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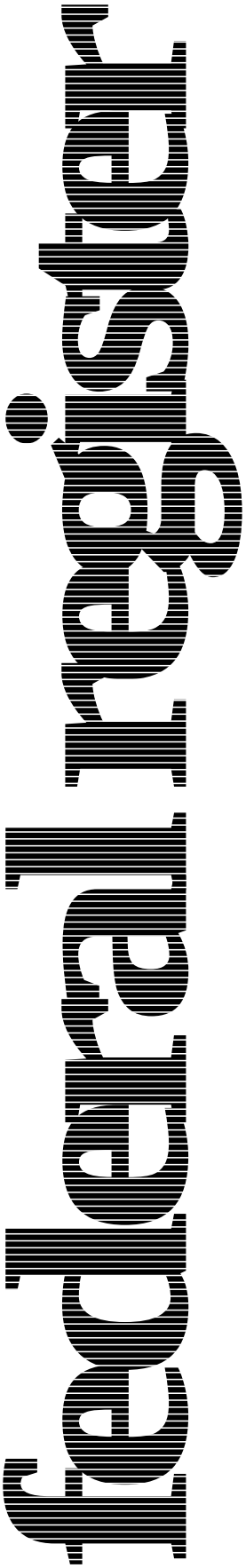
Vol. 60 No. 3
Pages 1707–1988



Thursday
January 5, 1995

Briefings on How To Use the Federal Register
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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.

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: January 25 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 60, No. 3

Thursday, January 5, 1995

Separate Parts In This Issue

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 3
Thursday, January 5, 1995

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 351]

Food Stamp Program—Distribution of Employment and Training Performance-Based Funds

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: State welfare agencies are responsible for administering the Food Stamp Program and are required to operate the Food Stamp Employment and Training (E&T) program. To assist in the operation of their E&T programs, the State agencies receive a Federal E&T grant, a portion of which is distributed on the basis of each State agency's performance in serving the targeted mandatory population. This final rule amends Food Stamp Program regulations as a result of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, enacted December 13, 1991 (FACT Act). The FACT Act reduces the annual performance standard for State agencies from 50 percent to no more than 10 percent in FYs 1992 and 1993 and no more than 15 percent in FYs 1994 and 1995. This final rule freezes the performance-based E&T grants at the level the State agencies received in Federal Fiscal Year 1993, for two years from the fiscal year in which this final rule is promulgated. The Department is taking this action in order to enable State agencies to exercise their option to serve fewer people, as provided by the FACT Act without reduction of performance-based E&T funds. This final rule supports efforts to target the E&T program toward more intensive components for a smaller segment of the targeted mandatory population. However, State agencies are not required to implement a more intensive E&T program and may continue to operate broad-based programs.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 716, Alexandria, Virginia 22302. The telephone number is (703) 305–2762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For reasons set forth in the final rule related Notice(s) of 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7; and (3) For program retailers and wholesalers —administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS), has certified that this action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected because they administer the Program and the rule will affect the performance-based funding levels for each State agency.

Paperwork Reduction Act

The provisions of this final rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

On January 19, 1994, the Department published a proposed rule at 59 FR 2779 designed to amend 7 CFR 273.7(d)(1)(i)(B) to specify that the $15 million Food Stamp E&T performance-based funds be frozen at the levels the State agencies respectively received in FY 1993. On April 11, 1994, the Department published the final rule implementing revised performance standards which supports efforts to allow State agencies to target the E&T program toward fewer participants. This final rule amends the regulations at 273.7(d), to allow State agencies the option of placing fewer participants through E&T programs and/or operate more intensive components of the E&T program, in keeping with Section 907(b) of the FACT Act. Comments were solicited on the provisions of the performance-based funding proposed rulemaking through March 21, 1994. This final action addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete understanding of this final action.

The Department received two comment letters from State agencies on the proposed rule; both concurred with the proposed provisions. The first commenter noted that the freeze of

performance-based funds at the levels the State agencies received in Fiscal Year 1993 for two years from promulgation of the final rule will allow State agencies to anticipate the available grant and plan for future needs.

The second commenter favored the proposed provision because the freeze minimizes changes in funding until the implementation of outcome-based performance standards for the E&T program, and distributes funds based upon data reflecting State agency performance prior to the point in time when most states would have begun targeting their E&T programs to fewer participants. No other comments were received on the proposed rule. The Department is adopting the provisions of the proposed rule as final without change.

Federal Funding for E&T Programs

Section 16(h), 7 U.S.C. 2025(h), of the Food Stamp Act of 1977 (Act) authorizes the Secretary to distribute $75 million each year in unmatched Federal funds to State agencies to operate their E&T programs. As specified under Section 16(h)(1)(C) of the Food Stamp Act, $60 million of the Federal E&T grant—the nonperformance based portion—is distributed on the basis of each State agency's work registrant population as a percent of the total work registrant population nationwide. Pursuant to Section 16(h)(1)(B), the remaining $15 million of the Federal E&T grant must be distributed on the basis of State agency performance.

Accordingly, the Department is amending 7 CFR 273.7(d)(1)(i)(B) in this rulemaking to specify that the $15 million performance-based funds will be frozen at the levels the State agencies received in FY 1993. In accordance with current rules, performance-based funds will be allocated by the ratio of the number of E&T mandatory participants placed in an E&T program by an eligible State agency to the number of E&T mandatory participants placed in all eligible State agencies in Calendar Year 1991.

Each State agency must continue to meet established performance standards (e.g., 10 percent in FY 1994) in order to be eligible for its share of these funds as is required under 7 CFR 273.7(d)(1)(i)(B). Should a State agency fail to meet the performance standard in a given fiscal year, the Department will determine if good cause exists to excuse the shortfall. Should the Department determine that no good cause exists, the State agency would be ineligible to receive its share of performance-based funding in the second following fiscal year. The Department will recalculate the performance-based funds payable to the State agencies on the basis of Calendar Year 1991 data, but excluding the State agencies which did not meet their standard.

The Department will not take into account corrected E&T report forms (FNS–583) received later than March 1 when determining whether a State agency is eligible for performance-based funding. If the data on the reports show that a State agency did not meet its performance standard or a good cause determination was not made by the Department by March 1, the State agency shall not be eligible for performance-based funding.

Implementation

The Department is amending 7 CFR 272.1 to add a new paragraph (g)(139) to reflect that the provisions of this final rule are effective October 1, 1993. State agencies are not required to take any action to implement these provisions.

Federal fiscal year 1993 levels will be used for the two Federal fiscal years following the Federal fiscal year in which this rule is published. The Department is anxious to receive suggestions for ways the performance-based funds could be distributed beyond that, until outcome-based performance standards are implemented.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for 7 CFR Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(139) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(139) *Amendment No. 351.* The provisions of Amendment No. 351 to amend 7 CFR 273.7(d) are effective October 1, 1993. State agencies are not required to take any action to implement these provisions.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7, paragraph (d)(1)(i)(B) is revised to read as follows:

§ 273.7 Work requirements.

* * * * *

(d) *Federal financial participation.*

(1) *Employment and training grants.*

(i) * * *

(B) In Federal fiscal year 1993, the Secretary shall allocate $15 million of the Federal funds available for unmatched employment and training grants based on the ratio of the number of E&T mandatory participants placed (as defined under paragraph (o) of this section) in a food stamp E&T program in an eligible State to the number of E&T mandatory participants placed in all eligible States in Calendar Year 1991. Beginning in Federal fiscal year 1994, and each subsequent Federal fiscal year until FY 1998, the Secretary shall allocate $15 million of Federal funds on the basis of the amount of performance-based funding each State agency received in Federal fiscal year 1993, provided the State agency has met the performance standard (as defined under paragraph (o) of this section) for the second preceding Federal fiscal year. For example, to receive performance-based funding in Federal fiscal year 1996, the State agency must have met its performance standard in Federal fiscal year 1994. Corrections to reports required to be submitted in accordance with paragraph (c) of this section must be received by FCS, and State agency good cause appeals must be resolved no later than March 1, to be used in determining whether a State agency is eligible for performance-based funding for the Federal fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard or a good cause determination was not made by FCS by March 1, the State agency shall not be eligible for performance-based funding. In this instance, the Secretary shall redistribute the $15 million Federal funds to eligible State agencies on the basis of Calendar Year 1991 data as prescribed under this paragraph, excluding the noncompliant States.

* * * * *

Dated: December 28, 1994.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 95–239 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–30–U

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD74

General Price Support Regulations for Grain, Rice, and Oilseeds for 1993 and Subsequent Crop Years

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the interim rule published in the **Federal Register** at 59 FR 34345 on July 5, 1994, with respect to the price support loan programs for grains and similarly handled commodities, including oilseeds (canola, mustard seed, rapeseed, safflower seed, soybeans, and sunflower seed).

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, Program Specialist, Consolidated Farm Service Agency (CFSA), USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–8481.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not- significant for purposes of Executive Order 12866 and therefore has not been reviewed by Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB Nos. 0560–0087 and 0560–0129. In accordance with the provisions of 44 U.S.C. 35, the information collection requirements that are revised as a result of this rule will be resubmitted to OMB for review.

Interim Rule

The interim rule published in the **Federal Register** on July 5, 1994, amended the regulations governing the price support loan programs for grains and similarly handled commodities to: Provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, provide more authority to State and county committees in administering the programs, lessen the administrative actions CCC imposes on producers who violate the loan and loan deficiency payment agreements, and correct errors.

Discussion of Comments

Comments were received by one respondent supporting CCC's proposed price support regulations. They believe the changes make the programs more farmer friendly and at the same time achieve program objectives.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, the interim rule which amended 7 CFR part 1421 published at 59 FR 34345 on July 5, 1994, is adopted as a final rule without change.

Signed in Washington, DC on December 23, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–243 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–05–P

7 CFR Part 1427

RIN 0560–AD82

1994 Cotton Loan and LDP Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On August 2, 1994, the Commodity Credit Corporation (CCC) issued an interim rule with respect to the cotton price support program which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). This interim rule provided greater clarity, enhanced the administration of CCC programs by providing uniformity between CCC price support programs, provided more authority to State and county committees in administering the programs, lessened administrative actions CCC imposes on producers who violate the loan and loan deficiency payment agreements, eliminated obsolete provisions, and more appropriately reflected loan eligibility requirement for the 1994 and subsequent year crops. This rule adopts as final the interim rule published on August 2, 1994 at 59 FR 39251. In addition, this rule amends 7 CFR Chapter XIV to reflect the abolishment of ASCS and the establishment of the Consolidated Farm Service Agency in the recent Department of Agriculture reorganization.

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Consolidated Farm Service Agency (CFSA), USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not- significant for purposes of Executive Order 12866 and therefore has not been reviewed by Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes 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. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB Nos. 0560–0087 and 0560–0129. The content and format of the information collections have not changed as a result of this amendment to 7 CFR part 1427; however, the frequency of reporting has been reduced. CFSA will submit a burden correction worksheet to OMB for review.

Discussion of Comments

One letter was timely received in response to the interim rule published on August 2, 1994, requesting public comments on the interim regulations for implementing the price support loan programs for upland cotton and extra long staple cotton which are administered by the CCC.

The respondent was generally supportive of the provisions of the interim rule; however, they expressed a need for a more detailed explanation of why the reference to incentive payments was removed from section 1427.5(c)(2)(ii). The removal of the reference to incentive payments was to remove the possible interpretation that incentive payments automatically resulted in the loss of beneficial interest. In fact, payments by buyers to producers for services, such as transportation and storage, will not cause beneficial interest to be transferred if such payment is not conditioned on the eventual sale of the cotton.

If buyers question whether or not incentive payments made to producers will result in the producer losing beneficial interest prematurely, such buyers are encouraged to have their contracts reviewed by the CFSA.

Establishment of the Consolidated Farm Service Agency

Pursuant to Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994. That memorandum orders the abolishment of the Agricultural Stabilization and Conservation Service and the establishment of the Consolidated Farm Service Agency, which assumes the functions previously performed by the Agricultural Stabilization and Conservation Service. This rule includes amendments to 7 CFR chapter XIV which are necessary to bring agency regulations into alignment with the departmental reorganization.

Accordingly, 7 CFR Chapter XIV and part 1427 are amended as follows:

1. In 7 CFR chapter XIV, all references to ''Agricultural Stabilization and Conservation Service'' are revised to read ''Consolidated Farm Service Agency'' and all references to ''ASCS'' are revised to read ''CFSA''.

2. Under authority of 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR part 1427 that was published at 59 FR 39251 on August 2, 1994 is adopted as a final rule without change.

Signed in Washington, DC, on December 23, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–241 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–05–P

Rural Utilities Service

7 CFR Part 1755

Telecommunications Standards and Specifications for Materials, Equipment and Construction; Correcting Amendments

AGENCY: Rural Utilities Service, USDA.

ACTION: Correcting amendments.

SUMMARY: The Rural Utilities Service (RUS) is correcting its telephone regulations in order to add a recently approved Office of Management and Budget (OMB) information collection control number to recently published RUS telephone specifications and to replace the old control numbers in the existing regulations with the recently approved control number.

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Jill M. Eberhart, Management Analyst, Program Support Staff, Rural Utilities Service, room 2242, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0380.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS). The Rural Utilities Service (RUS) recently issued three standards and specifications that need the addition of an Office of Management and Budget (OMB) control number in the regulatory text. RUS stated in the preambles of these three rules that RUS would publish a technical amendment to add this number to the rules when the information collection was reapproved. As OMB recently

reapproved this information collection, RUS is hereby adding this number to the three specifications. Also, RUS is replacing the old control number in existing codified telecommunications specifications found in 7 CFR part 1755 which need new control numbers to replace the previously approved number.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Accordingly, 7 CFR part 1755 is corrected by making the following amendments:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for 7 CFR part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§§ 1755.390, 1755.522, 1755.860, 1755.890 [Amended]

2. At the end but before Appendix A of §§ 1755.390, 1755.522, 1755.860, and 1755.890, remove the Office of Management and Budget control number ''0572–0077'' in the parentheticals, and add, in its place, the number ''0572–0059''.

§ 1755.397 [Amended]

3. At the end of § 1755.397 introductory text, remove the Office of Management and Budget control number ''0572–0062'' in the parentheticals, and add, in its place, the number ''0572–0059''.

§§ 1755.525, 1755.870, 1755.900 [Amended]

4. At the end of § 1755.525, and at the end but before Appendix A of §§ 1755.870 and 1755.900, add the following statement to read as follows:

(The information collection and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under control number 0572–0059.)

Dated: December 1, 1994.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–245 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–15–P

7 CFR Part 1755

Telephone Standards and Specifications

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Rural Utilities Service (RUS) is amending its list of codified regulations on telecommunications standards and specifications for materials, equipment and construction to add new entries in order to bring it up to date.

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, room 2234, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0380.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not: (1) Preempt any State or local laws, regulations, or policies; (2) have any retroactive effect; and (3) require administrative proceeding before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule simply involves telephone standards and specifications already codified and determined not to have a significant economic impact on a substantial number of small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, there are no information collection and recordkeeping requirements contained in this final rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

Pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS). The term ''RUS standards and specifications'', has the same meaning as the term ''REA standards and specifications'', unless otherwise indicated. RUS issues standards and specifications for construction of telephone facilities financed with RUS loan funds. In this document, RUS is setting out for the public for informational purposes the currently completed list of codified specifications. Due to the nature of this document and the Administrative Procedure Act, this action is being published as a final rule and is effective date of publication.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178.

2. Section 1755.98 is amended by adding in numerical order new entries to the table to read as follows:

§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.

* * * * *

Section	Issue date	Title
*	*	*
1755.390 ..	6–21–93	RUS Specification for Filled Telephone Cables.
*	*	*
1755.522 ..	6–28–93	RUS General Specification for Digital, Stored Program Controlled Central Office Equipment.
1755.525 ..	7–18–94	RUS Form 525, Central Office Equipment Contract (Including Installation).
1755.860 ..	12–20–93	RUS Specification for Filled Buried Wires.
1755.870 ..	7–14–94	RUS Specification for Terminating Cables.
1755.890 ..	6–21–93	RUS Specification for Filled Telephone Cables with Expanded Insulation.
1755.900 ..	8–4–94	RUS Specification for Filled Fiber Optic Cables.
*	*	*

Dated: December 6, 1994.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–244 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–231–AD; Amendment 39–9116; AD 95–01–05]

Airworthiness Directives; Boeing Model 757 Equipped With Pratt & Whitney Model PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This action requires a revision to the FAA-approved Airplane Flight Manual to include procedures to perform periodic engine run-ups during ground operation in icing conditions in order to shed ice before it accumulates, sheds, and is ingested into the engine, which could cause damage to the core of the engine. This action provides procedures for a visual check to detect ice build-up on the first stage of the low pressure compressor (LPC) stator and removal of any ice, as necessary. This amendment is prompted by reports of damage to the high pressure compressor of the engines due to ice ingestion. The actions specified in this AD are intended to prevent damage to engines due to the ingestion of ice into the compressor, which can result in the loss of power from the affected engine.

DATES: Effective January 20, 1995.

Comments for inclusion in the Rules Docket must be received on or before March 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Tamra J. Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2669; fax (206) 227–1181; or John Fisher, Aerospace Engineer, Engine Certification Branch, ANE–141, FAA, Engine and Propeller Directorate, Engine Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 238–7149; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received reports of damage to the high pressure compressor (HPC) of the engines on several Boeing Model 757 series airplanes equipped with Pratt & Whitney Model PW2000 series engines. Investigation into the cause of this damage revealed that, during prolonged ground operation in icing conditions, ice can accumulate on the first stage of the low pressure compressor (LPC) stator. Subsequent acceleration to high thrust levels releases this ice, which travels through the LPC and into the HPC, where blade damage may occur.

During ground operation in icing conditions, ice may build up on the first stage of the LPC stator of the engines. The engine anti-ice system will not remove or prevent the formation of ice on this component; it only protects the inlet cowl. Ice accumulation on the first stage of the LPC stator is an urgent safety concern since it may be ingested into the core of the compressor, which can cause damage to the engine. If the ice accumulation is sufficiently large and is subsequently shed and ingested, the resulting damage to the engine may lead to surges in or loss of power from the affected engine.

The FAA has determined that periodic engine run-ups will shed the ice from the first stage of the LPC stator before it accumulates in sufficiently large quantities that, when shed, may result in damage to the engine. Ice shedding occurs when the air loads exceed the adhesion force between the ice and the stator. However, the quantity of ice that is shed is not proportional to rotor speed. The FAA finds that a minimum of 50 percent rotation speed of the engine fan (N_1) is necessary to shed ice; power settings below 50 percent N_1 are ineffective for ice removal. In addition, the FAA has determined that these engine run-ups should be based on temperature and visible moisture, rather than on icing indications on the airframe of the airplane.

Ice accumulation, if not detected and removed, can be ingested into the compressor and cause damage to the engine, which could result in the loss of power from the affected engine.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent damage to these engines due to ice ingestion into the compressor, which may result in the loss of power from the affected engine. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will ensure that during inclement weather, periodic engine run-ups will shed ice before it accumulates and causes damage to the engine.

This action also provides procedures for a visual check to detect ice build-up on the first stage of the LPC stator and removal of any ice, if necessary. The FAA has determined that these visual checks may be properly performed by pilots because the checks do not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of or reference

to technical data that are not contained in the body of the AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–231–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–01–05 Boeing: Amendment 39–9116. Docket 94–NM–231–AD.

Applicability: Model 757 series airplanes equipped with Pratt & Whitney Model PW2000 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to these engines due to ice ingestion into the compressor, which may result in the loss of power from the affected engine, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise the Limitations Section, Section 1, page 11, of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

Ground Operations During Icing Conditions

Periodic engine run-ups must be performed during prolonged ground operation in icing conditions (including time to taxi-in and taxi-out, and ground hold time), when engine anti-ice is required and the outside air temperature (OAT) is +3 degrees Centigrade (37 degrees Fahrenheit) or less.

These momentary run-ups must be performed to a minimum of 50 percent N_1 in order to shed ice from the first stage of the low pressure compressor (LPC) stator. The run-up interval is established according to either paragraph a. or paragraph b., below:

a. If a visual check of the leading edge of the first stage of the LPC stator has NOT been accomplished prior to engine start, run-ups must be performed at intervals not to exceed 15 minutes (including time to taxi-in and taxi-out, and ground hold time); or

b. If a visual check of the leading edge of the first stage of the LPC stator has been accomplished prior to engine start and it is determined to be free of ice, run-ups must be performed at intervals not to exceed 30 minutes (including time to taxi-in and taxi-out, and ground hold time). Any ice accumulation on the first stage of the LPC must be removed prior to dispatch.

In no case can the engines be operated for more than 30 minutes without either a visual check or an engine run-up.

If either of the time limits in paragraph a. or paragraph b., above, is exceeded without performing a run-up, the aircraft must be taxied to an area where the engines can be shut down, a visual check for ice accumulation must be accomplished, and any ice must be removed prior to the next run-up or takeoff. During taxi to the area for the visual inspection, engine speeds greater than 40 percent N_1 should be avoided to minimize the potential for ice shedding into the engine compressor. If these requirements cannot be met, takeoff is not authorized.

The procedures for accomplishing the visual check of and ice removal from the first stage of the LPC stator are contained in paragraphs (b) and (c) of AD 95–01–05.

(b) Perform visual checks of the engine to detect ice build-up on the first stage of the LPC stator in accordance with the procedures specified in paragraphs (b)(1) and (b)(2) of this AD, at the times specified in the revision to the AFM required by paragraph (a) of this AD. These visual checks may be performed either by the cockpit flight crew or by certificated maintenance personnel.

(1) Use adequate lighting to illuminate the first stage of the LPC stator. This stator can be viewed by standing at ground level, off to the side of the centerline of the engine, and viewing through the opening between the fan blades. (See Appendix 1, Figure 1 of this AD.) If ice is present, it will be seen to build up on the leading edge of the first stage of the LPC stator or the lip of the splitter. (See Appendix 1, Figure 2.)

(2) This visual check is to be performed after engine shutdown. The visual check can be performed on a windmilling engine without bringing the fan rotor to a stop. It will actually become easier to see the first stage of the LPC stator if the rotor is turning. The ice will be visible, if present.

(c) If any ice is detected on the first stage of the LPC stator (see Appendix 1, Figure 2) during the visual check required by paragraph (b) of this AD, it must be removed prior to dispatch of the aircraft, in accordance with the procedures specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If the total ground operating time since the last run-up to 50 percent N_1 is less than 30 minutes, the engine may be run-up to 50 percent N_1 to remove the ice, or it may be removed in accordance with the ''Ice Removal'' procedures described in paragraph (c)(2) of this AD.

(2) If the total ground operating time since the last run-up to 50 percent N_1 is greater than 30 minutes, and the engine has been visually checked and it has been determined that ice has accumulated on the leading edge of the first stage of the LPC stator, the following ''Ice Removal'' (hot air de-icing) method must be used. Do not use hot water or aircraft de-icing fluids.

Ice Removal

De-ice the leading edge of the first stage of the LPC stator with the use of a suitable hot air source (e.g., heating cart). At no time should the temperature of the air supplied exceed 175 degrees Fahrenheit. Direct the air past the fan blades toward the first stage of the LPC stator. Continue hot air de-icing this LPC stator until all of the ice has been melted. Melted ice and ice chunks, which have been dislodged, should not be allowed to accumulate at the bottom of the fan duct where they could refreeze and become ingested into the engine during the next engine run-up.

Note 1: The only acceptable means to remove ice from the first stage of the LPC stator are listed in paragraphs (c)(1) and (c)(2) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) This amendment becomes effective on January 20, 1995.

BILLING CODE 4910–13–U

Appendix 1

FIGURE 1

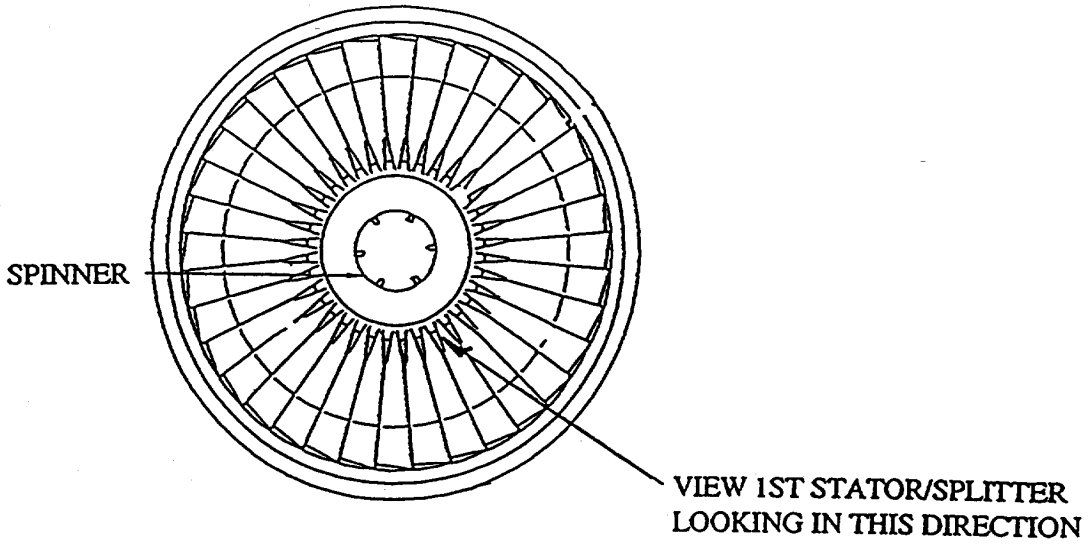
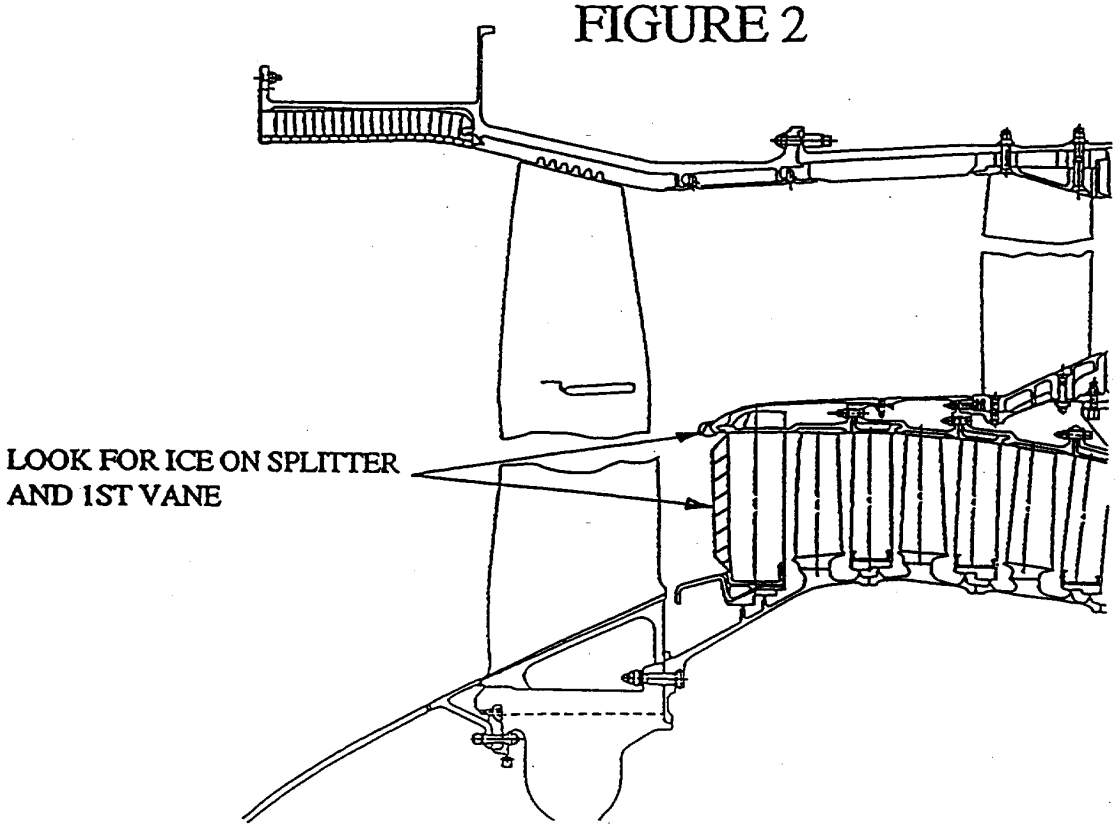


FIGURE 2



BILLING CODE 4910–13–C

Issued in Renton, Washington, on December 27, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–176 Filed 1–4–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 375, and 385

[Docket No. RM93–20–000]

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant Order No. 574

Issued December 29, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to provide for the electronic filing of FERC Form No. 1, Annual Report of Major electric utilities, licensees and others. Commencing with the report for reporting year 1994, due on or before April 30, 1995, filing will be required in the form of a computer diskette in addition to the currently required number of paper copies. No changes are being made to the FERC Form No. 1 itself. The Commission has concluded that the automation of Form 1 filing will yield significant benefits, including more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of reporting burden.

EFFECTIVE DATE: This rule is effective February 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard Mattingly (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–2070

Robert J. Lynch (Technical Information), Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426, (202) 219–3012

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant; Docket No. RM93–20–000.

Order No. 574 Final Rule

Issued December 29, 1994.

I. Introduction

On July 23, 1993, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR)[1] in which the Commission proposed to amend 18 CFR Parts 141 and 385 to provide for the electronic filing of FERC Form No. 1, ''Annual Report of Major electric utilities, licensees and others'' (Form 1). Under the proposed rule, in addition to paper copies, future Form 1 filings would also be made by means of a computer diskette incorporating software programming developed by the Commission. Electronic reporting of Form 1 was proposed to commence with reporting year 1993, due on or before April 30, 1994. No change was proposed in Form 1 itself.

Interested parties were requested to submit written comments. Comments were received from numerous electric utilities, industry associations, and the Energy Information Administration of the United States Department of Energy. On December 30, 1993, the Commission issued a Notice of Intent to Act and Response to Comments (Notice).[2] The Commission deferred issuance of a final rule pending development and testing of the necessary software. The Commission stated that it anticipated that the development and testing process would be complete in time for the electronic filing of Form 1 for report year 1994, due on or before April 30, 1995. The Commission also stated its views on a number of issues raised by the commenters.[3] The procedures outlined in the Notice have been successfully completed, and the Commission is now adopting a final rule amending its regulations to provide for the electronic filing of Form 1 and also for the delegation of authority to the Chief Accountant or his designee to rule on requests for waiver of the electronic filing requirements.

II. Public Reporting Burden

The current annual reporting burden for the industry for collection of information is estimated to be 235,000 hours for the Form 1. The industry burden is based on an estimate of 1,217 average hours on an annual basis for the 193 entities which complete a Form 1 filing. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Commission anticipates that any increase in reporting burden for collection of information from this rule will be minimal. Initially, there may be some increase in reporting burden as respondents develop procedures and adapt equipment to implement electronic filing. However, for the last several years, most Form 1 respondents have already prepared their Form 1 paper copies from computer-based systems. This rule will thus result largely in a standardization of preparing and filing the form electronically.

Send comments regarding reporting burden or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Information Services Division, 202–208–1415), and to the Office of

[1] 58 FR 40606 (July 29, 1993); IV FERC Stats. & Regs. ¶ 32,498 (1993).

[2] 59 FR 1687 (Jan. 12, 1994). In an order issued concurrently, on December 30, 1993, the Commission also adopted a final rule delegating to the Chief Accountant or his designee the authority to act on requests for waiver of the Form Nos. 1 and 1–F. Order No. 564, 59 FR 1917 (Jan. 13, 1994); III FERC Stats. & Regs. ¶ 30,990 (1993).

[3] The discussion and analysis in the Notice is hereby incorporated by reference in this order.

Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Background

The Commission, in the exercise of its authority under the Federal Power Act, collects data pertaining to the electric utility industry in the United States.[4] One of the principal forms used for collection of this information is Form 1, which is submitted annually by some 193 electric utilities and licenses. Form 1 consists of cover pages, four pages of general information and instructions, and 113 pages of schedules incorporating financial and operational information pertaining to the respondent companies. Form 1 also requires that certain financial information be certified by an independent certified public accountant[5] as conforming to the Commission's Uniform System of Accounts.[6]

Form 1 has heretofore been submitted in a paper or hardcopy format. Currently, Form 1 respondents must file an original and six copies. As noted in the NOPR, the Commission and its staff have been approached by individual electric utilities and state commission staffs inquiring whether the Commission had developed or planned to develop an automated data filing system for Form 1. These parties suggested that such a procedure could yield significant benefits in terms of process simplification and savings of time and expense.

The Commission has concluded that the automation of Form 1 filing will yield significant benefits, including more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of reporting burden. Accordingly, in this Final Rule, the Commission is requiring the automation of Form 1 filing.

IV. Summary of Proposal

The NOPR outlined a plan under which the Commission would develop a personal computer (PC) based software package for Form 1 reporting.[7] The software would be available on standard computer diskettes with instructions and documentation and would be sent to each Form 1 respondent without charge. The program would display the Form 1, schedule by schedule, on the respondent's PC. The required data could then be manually key-entered on the respondent's PC. The program was intended to permit the respondent to ''import'' the required data from its PC or mainframe computer directly into the software package, thus avoiding the manual data-entry process. When the data entry process was completed, the respondent, using the software, would be able to produce a data diskette that would be submitted to the Commission, along with the required paper copies.[8]

The Commission noted that it had already initiated the process of procuring the necessary software package for automating Form 1 reporting and stated that, upon receipt of the software package, the Commission staff would test all aspects of the system, including data input, data output, and print capability. The Commission also stated its intention to conduct a thorough field test of the software package with volunteer Form 1 respondents.

V. Development of the Software Program

Development of software for electronic reporting of Form 1 was carried out in accordance with the outline set forth in the NOPR. Working with members of the Commission staff, a software contractor developed an initial program, which was submitted for preliminary testing. The program was thoroughly tested by the staff and numerous adjustments and revisions were adopted. Following completion of these tests, the staff established a working group of volunteer electric utilities to design a field test for the program. The field test was undertaken and successfully completed. The results of the field test confirm that the Form 1 software program is practical, reliable, and suitable for the purpose of electronic filing of Form 1.

VI. Reporting Procedure

The Commission intends to mail the program to each Form 1 respondent in late December 1994 or early January 1995. The program is incorporated in three diskettes, which will be accompanied by a user manual and a cover letter. The cover letter will include (1) an explanation of the principal features of the program, (2) the names and telephone numbers of staff contacts for any respondents requiring assistance, (3) diskette labelling instructions, (4) instructions for filing corrections (resubmissions), and (5) other pertinent information regarding the filing requirements and procedures. The Form 1 report, which will be incorporated on a single diskette, must be submitted by each respondent on or before April 30 of each year, commencing April 30, 1995. Each respondent will be required to submit two duplicate diskettes, together with the required original and six paper copies.

The Commission is adopting one change in reporting procedure as a result of the adoption of the electronic filing requirement. Heretofore, revisions to Form 1 data were made by means of submitting only those individual pages or schedules requiring correction. In the future, in cases where changes are required, respondents will be required to submit a complete Form 1 report incorporating the necessary changes and corrections. Two new diskettes and an original and six conforming paper copies will be required to be filed. This requirement is necessary in order to facilitate electronic collation of the reported data and to assure the completeness and consistency of reporting.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[9] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most respondents do not fall within the definition of ''small entity,''[10] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Information Collection Statement

The regulations of the Office of Management and Budget (OMB)[11] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this Final Rule are contained in FERC Form No. 1, ''Annual Report of Major electric utilities, licensees and others'' (OMB approval No. 1902–0021). Since this Final Rule does not involve new information requirements and will have a minimal effect on current information collections, there is no need to obtain

[4] 16 U.S.C. 825, 825c.

[5] 18 CFR 41.11. The Commission did not propose any change in the requirements for filing the independent certified public accountant's report.

[6] 18 CFR Part 101.

[7] An IBM compatible, DOS-based system.

[8] The software package would also enable respondents to print paper copies of the Form 1.

[9] 5 U.S.C. 601–612.

[10] *See* 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[11] 5 CFR 1320.14.

OMB approval. However, the Commission is sending a copy to OMB for informational purposes only.

IX. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[12] No environmental consideration is necessary for the promulgation of a rule that involves information gathering, analysis and dissemination.[13] The final rule only affects the way in which the Commission gathers information. Accordingly, no environmental consideration is necessary.

X. Effective Date

This final rule is effective February 6, 1995.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Parts 141, 375 and 385 in Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for Part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 141.1, the heading of paragraph (b) is revised and paragraph (b)(2) is revised to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(b) *Filing requirements.*

* * * * *

(2) *When to file and what to file.* This report form shall be filed on or before April 30 of each year for the previous calendar year. This report form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in this report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with report year 1994, due on or before April 30, 1995.

PART 375—THE COMMISSION

3. The authority citation for Part 375 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. Section 375.303 is amended by revising paragraph (l) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(1) Deny or grant, in whole or part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major electric utilities, licensees and others) and § 141.2 of this chapter (FERC Form No. 1–F, Annual report for Nonmajor public utilities and licensees), and of the filing of FERC Form No. 1 on electronic media (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

PART 385—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 385.2011 is amended by revising the heading, by adding paragraph (a)(6) and by revising paragraphs (c)(3), (e)(1), (e)(2) and (e)(4) to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(6) FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(c) * * *

(3) The electronic media must be accompanied by the traditional prescribed number of paper copies.

* * * * *

(e) *Waiver*—(1) *Filing of petition.* If a natural gas company, electric utility, licensee or other entity does not have and is unable to acquire the computer capability to file the information required to be filed on electronic media, the company may request waiver from the requirement of this part, by filing an original and two copies of a petition. The natural gas company, electric utility, licensee or other entity may renew the waiver if the company can continue to show that it does not have and is unable to acquire the computer capability for electric filing.

(2) *Standard for waiver.* The petition for waiver must show that the natural gas company, electric utility, licensee or other entity does not have the computer capability to file the information required under this section on electronic media and that acquisition of the capability would cause the company severe economic hardship. This waiver may be granted for up to one year.

* * * * *

(4) *Decision on petition.* The Commission or its designee will review a petition for waiver and notify the applicant of its grant or denial. Once the petition is decided, the natural gas company, electric utility, licensee or other entity will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was required to be filed while the petition was pending.

[FR Doc. 95–263 Filed 1–4–95; 8:45 am]

BILLING CODE 6717–01–P

[12] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Regulations Preambles 1986–90 ¶ 30,783 (1987).

[13] 18 CFR 380.4(a)(5).

18 CFR Part 284

[Docket No. RM93–4–006; Order No. 563–D]

Standards for Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations

Issued December 29, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order modifying capacity release data sets.

SUMMARY: In response to a proposed modification submitted by the Electronic Bulletin Board Working Group, the Federal Energy Regulatory Commission (Commission) is issuing an order making changes to the capacity release data sets. The Commission's order revises its ''Standardized Data

Sets and Communication Protocols,'' available at the Commission's Public Reference and Files Maintenance Branch, to add two fields in the Award Data Set for reporting the maximum natural gas pipeline tariff rate related to released capacity. With the electronic data on maximum rates, the Commission can use computers to automatically evaluate the relationship between release and maximum rates.

DATES: New fields must be implemented by February 1, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0292

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations; Docket No. RM93–4–006.

Order No. 563–D; Order Modifying Capacity Release Data Sets

Issued December 29, 1994.

On November 4, 1994, the Electronic Bulletin Board (EBB) Working Group submitted a proposed modification of the capacity release data sets adopted by the Commission in Order No. 563.[1] The approved data sets are included in a document entitled ''Standardized Data Sets and Communication Protocols,'' available at the Commission's Public Reference and Files Maintenance Branch.

The Working Group states that to accommodate a suggestion from Commission staff at the August 11, 1994 conference, it is proposing to add fields in the Award Data Set for reporting the maximum tariff rate for service relating to capacity posted for release at the time the offer to release is made. The proposed fields would report the maximum reservation rate and maximum volumetric rate for released capacity. The Working Group proposes to make these fields optional, because pipelines tariffs do not currently require posting of maximum rate.[2] The filing also contains proposed revisions to the Electronic Data Interchange (EDI) implementation guide relating to this change.

Pursuant to the process adopted by the Commission to make modifications to the data sets,[3] public notice of the filing was issued on November 17, 1994, with comments due by November 29, 1994. Panhandle Eastern Pipelines [4] filed a comment supporting the data sets as submitted. They request implementation not be required earlier than February 1, 1995, because during December and January, many pipelines' computer staffs are occupied with the tasks of beta-testing EDI confirmation and nomination data sets and finalizing transaction point information for the PI Grid Common Code Data Base.

The National Registry of Capacity Rights, Inc. (Registry) supports the Working Group filing, but contends that the maximum rate fields be made mandatory to ensure that the data is provided by all pipelines. The Registry states that due to the operating principle within the Working Group of requiring 100% consensus in support of a proposed change, consensus could not be reached for requiring that the fields be mandatory. The Registry further states that, based on its experience with EDI data, retention of optional status for these fields will mean that the maximum rate information will not be included in many instances. The Registry maintains that changing to mandatory status would require no substantive change in the data sets or implementation guide; the only change would be redesignate the fields as mandatory.

The Commission will accept the additional fields, but will require the fields to be mandatory, so that all pipelines will be required to include them. Having electronically transmitted data on the maximum rate for releases on all pipelines in the Award Data Set is important for the Commission, as well as the other members of the gas industry, to be able to efficiently evaluate the capacity release market by determining the extent to which capacity releases are discounted from maximum rates. With the electronic data on maximum rates, the Commission can use computers to automatically evaluate the relationship between release and maximum rates. Without electronic data, Commission staff would have to determine the maximum release rate for each release from the pipelines' individual tariffs and manually enter that information in its computer data base. Given the large number of capacity release offers and the difficulty in ascertaining the maximum rate that will apply to each release, manual entry would prove to be very tedious and time consuming.[5]

For those pipelines that do not already include maximum rate information on their EBBs, the burden of adding this data should not be significant. All pipelines must know (and in many cases will already have

[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[2] Optional means the pipeline must include the field only if the pipeline chooses to do so or its tariff requires it to include the information.

[3] Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,036–37.

[4] Algonquin Gas Transmission Company, Panhandle Eastern Pipe Line Company, Texas Eastern Transmission Corporation, and Trunkline Gas Company.

[5] There are number of factors that make computation of maximum rates for specific releases difficult. For example, many pipelines have a significant number of rate zones, with the maximum rate depending on the number of zones the release crosses. In addition, surcharges and other requirements in pipeline tariffs may affect the maximum rate. Maximum rates also will change each time a pipeline makes a tariff filing to revise its rates.

computerized) the maximum rate information so that they can verify that bids for release packages do not exceed the maximum rate.

Pipelines will be required to implement the new fields by February 1, 1995. The ''Standardized Data Sets and Communication Protocols'' will be modified to include the new fields and will be made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission Orders

(A) The Commission will accept the proposed fields for maximum reservation rate and maximum volumetric rate and the related EDI implementation guide changes as proposed in the November 4, 1994 filing with the modification that the maximum rate fields will be mandatory.

(B) Pipelines must implement these new fields by February 1, 1995.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–264 Filed 1–4–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 43a, 112, and 113

[DoD Directive 1344.9 and DoD Instruction 1344.12]

RIN 0790–AF65 and RIN 0790–AF80

Indebtedness of Military Personnel

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: 5 U.S.C. 5520a(k) required the Department of Defense to ''promulgate regulations'' by April 4, 1994 for the involuntary allotment of pay from members of the Armed Forces for debts reduced to judgments. The Department published its proposed rule in the **Federal Register** on April 26, 1994 (59 FR 21713). This final rule satisfies 5 U.S.C. 5520a(k) by promulgating regulations with regard to members of the Armed Forces which include provisions for the involuntary allotment of the pay of a member of the Armed Forces for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940; and which gives consideration for the absence of a member of the Armed Forces from an appearance in a judicial proceeding resulting from exigencies of military duty.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Major Alan L. Cook, (703) 697–3387.

SUPPLEMENTARY INFORMATION: Following publication of the Department of Defense's proposed rule, the Department received several public comments. After review of the comments, the Department amended its proposed rule accordingly. Some of the major changes included increasing the percentage of a member's pay that could be collected by a debtor pursuant to an involuntary allotment; deleting the requirement that a judgment could not be more than two years old in order for the Department to process an involuntary allotment request; and establishing appeal procedures for debtors from determinations by commanders that preclude collection by involuntary allotment because of exigencies of military duties. Additionally, the Coast Guard coordinated with the Department of Defense to be included in the regulations published by the Department of Defense. Note, the Department originally intended to publish its final regulation, which included both policy and procedural provisions, in the form of a DoD directive. However, due to internal Department of Defense guidance published in DoD 5025.1–M [1] (August 1994), directives may no longer include procedures. The procedures that were contained in the proposed rule have been placed in a DoD instruction. Accordingly, the final rule is now in two parts. The first part, 32 CFR part 112, is based on the DoD directive that contains broad policy guidance. The second part, 32 CFR part 113, reflects the DoD instruction and contains the Department's procedural guidance. The substance of both parts are derived from the proposed rule as originally published on April 26. Additionally, it has been determined that 32 CFR parts 112 and 113 are not significant regulation actions. The rules do not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. It has also been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it will not have a significant adverse economic impact on a substantial number of small entities. The primary financial effect on administering the rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies. Additionally, it has been determined that 32 CFR part 112 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). 32 CFR part 113 imposes an information collection requirement for which the paperwork has been completed. The OMB approval number is 0704–0367. Specifically, OMB provided their approval for the collection of information required by DD Form 2653, appendix C to 32 CFR part 113, that was originally intended to be included in the DoD directive but had to be moved to the DoD instruction (for internal reasons as noted above). Finally, application forms for involuntary allotment (DD Form 2653, ''Involuntary Allotment Application,'' as described in 32 CFR part 113, appendix C) may be obtained from the Defense Finance and Accounting Service, Cleveland Center, Code L, PO Box 998002, Cleveland, Ohio 44199–8002, telephone (216) 522–5301.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Parts 43a, 112 and 113

Claims, Credit, Military personnel.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, under the authority of 10 U.S.C. 301, Title 32 of the Code of Federal Regulations, Chapter I, Subchapter C, is amended to read as follows:

Dated: December 28, 1994.

PART 43a—[REMOVED]

1. Part 43a is removed.

2. 32 CFR parts 112 and 113 are added to read as follows:

PART 112—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.
112.1 Purpose.
112.2 Applicability and scope.
112.3 Definitions.
12.4 Policy.
112.5 Responsibilities.

Authority: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

§ 112.1 Purpose.

This part: (a) Updates policy and responsibilities governing delinquent indebtedness of members of the Military Services, and prescribes policy for processing involuntary allotments from the pay of military members to satisfy judgment indebtedness in accordance with 5 U.S.C. 5520a(k).

(b) Establishes responsibility for procedures implementing 5 U.S.C. 5520a(k), 15 U.S.C. 1601 note, 1601–1614, 1631–1646, 1661–1665a, 1666–1666j, and 1667–1667e (''Truth in Lending Act''), and 15 U.S.C. 1601 note, and 1692–1692o (''Fair Debt Collection Practices Act'').

(c) Designates the Director, Defense Finance and Accounting Service (DFAS), as the Department of Defense Executive Agent for forms necessary to process involuntary allotments. The Executive Agent shall publish, print, stock, distribute, and revise forms.

§ 112.2 Applicability and scope.

(a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the Department of Defense Field Agencies (hereafter referred to collectively as ''the Department of Defense Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) The provisions of this part do not apply to:

(1) Indebtedness of a member of the Military Services to the Federal Government.

(2) Processing of indebtedness claims to enforce judgments against military members for alimony or child support.

(3) Claims by State or municipal governments under the processing guidelines for complaints, including tax collection actions.

§ 112.3 Definitions.

(a) *Absence.* A member's lack of an ''appearance,'' at any stage of the judicial process, as evidenced by failing to physically attend court proceedings; failing to be represented at court proceedings by counsel of the member's choosing; or failing to timely respond to pleadings, orders, or motions.

(b) *Court.* A court of competent jurisdiction within any State, territory, or possession of the United States.

(c) *Debt collector.* An agency or agent engaged in the collection of debts described under 15 U.S.C. 1601 note and 1692–1692o (''Fair Debt Collection Practices Act'').

(d) *Exigencies of military duty.* A military assignment or missing-essential duty that, because of its urgency, importance, duration location, or isolation, necessitates the absence of a member of the Military Services from appearance at a judicial proceeding or prevents the member from being able to respond to a notice of application for an involuntary allotment. Exigency of military duty is normally presumed during periods of war, national emergency, or when the member is deployed.

(e) *Judgment.* A final judgment must be a valid, enforceable order or decree, by a court from which no appeal may be taken, or from which no appeal has been taken within the time allowed, or from which an appeal has been taken and finally decided. The judgment must award a sum certain amount and specify that the amount is to be paid by an individual who, at the time of application for the involuntary allotment, is a member of the Military Services.

(f) *Just financial obligations.* A legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment that conforms to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591).

(g) *Member of the military services.* Any member of the Regular Army, Air Force, Navy, Marine Corps, or Coast Guard, and any member of a Reserve component of the Army, Air Force, Navy, Marine Corps or Coast Guard (including the Army National Guard of the United States and the Air National Guard of the United States) on active duty pursuant to 10 U.S.C. 672, for a period in excess of 180 days at the time an application for involuntary allotment is received by the Director, DFAS, or Commanding Officer, Coast Guard Pay and Personnel Center. The following shall not be considered members:

(1) Retired personnel, including those placed on the temporary or permanent disabled retired list; and

(2) Personnel in a prisoner of war or missing in action status, as determined by the Secretary of the Military Department concerned.

§ 112.4 Policy.

(a) Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice (10 U.S.C. 801–940) or a claim pursuant to Article 139 of the Uniform Code of Military Justice (10 U.S.C. 939). Except as stated in this section, and in paragraphs (a)(1) and (a)(2) of this section, the Department of Defense Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt.

(1) Legal process instituted in civil courts to enforce judgments against military personnel for the payment of alimony or child support shall be acted on in accordance with 42 U.S.C. 651–665, and Part 7, Chapter 7, Section B. of Department of Defense 7000.14–R [1], Volume 7, Part A.

(2) Involuntary allotments under 5 U.S.C. 5520a(k) shall be established in accordance with this part.

(b) Whenever possible, indebtedness disputes should be resolved through amicable means. Claimants may contact military members by having correspondence forwarded through the military locator services for an appropriate fee, as provided under DoD Instruction 7230.7.[2]

(c) The following general policies apply to processing of *debt complaints* (not involuntary allotments):

(1) Debt complaints meeting the requirements of this part, and procedures established by the Under Secretary of Defense (Personnel and Readiness), as required by 32 CFR part 113, shall receive prompt processing assistance from commanders.

(2) Assistance in indebtedness matters shall not be extended to those creditors:

(i) Who have not made a bona fide effort to collect the debt directly from the military member;

(ii) Whose claims are patently false and misleading; or

(iii) Whose claims are obviously exorbitant;

(3) Some States have enacted laws that prohibit creditors from contacting a debtor's employer about indebtedness or

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 112.4(a)(1)

communicating facts on indebtedness to an employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment or obtaining written permission of the debtor.

(i) At Department of Defense installations in States having such laws, the processing of debt complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

(ii) The rule in § 112.4(c)(3)(i) shall govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

(4) Under 15 U.S.C. 1601 note and 1692–1692o (''Fair Debt Collection Practices Act''), contact by a debt collector with third parties, such as commanding officers, for aiding debt collection is prohibited without a court order, or the debtor's prior consent given directly to the debt collector. Creditors are generally exempt from this requirement, but only when they collect on this own behalf.

(d) The following general policies apply to processing of *involuntary allotments* under 5 U.S.C. 5520a(k).

(1) In those cases in which the indebtedness of a military member has been reduced to a judgment, an application for an involuntary allotment from the pay of the member may be made under procedures prescribed by the Under Secretary of Defense (Personnel and Readiness). Such procedures shall provide the exclusive remedy available under 5 U.S.C. 5520a(k).

(2) An involuntary allotment from a member's pay shall not be started in any indebtedness case in which:

(i) Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

(ii) There has not been compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. appendix sections 501–591.

§ 112.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) In consultation with the Under Secretary of Defense (Comptroller), establish procedures for the processing of debt complaints and involuntary allotments.

(2) Have policy oversight on the assistance to be provided by military authorities to creditors of military personnel who have debt complaints, and on involuntary allotment of military pay.

(b) The Under Secretary of Defense (Comptroller) shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense (Personnel and Readiness) to administer and process involuntary allotments from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Director, DFAS:

(i) Implements procedures established by the Under Secretary of Defense (Personnel and Readiness) and the Under Secretary of Defense (Comptroller).

(ii) Considers whether the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591), has been complied with under 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Department of Defense Executive Agent for Department of Defense forms necessary to process involuntary allotments.

(c) The Heads of the Department of Defense Components shall urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all Department of Defense personnel. See DoD Directives 1000.10,[3] 1000.11,[4] and 5500.7.[5]

(d) The Secretaries of the Military Departments shall:

(1) Establish, as necessary, procedures to administer and process involuntary allotments from the pay of members of the Military Services. This includes designating those commanders, or other officials who may act in the absence of the commander, who shall be responsible for determining whether a member's absence from a judicial proceeding was caused by exigencies of military duty, and establishing appeal procedures regarding such determinations.

(2) Require commanders to counsel members to pay their just debts, including complying, as appropriate, with court orders and judgments for the payment of alimony or child support.

(3) Emphasize prompt command action to assist with the processing of involuntary allotment applications.

(e) The Chief, Office of Personnel and Training, for the Coast Guard shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense (Personnel and Readiness) to administer and process involuntary allotments from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personnel Center:

(i) Implements procedures established by the Under Secretary of Defense (Personnel and Readiness) and Chief, Office of Personnel and Training.

(ii) Considers whether the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591), has been complied with under 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard Executive Agent for forms necessary to process involuntary allotments.

PART 113—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.

Authority: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

§ 113.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under 32 CFR part 112 governing delinquent indebtedness of members of the Military Services.

§ 113.2 Applicabichlity.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Military

[3] See footnote 1 to § 112.4(a)(1).
[4] See footnote 1 to § 112.4(a)(1).
[5] See footnote 1 to § 112.4(a)(1).

Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 113.3 Definitions.

(a) *Appearance.* The presence and participation of a member of the Military Services, or an attorney of the member's choosing, throughout the judicial proceeding from which the judgment was issued that is the basis for a request for enforcement through involuntary allotment.

(b) *Applicant.* The original judgment holder, a successor in interest, or attorney or agent thereof who requests an involuntary allotment from a member of the Military Services pursuant to DoD Directive 1344.9.[1]

(c) *Pay subject to involuntary allotment.* For purposes of complying with 32 CFR part 112 and 5 U.S.C. 5520a(k), pay subject to involuntary allotment shall be determined by:

(1) Including:

(i) Basic pay but excluding reduction for education for education benefits under section 38 U.S.C. 1411 (''New G.I. Bill'').

(ii) Special pay (including enlistment and reenlistment bonuses).

(iii) Incentive pay.

(iv) Accrued leave payments (basic pay portion only).

(v) Readjustment pay.

(vi) Severance pay (including disability severance pay).

(vii) Lump-sum Reserve bonus.

(viii) Inactive duty training pay.

(2) Excluding:

(i) Retired pay (including) disability retired pay).

(ii) Retainer pay.

(iii) Separation pay, Voluntary Separation Incentive (VSI), and Special Separation Benefit (SSB).

(iv) Allowances paid under titles 10 and 37 of the United States Code (e.g., Chapter 53 of title 10 and Chapter 7 of title 37, respectively) and other reimbursements for expenses incurred in connection with duty in the Military Service or allowances in lieu thereof.

(v) Payments not specifically enumerated in § 113.3(c)(1).

(3) After including the items in § 113.3(c)(1), subtracting the following pay items to compute the final earnings value of the pay subject to involuntary allotment:

(i) Federal and State employment and income tax withholding (amount limited only to that which is necessary to fulfill member's tax liability).

(ii) FICA tax.

(iii) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home.

(iv) Deductions for the Servicemen's Group Life Insurance coverage.

(v) Retired Serviceman's Family Protection Plan.

(vi) Indebtedness to the United States.

(vii) Fines and forfeitures ordered by a court-martial or a commanding officer.

(viii) Amounts otherwise required by law to be deducted from a member's pay (except payments under 42 U.S.C. 659, 661, 662, and 665).

(d) *Preponderence of the evidence.* A greater weight of evidence that is more credible and convincing to the mind. That which best accords with reason and probability. (See Black's Law Dictionary [2])

(e) *Proper and Timely Manner.* A manner that under the circumstances does not reflect discredit on the Military Service.

§ 113.4 Policy

(a) It is DoD policy under 32 CFR part 112 that procedures be established for the processing of debt complaints against members of the Military Services and involuntary allotments from the pay of members of the Military Services.

(b) An involuntary allotment shall not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law.

(c) The amount of an involuntary allotment under 32 CFR part 112 and this part when combined with deductions as a result of garnishments or statutory allotments for spousal support and child support under 42 U.S.C. 659, 661, 662, or 665, may not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under applicable State law. In any case in which the maximum percentage would be exceeded, garnishments and involuntary allotments for spousal and child support shall take precedence over involuntary allotments authorized under 32 CFR part 112 and this part. Involuntary allotments established under 32 CFR part 112 and this part shall be reduced or stopped as necessary to avoid exceeding the maximum percentage allowed.

(d) The Truth in Lending Act (15 U.S.C. 1601 note, 1601–1614, 1631–1646, 1661–1666j, and 1667–1667e) prescribes the general disclosure requirements that must be met by those offering or extending consumer credit and Federal Reserve Board Regulation Z (12 CFR 226) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal Government requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanding officers, with the assistance of judge advocates, should check regulations of the Federal Reserve Board to determine whether Federal or State laws and regulations govern.

§ 113.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall monitor compliance with this part.

(b) The Under Secretary of Defense (Comptroller) shall ensure Defense Finance and Accounting Service (DFAS) implementation of this part.

(c) The Heads of the DoD Components shall ensure compliance with this part.

§ 113.6 Procedures.

(a) The following procedures apply to the processing of debt complaints against members of the Military Services.

(1) It is incumbent on those submitting indebtedness complaints to show that they have met the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note, 1601–1614, 1631–1646, 1661–1666j, and 1667–1667e) and Federal Reserve Board Regulation Z (12 CFR 226), and that they complied with the Standards of Fairness (appendix B to this part).

(2) Creditors subject to Federal Reserve Board Regulation Z (12 CFR 226), and assignees claiming thereunder, shall submit with their debt complaint an executed copy of the Certificate of Compliance (appendix A to this part), and a true copy of the general and specific disclosures provided the member of the Military Service as required by the Truth in Lending Act (15 U.S.C. 1601 note, 1601–1614, 1631–1646, 1661–1666j, and 1667–1667e). Debt complaints that request assistance but do not meet these requirements will be returned without action to the claimant.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Black's Law Dictionary, Fourth Edition, West Publishing Company, Saint Paul, Minnesota (1952).

(3) A creditor not subject to Federal Reserve Board Regulation Z (12 CFR 226), such as a public utility company, shall submit with the request a certificate that no interest, finance charge, or other fee is in excess of that permitted by the law of the State in which the obligation was incurred.

(4) A foreign-owned company having debt complaints shall submit with its request a true copy of the terms of the debt (English translation) and shall certify that it has subscribed to the Standards of Fairness (appendix B to this part).

(5) Debt complaints that meet the requirements of this part shall be processed by Department of Defense Components. ''Processed'' means that Heads of the Department of Defense Components, or designees, shall:

(i) Review all available facts surrounding the transaction forming the basis of the complaint, including the member's legal rights and obligations, and any defenses or counterclaims the member may have.

(ii) Advise the member concerned that:

(A) Just financial obligations are expected to be paid in a proper and timely manner, and what the member should do to comply with that policy;

(B) Financial and legal counseling services are available under DoD Directive 1344.7 [3] in resolving indebtedness; and

(C) That a failure to pay a just debt may result in the creditor obtaining a judgment from a court that could form the basis for collection of pay from the member pursuant to an involuntary allotment.

(iii) If a member acknowledges a debt as a result of creditor contact with a DoD Component, advise the member that assistance and counseling may be available from the on-base military banking office, the credit union serving the military field of membership, or other available military community service organizations.

(iv) Direct the appropriate commander to advise the claimant that:

(A) Those aspects of DoD policy prescribed in 32 CFR part 112.4, are pertinent to the particular claim in question; and

(B) The member concerned has been advised of his or her obligations on the claim.

(v) The commander's response to the claimant shall not undertake to arbitrate any disputed debt, or admit or deny the validity of the claim. Under no circumstances shall the response indicate whether any action has been taken, or will be taken, against the member as a result of the complaint.

(b) The following procedures apply to the processing of involuntary allotments from the pay of members of the Military Services.

(1) *Involuntary allotment application.* (i) Regardless of the Service Affiliation of the member involved, with the exception of members of the Coast Guard an application to establish an involuntary allotment from the pay of a member of the Military Services shall be made by sending a completed DD Form 2653, ''Involuntary Allotment Application'' (appendix C to this part) to the appropriate address listed below. Applications sent to any other address shall be returned without action to the applicant.

(For Army, Navy, Air Force, or Marine Corps)

Defense Finance and Accounting Service, Cleveland Center, Code L, P.O. Box 998002, Cleveland, OH 44199–8002

(For Coast Guard only)

Coast Guard Pay and Personnel Center (LGL), 444 S.E. Quincy Street, Topeka, KS 66683–3591

(ii) Each application must include a copy of the final judgment certified by the clerk of court and such other documents as may be required by § 113.6(b)(1)(iv).

(iii) A garnishment summons or order is insufficient to satisfy the final judgment requirement of § 113.6(b)(1)(ii) and is not required to apply for an involuntary allotment under this part.

(iv) Involuntary allotment applications must contain the following information, certifications, and acknowledgment:

(A) The full name, social security number, and branch of Service of the military member against whose pay an involuntary allotment is sought. Although not required, inclusion of the member's current duty station and duty address on the application form will facilitate processing of the application.

(B) The applicant's full name and address. If the applicant is not a natural person, the application must be signed by an individual with the authority to act on behalf of such entity. If the allotment is to be in favor of a person other than the original judgment holder, proof of the right to succeed to the interest of the original judgment holder is required and must be attached to the application.

(C) The dollar amount of the judgment. Additionally, if the judgment awarded interest, the total dollar amount of the interest on the judgment accrued to the date of application.

(D) A certification that the judgment has not been amended, superseded, set aside, or satisfied; or, if the judgment has been satisfied in part, the extent to which the judgment remains unsatisfied.

(E) A certification that the judgment was issued while the member was not on active duty (in appropriate cases). If the judgment was issued while the member was on active duty, a certification that the member was present or represented by an attorney of the member's choosing in the proceedings, or if the member was not present or represented by an attorney of the member's choosing, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591).

(F) A certification that the member's pay could be garnished under applicable State law and section 5520a(k) of the United States Code, if the member were a civilian employee.

(G) A certification that, to the knowledge of the applicant, the debt has not been discharged in bankruptcy, nor has the member filed for protection from creditors under the bankruptcy laws of the United States.

(H) A certification that if the judgment is satisfied prior to the collection of the total amount through the involuntary allotment process, the applicant will provide prompt notice that the involuntary allotment must be discontinued.

(I) A certification that if the member overpays the amount owed on the judgment, the applicant shall refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever, is earlier, and that if the applicant fails to repay the member, the applicant understands he or she may be denied the right to collect by involuntary allotment on other debt reduced to judgments.

(J) Acknowledgment that as a condition of application, the applicant agrees that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable for any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to any application made in accordance herewith.

(v) The original and three copies of the application and supporting documents must be submitted by the applicant to DFAS.

(vi) A complete ''application package'' (the DD Form 2653, supporting documentation, and three copies of the

[3] See footnote 1 to § 113.3(b).

application and supporting documents), is required for processing of any request to establish an involuntary allotment pursuant to this part and 32 CFR part 112.

(vii) Applications that do not conform to the requirements of this part shall not be processed. If an application is ineligible for processing, the application package shall be returned to the applicant with an explanation of the deficiency. In cases involving repeated false certifications by an applicant, the designated DFAS official may refuse to accept or process additional applications by that applicant for such period of time as the official deems appropriate to deter against such violations in the future.

(2) *Processing of involuntary allotment applications.* (i) Promptly upon receipt of DD Form 2653 (Appendix C to this part), the designated DFAS official shall review the ''application package'' to ensure compliance with the requirements of this part. If the application package is complete, the DFAS official shall:

(A) Complete Section I of DD Form 2654, ''Involuntary Allotment Notice and Processing'' (Appendix D to this part), by inserting the name, social security number, rank, and branch of service of the military member against whom an application for involuntary allotment is being processed. Additionally, the DFAS official shall provide the due date for receipt of a response at DFAS. The due date shall be 90 days from the date DFAS mails the DD Form 2654 to the commander and member concerned as provided for in § 113.6(b)(2)(i)(B).

(B) Mail one copy of the application package to the member and two copies of the application package, along with DD Form 2654, to the commander of the military member or other official as designated by the Military Service concerned during times of war, national emergency, deployment, or other similar circumstances, who may act for the commander, provided the Military Service concerned has provided DFAS with the name or position of the official and the appropriate address (hereinafter, the meaning of the term ''commander'' includes such other official).

(C) Within 60 days of mailing the copies of the application package and DD Form 2654, DFAS shall provide notice to the member and the member's commander that automatic processing of the involuntary allotment application shall occur if a response (including notice of an approved extension as authorized in § 113.6(b)(2)(iii)(B) and (F), is not received by the due date specified in Section I of DD Form 2654. In the absence of a response, DFAS may automatically process the involuntary allotment application on the fifteenth calendar day after the date a response was due. When DFAS has received notice of an extension, automatice processing shall not begin until the fifteenth calendar day after the approved extension date.

(D) Retain the original of the application package and DD Form 2654.

(ii) Upon receipt of an application, the commander shall determine if the member identified in Section I of DD Form 2654 is assigned or attached to the commander's unit and available to respond to the involuntary allotment application. If the member is not assigned or attached, or not available to respond (e.g., retired, in a prisoner of war status, or in a missing in action status), the commander will promptly complete Section II of DD Form 2654 and attach appropriate documentation supporting the determination. The commander will then mail the application package and DD Form 2654 to DFAS. Section II shall also be used by the commander to notify DFAS of extensions beyond the due date for a response contained in Section I of DD Form 2654. When such extensions are authorized, the commander will complete Section II, make a copy of Sections I and II, and promptly mail the copy to DFAS.

(iii) Within 5 days of receipt of an application package and DD Form 2654 from the designated DFAS official, the commander shall notify the member of the receipt of the application, provide the member a copy of the entire application package, and counsel the member using and completing Section III of DD Form 2654 about the following:

(A) That an application for the establishment of an involuntary allotment for the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law has been received.

(B) That the member has 15 calendar days from the date of receipt of the commander's notice to complete Section IV of DD Form 2654. That for good cause shown, the commander may grant an extension of reasonable time (normally not exceeding 30 calendar days) to submit a response. That during times of deployment, war, national emergency, assignment outside the United States, hospitalization, or other similar situations that prevent the member from obtaining necessary evidence or from responding in a timely manner, extensions exceeding 30 calendar days may be granted. That if the member fails to respond within the time allowed, the commander will note the member's failure to respond in Section V of DD Form 2654 and send the form to DFAS for appropriate action.

(C) That the member's response will either consent to the involuntary allotment or contest it.

(D) That the member may contest the application for any one of the following reasons:

(*1*) There has not been compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591) during the judicial proceeding upon which the involuntary allotment application is sought.

(*2*) ''Exigencies of military duty'' (as defined in 32 CFR part 112.3(d)) caused the ''absence'' of the member from appearance in a judicial proceeding forming the basis for the judgment upon which the application is sought.

(*3*) Information in the application is patently false or erroneous in material part.

(*4*) The judgment has been fully satisfied, superseded, or set aside.

(*5*) The judgment has been materially amended, or partially satisfied. When asserting this defense, the member shall include evidence of the amount of the judgment that has been satisfied.

(*6*) There is a legal impediment to the establishment of the involuntary allotment (for example, the judgment debt has been discharged in bankruptcy, the judgment debtor has filed for protection from the creditors under the bankruptcy laws of the United States, the applicant is not the judgment holder nor a proper successor in interest to that holder, or the applicant has been enjoined by a Federal or state court from enforcing the judgment debt).

(*7*) Or other appropriate reasons that must be clearly specified and explained by the member.

(E) That, if the member contests the involuntary allotment, the member shall provide evidence (documentary or otherwise) in support thereof. Furthermore, that any evidence submitted by the member may be disclosed to the applicant for the involuntary allotment.

(F) That the member may consult with a legal assistance attorney, if reasonably available, or a civilian attorney at no expense to the government. That if a legal assistance attorney is available, the member should immediately arrange for an appointment. That the member may request a reasonable delay from the commander to obtain legal assistance (in cases where an approved delay will cause DFAS to receive the member's

response after the due date identified in Section I of DD Form 2654, the commander must immediately notify the designated DFAS official of the delay, the date for an expected response, and the reason for the delay by completing Section II of DD Form 2654 and forwarding a copy of Sections I and II to DFAS). Additionally, that requests for extensions of time based on the need for legal assistance shall be denied to members who fail to exercise due diligence in seeking such assistance.

(G) That if the member contests the involuntary allotment on the grounds that exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered, then the member's commander shall review and make the final determination on this contention, and notify the designated DFAS official of the commander's decision by completing Section V of DD Form 2654 and forwarding the form to DFAS.

(*1*) In determining whether exigencies of military duty caused the absence of the member, the commander at the level designated by the Service concerned shall consider the definition of ''exigencies of military duty'' (as defined in 32 CFR part 112.3(d)).

(*2*) Additionally, consideration shall be given to whether the commander at the time determined the military duties in question to be of such paramount importance that they prevented making the member available to attend the judicial proceedings, or rendered the member unable to timely respond to process, motions, pleadings, or orders of the court.

(H) That if the member contests the involuntary allotment on any basis other than exigencies of military duty, the application package and DD Form 2654 shall be returned to the commander who shall forward it to the designated DFAS official for appropriate action.

(I) That if the member fails to respond to the commander within the time allowed under § 113.6(b)(2)(iii)(B), the commander shall notify the designated DFAS official of the member's failure to respond by completing Section V of DD Form 2654, and forwarding the form to DFAS.

(iv) After counseling the member in accordance with § 113.6(b)(2)(iii)(A)–(I), the commander shall:

(A) Date and sign Section III of DD Form 2654.

(B) Obtain the member's acknowledgment of counseling by having the member sign the appropriate space on Section III of DD Form 2654.

(C) Determine if the member consents to the involuntary allotment or needs the time authorized under this part to review the application package and take appropriate action. If the member consents to the involuntary allotment, the commander shall direct the member to appropriately complete Section IV of DD Form 2654. The commander must then complete the appropriate item in Section V and promptly forward the completed DD Form 2654 to the designated DFAS official.

(D) Complete the appropriate items in Section V of DD Form 2654 when the member fails to respond within the time authorized for a response, or asserts that exigencies of military duty caused the absence of the member from an appearance in the judicial proceeding upon which the Involuntary Allotment Application is sought.

(*1*) In determining whether exigencies of military duty caused the absence of the member, the commander, at the level designated by the Service concerned, shall consider the definition of ''exigencies of military duty'' (as defined in 32 CFR part 112.3(d)), the evidence provided by the member, any other reasonably available evidence (e.g., a copy of the member's personnel record), and whether the commander at the time determined the military duties in question to be of such paramount importance that they prevented making the member available to attend the judicial proceedings, or rendered the member unable to timely respond to process, motions, pleadings, or orders of the court.

(*2*) The evidentiary standard for a commander to determine whether existences of military duty caused the absence of the member from an appearance in the judicial proceeding upon which the Involuntary Allotment Application is sought is a ''preponderance of the evidence'' (as defined in § 113.3(d) of this part).

(*3*) If the commander has made a determination on exigencies of military duty, the commander must insert in Section V of DD Form 2654, the title and address of the appeal authority.

(E) Promptly following the date the member's response is due to the commander as determined by § 113.6(b)(2)(iii)(B), ensure that the DD Form 2654 is appropriately completed and mail the form, along with any response received from the member, to DFAS.

(F) Provide the member a copy of the completed DD Form 2654 within 5 days of mailing to the designated DFAS official.

(v) Upon receipt of DD Form 2654 and any additional evidence submitted by the member, the designated DFAS official shall conduct a review of the entire application package, DD Form 2654, and any evidence submitted by the member, to determine whether the application for an involuntary allotment should be approved and established.

(A) In those cases where the member's commander has completed Section V of DD Form 2654, and determined that exigencies of military duty caused the absence of the member from an appearance in a judicial proceeding upon which the involuntary allotment application is sought, the designated DFAS official shall deny the involuntary allotment application and provide the applicant written notice of the denial and the reason therefor. The designated DFAS official shall also advise the applicant that:

(*1*) The responsibility for determining whether exigencies of military duty existed belonged to the member's commander and the Military Department concerned.

(*2*) The commander's decision may be appealed within 60 days of the date DFAS mailed the notice of the decision to the applicant.

(*3*) An Appeal must be submitted to the appeal authority at the address provided by DFAS (as found in Section V of the DD Form 2654) in their written notice of denial, and that an appeal submitted to an appeal authority and address different from the one provided by DFAS may be returned without action.

(*4*) An appeal must be submitted in writing and contain sufficient evidence to overcome the presumption that the commander's exigency determination was correct.

(*5*) The appellate authority shall decide an appeal within 30 days of its receipt and promptly notify the applicant in writing of the decision. The 30 day decision period may be extended during times of deployment, war, national emergency, or other similar situations.

(*6*) If an appeal is successful, the applicant must submit a written request, along with a copy of the appellate authority's decision, to DFAS within 15 days of receipt of the appellate authority's decision.

(B) Upon receiving written notice that an applicant has successfully appealed a commander's determination on exigencies of military duty that resulted in denial of an involuntary allotment application, DFAS shall review the application in accordance with § 113.6(b)(2)(v)(C), and determine whether the involuntary allotment should be approved and initiated.

(C) In all cases, other than as described in § 113.6(b)(2)(v)(A), the designated DFAS official shall deny an

involuntary allotment application, and give written notice to the applicant of the reason(s) for denial, if the designated DFAS official determines that:

(*1*) There has not been compliance with the procedural requirements of the Soldier's and Sailor's Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591) during the judicial proceeding upon which the involuntary allotment application is sought.

(*2*) Information in the application is patently false or erroneous in material part.

(*3*) The judgment has been fully satisfied, superseded, or set aside.

(*4*) The judgment has been materially amended, or partially satisfied. In such a case, the request for involuntary allotment may be approved only to satisfy that portion of the judgment that remains in effect and unsatisfied; the remainder of the request shall be denied.

(*5*) There is a legal impediment to the establishment of the involuntary allotment (for example, the judgment debt has been discharged in bankruptcy, the judgment debtor has filed for protection from the creditors under the bankruptcy laws of the United States, the applicant is not the judgment creditor nor a proper successor in interest to that creditor, or the applicant has been enjoined by a Federal or State court from enforcing the judgment debt).

(*6*) The member's pay is already subject to one or more involuntary allotments or garnishments that equal the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law.

(*7*) The applicant has abused the processing privilege (e.g., an applicant, having been notified of the requirements of this part, repeatedly refuses or fails to comply therewith).

(*8*) Or other appropriate reasons that must be clearly explained to the applicant.

(D) In all cases other than as described in § 113.6(b)(2)(v) (A) and (C), the designated DFAS official shall approve the involuntary allotment application and establish an involuntary allotment against the pay subject to involuntary allotment of the member.

(vi) The designated DFAS official shall, at any time after establishing an involuntary allotment, cancel or suspend such allotment and notify the applicant of that cancellation if the member concerned, or someone acting on his or her behalf, submits legally sufficient proof, by affidavit or otherwise, that the allotment should not continue because of the existence of the factors enumerated in § 113.6(b)(2)(v)(A) and (C)(*1*)–(*8*).

(3) *Payments*

(i) Payment of an approved involuntary allotment under 32 CFR part 112 and this part shall commence within 30 days after the designated DFAS official has approved the involuntary allotment.

(ii) Payments under this part shall not be required more frequently than once each month, and the designated official shall not be required to vary normal pay and disbursement cycles.

(iii) If the designated DFAS official receives several applications on the same member of a Military Service, payments shall be satisfied on a first-come, first-served basis.

(iv) Payments shall continue until the judgment is satisfied or until canceled or suspended.

(A) DFAS shall collect the total judgment, including interest when awarded by the judgment. Within 30 days following collection of the amount of the judgment, including interest as annotated by the applicant in Section I of DD Form 2654, the applicant may submit a final statement of interest that accrued during the pay-off period. This final statement of interest request must be accompanied by a statement of account showing how the applicant computed the interest amount. DFAS will collect this post-application interest provided it is an amount owed pursuant to the judgment. DFAS shall not accept any further interest requests.

(B) Interest or other costs associated with the debt forming the basis for the judgment, but not included as an amount awarded by the judgment, shall not be paid to applicants for involuntary allotments.

(v) If the member is found not to be entitled to money due from or payable by the Military Services, the designated official shall return the application and advise the applicant that no money is due from or payable by the Military Service to the member. When it appears that pay subject to an involuntary allotment is exhausted temporarily or otherwise unavailable, the applicant shall be told why and for how long that money is unavailable, if known. Involuntary allotments shall be canceled on or before the date a member retires, is discharged, or is released from active duty. The designated DFAS official shall notify the applicant of the reason for cancellation.

(vi) Upon receiving notice from an applicant that a judgment upon which an involuntary allotment is based has been satisfied, vacated, modified, or set aside, the designated DFAS official shall promptly adjust or discontinue the involuntary allotment.

(vii) The Under Secretary of Defense (Comptroller) may, in DoD 7000.14–R [4] Volume 7, Part A, designate the priority to be given to involuntary allotments pursuant to 32 CFR part 112 and this part, among the deductions and collections taken from a member's pay, except that they may not give precedence over deductions required to arrive at a member's disposable pay for garnishments or involuntary allotments authorized by statute for alimony and child support payments. In the absence of a contrary designation by the Comptroller, all other lawful deductions (except voluntary allotments by the member) and collections shall take precedence over these involuntary allotments.

Appendix A to Part 113—Certificate of Compliance

I certify that the (Name of Creditor) upon extending credit

to _____

on _____

(Date)

complied with the full disclosure requirements of the Truth-in-Lending Act and Regulation Z, and the Fair Debt Collection Practices Act (or the laws and regulations of State of _____), and that the attached statement is a true copy of the general and specific disclosures provided the obligor as required by law.

I further certify that the Standards of Fairness set forth in DoD Directive 1344.9 [1] have been applied to the consumer credit transaction to which this form refers. (If the unpaid balance has been adjusted as a consequence, the specific adjustments in the finance charge and the annual percentage rate should be set forth below.)

_____

(Adjustments)

_____

_____

_____

(Date of Certification)

_____

(Signature of Creditor or Authorized Representative)

_____

(Street)

_____

(City, State and Zip Code)

Appendix B to Part 113—Standards of Fairness

1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge that could be made for such contract under the law of the place in which the contract is signed in the United States by the military member.

[4] See footnote 1 to § 113.3(b).

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. However, interest rates and service charges applicable to overseas military banking facilities shall be as established by the Department of Defense.

2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

3. In loan transactions, defenses that the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised the holder of this fact.

4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

5. No late charge shall be made in excess of 5 percent of the late payment, or $5.00, whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges shall not be levied where an allotment has been timely filed, but payment of the allotment has been delayed. Late charges by overseas banking facilities are a matter of contract with the Department of Defense.

6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment. In the event of prepayment, that portion of the finance charges that has inured to the benefit of the seller or creditor shall be prorated on the basis of the charges that would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract, and only the prorated amount to the date of prepayment shall be due. As an alternative, the ''Rule of 78'' may be applied.

7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

8. If the loan or contract agreement provides for payments in installation, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale shall be governed by the laws of the State in which the security is requested.

10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in preproduction costs, or require preparation for delivery, such additional costs shall be listed in the order form or contract.

a. No termination charge shall be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost that the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by the Truth in Lending Act (15 U.S.C. 1601 note, 1601–1614, 1631–1646, 1661–1665a, 1666–1666j, and 1667–1667e) and Federal Reserve Board Regulation Z (12 CFR 226)).

BILLING CODE 5000–04–M

Appendix C to Part 113

INVOLUNTARY ALLOTMENT APPLICATION

Form Approved
OMB No. 0704-0367
Expires Sep 30, 1997

Public reporting burden for this collection of information is estimated to average 15 minutes 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0367), Washington, DC 20503.
PLEASE DO NOT RETURN YOUR FORM TO EITHER OF THESE ADDRESSES. SEND YOUR COMPLETED FORM TO THE ADDRESS IN THE INSTRUCTIONS BELOW.

PRIVACY ACT STATEMENT

AUTHORITY: 5 USC 5520a, EO 9397.

PRINCIPAL PURPOSE: To make an application for the involuntary allotment of pay from a member of the Armed Services or the Coast Guard.

ROUTINE USES: None.

DISCLOSURE: Voluntary; however, failure to provide the requested information may result in denial of the involuntary allotment application.

INSTRUCTIONS

1. These instructions govern an application for involuntary allotment payment from Military Service (or Coast Guard) member's active or reserve/guard's pay under 5 USC Section 5520a.

2. In order to be processed, this form must be filled out completely, signed, and the following supporting documents attached:
   a. A copy of the judgment, certified by the clerk of the appropriate court;
   b. If the applicant is other than the original judgment holder, proof of the applicant's right to succeed to the interest of the original judgment holder.

3. Submit the original and three copies of this application and all supporting documents to:
   For Army, Navy, Air Force and Marine Corps:
   Defense Finance and Accounting Service
   Cleveland Center, Code L
   PO Box 998002
   Cleveland, OH 44199-8002

   For Coast Guard:
   Coast Guard Pay and Personnel Center (LGL)
   444 S.E. Quincy Street
   Topeka, KS 66683-3591

SECTION I - IDENTIFICATION

1. APPLICANT

I hereby request that an involuntary allotment be established from the pay of the following identified member of the Military Services/ Coast Guard pursuant to the provisions of Pub. L. No. 103-94, the Hatch Act Reform Amendments of 1993. The debt in question has been reduced to a judgment. A copy of the judgment, as certified by the appropriate Clerk of Court, is attached.

a. APPLICANT NAME *(Provide whole name whether a person or business)*

b. ADDRESS

(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE *(9 digit)*

2. SERVICE MEMBER

a. NAME *(Last, First, Middle Initial)*	b. SSN	c. BRANCH OF SERVICE

d. CURRENT DUTY ASSIGNMENT *(If known)*

e. CURRENT ADDRESS *(If known)*

(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE *(9 digit)*

3. CASE

a. CASE NUMBER *(As assigned by court)*	b. NAME OF ORIGINAL JUDGMENT HOLDER *(If different from applicant)*	c. ACCOUNT NUMBER OF DEBTOR

d. JUDGMENT AMOUNT

(1) DOLLAR AMOUNT OF JUDGMENT	(2) DOLLAR AMOUNT OF INTEREST OWED TO DATE OF APPLICATION *(Only if awarded by the judgment)*
$	$

DD FORM 2653, NOV 94

Appendix C to Part 113

SECTION II - APPLICANT CERTIFICATION

4. I HEREBY CERTIFY THAT:

a. *(X as applicable)*

☐ (1) The judgment has not been amended, superseded, set aside, or satisfied;

☐ (2) If the judgment has been satisfied in part, that the judgment remains unsatisfied to the extent of $ _____

b. *(X as applicable)*

☐ (1) The judgment was issued while the member was not on active duty; or

☐ (2) If the judgment was issued while the member was on active duty, that the member was present or represented by an attorney of the member's choosing in the proceedings; or

☐ (3) If the member was not present or represented by an attorney at the judicial proceedings, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 5 USC app. 501-592.

c. The member's pay could be garnished under applicable State law and 5 USC 5520a if the member were a civilian employee;

d. To the best of my knowledge, the debt has not been discharged in bankruptcy nor has the member filed for protection from creditors under the bankruptcy laws of the United States;

e. I will promptly notify you to discontinue the involuntary allotment at any time the judgment is satisfied prior to the collection of the total amount of the judgment through the involuntary allotment process;

f. If the member overpays the amount owed on the judgment, I will refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever is earlier, and that if I fail to repay the member, I understand that I may be denied the right to collect by involuntary allotment on other debts reduced to judgments.

5. I HEREBY ACKNOWLEDGE THAT:

As a condition of application, I agree that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable with respect to any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to this application.

6. CERTIFICATION

I make the foregoing statement as part of my application with full knowledge of the penalties involved for willfully making a false statement (U.S. Code, Title 18, Section 1001, provides a penalty as follows: A maximum fine of $10,000 or maximum imprisonment of 5 years, or both).

a. TYPED NAME *(Last, First, Middle Initial)*	b. SIGNATURE	c. DATE SIGNED

DD FORM 2653, NOV 94 (BACK)

Appendix D to Part 113

INVOLUNTARY ALLOTMENT NOTICE AND PROCESSING

PRIVACY ACT STATEMENT

AUTHORITY: 5 USC 5520a, EO 9397.

PRINCIPAL PURPOSE: To notify a member of the Armed Services or the Coast Guard of an involuntary allotment application against the member's disposable pay; to provide the member an opportunity to respond to the involuntary allotment application; and to provide for action by the member's commander to forward the member's response to the Defense Finance and Accounting Service (or the Coast Guard Pay and Personnel Center) and, as appropriate, to make determinations concerning exigencies of military duty; and to provide for appeals of exigency determinations.

ROUTINE USES: None.

DISCLOSURE: Voluntary for the member; however, failure to provide a response may result in the involuntary allotment of the member's disposable pay.

INSTRUCTIONS

1. These instructions govern notice and processing of an application for an involuntary allotment from the pay of a member of the Armed Forces or the Coast Guard under 5 USC 5520a.

2. Section I, item 1 is to be completed by the designated Defense Finance and Accounting Service (DFAS) (or Coast Guard Pay and Personnel Center) representative. After completing this section, the representative will mail the form, along with two copies of the DD Form 2653, "Involuntary Allotment Application" and associated paperwork, to the commander of the member identified, and one copy to the member.

3. Upon receipt, the commander will determine if the member identified in Section I is in his or her unit. If the member is no longer assigned or available, or, after receiving the notice required by Section III, requests an extension to respond that is granted, the commander will complete Section II. If the member is no longer available under Section II, item 3, the commander will return the entire form and application package to DFAS (or the Coast Guard Pay and Personnel Center); if an extension is authorized under Section II, item 4, that will cause the member's response to be received by DFAS (or the Coast Guard Pay and Personnel Center) later than the date the response is due, then the commander must immediately provide a copy of Sections I and II to DFAS (or the Coast Guard Pay and Personnel Center). The address for mailing is: "DFAS, Cleveland Center, Code L, PO Box 998002, Cleveland, OH 44199-8002" (or other address as specified by DFAS). For the Coast Guard, the address is: "Coast Guard Pay and Personnel Center (LGL), 444 S.E. Quincy Street, Topeka, KS 66683-3591." If the member is assigned, the commander will provide the member a complete copy of DD Form 2653, "Involuntary Allotment Application," and counsel the member in accordance with Section III, items 7a - g.

4. After counseling, the commander will complete Section III, item 8, and the member will complete Section III, item 9. The commander will then make and retain one copy of the form with Section III completed. After obtaining a copy, the commander will provide the member the signed original and advise the member to complete Section IV prior to the date the commander specifies that the member's response is due.

5. The member will complete Section IV and return the original form and accompanying evidence or additional matters, if any, to the commander on or before the due date as specified by the commander.

6. Following receipt of the member's response, the commander will complete Section V and forward the original form, to include any additional evidence or other matters from the member, to DFAS (or the Coast Guard Pay and Personnel Center) at the address listed in paragraph 3 above. Note, if the member fails to respond by the due date, the commander will complete Section V on a copy of the DD Form 2654 previously retained in accordance with the instructions in paragraph 4 above, and forward the form to DFAS (or the Coast Guard Pay and Personnel Center).

7. Within 5 working days from the date of forwarding to DFAS (or the Coast Guard Pay and Personnel Center), the commander will provide the member a copy of the completed DD Form 2654.

SECTION I - NOTIFICATION OF APPLICATION FOR INVOLUNTARY ALLOTMENT

1. MEMBER IDENTIFICATION

a. NAME *(Last, First, Middle Initial)*	b. SSN	c. RANK	d. BRANCH OF SERVICE

2. DATE RESPONSE DUE *(If not received by this date, an involuntary allotment may be automatically processed.)*

SECTION II - COMMANDER'S DETERMINATION OF MEMBER'S AVAILABILITY AND EXTENSIONS TO RESPOND

3. MEMBER AVAILABILITY

On _____ *(date - YYMMDD)*, I received this form and an application for an involuntary allotment from the pay of the member identified. The above named member is not available for purposes of processing an involuntary allotment because the member is as indicated below. Official documentation supporting this determination is attached.

	a. Retired (Including placement on the Temporary or Permanent Disabled Retired List).
	b. In a prisoner of war status.
	c. In a missing in action status.
	d. Not assigned or attached to this unit or organization.

Appendix D to Part 113

SECTION II *(Continued)*

4. EXTENSION

I have determined that an extension is necessary until _____ *(YYMMDD)* because the member is not available for notice and counseling or unable to respond in a timely manner *(explain in Remarks section below)*. I will notify you prior to the above date if any further extensions are necessary.

5. REMARKS

6. COMMANDER OR DESIGNEE

a. SIGNATURE	b. SIGNATURE BLOCK	c. DATE SIGNED

SECTION III - NOTICE TO MEMBER BY COMMANDER OR AUTHORIZED DESIGNEE

7. NOTICE

You are hereby notified that an application for the establishment of an involuntary allotment for the lesser of 25% of your pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable state law has been received. Along with this notice, I am providing you a copy of the entire application package.

Additionally, you are notified that:

a. You must respond within 15 calendar days from the date of this notification by either consenting to the involuntary allotment or contesting it. For good cause shown, I may grant an extension of reasonable time (normally not exceeding 30 calendar days, except during times of deployment, war, national emergency, or other similar situations) to submit a response. Additionally, if you fail to respond within the specified date (or any approved extended date), your failure to respond will be indicated in Section V of this form, which will then be sent back to the designated Defense Finance and Accounting Service (DFAS) (or Coast Guard Pay and Personnel Center) official for appropriate action.

b. You may contest this application for any of the reasons described in Section IV of this form.

c. If you contest the application, you must provide evidence (documentary or otherwise) supporting your reasons for contesting the application. Any evidence you submit may be disclosed to the applicant for this involuntary allotment.

d. You may, if reasonably available, consult with a legal assistance attorney, or a civilian attorney at no expense to the government. If a legal assistance attorney is available, you should immediately arrange for an appointment. If a legal assistance attorney is not available, you may request a reasonable delay to enable you to obtain legal assistance. If you have failed to exercise due diligence in seeking assistance, I will deny a request for delay.

e. If you contest the involuntary allotment on the grounds that exigencies of military duty caused your absence from an appearance at the judicial proceeding at which the judgment was rendered, then I will review and make the final determination on this contention. My decision will be reflected in Section V of this form which will be forwarded to the designated DFAS (or Coast Guard Pay and Personnel Center) official for appropriate action. I will consider the following when making this determination:

(1) That exigencies of military duty are defined as "a military assignment or mission essential duty that, because of its urgency, importance, duration, location, or isolation, necessitates the absence of a member of the military services from appearance at a judicial proceeding. Absence from an appearance in a judicial proceeding is normally presumed to be caused by exigencies of military duty during periods of war, national emergency, or when the member is deployed."

(2) Whether the military duties in question were of such paramount importance that they prevented making you available to attend the judicial proceedings, or rendered you unable to timely respond to process, motions, pleadings, or orders of the court.

f. If you contest the involuntary allotment on any basis other than exigencies of military duty, you must return this form and your response to me. This form, the application package, and your response will then be returned to the designated DFAS (or Coast Guard Pay and Personnel Center) official who will consider your response and determine whether to establish the involuntary allotment. The designated DFAS (or Coast Guard Pay and Personnel Center) official has decision authority on all issues other than exigencies of military duty.

Appendix D to Part 113

SECTION III *(Continued)*

g. If you fail to respond to me within the time period specified (including any extensions authorized by me), I shall indicate your failure to respond in Section V of this form, and mail this form and the application package back to the designated DFAS (or Coast Guard Pay and Personnel Center) official for appropriate action.

8. COMMANDER OR DESIGNEE

a. SIGNATURE	b. SIGNATURE BLOCK	c. DATE SIGNED

9. MEMBER ACKNOWLEDGMENT

I hereby acknowledge that the commander or his or her designee has counseled me in accordance with Section III of this form; that I am being given an opportunity to review this form and the application package; I may seek legal assistance prior to responding; I have received a copy of DD Form 2653 and the entire application package for this involuntary allotment; and that I must complete Section IV of this form and return the form to my commander.

a. SIGNATURE	b. DATE SIGNED

SECTION IV - MEMBER RESPONSE

10. MEMBER WILL INITIAL IN THE APPROPRIATE SPACE(S):

	a. I acknowledge that this is a valid judgment and consent to the establishment of an involuntary allotment.
	b. I contest this Involuntary Allotment Application for the following reasons *(If contesting, you must explain the reason in item 11, "Remarks," and provide appropriate evidence to support the reason.)*:
	(1) That my rights under the Soldiers' and Sailors' Civil Relief Act were not complied with during the judicial proceeding upon which this application is based.
	(2) That exigencies of military duty caused my absence from appearance in a judicial proceeding forming the basis for the judgment upon which this application is sought.
	(3) That information contained in the application is false or erroneous in material part.
	(4) The judgment has been fully satisfied, superseded, or set aside.
	(5) The judgment has been materially amended, or partially satisfied. *(Provide evidence of the amount satisfied and the amount which remains in effect.)*
	(6) There is a legal impediment to the establishment of the involuntary allotment. *(For example, the judgment debt has been discharged in bankruptcy, or you have filed for protection from the creditor(s) under the bankruptcy laws of the United States, or the applicant is not the judgment creditor or a proper successor in interest to the creditor.)*

11. REMARKS *(Use additional sheets if necessary.)*

12. MEMBER

a. SIGNATURE	b. DATE SIGNED

DD FORM 2654, NOV 94

Appendix D to Part 113

SECTION V - COMMANDER'S ACTION AND DETERMINATIONS							
13. COMMANDER OR DESIGNEE WILL INITIAL IN THE APPROPRIATE SPACE:							
	a. The member has completed Section IV of this form and the member's response (to include any additional submissions) is hereby forwarded for appropriate action.						
	b. The member refused to respond by the authorized suspense date and this form is hereby returned without Section IV completed by the member.						
14. COMPLETE ONLY IF THE MEMBER ASSERTED "EXIGENCIES OF MILITARY DUTY" AS REASON FOR CONTESTING THE INVOLUNTARY ALLOTMENT APPLICATION *(Initial in the appropriate space)*							
	a. Exigencies of military duty DID NOT CAUSE the absence of the member from an appearance in the judicial proceeding upon which this Involuntary Allotment Application is sought.						
	b. Exigencies of military duty CAUSED the absence of the member from an appearance in the judicial proceeding upon which this application for involuntary allotment is sought. Exigency existed due to: *(X as applicable and explain in item 15, "Remarks.")*						
		(1) Deployment		(2) War		(3) National Emergency		(4) Other *(e.g., Major Exercise)*
15. REMARKS							
NOTE: Commander must provide member a copy of this form within 5 days of mailing to the designated DFAS (or Coast Guard Pay and Personnel Center) official.							
16. IF THE APPLICANT CHOOSES TO APPEAL MY EXIGENCY DETERMINATION, THE APPEAL MUST BE SENT TO:							
a. TITLE OF APPEAL AUTHORITY							
b. STREET ADDRESS		**c. CITY**			**d. STATE**	**e. ZIP CODE**	
17. COMMANDER OR DESIGNEE							
a. SIGNATURE		**b. SIGNATURE BLOCK**				**c. DATE SIGNED**	

DD FORM 2654, NOV 94

PAGE 4 OF 4 PAGES

[FR Doc. 95–224 Filed 1–4–95; 8:45 am]
BILLING CODE 5000–04–C

Department of the Army

32 CFR Parts 536 and 537

The Army Claims System

AGENCY: Department of the Army, DOD.
ACTION: Final rule.

SUMMARY: This document withdraws the amendments to 32 CFR Parts 536 and 537, The Army Claims System; published in the **Federal Register** Monday, December 12, 1994 (59 FR 64016) and reinstates Parts 536 and 537 as published in the Code of Federal Regulations revised as of July 1, 1994.

Reasons for this rescission are changes to legal references and other editorial changes. Publication of the December 12, 1994 document as a Final Rule was premature. This document will not be resubmitted as a Final Rule until such time as all legal reviews have been completed and has been authenticated at the Army Secretariat level.

EFFECTIVE DATE: December 12, 1994.

ADDRESSES: Director, U.S. Army Claims Service, Building 4411, Llewellyn Ave., ATTN: LTC Michael Millard, Fort Meade, Maryland 20755–5360.

FOR FURTHER INFORMATION CONTACT: LTC Michael Millard, (303) 677–7009, Ext. 202 or the undersigned at (703) 325–6277.

Kenneth L. Denton,
Army Federal Register Liaison Officer.

Accordingly, the amendments to 32 CFR parts 536 and 537 published December 12, 1994, at 59 FR 64016, are withdrawn and the text of 32 CFR parts 536 and 537 as published in the Code of Federal Regulations revised as of July 1, 1994, is reinstated.

[FR Doc. 95–183 Filed 1–4–95; 8:45 am]
BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5132–7]

RIN 2060–AE21

Inspection/Maintenance Program Requirements—Provisions for Redesignation

AGENCY: Environmental Protection Agency.
ACTION: Final rule.

SUMMARY: Today's action revises the motor vehicle Inspection/Maintenance Program Requirements final rule promulgated on November 5, l992. EPA proposed these revisions on June 28, l994, allowing stakeholders ample opportunity for review and comment, and is taking final action on the revisions to include additions and modifications, regarding State Implementation Plan submissions for states with nonattainment areas that are in a position to redesignate to attainment. The revisions specify SIP requirements only for areas that are subject to the basic Inspection/Maintenance program requirement and that otherwise qualify for redesignation from nonattainment to attainment for the carbon monoxide or ozone national ambient air quality standards. This rule allows such areas to defer adoption and implementation of some of the otherwise applicable requirements established in the original promulgation of the Inspection/Maintenance rule. It is an appropriate time to take this action since the rule applies only to areas that by virtue of their air quality classification are required to implement a basic I/M program and that submit, and otherwise qualify for, a redesignation request.

EFFECTIVE DATE: The effective date of this rule is January 5, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–93–21. The docket is located at the Air Docket, room M–1500 (LE–131), Waterside Mall SW., Washington, DC 20640. The Docket may be inspected from 8 a.m. to 4:30 p.m. on weekdays. A reasonable fee may be charged for coping docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668–4456.

SUPPLEMENTARY INFORMATION: Section l07(d)(3)(E) of the Clean Air Act, as amended in l990 (the Act), states that an area can be redesignated to attainment if the following conditions are met: EPA has determined that the National ambient air quality standards have been attained; EPA has fully approved the applicable implementation plan under section 110(k); EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions due to the implementation plan and other permanent and enforceable reductions; the State has met all applicable requirements of section 110 and part D; and, EPA has fully approved a maintenance plan for the area under section 175A of the Act. Section 175A in turn requires states that submit a redesignation request to submit a plan, and any additional measures if necessary, for maintenance of the air quality standard, for at least a 10 year period following EPA's final approval of the redesignation. It also requires the plan to include contingency provisions to ensure prompt correction of any violation of the standard which occurs after redesignation. The contingency measures must include a provision requiring the state to implement measures which were contained in the State Implementation Plan (SIP) prior to redesignation as an attainment area.

Today's action revises subpart S of part 51 of title 40 of the Code of Federal Regulations (subpart S) to address Inspection/Maintenance (I/M) program requirements for areas subject to the Act's basic I/M requirements and that otherwise would qualify for and ultimately obtain approval by EPA of redesignation requests to attainment. This final rule adds a new paragraph to the regulation pertaining to State Implementation Plan (SIP) submissions for areas required to implement a basic I/M program that are submitting and otherwise qualify for approval of a redesignation request. Areas subject to basic I/M fall into several categories. There are basic areas that will be submitting redesignation requests that do not currently have I/M programs, or have either a basic program implemented pursuant to the l977 amendments to the Act or a basic program required to be upgraded to meet the requirements of EPA's I/M regulations. For purposes of today's final rulemaking, EPA is using the word ''upgraded'' to refer to a basic I/M program that meets all the basic I/M program requirements of the I/M rule, subpart S, part 5l, title 40 of the Code of Federal Regulations in addition to pre-l990 Clean Air Act I/M program policy. This rule applies only to areas that by virtue of their air quality classification are required to implement a basic I/M program, and that submit, and otherwise qualify for a redesignation request.Pursuant to sections 182(a)(2)(B)(i) and 182(b)(4) of the Act, basic I/M areas must submit a SIP revision that includes any ''provisions necessary to provide for a vehicle inspection and maintenance program'' of no less stringency than either the program that was in the SIP at the time of passage of the Act or the minimum basic program requirements, whichever is more stringent. For purposes of this final rule EPA interprets the statutory language of

section 182(a)(2)(B)(i) and section l82(b)(4) as providing a degree of flexibility compared with the statutory language in section l82(c)(3), which requires enhanced I/M areas to submit a SIP revision ''to provide for an enhanced program''. For areas that otherwise qualify for redesignation to attainment and ultimately obtain EPA approval to be redesignated, EPA is today amending Subpart S to allow such areas to be redesignated if they submit a SIP that contains the following four elements: (1) Legal authority for a basic I/M program (or an enhanced program, as defined in this final rule, if the state chooses to opt up), meeting all of the requirements of Subpart S such that implementing regulations can be adopted without further legislation; (2) a request to place the I/M plan or upgrades, as defined in this rule, (as applicable) in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below; (3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the I/M program in response to the specified triggering event; and (4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones, in the event the contingency measure is triggered (milestones shall be defined by states in terms of months since the triggering event). EPA believes that for areas that otherwise qualify for redesignation a SIP meeting these four requirements would satisfy the obligation to submit ''provisions to provide'' for a satisfactory I/M program, as required by the statute.

With these amendments the determination of whether a state fulfills the basic I/M SIP requirements will depend, for the purposes of redesignation approval only, on whether the state meets the four requirements listed above. EPA believes that it is permissible to interpret the basic I/M requirement to provide this flexibility and that it should apply only for the limited purpose of considering a redesignation request to attainment.

Summary of Comments

EPA received comments from the Natural Resources Defense Council (NRDC) opposing the proposal to redesignate an area as in attainment when such an area has not yet submitted regulations for a basic I/M program. NRDC argues that the phrase ''any provisions necessary'' plainly encompasses any adopted regulations needed to implement the program. NRDC argues that EPA ignores the impact of the word ''any'' and claims that Congress used this term to require that the State submit ''all'' that is necessary to put a basic I/M program in place. NRDC further argues that without adopted regulations a SIP is incomplete and cannot be approved.

EPA disagrees with NRDC's comments. The plain language of the statute requires that each SIP include ''any provisions necessary to provide for'' the required I/M program. It is EPA's view that what is ''necessary'' to provide for the required I/M program depends on the area in question. For areas which have attained the ambient standard with the benefit of only the current program, or no program at all, EPA does not believe it is ''necessary'' to revise or adopt new regulations and undertake other significant planning efforts which are not essential for clean air, and which would not be implemented after redesignation occurred because they are not ''necessary'' for maintenance. For such areas that would otherwise be eligible for redesignation to attainment, EPA believes that a contingency plan that includes already enacted legislative authority and provides for adoption of an I/M program on an expeditious schedule if the area develops a problem is the only set of provisions necessary to provide for an I/M program.

Although for most purposes EPA will continue to interpret ''provisions necessary to provide for'' a basic I/M program to require full adoption and expeditious implementation of such a program it is appropriate, based on the flexible language provided in section 182(a)(2)(B)(i) and 182(b)(4) as compared with section l82(c)(3), to revise the SIP revision requirements applicable to basic I/M areas that otherwise qualify for, and ultimately receive, redesignation.

Contrary to NRDC's assertions, a SIP revision applicable to basic I/M areas that otherwise qualify for, and ultimately receive, redesignation would meet the minimum completeness criteria without adopted regulations. EPA promulgated criteria setting forth the minimum criteria necessary for any submittal to be considered complete. 40 CFR part 51, appendix V. However, EPA recognizes that not all of the listed criteria are necessarily applicable to all of the various types of submissions which require a completeness determination. Accordingly, EPA interprets the completeness criteria to apply only those criteria that are relevant to the particular types of submissions. [1]

To be complete, a plan submission typically must supply the elements necessary to comply with the provisions of the CAA, including, among other things, specific enforceable measures. 40 CFR part 51, appendix V. section 2.l(d). As discussed earlier, however, EPA believes that it may provide that adopted regulations are not necessary to meet the statutory requirements of sections 182(a)(2)(B)(i) and 182(b)(4) of the CAA. EPA interprets these sections to provide that in some circumstances areas should be allowed to submit plans which lack specific enforceable measures, as long as the SIP includes provisions necessary to provide for the required program. It makes little sense for Congress to provide such flexibility under these sections, only to require that such submissions be summarily rejected on the grounds of incompleteness. A reasonable reading of the statute would give effect to both provisions by permitting areas that otherwise qualify for, and ultimately receive, redesignation to have their redesignation requests determined ''complete'' if the submission contains ''provisions necessary to provide for'' the I/M program. Thus, as long as such an area submits a SIP that contains the four elements discussed in this rule, EPA will deem that submission ''complete'' only for the purposes of determining whether an area seeking redesignation has met the basic I/M requirements.

NRDC also commented that Congress did not intend the phrase 'any provisions necessary' to justify a mere commitment to adopt I/M regulations at some later date. NRDC cites *Natural Resources Defense Council* v. *Environmental Protection Agency,* 22 F.3d 1125 (D.C. Cir. 1994) (''*NRDC* v. *EPA*'') for further support of their argument.

As discussed in the proposal, in *NRDC* v. *EPA*, 22 F.3d 1125 (D. C. Cir. l994) the D. C. Court of Appeals held that EPA did not have authority to construe section ll0(k)(4) to authorize conditional approval of an I/M committal SIP that contains no specific substantive measures. A premise of the case is that I/M SIP submissions are required to have fully adopted rules. In

[1] Emission inventories required pursuant to 42 U.S.C. 7511a(a)(1) for ozone nonattainment areas are also an example of a required submittal that by definition could never satisfy all of the completeness criteria. As with committal SIPs, emission inventories are not in the form of regulations and do not include other technical items identified in the completeness criteria such as emission limits or test methods. 40 CFR part 51, appendix V, section 2.1(d), (g).

today's rule, EPA continues to interpret section 182 as generally requiring I/M programs to have fully adopted rules. However, EPA here is reinterpreting the relevant statutory sections to permit an exception to this general requirement for areas otherwise qualifying for redesignation to attainment. Based on this interpretation, the SIPs for states that otherwise qualify for redesignation may receive full approval, not conditional approval under section ll0(K)(4),if they contain legislative authority for, and a commitment to adopt, an I/M program in their contingency plan. Thus, the court's holding in *NRDC* v. *EPA* is not implicated here.

Without these amendments, states that are being redesignated to attainment would have to adopt a full I/M program for the purpose of obtaining full approval of their SIPs as meeting all applicable SIP requirements, which is a prerequisite for approval of a redesignation request. Once redesignated, these areas could discontinue implementation of this program (assuming it was not needed for maintenance of the ozone or CO standard) as long as it was converted to a contingency measure meeting all the requirements of EPA redesignation policy. Section 175A(d) provides that each plan revision contain contingency provisions necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area to attainment. These provisions must include a requirement that the state will implement all measures which were contained in the SIP for the area before redesignation. There are four possible scenarios under which an area can submit a redesignation request: (1) Areas without operating I/M programs; (2) areas with operating I/M programs that continue operation without upgrades; (3) areas with operating I/M programs; and (4) areas with operating I/M programs that are discontinued. A detailed explanation of each scenario is in the proposal.

NRDC commented that the CAA does not authorize conversion of I/M programs to contingency measures and that section 175A imposes a mandatory duty on an area that is redesignated to continue the emission control programs the area adopted prior to redesignation. NRDC further argued that failure to adopt regulations will result in more air pollution.

EPA disagrees. Section 175A requires that the state ''promptly'' correct any violation of the standard, but does not mandate that the contingency measures be fully adopted programs. In contrast, section l72(c)(9) requires that contingency measures for nonattainment plans ''take effect in any such case without further action by the State or the Administrator.'' Since 175A contains no such requirement that the contingency measures take effect without further action, it is clear that Congress did not intend to require contingency measures under section 175A to contain fully adopted programs. If an area did not require adoption or implementation of an I/M program in order to otherwise qualify to be redesignated to attainment, EPA believes it would be a wasteful exercise and impose needless costs to force states to go through full adoption of regulations only to have these regulations used as a contingency measure once the redesignation is approved.

In today's action, it should be understood that, pursuant to section 175A(c), while EPA considers the redesignation request, the state shall be required to continue to meet all the requirements of this subpart. This includes the submission of another SIP revision meeting the existing requirements for fully adopted rules and the specific implementation deadline applicable to the area as required under 40 CFR 51.372 of the I/M rule. If the state does not comply with these requirements it shall be subject to sanctions pursuant to section l79. Because the possibility for sanctions exists, states which do not have a solid basis for approval of the redesignation request and maintenance plan shall proceed to fully prepare and plan to implement a basic I/M program that meets all the requirements of subpart S.

The SIP revision must demonstrate that the performance standard in either 40 CFR 53.351 or 40 CFR 51.352 will be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the trigger date. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the five year period. All other requirements shall take effect within 24 months of the trigger date. Furthermore, a state may not discontinue implementation of an I/M program until the redesignation request and maintenance plan (that does not rely on reductions from I/M) are finally approved. If the redesignation request is approved, any sanctions already imposed, or any sanctions clock already triggered, would be terminated.

Paperwork Reduction Act

Today's rule places no information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act U.S.C. 3501 *et seq.*

Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia within sixty days of publication of this action in the **Federal Register**.

Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a significant regulatory action under the terms of Executive Order l2866 and is, therefore exempt from OMB review. This rule would only relieve states of some regulatory requirements, not add costs or otherwise adversely affect the economy.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government

entity or jurisdiction. A small government jurisdiction is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' This certification is based on the fact that the I/M areas impacted by the rule do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble part 51 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

l. The authority citation for part 51 is revised as follows:

Authority: 42 U.S. C. 740l(a)(2), 7475(e), 7502(a) and (b). 7503. 9601(a)(1) and 7602.

2. Section 51.372 is amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(c) *Redesignation requests.* Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under sections 182(a)(2)(B) or l82(b)(4) if the submittal contains the following elements:

(1) Legal authority to implement a basic I/M program (or enhanced if the state chooses to opt up) as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation.

(2) A request to place the I/M plan (if no I/M program is currently in place or if an I/M program has been terminated,) or the I/M upgrade (if the existing I/M program is to continue without being upgraded) into the contingency measures portion of the maintenance plan upon redesignation.

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the required I/M program in response to a specified triggering event. Such contingency measures must be implemented on the trigger date, which is a date determined by the State to be no later than the date EPA notifies the state that it is in violation of the ozone or carbon monoxide standard.

(4) A commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones, including the items in paragraphs (a)(l)(ii) through (a)(l)(vii) of this section. In addition, the schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart, excluding schedule requirements. Schedule milestones shall be listed in months from the trigger date, and shall comply with the requirements of paragraph (e) of this section. SIP submission shall occur no more than l2 months after the trigger date as specified by the State.

(d) Basic areas continuing operation of I/M programs as part of their maintenance plan without implemented upgrades shall be assumed to be 80% as effective as an implemented, upgraded version of the same I/M program design, unless a state can demonstrate using operating information that the I/M program is more effective than the 80% level.

(e) *SIP submittals to correct violations.* SIP submissions required pursuant to a violation of the ambient ozone or CO standard (as discussed in § 51.372(c)) shall address all of the requirements of this subpart. The SIP shall demonstrate that performance standards in either § 51.351 or § 51.352 shall be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the trigger date. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the 5-year period. All other requirements shall take effect within 24 months of the trigger date. The phase-in allowances of § 51.373(c) of this subpart shall not apply.

[FR Doc. 95–254 Filed 1–4–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[PA32–1–5966; FRL–5126–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania Small Business Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act (''the CAA'' or ''the Act'') which lists specific program criteria to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The intended effect of this action is to approve this SIP revision. This action is being taken under section 110 of the CAA.

DATES: This action will become effective March 6, 1995, unless adverse comments received on or before February 6, 1995, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Makeba Morris, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

Background

Implementation of the provisions of the CAA, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics.

Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, section 507 of the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, section 507 of the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of Title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the federal and state roles in meeting the new statutory provisions, and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On February 1, 1993, the Commonwealth of Pennsylvania submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the state submittal must provide for each of the following elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of the CAA; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and the state Small Business Ombudsman. The plan must also determine the eligibility of small business stationary sources for assistance in the program. The plan must include the duties, funding and schedule for implementation for the three program components.

Analysis

1. Small Business Assistance Program

Sections 7.7 through 7.9 of the 1992 Pennsylvania Air Pollution Control Act, authorize the establishment of a Small Business Assistance Program which meets the requirements of section 507 of the CAA. In developing the PROGRAM submittal, the Commonwealth has delegated the majority of its functions to the Department of Environmental Resources (DER).

Section 507(a) of the CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this document, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section.

The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

Pennsylvania has met the first requirement through the use of a independent contractor, who will conduct the reactive technical assistance and proactive outreach portion of the program. The DER will train the contractor in state and federal permitting and enforcement policies. The contractor will then have the responsibility of serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. In the reactive portion of the program, the contractor will maintain a toll free telephone line for small businesses and be responsible for responding to questions raised by small businesses. All answers will be verified with the DER prior to issuance. In addition, the contractor will maintain a database of all questions and answers.

The DER will also monitor permit applications and compliance reports, contact trade associations and the EPA for information regarding the appropriate compliance techniques for small businesses and maintain a database of this information, which will be used to advise small businesses of compliance alternatives.

The contractor, in conjunction with the DER and the small business ombudsman will implement the proactive outreach portion of the program through the development of outreach documents (pamphlets and brochures, etc.), and seminars for small businesses and trade associations. In addition, the DER will maintain a computer bulletin board system which will allow sources to download up to date information regarding regulations and other policy documents.

The second requirement will be met through the outreach and audit programs. Pamphlets will contain information regarding accidental release prevention and pollution prevention. In addition, pollution prevention and accidental release information will be provided during onsite audits, which may be requested by the small businesses.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. Pennsylvania has met this requirement by providing contractor assistance in the application process. The contractor will assist the small business in determining if a permit is required and provide the source with all applicable permit application forms as well as the proper interpretation of the application forms. In addition, the proactive outreach and reactive technical assistance portion of the program, discussed above, will be used to assure small business will be informed of the applicable requirements in a timely manner.

The fourth requirement is to develop adequate mechanisms to assure that small businesses stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA. Pennsylvania has met these requirements by planning to maintain a toll free telephone line to allow easy access to information regarding federal and/or state requirements. In addition the State will inform affected small businesses, in a timely manner by the proactive mechanisms described above. The State will provide material, through the outreach portion of the program on environmental auditors to assist small businesses in meeting the requirements of CAA. The environmental audit will determine applicable requirements, compliance status, control options and pollution prevention alternatives.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods. Pennsylvania has met this requirement by establishing a mechanism to receive, review and process requests for work practice, compliance method or milestone modifications. The mechanism provides that the small business must submit the request in writing to the DER, which will review said request in 30 days and make a decision no later than 6 months from the date of submittal. Requests will be reviewed to ensure that no violation of state or federal requirement occur.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. The Pennsylvania Air Pollution Control Act, Section 7.9 designates the Department of Commerce to house the Office of Small Business Ombudsman. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities. In addition, the Ombudsman will review and handle complaints from small businesses regarding improper treatment by the DER, and recommend procedural changes that may improve relations with small businesses. The Ombudsman may sponsor meetings and conferences and work directly with trade associations. Finally, on an annual basis the Ombudsman must report to the Governor and State Legislature on the effectiveness of the PROGRAM, and also prepare reports evaluating proposed regulations for their economic impact on small businesses.

Ombudsman's office will be staffed by two individuals, an Ombudsman and a secretary.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (the CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Pennsylvania Compliance Advisory Committee was established by the State Air Pollution Control Act, Section 7.8. The Committee will include eleven members, seven of which will be chosen consistent with the requirements of section 507(e) of the CAA. The four additional members consist of the Secretary of Commerce, the Small Business Ombudsman and two additional members selected by the Governor.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (A) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (B) to review and assure that information for small business stationary sources is easily understandable; (C) to develop and disseminate the reports and advisory opinions made through the SBAP; and (D) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.) Pennsylvania has met these requirements by delegating the above mentioned duties to the Compliance Advisory Committee, specifically the SIP submittal states: the Committee will report on the program's compliance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act and report on the program and recommend changes that are needed as well as new material that may be necessary to improve the effectiveness of the program.

4. Eligibility

Section 507(c)(1) of the CAA defines the term ''small business stationary source'' as a stationary source that:

(A) is owned or operated by a person who employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act;

(C) is not a major stationary source;

(D) does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) emits less than 75 tpy of all regulated pollutants.

Under Section 507(c)(2) major sources may petition for admittance to the PROGRAM. The Pennsylvania SIP revision provides a mechanism for source inclusion upon approval by EPA. Except for source categories which the EPA Administrator or the Commonwealth of Pennsylvania determines (in accordance with sections 507(c)(3) (A) and (B)), to have sufficient financial and technical capabilities to meet the requirements of the Act without PROGRAM assistance, all small business stationary sources located in Pennsylvania will be eligible to receive assistance under the PROGRAM. Pennsylvania's PROGRAM criteria for defining a ''small business stationary source'' is substantially equivalent to the criteria listed in Section 507(c)(1) of the CAA. The Commonwealth has provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of Sections 507(c)(1)(C–E) with notice and opportunity for public comment as provided in Section 7.5 of the Pennsylvania Air Pollution Control Act.

Summary of SIP Revision

The Commonwealth of Pennsylvania has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA. The Small Business Assistance Program (SBAP) will be administered by the Department of Environmental Resources. Program implementation will begin no later than November 1994. By this action, EPA is hereby approving the SIP revision submitted by the Commonwealth of Pennsylvania. Accordingly, § 52.2060 is added to 40 CFR part 52, subpart NN in order to reflect EPA's approval action and the fact that it is considered part of the Pennsylvania SIP.

Final Action

EPA is approving the Commonwealth of Pennsylvania SIP revision submittal for the establishment of the Small Business Assistance Program submitted February 1, 1993. Accordingly, § 52.2060 is added to 40 CFR part 52, subpart NN—Pennsylvania to reflect EPA's approval action. EPA has reviewed this request for revision of the federally-approved state implementation plan for conformance with the CAA including section 507 and section 110(a)(2)(E).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Pennsylvania Small Business Stationary Source Technical and Environmental Compliance Assistance Program must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: August 11, 1994.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2060 is added to read as follows:

§ 52.2060 Small Business Assistance Program.

On February 1, 1993, the Secretary of the Pennsylvania Department of Environmental Resources submitted a plan for the establishment and implementation of the Small Business Assistance Program as a state implementation plan (SIP) revision, as required by Title V of the Clean Air Act Amendments. EPA approved the Small Business Assistance Program on March 6, 1995, and made it part of the Pennsylvania SIP. As with all components of the SIP, Pennsylvania must implement the program as submitted and approved by EPA.

[FR Doc. 95–259 Filed 1–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5134–2]

Clean Air Act Final Interim Approval of the Operating Permits Program; Washoe County District Health Department, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating interim approval of the operating permits program submitted by the Washoe County District Health Department (Washoe or District) for the purpose of complying with Federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: March 6, 1995.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing the final interim approval are available for inspection (docket number NV–WSH–94–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the Clean Air Act (Act), and implementing regulations at 40 CFR part 70 require that states develop and submit operating permit programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On August 24, 1994, EPA proposed interim approval of the operating permits program for Washoe County, Nevada. See 59 FR 43523. The August 24, 1994 **Federal Register** document also proposed approval of Washoe's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received one comment on the section 112(g) proposal and is responding to that comment in this document and in a separate ''Response to Comments'' document that is available in the docket. The proposed actions have not been altered as a result of public comment or for any other reason. Hence, this final rule is granting interim approval to Washoe's operating permits program and approving the 112(g) and 112(l) mechanisms noted above.

II. Final Action and Implications

A. Analysis of State Submission

Washoe's title V operating permits program was submitted by the Nevada Division of Environmental Protection, on behalf of Washoe, on November 18, 1993 and found to be complete on January 13, 1994. The regulations that comprise the program were adopted by the Washoe County District Board of

Health on October 20, 1993. EPA proposed interim approval, in accordance with § 70.4(d), on August 24, 1994 (59 FR 43523) on the basis that the program ''substantially meets'' part 70 requirements. The analysis in the proposed document remains unchanged and will not be repeated in this final document. The program deficiencies identified in the proposed document, and outlined below, also remain unchanged and must be corrected for the District to have a fully approvable program.

At the time of proposal, EPA believed that an implementation agreement would be completed prior to final interim approval. EPA and Washoe have not yet finalized the implementation agreement, however, but are working to do so as soon as practicable.

As discussed in the proposed document, Washoe has authority under State and local law to issue a variance from State and local requirements. The EPA would like to reiterate that the Agency has no authority to approve provisions of state or local law that are inconsistent with the Act, and EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70.

B. Public Comment

EPA received one public comment regarding the proposed approval of Washoe's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. In opposition to the proposed action, one commenter argued that Washoe should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation; and (2) the District has a section 112(g) program in place.

EPA disagrees with the commenter's contention that section 112(g) does not take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a source after the effective date of a title V program unless MACT (determined on a case-by-case basis, if necessary) is met. The plain meaning of this provision is that the prohibition takes effect on the effective date of title V regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations (See June 28, 1994 memorandum entitled, ''Guidance for Initial Implementation of Section 112(g),'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.) EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below *de minimis* levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). The EPA believes the proposed rule provides sufficient guidance to Washoe and sources until such time as EPA's section 112(g) rulemaking is finalized.

The EPA is aware that Washoe lacks a program designed specifically to implement section 112(g). However, Washoe does have authority to regulate hazardous air pollutants (HAP) in its preconstruction review program, and hence, the preconstruction review program can serve as a procedural vehicle for rendering a case-by-case MACT or offset determination federally enforceable. The EPA believes Washoe's preconstruction review program will be adequate because it will allow Washoe to select control measures that would meet MACT, as defined in section 112, and incorporate those measures into a federally enforceable preconstruction permit. By approving Washoe's preconstruction review program under the authority of title V and part 70, EPA is clarifying that it may be used for the purpose of implementing section 112(g) during the transition period.

One consequence of the fact that Washoe lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in section 112(g). However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes will be determined according to the statutory provisions of section 112(g), using the proposed rule as guidance. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a state's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a *de minimis* increase under any interpretation of the Act. The EPA would expect Washoe to issue a preconstruction permit containing a case-by-case determination of MACT in such a case even if review under its own preconstruction review program would not be triggered.

C. Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is granting interim approval to the operating permits program submitted to EPA by the Nevada Division of Environmental Protection, on behalf of Washoe, on November 18, 1993. The District must make the following changes to receive full approval:

(1) Revise insignificant activity provisions so that they comply with § 70.5(c). Specifically, rule 030.905(B)(3) must state that any activity at a title V facility that is subject to an applicable requirement may not qualify as an insignificant activity. Because Washoe defines insignificant activities by size, both rule 030.020(C)(4) and the application form must require the applicant to list all insignificant activities in enough detail to determine applicability and fees, and to impose any applicable requirements.

(2) Revise 030.020 to state that each application must contain the following information: (1) Description of any processes and products associated with alternate scenarios (§ 70.5(c)(2)); (2) description of compliance monitoring devices or activities (§ 70.5(c)(3)(v)); (3) when emissions trading provisions are requested by a source, proposed replicable procedures and permit terms (§ 70.4(b)(12)(iii)); and (4) a statement that the source will, in a timely manner, meet all applicable requirements that will become effective during the permit term (§ 70.5(c)(8)). EPA has also noted in the Technical Support Document recommended revisions to Washoe's permit application form so that the form will better reflect the information required by regulation. These recommended revisions, however, are not required for full approval. In addition, rule 030.020 must clearly require that any application form, report, or compliance certification submitted in the permit application include a certification based on information and belief formed after reasonable inquiry. (§ 70.5(d))

(3) Add a provision to the rule that imposes a general duty on the permit applicant to submit supplementary facts or corrected information upon becoming aware of any failure to submit relevant facts or submittal of incorrect information. (§ 70.5(b))

(4) Revise 030.930 to provide public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

(5) Revise 030.960(C)(8) to state that the certifications must be based on information and belief formed after reasonable inquiry. (§ 70.6(c)(1) and § 70.5(d))

(6) Revise 030.970(B) to state that schedules for compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. (§ 70.5(c)(8)(iii)(C) and § 70.6(c)(3))

(7) Part 70 prohibits sources from implementing significant permit modifications prior to final permit action unless the changes have undergone preconstruction review pursuant to section 112(g) or a program approved into the SIP pursuant to part C or D of title I, and the changes are not otherwise prohibited by the source's existing part 70 permit. Washoe's regulations require sources to submit applications for significant permit modifications 6 months prior to implementing the change, yet final permit action may not occur until 9 months after receipt of a complete application. Hence, rule 030.950(E) must be revised to eliminate the 3 month time frame that sources are able to implement significant permit modifications without revised permits. (§ 70.5(a)(1)(ii))

2. Implications of Title V Interim Approval

As a result of today's final interim approval of Washoe's part 70 program, the requirement to submit a permit application to Washoe applies to all part 70 sources, as defined in the approved program, within Washoe's jurisdiction, except for any source of air pollution over which a federally recognized Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (November 9, 1994).

This interim approval, which may not be renewed, extends until February 5, 1997. During this interim approval period, Washoe is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Washoe County. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Washoe fails to submit a complete corrective program for full approval by August 5, 1996. EPA will start an 18-month clock for mandatory sanctions. If Washoe then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Washoe has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Washoe, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Washoe has come into compliance. In any case, if, six months after application of the first sanction, Washoe still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Washoe's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Washoe has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Washoe, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Washoe has come into compliance. In all cases, if, six months after EPA applies the first sanction, Washoe has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Washoe has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Washoe program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Washoe County upon interim approval expiration.

3. District Preconstruction Permit Program Implementing Section 112(g)

The EPA is approving Washoe's preconstruction permitting program found in District rules 030.000 and 030.002 under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. This approval is limited in duration and will expire 12 months after EPA promulgates section 112(g) regulations.

4. Program for Delegation of Section 112 Standards as Promulgated

The EPA is approving under section 112(l)(5) and 40 CFR section 63.91 Washoe's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Washoe has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into District regulations by reference to the Federal regulations. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Washoe and EPA. This program for delegations only applies to sources covered by the title V program.

III. Administrative Requirements

A. Docket

Copies of Washoe's submittal and other information relied upon for the final interim approval, including the one public comment received and reviewed by EPA on the proposal, are contained in docket number NV–WSH–94–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Nevada in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nevada

(a) (Reserved)

(b) Washoe County District Health Department: submitted on November 18, 1993; interim approval effective on March 6, 1995; interim approval expires February 5, 1997.

* * * * *

[FR Doc. 95–253 Filed 1–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5130–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Bethlehem Steel Corporation (BSC), Sparrows Point, Maryland. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

EFFECTIVE DATE: January 5, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is ''F–94–B8EF-FFFFF''. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that:

(1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and

(2) No other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

B. History of This Rulemaking

Bethlehem Steel Corporation, located in Sparrows Point, Maryland, petitioned the Agency to exclude from hazardous waste control its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006. After evaluating the petition, EPA proposed, on March 4, 1994, to exclude BSC's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 59 FR 10352). This rulemaking finalizes the proposed decision to grant BSC's petition.

II. Disposition of Delisting Petition

Bethlehem Steel Corporation, Sparrows Point, Maryland.

A. Proposed Exclusion

Bethlehem Steel Corporation (BSC), located in Sparrows Point, Maryland, is involved in the production of tin and chromium plated parts and steel strip. BSC petitioned the Agency to exclude, from hazardous waste control, its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum''. The listed constituents of concern for EPA Hazardous Waste No. F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see Part 261, Appendix VII).

In support of its petition, BSC submitted:

(1) Detailed descriptions of its manufacturing, waste treatment, and stabilization processes, including schematic diagrams;

(2) Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes;

(3) Results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, nickel, cyanide, zinc, and sulfide from representative samples of the dewatered (unstabilized) filter cake and the stabilized filter cake;

(4) Results from the EP Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the dewatered (unstabilized) filter cake, uncured stabilized filter cake, and the cured stabilized filter cake;

(5) Results from total oil and grease analyses from representative samples of the dewatered (unstabilized) filter cake and stabilized filter cake;

(6) Results from the Multiple Extraction Procedure (MEP, SW–846 Method 1320) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the stabilized filter cake;

(7) Test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity;

(8) Results from the TCLP analyses for the TC volatile and semivolatile organic compounds from representative samples of the dewatered (unstabilized) filter cake; and

(9) Results from total constituent analyses for hexavalent chromium from representative samples of dewatered (unstabilized) filter cake.

The Agency evaluated the information and analytical data provided by BSC in support of its petition and determined that the hazardous constituents found in

the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in BSC's petitioned waste would not leach and migrate at levels that would result in groundwater concentrations above the Agency's health-based levels used in delisting decision-making. See 59 FR 10352, March 4, 1994, for a detailed explanation of why EPA proposed to grant Bethlehem Steel Corporation's petition for its chemically stabilized wastewater treatment filter cake.

B. Response to Public Comments

The Agency did not receive any comments on the proposed rule.

C. Final Agency Decision

For the reasons stated in the proposal and in this final rule, the Agency believes that BSC's chemically stabilized wastewater treatment filter cake should be excluded from listing as a hazardous waste. The Agency, therefore, is granting a final exclusion to Bethlehem Steel Corporation, located in Sparrows Point, Maryland for its chemically stabilized wastewater treatment filter cake, described in its petition as EPA Hazardous Waste No. F006.

This exclusion only applies to the processes and waste volume (a maximum of 1,100 cubic yards generated annually in stabilized filter cake form) covered by the original demonstration. The facility would require a new or amended exclusion if there is an adverse change in composition of treated waste such that levels of hazardous constituents increase significantly (e.g., from changes to manufacturing or treatment processes). (Note, however, that changes in the stabilization process are allowed as described in Condition (4).) Continued evaluation for levels of hazardous constituents will be achieved by the annual verification testing specified in Condition (1)(C). Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 1,100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, appendix I).

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under both Federal and State programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective January 5, 1995. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. This rule to grant an exclusion is not significant, since its effect, is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This amendment will not have any adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: December 19, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Bethlehem Steel Corporation.	Sparrows Point, Maryland.	Stabilized filter cake (at a maximum annual rate of 1100 cubic yards) from the treatment of wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of publication in FEDERAL REGISTER]. Bethlehem Steel (BSC) must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA). (A) *Initial Verification Testing:* During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake. (B) *Subsequent Verification Testing:* Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous. (C) *Annual Verification Testing:* In order to confirm that the characteristics of the treated waste do not change significantly, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR § 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week. (2) *Waste Holding and Handling:* BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All concentrations must be measured in the waste leachate by the method specified in 40 CFR § 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; lead—1.4; mercury—0.19; nickel—9.6; selenium—1.0; silver—5.0. (4) *Changes in Operating Conditions:* After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (*e.g.,* stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled. (5) *Data Submittals:* Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C § 1001 and 42 U.S.C § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
*	*	* * * * *

[FR Doc. 95–255 Filed 1–4–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 231 and 242

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule which amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) concerning the reimbursement of restructuring costs associated with business combinations.

DATES: *Effective date:* December 29, 1994.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before March 6, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D316 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Eric R. Mens, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) restricts the Department of Defense from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. This interim DFARS rule provides policies and procedures for allowing appropriate contractor costs which involve external restructuring activities. A proposed DFARS rule addressing the allowability of contractor costs associated with internal restructuring activities will be published separately.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) requires the Secretary of Defense to prescribe regulations no later than January 1, 1995. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most small entities are not subject to the contract cost principles in FAR part 31 or DFARS part 231. The contract cost principles normally apply where contract award exceeds $500,000 and the price is based on certified cost or pricing data. This interim DFARS rule applies only to defense contractors which incur restructuring costs coincident to a business combination and are subject to the contract cost principles. Most contracts awarded to small entities are awarded on a competitive, fixed-price basis. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small business entities and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D316 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 48 CFR Parts 231 and 242

Government procurement.

Claudia L. Naugle,
Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 231 and 242 are amended as follows:

1. The authority citation for 48 CFR parts 231 and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205 is amended by adding a new subsection 231.205–70 to read as follows:

231.205–70 Restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing appropriate contractor restructuring costs when allowing such costs would result in net savings for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two previously separate companies are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that involve facilities or workforce from both of the previously separate companies.

(3) *Internal restructuring activities* means restructuring activities occurring after a business combination that involve facilities or workforce from only one of the previously separate companies, or, when there has been no business combination, restructuring activities undertaken within one company.

(4) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities associated with the reduction of facilities or workforce, or consolidation of facilities or operations (including disposal or abandonment undertaken to effect such consolidation), in an effort to improve future operations and reduce overall costs. Restructuring activities do not include routine or ongoing repositioning and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation).

(5) *Restructuring costs* means the costs, including both direct and indirect, associated with restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment.

(6) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that are directly associated with or result directly from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR part 31 and DFARS part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205 (d)(8); and

(iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(2) The certification required by 231.205–70(c)(1)(iv) shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(3) Costs that may be incurred after a business combination but are not allowed in accordance with FAR part 31 and DFARS part 231 include, but are not limited to:

(i) Incorporation fees; costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors (see FAR 31.205–27).

(ii) The cost of any change in the contractor's financial structure (see FAR 31.205–27).

(iii) Interest or other costs of borrowing to finance the acquisition or merger (however represented) (see FAR 31.205–20).

(iv) When the purchase method of accounting for a business combination is used, increased depreciation, amortization, or cost of money attributable to increases in the book value of plant, equipment, and other tangible assets of the acquired company above the amount that would have been allowed if the business combination had not taken place (see FAR 31.205–52).

(v) Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) (see FAR 31.205–49).

(vi) Payments to employees of special compensation in excess of the contractor's normal severance pay practice if their employment terminates following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205–6(l)(1)).

(vii) Payments to employees of special compensation which is contingent upon the employee remaining with the contractor for a specified period of time following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205–6(l)(2)).

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs associated with external restructuring activities, the cognizant ACO shall:

(1) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in (c)(1)(iv) is obtained.

(2) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a detailed breakout by year by cost element, showing the projected restructuring costs, both direct and indirect, and projected restructuring savings, both direct and indirect.

(3) Negotiate a Memorandum of Understanding with the contractor setting forth, at a minimum, the types and treatments of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, immediately adjust forward pricing rates to reflect the impact of projected restructuring savings. Pending execution of an advance agreement in accordance with 231.205–70(d)(8), restructuring costs may be included in forward pricing rates if a repricing clause is included in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205–70(c)(1)(iv) is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, cost ceiling amounts on restructuring projects and, when necessary, a cost amortization schedule. Cost ceilings may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205–70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205–70(e).

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

SUBPART 242.12—NOVATION AND CHANGE-OF-NAME AGREEMENTS

3. Sections 242.1202 and 242.1204 are added to read as follows:

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall ensure agreements are executed promptly.

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 231.205–70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

''(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under part 31 of the Federal Acquisition Regulation (FAR) or part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) and/or the National Aeronautics and Space Administration (NASA), and the requirements included in DFARS 231.205–70 are met. These costs and the contracting parties' responsibilities shall be addressed in a Memorandum of Understanding to be negotiated between the cognizant contracting officer and the Transferee. The Memorandum of Understanding will specify the types and treatment of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD and/or NASA. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth cost ceiling amounts on restructuring projects and the period to which such costs shall be assigned.''

[FR Doc. 95–158 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket 93–40; Notice 3]

RIN 2127–AE88

Temporary Exemption From Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical correction; final rule.

SUMMARY: This notice corrects a grammatical error in the language of the certification label required for a vehicle temporarily exempted from compliance with the Federal motor vehicle safety standards.

DATES: The effective date of the final rule is February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 29, 1993, NHTSA amended 49 CFR 555.9(c)(1), the certification requirements for motor vehicles that have been temporarily exempted from compliance with one or more of the Federal motor vehicle safety standards, to conform it to the requirements of 49 CFR 567.4(g)(5) for nonexempted vehicles by including a reference to the Theft Prevention Standard (58 FR 58103).

As amended, the manufacturer of an exempted vehicle, under paragraph 555.9(c)(1), shall:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) Instead of the statement required by Sec. 567.4(g)(5) of this chapter, the following statement shall appear:

''THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY AND THEFT PREVENTION STANDARDS (and, if a passenger car), BUMPER STANDARD IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. (listing the standards by number and title for which an exemption has been granted) EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.''

Michael Grossman, representing Automobili Lamborghini, telephoned NHTSA to comment that this wording would require an exempted manufacturer of a passenger car to certify in part to ''* * * THEFT PREVENTION STANDARDS, BUMPER STANDARD. * * *'' He recommended that NHTSA correct this grammatical error by incorporating the language of the general certification requirement at Sec. 567.4(g)(5) with the exception now in effect under which the exempted standards are listed. NHTSA concurs with this comment, and is amending paragraph 555.9(c)(1) in an appropriate manner. A manufacturer of an exempted vehicle shall now:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) The statement required by paragraph 567.4(g)(5) of this chapter shall end with the phrase ''except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____''.

This amendment also addresses a recent observation by Chrysler Corporation that vehicles other than passenger cars, such as its electric vans which are covered by a Temporary Exemption, are not yet subject to 49 CFR Part 541 *Federal Motor Vehicle Theft Prevention Standard,* and its recommendation that the parenthetical reference to passenger cars should precede and not follow the reference to the theft prevention standard in paragraph 555.9.

Although the wording of the two labels varies slightly, the variation is not substantive. The agency therefore has no objection if exempted manufacturers wish to exhaust their present supply of labels with the old wording.

The notice also revises the authority citation for Part 555 to reflect the recodification in Title 49 of the United States Code of the statutory provisions previously in Title 15.

Effective Date

Because the amendment is technical in nature and has no substantive impact, it is hereby found that notice and comment thereon are unnecessary. Further, because the amendment is technical in nature and has no substantive impact, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective February 6, 1995. As the amendment makes no substantive change, it does not affect any of the impacts previously considered in the promulgation of part 555.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This rulemaking action has not been considered under Executive Order 12866. However, it has been determined to be not significant under the Department of Transportation's regulatory policies and procedures. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. Manufacturers subject to the final rule are not affected by the technical correction.

Regulatory Flexibility Act. The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Although manufacturers who receive temporary exemptions are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that there will be no cost to conform to the final rule. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new exempted motor vehicles will not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

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

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment. Manufacturers subject to this regulation must already provide a certification label for their vehicles. The rule will not have an effect upon fuel consumption.

Civil Justice. This rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 555

Imports, Motor vehicle safety, Motor vehicles.

PART 555—TEMPORARY EXEMPTIONS FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 555 is amended as follows:

1. The authority citation for part 555 is revised to read as follows:

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

2. Section 555.9 is amended by revising paragraph (c)(1) to read as follows:

§ 555.9 Temporary exemption labels.

* * * * *

(c) * * *

(1) The statement required by § 567.4(g)(5) of this chapter shall end with the phrase ''except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.''

* * * * *

Issued on December 28, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 95–100 Filed 1–4–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 80–9; Notice 10]

RIN 2127–AE86

Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the trailer conspicuity requirements of Motor Vehicle Safety Standard No. 108 to provide clarifications of the existing rule with respect to tank trailers and to the width of retroreflective conspicuity sheeting.

DATES: The final rule is effective February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Vehicle Safety Standards, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION: Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* was amended on December 10, 1992, to add S5.7 *Conspicuity Systems,* and associated Figure 30, requirements establishing a visibility enhancement scheme for large trailers (57 FR 58406). In response to petitions for reconsideration, S5.7 was amended on October 6, 1993 (58 FR 52021).

The requirements, which became effective December 1, 1993, have been the subject of a number of questions which the agency has answered through interpretation letters. After due consideration, NHTSA has decided that incorporating these interpretations into the standard by making minor changes in the regulatory text and Figure 30 would better serve the needs of trailer manufacturers and users. These changes are not intended to create additional burdens on any person, and should not be interpreted as requiring a change in practice by any manufacturer who has been certifying conformance to S5.7 and Figure 30 of Standard No. 108 on the basis of Standard No. 108 as it existed before the effective date of these amendments.

Upper Rear Treatment of Tank Trailers

The notice proposing conspicuity treatment for trailers (December 4, 1991, 56 FR 63474) contained an alternative that dealt specifically with trailers such as tank trailers whose rear configuration was other than rectangular. On such trailers, under proposed S5.7.1.4.1(d), the conspicuity treatment would ''be applied to follow the contours of the rear in the uppermost and outermost areas of the rear of the trailer body on

the upper and left sides.'' This treatment was illustrated in proposed Figure 31C.

When the final rule was published, a more general requirement applicable to all trailers without reference to rear configuration was adopted with the thought that a less detailed specification would afford greater flexibility to trailer manufacturers. Under S5.7.1.4.1(b), the treatment is ''applied horizontally and vertically to the right and upper left contours of the body, as viewed from the rear * * *.'' Figure 31C was not adopted and Figure 30, which was adopted, depicts van and platform trailers only. Further, NHTSA provided no explanation of why the tank trailer proposals were not adopted. It has since explained to the industry in interpretation letters that the tank trailer proposal, as illustrated in Figure 31C, is an acceptable scheme for compliance with S5.7.1.4.1(b). To reflect these interpretations, NHTSA is amending S5.7.1.4.1(b) to specify that ''if the rear of the trailer is other than rectangular, the strips may be applied to follow the contours of the rear in the uppermost and outermost areas of the rear of the trailer body on the left and right sides.''

Trailer Illustrations

Figure 30 shows a side stripe with two breaks to illustrate that the side stripe is not required to be continuous. This Figure has been interpreted literally by some small manufacturers as requiring three long pieces of material. NHTSA is replacing Figure 30 with four drawings (Figures 30–1 through 30–4) which are more realistic. They include two examples of tank trailers which illustrate interpretations that side material may be mounted at the tank centerline when practicable locations closer to the ground are unavailable, another source of questions from tank trailer manufacturers. The new Figure also shows other required lamps and reflectors, which had not been illustrated in the original Figure 30.

Paragraph S5.1.1.29 (as amended October 6, 1993 (58 FR 52021)) states that ''A trailer equipped with conspicuity treatment in conformance with S5.7 * * * need not be equipped with the reflex reflectors required by Table I of this standard *if the conspicuity material is placed at the locations of the reflex reflectors required by Table I* (emphasis added). The following discussion addresses the issues that have been raised by trailer manufacturers in their attempts to interpret S5.1.1.29.

Table II of Standard No. 108 requires side reflex reflectors on large trailers to be located from 375 mm to 1525 mm above the road surface and they must be located where they are visible throughout a geometric range of +/−10 degrees vertically and +/−20 degrees horizontally. There is no geometric visibility specification for conspicuity material which may be located as close to between 375 mm and 1525 mm as practicable. NHTSA is aware of at least two common examples of trailer conspicuity treatments which could not be placed at the same location as reflex reflectors. Container chassis use a side conspicuity treatment on the frame because there is no alternative. The material near the ends of a container chassis frame is shrouded by the forward and rear bolsters (full width cross members), and is not visible throughout the +/−20 degrees horizontal range required of reflex reflectors. Therefore, the reflex reflectors mounted at the tips of the bolsters must be retained. The other example appears in the new Figures. A tank trailer with conspicuity material on the fenders is shown in Figure 30–3, and the reflex reflectors may be omitted, but Figure 30–4 shows a tank trailer with a conspicuity treatment on the tank at a height much greater than 1525 mm. The height of the conspicuity material in Figure 30–4 is dictated by practicability, but the reflex reflectors must be located in the required range of 375 mm to 1525 mm and cannot be omitted.

Width of Retroreflective Tape

Paragraph S5.7.1.3(e) establishes three grades of retroreflective sheeting material (C2, C3, and C4) based on minimum levels of retroreflective brightness. Paragraph S5.7.1.3(d) establishes the width of C2, C3, and C4 sheeting. The intent of Standard No. 108 is to establish a minimum amount of light return per linear unit of conspicuity treatment. Thus, C2 material (with the stated width of 50 mm) could be used in widths of 75 mm (C3) or 100 mm (C4) because it exceeds the minimum performance requirements of C3 and C4 material. For the same reason, C3 material could be used in a width of 100 mm. Some trailer manufacturers would like to use C2 material in 75 mm or 100 mm widths but regard the unqualified width value as precluding them from doing so. NHTSA therefore is amending the width figures to be expressed as minimum values. This will also cure a technical problem affecting C2 material, which is available in 2-inch widths, but not the slightly lesser 50 mm width expressed in Standard No. 108.

Typographical Errors

In Notice 8 published on October 6, 1993, S5.7.1.4.1(c) erroneously stated a minimum width of 388 mm for conspicuity material placed on the horizontal member of the rear underride guard; the correct minimum is 38 mm.

The text of Standard No. 108 that is published annually in the Code of Federal Regulations omits underlining from the captions of paragraphs S5.4, S7.5 and S7.7. These are added.

Effective Date

Because the final rule clarifies existing requirements and imposes no additional burden upon any person, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the final rule is in the public interest. Accordingly these amendments are effective 30 days after their publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This rulemaking has not been reviewed under Executive Order 12866. It has been determined that the rulemaking is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rule is to clarify existing requirements. Since the rule does not have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act. NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon the environment simply because of the clarifications made to existing requirements.

Regulatory Flexibility Act. The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Based on the discussion above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected by these minor amendments.

Executive Order 12612 (Federalism). This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Forty-nine U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30161; delegation of authority at 49 CFR 1.50.

2. Sec. 571.108 is amended by revising the heading of S5.4, paragraphs S5.7.1.3(a), S5.7.1.3(d), S5.7.1.4.1(b), and the last sentence of S5.7.1.4.1(c), and the headings of S7.5 and S7.7 to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment

* * * * *

S5.4 *Equipment combinations.* * * *

* * * * *

S5.7.1.3 *Sheeting pattern, dimensions, and relative coefficients of retroreflection.*

(a) Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the side and rear of each trailer, and in white to the upper rear corners of each trailer, in the locations specified in S5.7.1.4, and Figures 30–1 through 30–4, as appropriate.

* * * * *

(d) Retroreflective sheeting shall have a width of not less than 50 mm (Grade DOT-C2), 75 mm (Grade DOT-C3), or 100 mm (Grade DOT-C4).

* * * * *

S5.7.1.4.1 *Rear.* * * *

* * * * *

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long of grade DOT-C2, DOT-C3, or DOT-C4, applied horizontally and vertically to the right and left upper contours of the body, as viewed from the rear, as close to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is other than rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides.

(c) Element 3: * * * Grade DOT-C2 material not less than 38 mm wide may be used.

* * * * *

S7.5 *Replaceable bulb headlamp system.* * * *

* * * * *

S7.7 *Replaceable light sources.* * * *

* * * * *

§ 571.108 [Amended]

3. Section 571.108 is amended by removing Figure 30 and adding Figures 30–1 through 30–4 as set forth below:

BILLING CODE 4910–59–P

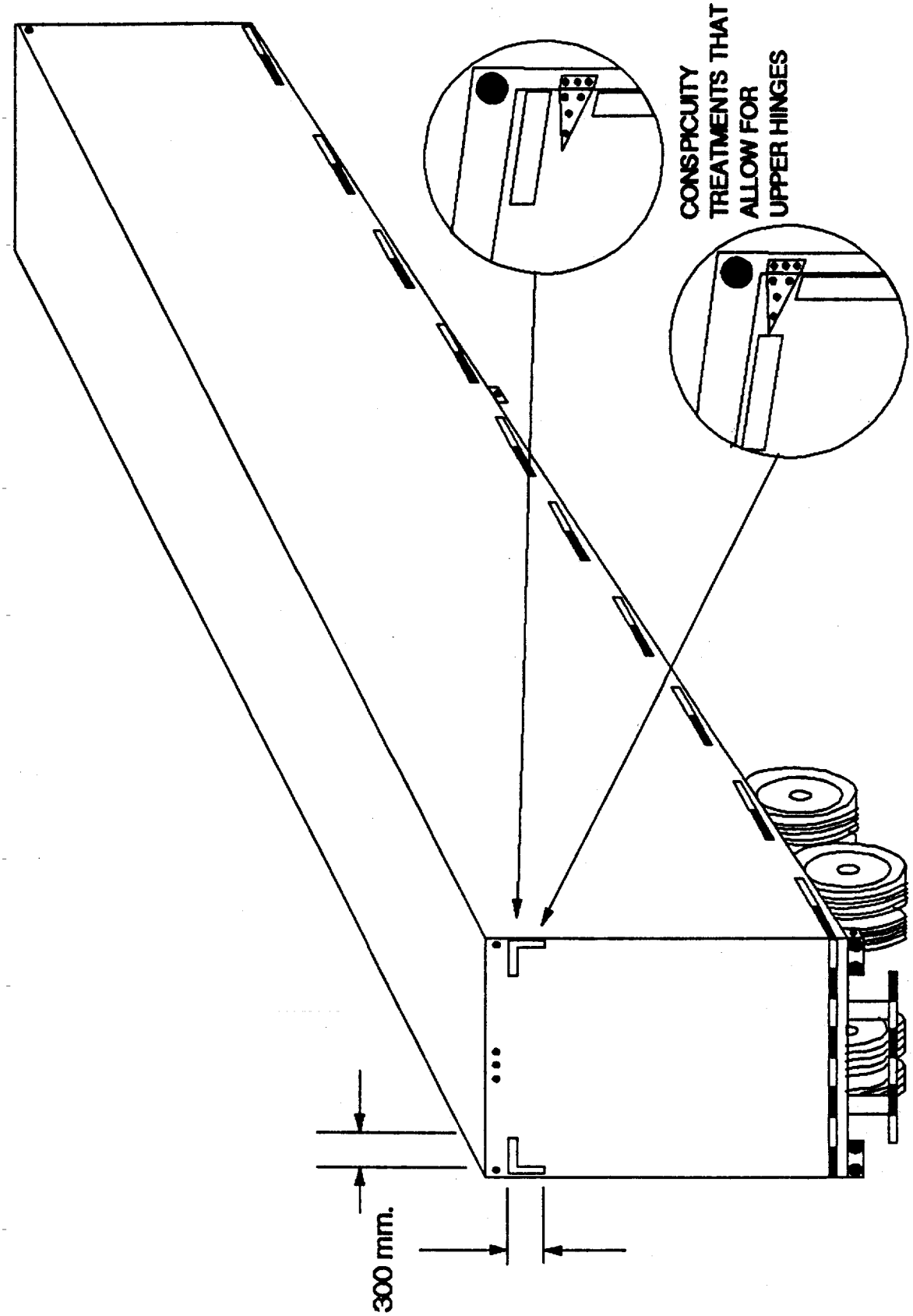


Figure 30-1
Trailer Conspicuity Treatment Example

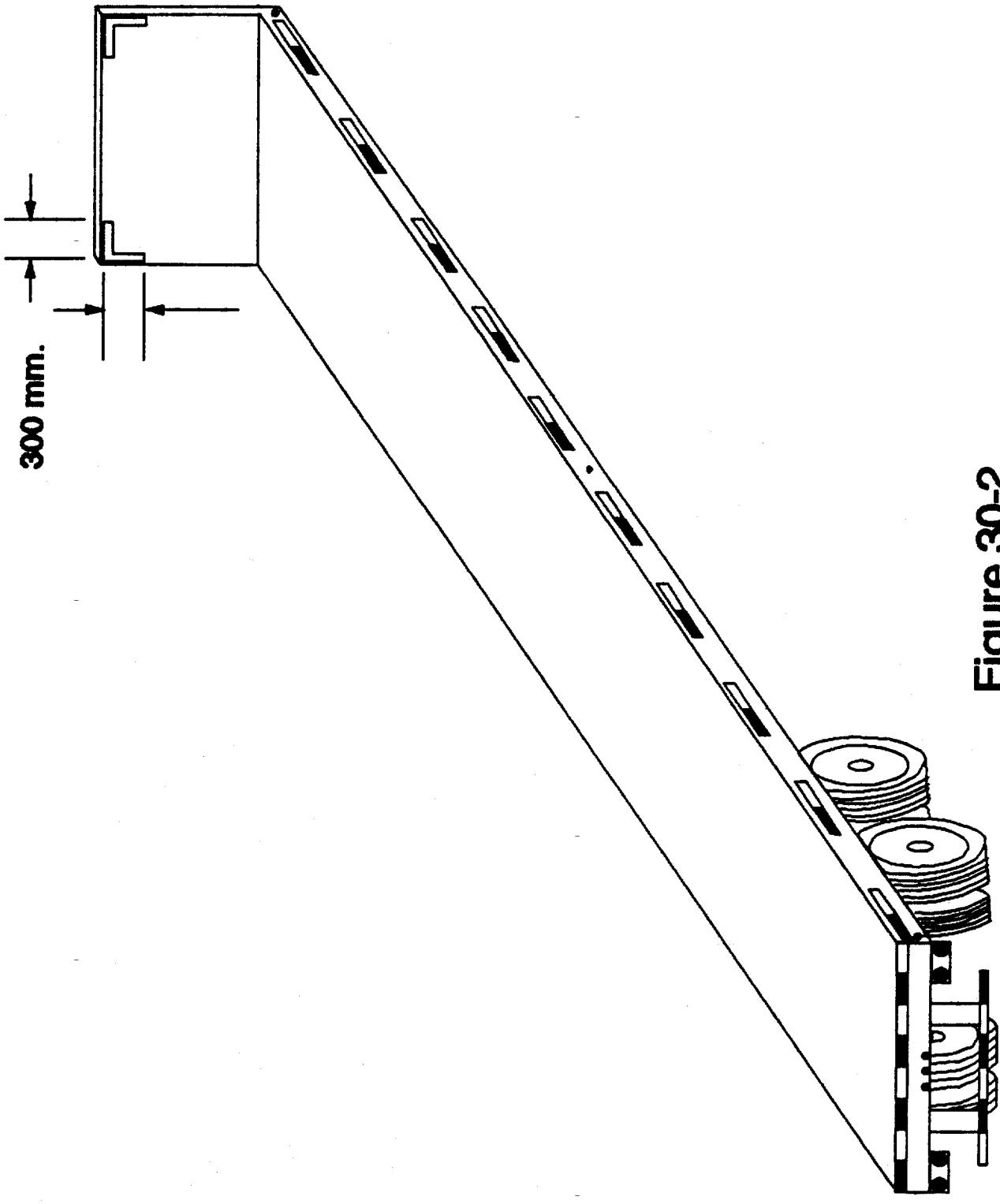


Figure 30-2
Trailer Conspicuity Treatment Example

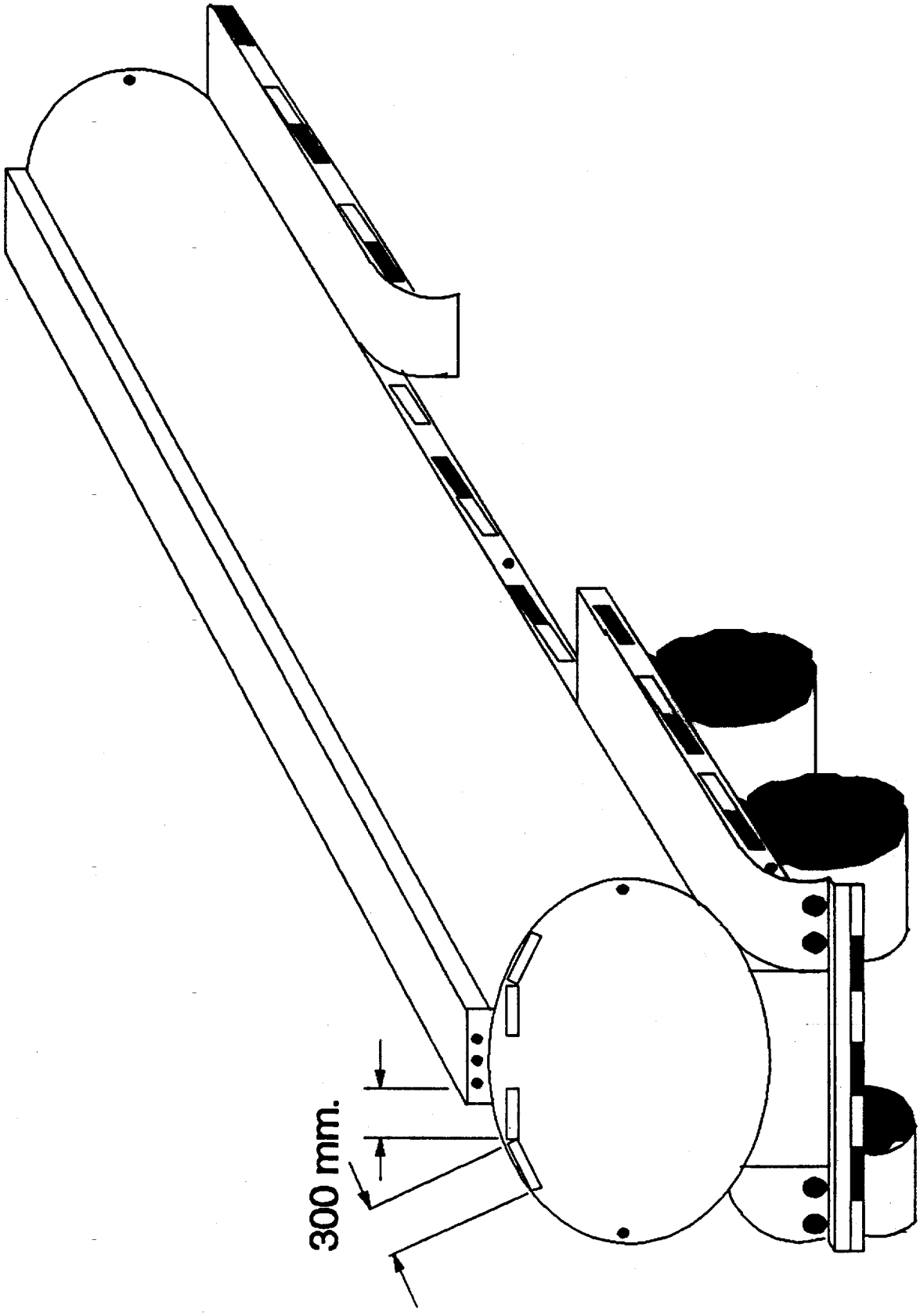


Figure 30-3
Trailer Conspicuity Treatment Example

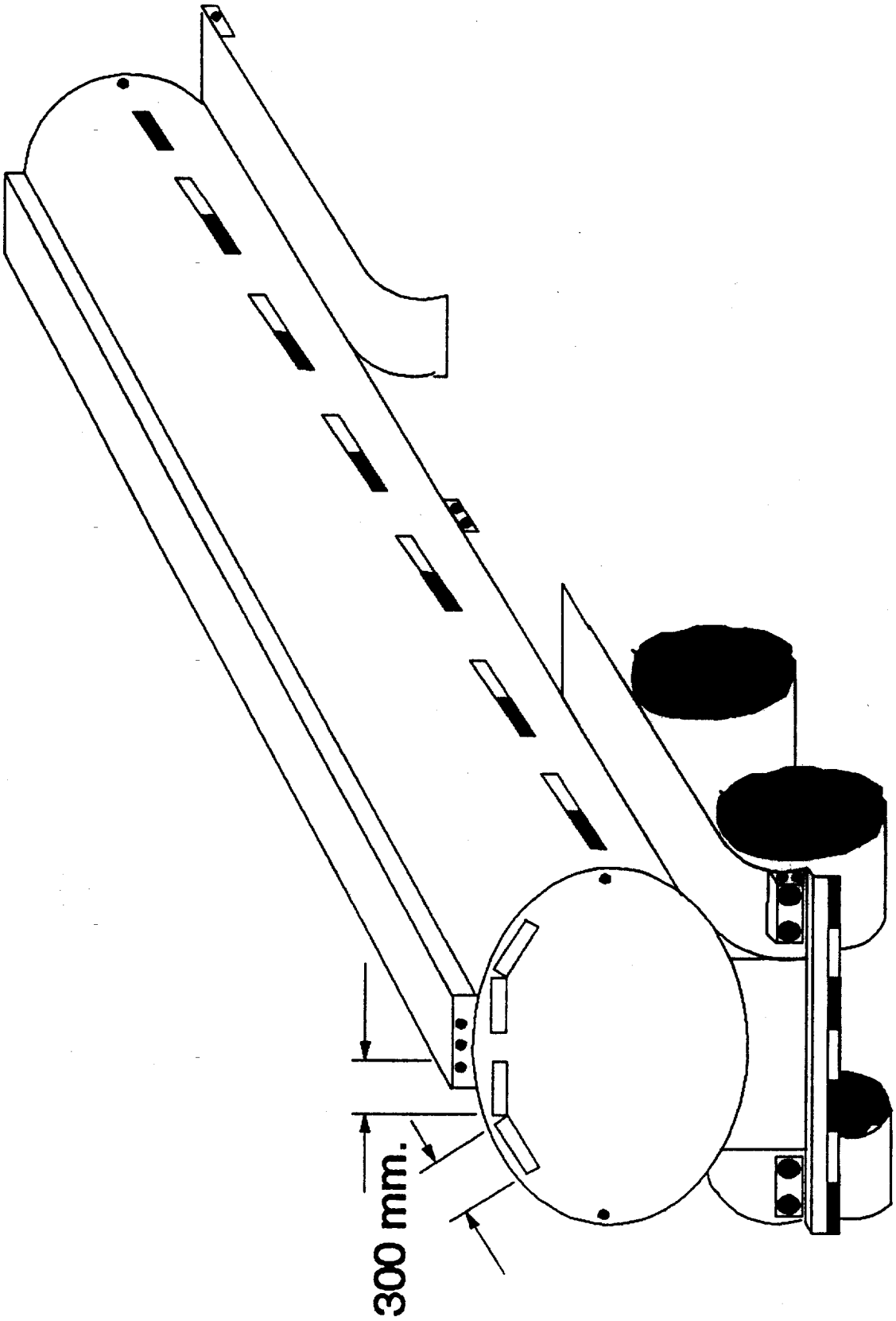


Figure 30-4
Trailer Conspicuity Treatment Example

BILLING CODE 4910–59–C

Issued on: December 28, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 95–102 Filed 1–4–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 122794C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 150,000 lb (68,040 kg) of commercial summer flounder quota to the State of New York. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS, (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

Further, the Regional Director is required to publish notification in the **Federal Register** advising a state, and notifying Federal vessel permit and dealer permit holders, that effective upon a specific date, a portion of a state's commercial quota has been transferred to, or combined with, the commercial quota of another state.

North Carolina has agreed to transfer 150,000 lb (68,040 kg) of commercial quota to New York. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1994.

David S. Crestin,

Acting Director, Office Of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–32337 Filed 12–30–94; 11:39 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 3
Thursday, January 5, 1995

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

Rural Utilities Service

7 CFR Part 1755

RIN 0572–AA66

Telephone Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding a number of outdated bulletins. These bulletins are incorporated by reference in RUS telecommunications regulations and thus are regulatory in nature. Therefore, RUS is requesting public comments on this proposed rescission.

DATES: Comments concerning this proposed rule must be received by RUS, or postmarked no later than February 6, 1995.

ADDRESSES: Comments should be mailed to Director, Telecommunications Standards Division, Rural Utilities Service, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Richard J. Peterson, Assistant Director, Telecommunications Standards Division, Rural Utilities Service, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–8663. Copies of individual bulletins are available from the Publications Branch, Rural Utilities Service, room 0180, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–8674.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any State or local laws, regulations, or policies; (2) have any retroactive effect; and (3) require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule streamlines and updates RUS requirements for telephone borrowers by rescinding obsolete standards and specifications. Borrowers unable to use products meeting only the specifications being eliminated may experience increased short-term costs. However, RUS believes that borrowers will benefit from reduced overall costs due to the greater durability and lower maintenance costs over time. These bulletins no longer meet industry standards.

Information Collection and Recordkeeping Requirements

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees, and 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

Pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS). The terms ''RUS bulletin'' and ''RUS standards and specifications'' have the same meaning as the term ''REA bulletin'' and ''REA standards and specifications'', unless otherwise indicated. RUS issues publications titled ''bulletins'' which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telephone facilities financed with RUS loan funds. After review of RUS's bulletin and specification issuances, RUS has decided to propose to rescind the outdated RUS bulletins listed below. RUS felt rescission was the best option for these bulletins and welcomes public comment. These bulletins are incorporated by reference at 7 CFR 1755.97.

LIST OF RUS BULLETINS PROPOSED FOR RESCISSION

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
345–13	PE–22	Jan. 1983	RUS Specification for Aerial and Underground Telephone Cable.
345–29	PE–38	Feb. 1982	RUS Specification for Self-Supporting Cable.
345–75	PE–65	Jan. 1977	RUS Specification for Electronic Trunk Circuits.
345–168	Form 538	Oct. 1977	RUS Specification for Equipment for Direct Distance Dialing.

RUS Bulletins 345–13, RUS Specification for Aerial and Underground Telephone Cable, PE–22 and 345–29, RUS Specification for Self-Supporting Cable, PE–38 specify the technical requirements for air core cables that are primarily used in aerial plant installations. With the development of filled cables having 80 degree Centigrade filling compounds, filled cables, which are primarily used for direct buried and underground plant installations, can now be used for aerial plant installations. Since filled cables provide greater service reliability than air core cables, filled cables for aerial plant installations have increased on RUS borrower construction projects. This increasing use of filled cables for aerial installations has resulted in a decline of air core cables for aerial plant construction projects. Since the use of air core cables in aerial plant construction is declining on RUS borrower projects, RUS is rescinding both bulletins because of obsolescence. RUS borrowers may refer to 7 CFR 1755.390, RUS Specification for Filled Telephone Cables, and/or 7 CFR 1755.890, RUS Specification for Filled Telephone Cables With Expanded Insulation, for further information on filled cables.

RUS Bulletin 345–75, RUS Specification for Electronic Trunk Circuits, PE–65, is proposed for rescission because RUS trunk circuits are now digitally derived making RUS Bulletin 345–75 obsolete.

RUS Bulletin 345–168, RUS Specification for Equipment for Direct Distance Dialing, Form 538, specified the technical requirements for equipment use in direct distance dialing. Since the equipment requirements for direct distance dialing are now specified in RUS 7 CFR 1755.522, RUS General Specification for Digital, Stored Program Controlled Central Office Equipment, RUS Bulletin 345–168 is no longer required therefore making the document obsolete.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIAL, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entries listed below from the table:

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
* * *	*	* * * * *	
345–13	PE–22	Jan. 1983	RUS Specification for Aerial and Underground Telephone Cable.
* * *	*	* * * * *	
345–29	PE–38	Feb. 1982	RUS Specification for Self-Supporting Cable.
* * *	*	* * * * *	
345–75	PE–65	Jan. 1977	RUS Specification for Electronic Trunk Circuits.
* * *	*	* * * * *	
345–168	Form 538	Jan. 1977	RUS Specification for Equipment for Direct Distance Dialing.
* * *	*	* * * * *	

Dated: 12–6–94.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–246 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–15–P

7 CFR Part 1755

RUS General Specification for Digital, Stored Program Controlled Central Office Equipment (Form 522)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Rural Utilities Service (RUS) General Specification for Digital, Stored Program Controlled Central Office Equipment by eliminating the requirement for multiparty service and certain other technical aspects associated with this service. This amendment does not diminish public telephone service integrity.

DATES: Written comments must be received by RUS or postmarked no later than February 6, 1995.

ADDRESSES: Written comments should be addressed to Orren E. Cameron III, Director, Telecommunications

Standards Division, U.S. Department of Agriculture, Rural Utilities Service, room 2835–S, Washington, DC 20250–1500. RUS requires a signed original and three copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, room 2836–S, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes to the General Specification for Digital, Stored Program Controlled Central Office Equipment in this proposed rule are updates which have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0059. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

Since publication of the regulation on REA General Specification for Digital, Stored Program Controlled Central Office Equipment, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103–354, 181 Stat. 3178 (Reorganization Act) has been enacted. Pursuant to the Reorganization Act the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS). Rules formerly published by REA were reassigned to RUS pursuant to a final rule published in the **Federal Register** at 59 FR 66438. Therefore, this proposed rule culminating a rulemaking proceeding initiated by REA is being published by RUS.

RUS makes loans and loan guarantees to telephone systems to provide and improve telecommunications service in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, (RE Act). RUS issues construction standards and specifications for materials and equipment. In accordance with the RUS loan contract, these standards and specifications apply to facilities constructed by RUS telephone borrowers. The Rural Electrification Loan Restructuring Act of 1993 (RELRA) (107 Stat. 1356) mandates the elimination of multiparty service. This proposed rule will eliminate the requirement in 7 CFR 1755.522 for multiparty service along with features which are associated with that service such as revertive calling and multifrequency ringing.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1755.522 is amended by revising paragraphs (e)(5), (e)(6), (e)(7), (e)(11), and (e)(19)(vii), removing paragraph (f)(1)(ii), redesignating paragraph (f)(1)(iii) as paragraph (f)(1)(ii), removing paragraphs (g)(2)(ii), (g)(2)(iii), (g)(8), (g)(8)(i), and (g)(8)(ii), redesignating paragraphs (g)(2)(iv) through (g)(2)(xv) as paragraphs (g)(2)(ii) through (g)(2)(xiii), and paragraphs (g)(9) through (g)(12)(iii) as paragraphs (g)(8) through (g)(11)(iii), revising paragraphs (i)(2)(ix) and (p)(1)(vi), introductory text, amending paragraph (p)(3)(i) by removing the entry ''Revertive'' from the table, removing paragraph (r)(6), redesignating paragraphs (r)(7) through (r)(8)(vii) as paragraphs (r)(6) through (r)(7)(vii), and revising paragraphs (s)(5)(ii)(A), (s)(5)(ii)(C), introductory text and (s)(6)(ii) to read as follows:

§ 1755.522 RUS general specification for digital, stored program controlled central office equipment.

* * * * *

(e) * * *

(5) The basic switching system shall include the provision of software programming and necessary hardware, including memory, for optional custom calling services such as call waiting, call forwarding, three-way calling, and

abbreviated dialing. It shall be possible to provide these services to any individual line (single-party) subscriber. The addition of these services shall not reduce the anticipated ultimate engineered line, trunk, and traffic capacity of the switching system as specified in appendix A of this section.

(6) The requirements in this specification apply only to single party lines. Although only single frequency ringing is required, other types may be requested in appendix A of this section.

(7) Provision shall be made for local automatic message accounting (LAMA), and for traffic service position system (TSPS) trunks, or equivalent, to the operator's office when required either initially or in the future.

* * * * *

(11) Provision shall be made for hotel-motel arrangements, as required by the owner, to permit the operation of message registers at the subscriber's premises to record local outdial calls by guests (see Item 10.5, appendix A of this section).

* * * * *

(19) * * *

(vii) If the 911 service bureau is holding a calling line, it shall be possible for the 911 line to cause the equipment to ring back the calling line. This is done by providing a flash of on-hook signal from the 911 line lasting from 200 to 1,100 milliseconds. The signal to the calling line shall be ringing current if the line is on-hook, or receiver off-hook (ROH) tone if the line is off-hook.

* * * * *

(i) * * *

(2) * * *

(ix) Distinctive tone, when required for alarm calls, or other features, shall consist of high tone interrupted at 200 IPM with tone on 150 ms and off 150 ms.

* * * * *

(p) * * *

(1) * * *

(vi) The traffic capacity in the following table should be used for small trunk groups such as pay station, special service trunks, intercept, and PBX trunks, unless otherwise specified in appendix A of this section. * * *

* * * * *

(s) * * *

(5) * * *

(ii) * * *

(A) The ringing generators shall have an output voltage which approximates a sine wave and, as a minimum, shall be suitable for ringing straight-line ringers. Although not a requirement for RUS listing, decimonic, synchromonic, or harmonic ringing may also be specified in appendix A of this section.

* * * * *

(C) The output of each generator shall have three or more voltage taps or a single tap with associated variable control. Taps or control shall be easily accessible as installed in the field. Software control of ringing generator outputs via I/O devices may be provided in lieu of taps. The taps, or equivalent, shall be designated L, M, and H. The variable control shall have a locking device to prevent accidental readjustment. The outputs at the terminals of the generators with a voltage input of 52.1 volts and rated full resistive load shall be as follows for the ringing frequencies provided. * * *

* * * * *

(6) * * *

(ii) The ringing cycle provided by the interrupter equipment shall not exceed 6 seconds in length. The ringing period shall be 2 seconds.

* * * * *

Appendix A to 7 CFR 1755.522 [Amended]

3. Appendix A to 7 CFR 1755.522 is amended by removing items 6.1.3, 6.1.4, and 6.1.5, redesignating items 6.1.6 through 6.1.16.2 as items 6.1.3 through 6.1.13.2, amending item 7.1 by removing from the table the entries ''Two-party—Res'', ''Two-party—Bus'', and ''Four-party'', removing items 10.2 through 10.2.1.3, and redesignating items 10.3 through 10.8.5 as items 10.2 through 10.7.5.

Appendix B to 7 CFR 1755.522 [Amended]

4. Appendix B to 7 CFR 1755.522 is amended by removing items 1.2 and 1.3 and redesignating items 1.5 through 1.9 as items 1.4 through 1.7.

Appendix C to 7 CFR 1755.522 [Amended]

5. Appendix C to 7 CFR 1755.522 is amended by revising item 3.1.3.1 to read as follows:

* * * * *

3.1.3.1 The number of directory numbers provided shall be based on the total directory numbers required (Item 6.1.11, appendix (A), as modified by the memory increment of the proposed system.

* * * * *

Dated: December 6, 1994.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–247 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. RSOR 13, Notice No. 2 RIN 2130–AA86]

Roadway Worker Protection

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Notice of establishment of advisory committee for regulatory negotiation session and notice of first meeting.

SUMMARY: The Federal Railroad Administration is announcing the establishment of an advisory committee to develop a report including a recommended proposed rule concerning the protection of railroad employees who work on or adjacent to track and face the risk of injury from moving trains and equipment. The committee will adopt its recommendation through a negotiation process. The committee is composed of persons who represent interests affected by any rule adopted on this issue. This notice also announces the time and place of the first advisory committee meeting.

DATES: The first meeting of the advisory committee will begin at 9:30 a.m. on January 23–25, 1995.

ADDRESSES: The first meeting of the advisory committee will be held in Room 3200–3204 of the Nassif Building, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC. Subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Christine Beyer or Cynthia Walters, Trial Attorneys, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Room 8201, Washington, DC 20590 (Telephone: 202–366–0621).

SUPPLEMENTARY INFORMATION:

I. Background

The Rail Safety Enforcement and Review Act, Pub. L. No. 102–365, 106 Stat. 972, enacted September 3, 1992, required FRA to review and revise its track safety standards, and to complete ''an evaluation of employee safety.'' FRA issued an Advance Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (57 FR 54038) to begin the proceeding to amend the Federal Track Safety Standards (49 C.F.R. Part 213). Following publication of the ANPRM, FRA conducted a series of workshops to gather the industry's views on the need for changes to FRA's track regulations. One such workshop

held on March 31, 1993 was devoted specifically to employee safety and addressed the hazards associated with working adjacent to moving trains and equipment. It was determined that for the purposes of any proceeding, the term ''roadway worker'' would be used rather than ''maintenance of way employee'' to describe the group of employees at risk. This term encompasses all employees of a railroad or a contractor to a railroad who construct, maintain, inspect or repair railroad tracks, structures, signal and train control systems, communication systems, utility systems, or any other fixed property of a railroad while in close or potentially close proximity to tracks on which trains or equipment can be operated. The term applies regardless of the craft or class title of the employee, affiliation with any labor organization, or rank within the railroad organization.

Because FRA decided that this issue should be addressed quickly and because the hazards involved relate more closely to employee safety than to track standards, FRA moved roadway worker safety from the track safety standard review (FRA Docket No. RST–90–1) and placed it in FRA Docket No. RSOR 13.

Since 1989, 24 roadway workers have been fatally injured by moving trains or equipment. Ten workers were struck by trains while performing work, four were struck by trains on track adjacent to the work location, five stepped into a train's path, and five were struck by maintenance-of-way equipment. These fatalities are among the following crafts: signal maintainers, machine operators, welders, track foremen, track inspectors, and track laborers. These figures reflect a serious problem that may require changes in railroad operating rules, training and practices. In the past year, the Brotherhood of Maintenance of Way Employes and the Brotherhood of Railroad Signalmen have filed petitions for emergency order and rulemaking that suggest procedures to reduce roadway worker fatalities and injuries.

On June 3, 1994 FRA Administrator Jolene M. Molitoris convened a meeting with all affected industry representatives to discuss what actions the industry and the agency should take to prevent injuries and fatalities among roadway workers. FRA and the industry concluded that extensive input from all interested parties would be necessary to develop a rule that will address both the risk of injury from moving railroad equipment and the operational concerns that the issue presents. Therefore, it was determined that the agency should initiate a negotiated rulemaking to develop new standards to protect roadway workers.

On August 17, 1994 FRA published a notice of intent to establish an advisory committee (Committee) for regulatory negotiation to develop a report including a recommended proposed and final rule concerning protection for roadway workers (59 FR 42200). The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The notice also announced the intent to seek the services of a professional neutral to facilitate the negotiations and requested nominations for this position from the industry.

FRA received over 30 comments on the notice of intent. None of the comments opposed using regulatory negotiation for this rulemaking; most endorsed the process and included requests to serve on the Committee. Based on this response and for the reasons stated in the notice of intent, FRA has determined that establishing an advisory committee on this subject is necessary and in the public interest. In accordance with Section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. App. I § 9(c), FRA prepared a Charter for the establishment of the Roadway Worker Safety Advisory Committee. On December 27, 1994 the Office of Management and Budget approved the Charter, authorizing the Committee to begin negotiating the provisions of a proposed rule.

II. Mediators

In the notice of intent, FRA stated that it was seeking an impartial mediator to conduct the negotiations. FRA is pleased to announce that the Federal Mediation and Conciliation Service (FMCS) has agreed to provide mediation personnel for this purpose.

III. Membership

In addition to a representative from FRA, the Committee will consist of the following members:

American Public Transit Association (APTA)
The American Short Line Railroad Association (ASLRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDA)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Burlington Northern Railroad (BN)
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc. (CSX)
Florida East Coast Railway Company (FEC)
Metra
National Railroad Passenger Corporation (AMTRAK)
Norfolk Southern Corporation (NS)
Regional Railroads of America (RRA)
Transport Workers Union of America (TWU)
Union Pacific Railroad Company (UP)
United Transportation Union (UTU)

In order to ensure balance on the Committee, the BMWE and BRS will be represented by more than one individual: five for the BMWE and three for the BRS. FRA was not able to grant requests for multiple seats made by two other organizations. APTA and RRA each submitted two names for membership, and FRA chose one name from each organization. In making those decisions, the agency selected the individuals with operating experience rather than the lawyers that were nominated by APTA and RRA. FRA believes that the Committee will benefit greatly from members who have actual knowledge of railroad operating practices and hands-on field experience with those practices.

FRA regrets being unable to accommodate all requests for membership on the Committee. Several factors, which were listed in the notice of intent, guided FRA's decision to limit the Committee's size to 25. The Committee must be kept to a size that permits effective negotiation, but that ensures all interests a voice in the recommendation adopted. Although FRA would have preferred a smaller Committee, the agency erred on the side of inclusion to be certain that all interests affected by a rule would be represented in this process. Summarized below is FRA's rationale for denying the remaining applications for membership.

The Chicago and North Western Railway Company (CNW) requested representation on the Committee, but unfortunately could not be selected. Other Class 1 railroads on the Committee work with operating procedures, environmental conditions, topographical characteristics, and employee relations that are quite similar to those of CNW. Each of these factors may impact the content of a recommended proposed rule and so it is important that they be fully represented. However, FRA believes that AAR, BN, CSX, Conrail, NS, and UP adequately represent CNW's interests.

The Massachusetts Bay Transportation Authority (MBTA)

petitioned for membership on the Committee, but was not selected. MBTA is a commuter line in the northeast with operational characteristics that are very similar to those of Amtrak, a Committee member. Also, APTA's Committee member will represent all commuter lines in this proceeding. Therefore, FRA believes that MBTA's interests will be adequately represented by the other commuter rail organizations on the Committee.

The Long Island Rail Road (LIRR) requested Committee membership and nominated its Executive Director of System Safety to serve as its representative. Although FRA was not able to select LIRR for Committee membership, its nominee will serve on the Committee representing the interests of APTA and all public transit organizations. Therefore, LIRR's interests will be effectively considered during the negotiation process.

The Wisconsin Central Ltd. (WC) requested representation on the Committee and nominated its Vice President of Engineering to represent its interests. This individual was also nominated to represent RRA. FRA was unable to select WC individually, but its nominee has been chosen to represent RRA and all regional railroads. Therefore, WC's interests will be adequately addressed in the negotiation process.

Finally, the National Railroad Construction and Maintenance Association, Inc. (NRCMA) filed a request for membership jointly with RRA, and nominated its Executive Vice President to represent the interests of NRCMA and RRA. As indicated above, RRA filed a second application for representation asking that WC's Vice President of Engineering also represent their interests. As already stated, this individual has been chosen to represent RRA (and WC implicitly) because he brings extensive hands-on experience to the proceeding. FRA deliberated over NRCMA's application, and determined that its interests will be effectively represented by the railroads and labor organizations on the Committee who currently have primary responsibilities for protecting roadway workers. NRCMA's duties derive from and are subject to those of the railroads with whom they contract for maintenance and construction work. Given the limitations the agency faces in creating a Committee of reasonable size, and the broad spectrum of railroads and employee crafts represented on the Committee, FRA believes that NRCMA's interests will be effectively addressed in this process. Also, public participation will be a key component of this process; all Committee meetings will be open to the public, and the Committee is expected to devise procedures that will periodically permit comment from the public. FRA will hold a public hearing after issuing a proposed rule, and will invite and consider comments from organizations such as the NRCMA before promulgating any final standard.

IV. Participation by Non-Members

FRA believes that public participation is critical to the success of this proceeding. Participation is not limited to Committee members. Negotiation sessions will be open to the public, so interested parties may observe the negotiations and communicate their views in the appropriate time and manner to Committee members. Also, interested groups or individuals may have the opportunity to participate with working groups of the Committee. FRA believes that this sort of participation will produce meaningful information and lead to a more effective roadway worker safety program. Of course, FRA will invite comment on the proposed rule resulting from the Committee's deliberations and hold a public hearing to hear additional comments.

V. Major Issues

In its notice of intent, FRA tentatively identified major issues to consider in the negotiation and asked for comment on whether the issues presented were appropriate and if alternate or additional issues should be considered. Unfortunately, most comments submitted were devoted to issues of membership rather than rule substance. Listed below are subjects FRA believes the negotiation process should address:

1. Devices available that would reduce the risk of injury to roadway workers;

2. Practices and training programs currently in use or that may be instituted to reduce the risk of injury to roadway workers;

3. The extent to which environmental, topographical, and operational conditions do or should cause variations in any roadway worker safety program;

4. The type and extent of FRA enforcement and recordkeeping requirements necessary to protect roadway workers; and

5. The costs associated with developing an effective roadway worker safety program. (The costs include but are not limited to the burden on railroads and local, state, and federal government entities.)

FRA believes that the negotiation process should be open to discussion about these and any other relevant matters the Committee finds necessary to explore.

VI. Procedure and Schedule

Those who commented on the notice of intent generally did not address Committee procedures. FRA anticipates that all or a substantial majority of the negotiation sessions will take place in Washington, D.C. at DOT headquarters. Given FRA's limited resources, travel outside of Washington, D.C. for the purpose of holding negotiation sessions is unlikely. However, FRA will consider any recommendations made by the Committee in this regard.

FRA will not make any determinations at this time concerning the frequency or timing of public hearings, or the development of negotiation subcommittees. FRA's ability to hold public hearings will be subject to the availability of funds for this purpose. However, FRA will consider any recommendations the Committee makes on these matters.

Consistent with requirements of the Federal Advisory Committee Act, a clear and comprehensive record of the Committee's deliberations should be kept and circulated to Committee members. FRA will provide an administrative specialist to the Committee to complete these duties and assist with drafting any additional documents, including the Committee's report. The Committee may also choose to designate additional individuals to draft documents.

The objective of the negotiation, in FRA's view, is for the Committee to produce a report recommending a course of action for FRA to follow that will prevent roadway worker injuries and fatalities. FRA anticipates that the report will include a draft NPRM on which the Committee has reached consensus. This approach is consistent with recommendations of the Administrative Conference of the United States on regulatory negotiation. As stated in the notice of intent, FRA will proceed on its own if the Committee cannot reach consensus on a recommended course of action. In that event, FRA will make every attempt to include provisions that the Committee did reach agreement on in the agency's NPRM. Also, as stated in the notice of intent, FRA must review the Committee's recommendations for enforceability and effectiveness. If the agency determines that the report contains recommendations which are unenforceable, contrary to existing law, or completely ineffective, FRA may abandon or amend the Committee's recommendations. However, we believe

likelihood of such a situation is remote, and will seek to avoid this result.

In view of the high priority FRA has given this proceeding and the facilitation contract limitations, the agency is asking the advisory committee to complete negotiations for the NPRM by May 1, 1995. FRA realizes that this deadline is ambitious, but we believe that it will encourage serious and efficient negotiation by all parties.

The negotiation process will otherwise proceed according to a schedule of specific dates that the Committee devises at the first meeting to be held on January 23–25, 1995. As time permits, FRA will publish notices of future meetings in the **Federal Register**. The first meeting is scheduled to begin at 9:30 a.m. in Room 3200–3204 of the Nassif Building, DOT headquarters. This session will commence with an orientation and regulatory negotiation training program conducted by facilitators from the Federal Mediation and Conciliation Service. After the training program, the Committee will devise its procedures and calendar, and will then begin substantive deliberations on roadway worker safety. FRA has given advance notice of this meeting to all Committee members and believes that all members will be present for this first and important meeting.

Issued this 29th day of December, 1994.

S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 95–201 Filed 1–4–95; 8:45 am]

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Notices

Federal Register

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Thursday, January 5, 1995

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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Feed Grain Donations; Flathead Indian Reservation of Montana

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Executive Vice President, Commodity Credit Corporation (CCC) is announcing that the Flathead Indian Reservation of Montana is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: John Newcomer, Consolidated Farm Service Agency, P.O. Box 2415, Washington, DC 20013–2415, 202–720–6157.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that it is determined that:

1. The chronic economic distress of the needy members of the Confederated Salish and Kootenai Tribes located on the Flathead Indian Reservation of Montana has been materially increased and become acute because of severe drought during the 1994 growing season and ensuing wild fires, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is utilized by members of the Confederated Salish and Kootenai Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members on the Flathead Indian Reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, the Flathead Indian Reservation of Montana is declared an acute distress area and the donation of feed grain owned by the CCC is authorized to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Confederated Salish and Kootenai Tribes utilizing such lands. These donations by the CCC may commence upon November 15, 1994, and shall be made available through April 30, 1995, or such other date as may be stated in a notice issued by the Executive Vice President, CCC.

Signed at Washington, DC, on December 23, 1994.

Bruce R. Weber

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–240 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–05–P

Feed Grain Donations; Pueblo of Laguna Indian Reservation of New Mexico

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Executive Vice President, Commodity Credit Corporation (CCC) is announcing that the Pueblo of Laguna Indian Reservation of New Mexico is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: John Newcomer, Consolidated Farm Service Agency, P.O. Box 2415, Washington, DC 20013–2415, 202–720–6157.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that it is determined that:

1. The chronic economic distress of the needy members of the Indians on the Pueblo of Laguna Indian Reservation of New Mexico has been materially increased and become acute because of drought during the 1992, 1993, and 1994 growing seasons, thereby creating a serious shortage of feed and causing increased economic distress.

This reservation is designated for Indian use and is utilized by members of the Pueblo of Laguna for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members of the Pueblo Indians on the Pueblo of Laguna Indian Reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, the Pueblo of Laguna Indian Reservation of New Mexico is declared an acute distress area and the donation of feed grain owned by the CCC is authorized to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Pueblo of Laguna utilizing such lands. These donations by the CCC may commence upon September 22, 1994, and shall be made available through December 20, 1994, or such other date as may be stated in a notice issued by the Executive Vice President, CCC.

Signed at Washington, DC, on December 23, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–242 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Bennett-Cottonwood Oil and Gas Development EIS Custer National Forest, McKenzie County, North Dakota

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of further oil and gas development in the Bennett-Cottonwood area, approximately 22 air miles south of Watford City, North Dakota. The lands involved include portions of the McKenzie Ranger District, Little Missouri National Grasslands, Custer National Forest.

DATES: Written comments concerning the scope of the analysis must be received by February 21, 1995.

ADDRESSES: Written comments concerning the analysis should be sent to District Ranger, McKenzie Ranger District, Little Missouri National Grasslands, Custer National Forest, HCO 2, Box 8, Watford City, North Dakota, 58854.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and EIS should be directed to Lesley W. Thompson, District Ranger, McKenzie Ranger District. Phone (701) 842–2393.

SUPPLEMENTARY INFORMATION: Until recently, there has been only one productive oil well in the Bennett-Cottonwood area. The lease for this well was issued in 1970 and has been held in production since 1980 by Apache Corporation. It's establishment and maintenance has had little impact on the area.

The high potential for oil and the development of leased mineral rights, as well as, private mineral rights, has resulted in the establishment of eight new oil wells within the area since 1991 (four Federal minerals and four private minerals). Successful oil production from these well has resulted in additional applications to drill on existing leases within the area.

Since 1970, the year of the oldest lease in the area, several resource management plans were prepared that inventoried and analyzed the area. They are: the Badlands Unit Plan (1974/75); Roadless Area Resource Inventory (RARE II, 1979); the Custer National Forest Land and Resource Management Plan, EIS, and Record of Decision (June 10, 1987); and the Oil and Gas Leasing EIS and ROD for the Northern Little Missouri National Grasslands (1991).

In addition to the noted plans, the North Dakota Game and Fish, re-introduced bighorn sheep (California subspecies) into the Sheep Creek area in 1987. Bighorn sheep are a sensitive species in the Northern Region (R–1) of the Forest Service.

The McKenzie Ranger District intends on preparing an EIS because further development in this area may significantly affect bighorn sheep and/or the Bennett-Cottonwood inventoried roadless area (L1DAY).

There are a total of thirteen (13) new oil wells proposed to be developed within the Bennett-Cottonwood area. Of the thirteen proposed wells, five (5) will sit on Federal surface accessing Federal minerals, two (2) will sit on Federal surface accessing private minerals, two (2) will sit on private surface accessing Federal minerals, one (1) will sit on private surface accessing private minerals, two (2) will sit on North Dakota state surface accessing Federal minerals, and one (1) will sit on North Dakota state surface accessing state leased minerals. Of the wells noted above, three that will sit on the same parcel of private property will require new road construction, across the Federal surface, for access. This will require approval of a special use permit by the Forest Service.

Forest Service decision authority is limited to the lands the Forest Service administers. Thus, in this instance, the Forest Service proposes to approve the surface use and operations plans for the construction of five (5) new oil wells, associated roads, and production facilities in the Bennett-Cottonwood area. As well as, consider approving a special use permit for a road to access private property surrounded by Federal lands within the same area. Production facilities includes the connection of proposed wells to an oil and gas pipeline system. The Forest Service will not make any decision(s) regarding the use of private or state lands, but must, pursuant to the National Environmental Policy Act, consider the cumulative effects of actions ''regardless of what agency (Federal or non-Federal) or person undertakes such other actions'' (40 CFR 1508.7).

This is a project level decision. The project area is located in the following Townships, Ranges, and Sections: T146N, R100W, S(s) 3, 4, 5, 8, 9, and 10; and T147N R100W, S(s) 22, 26, 27, 28, 32, 33, and 34. This is approximately 7,360 acres. The analysis area will be larger and will include the Bennett-Cottonwood Inventoried Roadless area and suitable bighorn sheep habitat for the Sheep Creek herd.

The decision(s) to be made are to approve or deny for implementation, in part or whole, as submitted or modified, individual development actions.

Additional Resource Information

Lands within the analysis area include portions of the following Townships and Ranges: T147N, R100 and 101W; T146N, R99, 100, and 101W, 5th PM. There are approximately 28,500 acres of land within the analysis area boundary, including 5,440 acres of privately owned lands, and 1,280 acres of North Dakota state lands. There are approximately thirty-one (31) leases within the analysis area. The scope and area of the decision will include National Forest System lands or those administered by the U.S. Forest Service only.

Roadless Resource

Part of the project area falls within the Bennett-Cottonwood inventoried roadless area. There are 13,760 acres of National Forest System lands within this roadless area. Its potential for wilderness recommendation was considered in the Forest Planning effort. In the Forest Plan Record of Decision, none of this area was recommended for wilderness consideration. Rather, approximately 4,600 acres was allocated to Management Area B (intensive range management), 2,900 acres to Management Area C (key wildlife habitat area, in this case, bighorn sheep), and the rest to Management Area J (low development area).

In the Forest Plan Record of Decision, it was recognized that because of existing commitments (private mineral rights and existing leases), it would be difficult to manage this area in an undeveloped state. However, the designation of Management Area C and J was considered the best attempt of managing for these values while still recognizing existing rights (CNF ROD page 20).

The issue of oil and gas development on the roadless character of the area surfaced again during the Oil and Gas Leasing FEIS for the Northern Little Missouri National Grasslands. While the decision was to lease the land within the Bennett-Cottonwood Management Area C with an NSO stipulation, close to 60 percent of the management area was already leased and held by production (NLM FEIS page 3–35). Some additional development was envisioned in this area as a result of these existing leases, as shown in the Reasonably Foreseeable Development Scenario (RFD) that was a part of this leasing analysis (NLM FEIS page 4–6). Managing these lands for low development has been compromised by the need for access and development of existing leases and due to limited control of privately owned minerals under Federal Surface ownership (NLM ROD page 19).

Wildlife, Bighorn Sheep

Bighorn sheep (believed to be the Audubon subspecies), once a native of the North Dakota badlands, disappeared from the state when the last reported ram was killed in 1905. The North Dakota Game and Fish Department began re-introducing California bighorn sheep into the badlands of North Dakota in 1955. Since that time nearly 260 sheep populate, through breeding and release, private, state, and Federal lands throughout western North Dakota. The Sheep Creek herd was re-introduced near the Sheep Creek/Bennett-Cottonwood area in 1987. The Sheep Creek herd is comprised of approximately of 30–35 sheep and is a component of the Sheep Creek-Magpie metapopulation which numbers approximately 50 to 60 sheep.

The Forest Service in conjunction with the North Dakota Game and Fish Department and some oil companies are engaged in a research study of bighorn sheep on the National Grasslands. One of the anticipated outcomes is to shed light on the effects of oil and gas

activities on bighorn sheep. The information gained through this study will be used in developing a conservation strategy that addresses the long term management of California bighorn sheep on the Little Missouri National Grasslands.

This EIS will tier to the Custer National Forest Land and Resource Management Plan, EIS, and Record of Decision (1987), as amended, and the Oil and Gas Leasing EIS for the Northern Little Missouri National Grasslands and Record of Decision (1991). This is a project level decision and the scope of the analysis will be confined to issues associated with the proposed action.

Federal, state,and local agencies, lessees, permittees, and other individuals or organizations interested in or potentially affected by the decision are invited to participate in the scoping process. Input to identify issues and alternatives to be addressed in this analysis will be gathered from the public through mailing of scoping information to all known interested publics.

Based on comments made by the public on past proposals, the following list of preliminary environmental issues has been identified. This list will be confirmed of modified based on further input from the public.

1. Consider the effects of oil well and associated access road(s) development, including Federally leased minerals and where private minerals are overlain by Federal surface and/or are accessed across Federal surface, on:

a. Sensitive plant and/or animal species, including bighorn sheep;

b. The Bennett-Cottonwood inventoried roadless area;

c. Canyon lands/complexes, including riparian areas;

d. Visual quality, especially as seen from the North Unit of Theodore Roosevelt National Park, and the Little Missouri Scenic River;

e. Grazing;

f. Private lands and access to these lands within the analysis area;

g. The Maah-Daah-Hey Trail; and

h. The transportation system.

Alternatives to be considered in this analysis depend on the final list of environmental issues. The following is a list of preliminary alternatives.

1. No Action, deny, or defer to a later time, further development within the area.

2. Approve as submitted, applications for permit to drill (Proposed Action);

3. Approve but modify, applications for permit to drill.

Release of Draft and Final EIS

The draft environmental impact statement (DEIS) is expected to be filed with the Evironmental Protection Agency (EPA) and available for public review in May 1, 1995. At that time, the EPA will publish a Notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Bennett-Cottonwood area participate at this time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by July 1, 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participants in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering tentative issues and proposed alternatives it is helpful if comments are as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this decision and EIS. My address is McKenzie Ranger District, Little Missouri National Grasslands, Custer National Forest, HC02 Box 8, Watford City, North Dakota 58854.

Dated: December 29, 1994.

Lesley W. Thompson,

District Ranger.

[FR Doc. 95–197 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–11–M

Eagle Creek Wild and Scenic River Management Plan Environmental Assessment, Wallowa-Whitman National Forest, Baker and Union Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: On December 22, 1994, Wallowa-Whitman Forest Supervisor, R.M. Richmond, signed a Decision Notice which adopted into the Forest Plan the Eagle Creek Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for Eagle Creek. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Eagle Creek Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR Part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Eagle Creek Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT: Steve Davis, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–1316.

Dated: December 22, 1994.

R. M. Richmond,

Forest Supervisor.

[FR Doc. 95–198 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–11–M

Food and Consumer Service

Summer Food Service Program for Children; Program Reimbursement for 1995

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP, or Program). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR Part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the SFPS (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1995 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1993 through November 1994.

The new 1995 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast—1.1800; Lunch or Supper—2.1200; Supplement—.5550.

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast—.1100; Lunch or Supper—.2000; Supplement—.0550.

b. For meals served at other types of sites:

Breakfast—.0875; Lunch or Supper—.1675; Supplement—.0425.

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 1.8 per cent increase during 1994 (from 144.2 in November 1993 to 146.8 in November 1994) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department points out that the administrative rate for Supplements ''for meals served at other types of sites'' is the same rate that was in effect last year because the increase in the Consumer Price Index was insufficient to raise the rounded rate to the next higher quarter cent.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: December 29, 1994.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 95–251 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–30–M

Rural Utilities Service

Notice of Meeting on Proposed Electric Distribution Mortgage

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rural Utilities Service (RUS), formerly the Rural Electrification Administration, will be meeting with the ad hoc Mortgage Committee of the National Rural Electric Cooperative Association, at their request, to answer questions and discuss comments by the Committee on the proposed standard form of mortgage published in the **Federal Register** on September 29, 1994 at 59 FR 49594.

DATES: The meeting will be held on January 18, 1995, starting at 9:00 a.m. eastern time, and will end no later than 3:30 p.m.

ADDRESSES: The meeting will be held in room 1255, South Building, U.S. Department of Agriculture, 14th and Independence Ave., SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles R. Miller, Assistant to the Administrator for Policy Analysis, Rural Utilities Service, 14th and Independence Ave., SW, Washington, DC 20250–1500. Telephone: (202) 720–0424.

SUPPLEMENTARY INFORMATION: The meeting will be an informal work session to discuss questions and comments from the ad hoc Committee regarding the overall structure and specific provisions of the proposed electric distribution mortgage. Emphasis will be mainly on technical discussions of individual issues. In addition to the ad hoc Committee and government representatives, the meeting room will accommodate 15 to 20 observers, who will be allowed entry to the room on a first-come first-served basis. RUS is willing to schedule other meetings with any interested individual or group to discuss the proposed mortgage.

Authority: 7 U.S.C. 901 *et seq.*

Dated: December 20, 1994.

Wally Beyer,

Administrator.

[FR Doc. 95–248 Filed 1–4–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 941243–4343]

Request for Public Comment on Technology Development and Research Needs To Reduce the Loss From Post-Earthquake Fires

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Request for Public Comment.

SUMMARY: The National Institute of Standards and Technology requests public suggestions and comments on technology development and research needs that will be used in developing recommendations to reduce the number and severity of post-earthquake fires. This is not a solicitation for proposals.

DATES: Written suggestions and comments (letter, fax, or e-mail) received by January 25, 1995 will be considered.

ADDRESSES: Written comments should be sent to Mr. W. Douglas Walton, National Institute of Standards and Technology, Polymers Building, Room A345, Gaithersburg, MD 20899. In addition, the fax number may be used (301–869–3531) or e-mail (dwalton@enh.nist.gov).

FOR FURTHER INFORMATION CONTACT:

Anyone requesting information should contact Mr. W. Douglas Walton, telephone: 301–975–6872; fax: 301–869–3531; e-mail: dwalton@enh.nist.gov.

SUPPLEMENTARY INFORMATION: The Building and Fire Research Laboratory at the National Institute of Standards and Technology (NIST), U.S. Department of Commerce, is developing recommendations to address the reduction of life and property loss resulting from post-earthquake fires. The recommendations will focus on concepts that would lead to the prevention of fires following an earthquake and the means to reduce the spread of fires that do occur. The recommendations will emphasize technologies with the potential for direct and near term impact on reducing the loss from fire in future earthquakes. The recommendations will include the role of water, gas, liquid fuel, electrical power, communications, and transportation lifeline systems in the ignition of fires and in the mitigation of fire spread.

The Laboratory is seeking public input in the form of concepts for technology development and research needs which will be used in developing a research plan. Technology development and research needs may include concepts related to pre-earthquake preparations, post-earthquake operations, new and retrofit construction techniques, and the rapid restoration of fire protection and lifeline systems following an earthquake.

This request is only for the purpose of identifying technology development and research needs. This request is not directed at the implementation of specific measures for reducing the loss from post-earthquake fires.

Dated: December 29, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 95–265 Filed 1–4–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 122094B]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intention of the Gulf of Mexico Fishery Management Council (Council) to prepare an SEIS for proposed Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Council and approved and implemented by NMFS under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The purpose of Amendment 9 is to manage shrimp trawling in the Gulf of Mexico to reduce the bycatch mortality of fish, particularly juvenile stages.

DATES: Written comments on the scope of the SEIS must be submitted by February 6, 1995.

ADDRESSES: Scoping comments and requests for additional information should be sent to Terrance Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, 813–228–2815.

SUPPLEMENTARY INFORMATION: The FMP was approved by NMFS and implemented in 1981; it documented a significant problem in the Gulf Mexico shrimp fishery involving adverse effects on other fisheries such as the groundfish and reef fish fisheries resulting from the bycatch of fish in shrimp trawling operations.

In the process of trawling for shrimp, various species of fish are inadvertently caught. Many of these fish, often at juvenile stages, die before being discarded. Some overfished species, such as Gulf red snapper, are significantly and adversely affected because of the bycatch mortality which is hampering stock recovery. Annual stock assessments for red snapper for the period 1990–94 have indicated that the red snapper resource cannot recover from its overfished status, even with a total closure of the directed fishery, without a 50 percent reduction in red snapper mortality resulting from shrimp trawl bycatch.

The Council developed a draft Fishery Management Plan for Groundfish in 1981 that proposed shrimp trawl-gear requirements contingent on development of bycatch excluder devices in shrimp trawls that would reduce bycatch by 50 percent, with no more than a 3–percent loss of shrimp. In 1990, the Council, with pledges of assistance from the shrimp industry, announced its intent to reduce bycatch mortality of juvenile red snapper in the shrimp fishery by 50 percent by 1993. The 3-year delay was provided to develop the methodology in cooperative studies with the industry. The Council's goal for bycatch reduction was affected by the 1990 amendments to the Magnuson Act that mandated a 3-year research program to assess the impacts of shrimp trawl bycatch on fishery resources under the management of the Council. The results of this research program will be considered as an important basis for any specific management actions.

Recent advances in gear development through government and shrimp industry efforts have produced Bycatch Reduction Devices (BRDs) that successfully exclude juvenile fish from shrimp trawls with a minimal loss of shrimp. In September 1994, the Council began development of Amendment 9 to the FMP to address bycatch reduction. The Council is considering the following management alternatives for this amendment:

1. No management action;
2. Require the use of NMFS-approved BRDs in shrimp trawls in the exclusive economic zone (EEZ) within the 110–fathom (201.17 m) contour;
3. Require the use of NMFS-approved BRDs in shrimp trawls in specified areas of the Gulf of Mexico EEZ;
4. Criteria for NMFS approval of BRDs, including specifications for exclusion of bycatch and retention of shrimp; and
5. Seasonal and area restrictions to reduce bycatch.

The FMP was prepared by the Council in 1980 and approved and implemented in 1981. A draft and final environmental impact statement was prepared for the FMP which evaluated the environmental effects of the FMP and the shrimp fishery. The SEIS to be prepared for Amendment 9 will examine the environmental impacts of the major alternative management measures considered by the Council as well as assessing, based on currently available information, the impacts of the Gulf shrimp trawl fisheries on the human environment, the shrimp resources, protected species

(endangered or threatened), and marine mammals within the Gulf of Mexico.

The Council will begin developing Amendment 9 and the draft SEIS in early 1995, after consulting with its Shrimp Advisory Panel and Scientific and Statistical Committee. Public hearings on the amendment documents and draft SEIS, as well as the formal filing of the draft SEIS with the Environmental Protection agency for a 45-day public comment period, are expected to occur in the summer of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 28, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–180 Filed 1–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 121594A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit No. 916 (P552).

SUMMARY: Notice is hereby given that on December 29, 1994, permit No. 916, issued to Michael T. Williams, University of Alaska Fairbanks, Department of Biology & Wildlife, Fairbanks, AK 99775, was modified to extend the expiration date until December 31, 1995.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7131).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations (50 CFR part 215).

Dated: December 29, 1994.

Steven L. Swartz,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–208 Filed 1–4–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 10 January 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Becky Terry, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 30, 1994.

L M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–219 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04––M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 11 January 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II¶10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 30, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–220 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Combat Identification

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Combat Identification will meet in closed session on January 17, 1995 at the MITRE Corporation, Bedford, Massachusetts.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the DoD long term strategy and plan for development and fielding of a comprehensive situational awareness (SA) and combat identification (CID) architecture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 30, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–221 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Depot Maintenance Operations and Management

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Depot Maintenance Operations and Management will meet in closed session on January 17, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide advice, recommendations and suggested implementations for improvements to the Department's depot maintenance operations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 30, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–222 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Global Positioning System (GPS)

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System (GPS) will meet in closed session on January 11–12, 1995 at Los Angeles Air Force Base, California. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and recommend options available to improve GPS jam resistance with particular emphasis on GPS tactical weapon applications. The main focus of the Task Force shall be the investigation of techniques for improving the resistance of GPS embedded receivers in tactical missiles and precision munitions and their delivery platforms.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, 1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 30, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–00223 Filed 1–4–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Office of Administrative Law Judges; Intent To Compromise Claims, Ohio Rehabilitation Services Commission

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claims.

SUMMARY: The Department intends to compromise claims against the Ohio Rehabilitation Services Commission now pending before the Office of Administrative Law Judges (OALJ), Docket Nos. 93–76–R and 93–120–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before February 21, 1995.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey B. Rosen, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5411, FB–10B, Washington, D.C. 20202–2242.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Rosen. Telephone: (202) 401–6009. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Single Audit Act of 1984 (Pub. L. 98–502) and the provisions of Office of Management and Budget (OMB) Circular A–128, the Ohio Auditor of State conducted an audit of the State of Ohio for the period July 1, 1989 through June 30, 1990. A final audit report was issued on January 18, 1993 (ACN: 05–23444G) (hereinafter ''Ohio I'').

Based upon this audit report, the Regional Commissioner, Region IV, Rehabilitation Services Commission, U.S. Department of Education (ED), issued a Preliminary Department Decision (PDD) on June 24, 1993 in which he requested that Ohio repay $883,517 of funds misspent under Title I of the Rehabilitation Act of 1973, as amended (the Act), 29 U.S.C. 701 *et seq.* There were six different findings as follows:

1. Finding 16—$10,395—late payment penalties.
2. Finding 18—$77,962—State match charged to the Federal program.
3. Finding 19—$227,400—payment of back pay award.

4. Finding 20—$157,417—exceeded statutory limitation for indirect costs.
5. Finding 21—$410,343—indirect costs not appropriately allocated.

On October 29, 1993 Ohio filed an application for review of the PDD with the Office of Administrative Law Judges (OALJ).

The Ohio Auditor of State conducted another audit covering the period July 1, 1988 through June 30, 1989. A final audit report was issued on October 1, 1992 (ACN: 05–23033G) (hereinafter ''Ohio II''). In Ohio II, the Regional Commissioner issued a PDD on August 31, 1993 in which he requested that Ohio repay $10,798 of funds under the Act. The demand for a refund was based upon Ohio using funds under the Act to pay late charges on overdue invoices. Ohio filed an appeal of the PDD with the OALJ on September 30, 1993.

On November 15, 1993 the Administrative Law Judge (ALJ) granted a motion to consolidate the two cases. On May 27, 1994 the Regional Commissioner filed a Notice of Reduction of Claim notifying the ALJ that, based upon new information submitted by Ohio, the claim in Ohio I was reduced by $106,840.86. The entire outstanding amount in Finding #18 of $77,962 was eliminated and the outstanding amount in Finding #20 was reduced by $28,878.86 to $128,538.14. Thus, the total amount outstanding in the two appeals was reduced to $787,474.14.

Ohio and ED have agreed to settle all of the issues in these cases with the exception of Finding #19 in Ohio I in the amount of $227,400. The parties will litigate this issue. The remaining amount of $560,074.14 is covered by the Settlement Agreement.

Under the terms of the proposed agreement, Ohio owes ED a total of $211,745.64. Of this amount, a total of $68,446.00 is credited to Ohio for overmatch reported on its SF–269 for fiscal year 1990. Under the Act, grant funds are awarded to States on a matching basis. Depending upon the fiscal year, the Federal Government contributes approximately 80 percent of the funding for the State's vocational rehabilitation (VR) program. (34 CFR 361.86.) The State is required to provide the remainder of the funding to earn the Federal contribution. State and Federal VR funds are commingled so that it is not possible to identify which funds are used for particular program expenditures. In this case, Ohio provided more State funds for VR services than was mandated by the matching requirement in § 361.86 of the regulations. These overmatch funds can be substituted for disallowed Federal expenditures on a dollar-for-dollar basis.

As a result, the repayment amount is $143,299.64, to be paid within 30 days of execution of the agreement by ED. Ohio would be assessed interest at a rate of 4 percent per year if full payment is not made within 30 days. Failure to make timely repayment within 40 days would result in a late payment fee of 10 percent of the $143,299.64 principal. Finally, under the agreement, the parties would jointly move for dismissal of the appeal. For the following reasons, ED recommends approval of the proposed Settlement Agreement.

A. Late Payment Penalties—100% Recovery

In both Ohio I and Ohio II, the State incurred late charges on invoices that were not properly paid. Ohio charged $10,395 and $10,798, respectively, to the VR Basic Support Program under the Act. Maintaining throughout the negotiations that there was no basis to use Federal funds for late charges, ED refused to compromise this portion of the findings. Ohio has agreed to repay the $21,193, in full, as part of the proposed agreement.

B. Unallowable Indirect Costs—100% Recovery

In Ohio I, the State exceeded the statutory limitation for indirect costs and charged the excess funds to the ED VR grants. ED maintained that the practice of charging unallowable costs to the VR program represented a substantial harm to the Federal interest of ensuring that Federal programs are not charged more than their fair and appropriate share of the costs. Ohio has agreed to pay the $128,538.14 outstanding on this violation, in full, as part of the proposed agreement.

C. Allocable Indirect Costs—15% Recovery

In Ohio I, the auditors found that all indirect costs were charged to ED grants, rather than to a centralized indirect cost pool. As a result, the auditors concluded that the State received duplicative reimbursement from ED and the U.S. Department of Health and Human Services (HHS). In particular, 33 employees of the State's Bureau of Disability Determination (BDD) Fiscal Accounting Section worked entirely on the HHS grant activities. The auditors found that the related indirect costs for these employees were charged inappropriately to the ED grants. A total of $410,343 was disallowed.

Ohio provided credible evidence that shows that this finding was based on some erroneous assumptions by the State auditors. Of the $410,343, a total of $26,018 was for telephone charges and a total of $115,116 was for rent charges. These expenses are clearly the type of expenses that are charged directly to grants, and the evidence submitted by the State demonstrates that these expenses were charged to the HHS grant. Thus, it appears that these charges should no longer be disallowed.

The remaining charges of $269,209 consisted of equipment, building maintenance, and consultants for the BDD. Documentation submitted by Ohio showed that the HHS grant was charged for substantially all of these costs.

There is no direct evidence that the ED grant was also charged. Even one of the auditors, who made the initial audit finding, expressed some doubt as to the validity of the initial findings.

There is clearly a high litigation risk in attempting to uphold the original finding. At this time, ED has no information to establish that any of the disallowed costs were charged inappropriately to the ED grant. Although there is clearly a problem with the State's recordkeeping with respect to this issue, Ohio has presented other less reliable and circumstantial evidence that could persuade a judge or a Federal court to rule in substantial part or in full for its position. Furthermore, it is highly unlikely that ED would have made the cost disallowance if this information had been available earlier.

Ohio has agreed to repay $62,014.50. Based upon the foregoing, ED believes that it is prudent to accept the settlement offer of 15 percent of the original costs disallowed in the PDD for this finding.

D. Other Considerations

If these issues are not settled, ED will incur further litigation costs. With respect to the back pay award that will be litigated further, there are no factual issues in dispute. The only area of contention is a legal issue—whether Federal funds can pay for costs if no services were provided and there was no benefit to the Federal interest. However, the allocable indirect costs issue is predicated upon factual disputes and the lack of corroborating documentation. Extensive discovery efforts would be necessary before this issue could be litigated. In addition, ED could hope to recover, at best, only the $269,209 that appears to be in dispute at this time. The recovery in the proposed agreement is almost 23 percent of this amount.

While the other two issues appear to be very strongly in favor of ED, there would be some litigation risk during the administrative process. Moreover, Ohio also would have the right to appeal any decision to the U.S. Court of Appeals. See 20 U.S.C. 1234g. There is no certainty that ED would recover 100 percent on these two issues as is contemplated in the settlement.

After weighing the risks in litigating the issues that are the subject of the settlement, it is ED's assessment that the proposed Settlement Agreement is the most advantageous resolution of these outstanding issues.

The public is invited to comment on the Department's intent to compromise these claims. Additional information may be obtained by writing to Jeffrey B. Rosen at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j) (1990)

Dated: December 29, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–217 Filed 1–4–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit cost of five residential energy sources for the year 1995. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit cost of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Pub.L. No. 94–163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective [Insert date 30 days after publication] and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act) [1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on December 29, 1993. (58 FR 68901). Effective February 6, 1995, the cost figures published on December 29, 1993, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1995 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, propane and kerosene prices found in this notice. The cost projections for electricity and natural gas are found in the fourth quarter, 1994, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (94/4Q) and reflect the mid-price scenario. Projections for residential (No.2) heating oil, propane and kerosene are based on the *Short-Term Energy Outlook* net-of-tax projection for heating oil costs and the relative prices of those three fuels in 1992 (the most recent year available) in the *State Price and Expenditure Report*, DOE/EIA–0376 (92). Both the *Short-Term Energy Outlook* and the *State Price and Expenditure Report* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

The 1995 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective February 6, 1995. They will remain in effect until further notice.

Issued in Washington, DC, December 29, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1995)

Type of energy	In common terms	As required by test procedure	Per million Btu [1]
Electricity	8.67¢/kWh [2, 3]	$.0867/kWh	$25.41
Natural gas	63.0¢/therm [4] or $6.49/MCF [5, 6].	.00000630/Btu	6.30
No. 2 Heating Oil	1.008/gallon [7]	.00000727/Btu	7.27
Propane	0.985/gallon [8]	.00001079/Btu	10.79
Kerosene	1.094/gallon [9]	.00000810/Btu	8.10

[1] Btu stands for British thermal units.

[1] References to the ''Act'' refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992. 42 U.S.C. §§ 6291–6309.

[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,030 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 95–236 Filed 1–4–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ES95–16–000]

Cambridge Electric Light Co.; Notice of Application

December 29, 1994.

Take notice that on December 23, 1994, Cambridge Electric Light Company filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $35 million of short-term debt during a two-year period commencing on the effective authorization date and maturing less than one year after the date of issuance.

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, D.C. 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 January 23, 1995. Protests will be considered by the Commission 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 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. 95–178 Filed 1–4–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–100–000]

Midwestern Gas Transmission Co.; Notice of Rate Filing

December 29, 1994.

Take notice that on December 22, 1994, Midwestern Gas Transmission Company (Midwestern), filed its Fourth Revised Sheet No. 5 and First Revised Sheet Nos. 35, 41, 52, 102, 103, and 104, of Second Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of December 1, 1994. Midwestern states that it is filing these sheets to eliminate its Take or Pay Volumetric Surcharge.

Midwestern states that it filed a Stipulation and Agreement governing resolution of take-or-pay matters in Docket No. RP91–78 on October 17, 1991, providing in part that Midwestern would collect $600,000 through its volumetric surcharge. The Commission approved the Stipulation by order dated June 25, 1992. *Midwestern Gas Transmission Co.*, 59 FERC 61, 358 (1994). Midwestern states that it has collected the $600,000 through its volumetric surcharge and now seeks to eliminate the volumetric surcharge charge and all references to it in its tariff.

Midwestern requests a waiver of the thirty day notice period for tariff changes so that the proposed changes can go into effect December 1, 1994.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before January 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–179 Filed 1–4–95; 8:45 am]
BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. QF95–41–000]

Nelson Industrial Steam Co. Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 29, 1994.

On December 19, 1994, Nelson Industrial Steam Company of 3400 Houston River Road, Westlake, Louisiana, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations and Section 3(17) of the Federal Power Act. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility, which will be located in Westlake, Louisiana, will consist of a circulating fluidized bed combustion boiler and a steam turbine generator. The net electric power production capacity of the facility will be approximately 150 MW. The primary energy source of the facility will be petroleum coke, a by-product from the refining of crude oil.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–177 Filed 1–4–95; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5134–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before [Insert date 30 days after date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: (EPA ICR No. 1391.03; OMB No. 2040–0118). This is a request for renewal of a currently approved information collection without any change in the substance or in the method of collection.

Abstract: Title VI of the Clean Water Act authorizes EPA to provide grants to States for the establishment of State Water Pollution Control Revolving Funds (SRFs). Before receiving a capitalization grant for its revolving fund, a State must agree to contribute partial funding of its own, and to meet certain accounting, compliance, and enforcement commitments. States must provide EPA with an Intended Use Plan/Capitalization Grant Agreement, Annual Reports, and perform and report on annually State financial and compliance audits. Upon approval of the capitalization grant application, each State establishes its SRF program.

Local communities submit applications to their State for SRF financial assistance. Typically, the local community applicants are required to submit a project description, cost estimate, disbursement and construction schedules, an analysis of environmental and cost impacts, and a description of their financial capability and repayment plans. States review these applications for their conformance with the Intended Use Plan, as well as for their environmental impacts and the applicant's financial status. If an application meets a State's requirements, the State prepares the appropriate loan agreement documents.

Burden Statement: The public reporting burden for this collection of information is estimated to average 60 hours per response for reporting, and 50 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: State and local government agencies.

Estimate No. of Respondents: 51 State and 1,224 local government agencies.

Estimated No. of Responses per Respondent: An average of 24 per State government and one per local government agency.

Estimated Total Annual Burden on Respondents: 153,340 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460 and

Mr. Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: December 29, 1994.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 95–256 Filed 1–4–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44615; FRL–4928–8]

Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for refractory ceramic fibers (RCFs) were submitted by three member companies of the Refractory Ceramic Fiber Coalition (RFCF) (Carborundum Company, Premier Refractories and Chemicals, Incorporated, and Thermal Ceramics, Incorporated) pursuant to a Testing Consent Order at 40 CFR 799.5000. They were received by EPA on December 23, 1994. The submission describes workplace exposure monitoring data from RCFC company facilities, as well as from their customers' facilities. The customers selected include those chosen at random and those who specifically requested monitoring. Air monitoring samples were collected from employees engaged in RCF fiber production and processing, or use in functional categories such as forming, finishing, and installation.

RCFs are used as insulation for industrial insulation applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44615). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: December 28, 1994.

David J. Kling,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–252 Filed 1–4–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–136, FCC 94–298]

AGENCY: Federal Communications Commission.

ACTION: Notice of Hearing Designation Order.

SUMMARY: Cellular application of Ellis Thompson Corporation (Thompson) is designated for hearing. The Commission has determined that a substantial and material question of fact exists as to whether American Cellular Network Corporation (Amcell) is a real-party-in-interest in Thompson's application. The hearing will examine the relationship between Thompson and Amcell and determine whether Thompson has the requite character qualifications necessary to hold the cellular license for Frequency Block A in Market 134, Atlantic City, New Jersey.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Mobile Services Division, Common Carrier Bureau (202) 418–1300.

SUPPLEMENTARY INFORMATION: This is a summary of Memorandum Opinion and Order and Hearing Designation Order in CC Docket 94–136, adopted November 18, 1994, and released November 28, 1994.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Summary of Memorandum Opinion and Order and Hearing Designation Order

The Commission has designated for hearing the application of Ellis Thompson Corporation for facilities in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in Market No. 134, Atlantic City, New Jersey. The Commission found that the evidence in the case disclosed a pattern of circumstances raising a substantial and material question of fact as to whether Thompson permitted American Cellular Network Corporation (Amcell) to become a real-party-in-interest in its application. Those circumstances included: (1) Amcell's status as the prospective purchaser of the system; (2) the failure of Thompson to receive profits; (3) Amcell's substantial financial exposure; (4) Amcell's specific assumption of control over litigation related to its management; (5) Amcell's broad management responsibilities under a long-term agreement; and (6) the consolidation of the facilities and staff of the Atlantic City system and Amcell's operations in adjacent areas.

Because the Commission believes that a substantial and material question of fact exists about the relationship between Thompson and Amcell, it has designated an issue for hearing to determine whether Amcell is a real-party-in interest in Thompson's application. The hearing will also determine, based upon the evidence, whether Thompson has the necessary qualifications to hold the license for Block A in Market No. 134, Atlantic City, New Jersey.

Pursuant to Section 309(e) of the Communications Act of 1934, as amended, Thompson's application has been designated for hearing upon the following issue listed below:

To determine whether American Cellular Network Corporation is a real-party-in-interest in the application of Ellis Thompson Corporation for a cellular radio system on frequency Block A in Atlantic City, New Jersey and, if so, the effect thereof on Ellis Thompson corporation's qualifications to be a Commission licensee.

The Commission further noted that the applicant and parties to this proceeding may avail themselves of an opportunity to be heard by filing written notices of appearance under 47 CFR 1.221(c), within 20 days of the mailing of this order by the Secretary of the Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–211 Filed 1–4–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2049]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

December 30, 1994

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed January 20, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Implementation of Sections 3(n) and 332 of the Communications Act. (GN Docket No. 93–252)

Regulatory Treatment of Mobile Services.

Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR System in the 800 MHz Frequency Band. (PR Doc. No. 93–144)

Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and 935–940 MHz Band Allotted to the Specialized Mobile Radio Pool. (PR Doc. No. 89–553)

Number of Petitions filed: 16.

Subject:

Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services. (CC Docket No. 92–115)

Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service. (CC Docket No. 94–46, RM–8367)

Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service. (CC Docket No. 93–116)

Number of Petitions filed: 36.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–212 Filed 1–4–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1043–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1043–DR), dated November 28, 1994, and related determinations.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated November 28, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of Florida:

Brevard County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–206 Filed 1–4–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreements(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, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 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.: 224–200686–001.

Title: Lakes Charles Harbor & Terminal District/Lake Charles Stevedores, Inc. Terminal Agreement.

Parties:

Lake Charles Harbor & Terminal District

Lake Charles Stevedores, Inc.

Filing Agent:

Michael K. Dees, Esquire

McHale, Bufkin & Dees, PLC

1901 Oak Park Blvd.

Lake Charles, LA 70601–8991

Synopsis: The proposed modification amends the Contract Equipment; Maintenance, etc., provision and restates the Agreement.

Dated: December 30, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–257 Filed 1–4–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to 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, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit 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 are found in § 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.

Agreement No.: 232–011485.

Title: Caribbean K Line/SeaFreight Space Charter and Sailing Agreement.

Parties:

Caribbean K Line Ltd. (''Caribbean K'')

SeaFreight Line Ltd. (''SeaFreight'')

Synopsis: The proposed Agreement permits Caribbean K to charter space fro SeaFreight. It also permits the parties to rationalize sailings in the trade between U.S. Atlantic and Gulf Coasts ports and points and ports and points in Aruba, Bonnaire and Curacao. The parties have required a shortened review period.

Agreement No.: 224–004161–009.

Title: Nonexclusive Management Agreement between Marine Terminals Corporation and San Francisco Port Commission.

Parties:

Marine Terminals Corporation

San Francisco Port Commission

Synopsis: The proposed amendment extends the term of the Agreement through March 31, 1995.

Agreement No.: 224–010600–003.

Title: Port of New Orleans/Ceres Gulf, Inc. for the Lease of Jourdan Road Terminal.

Parties:

Port of New Orleans

Ceres Gulf, Inc.

Synopsis: The proposed amendment replaces a former lease agreement between the Board of Commissioners of the Port of New Orleans and Ceres Gulf, Inc.

Agreement No.: 224–200355–001.

Title: Port of San Francisco/Flota Mercante Grancolombiana S.A. Terminal Agreement.

Parties:

Port of San Francisco

Flota Mercante Grancolombiana S.A.

Synopsis: The proposed amendment extends the current contract term in exchange for consideration of the combined container cargoes of Serpac, FMC Agreement No. 203–011298, for the purposes of compensation to the Port.

Agreement No.: 224–200375–002.

Title: Port of San Francisco/Naviera Interamericana Navicana S.A./ Columbus Line Terminal Agreement.

Parties:

Port of San Francisco

Naviera Interamericana Navicana S.A. (''Navicana'') Columbus Line

Synopsis: The proposed amendment permits Navicana to assign its rights, title and interests in the Agreement to Columbus Line.

Agreement No.: 224–200375–003.

Title: Port of San Francisco/Columbus Line Terminal Agreement.

Parties:

Port of San Francisco (''Port'')

Columbus Line

Synopsis: The proposed amendment extends the current contract term in exchange for consideration of the combined container cargoes of Serpac, FMC Agreement No. 203–011298, for the purposes of compensation to the Port.

Agreement No.: 224–200444–001.
Title: Port of San Francisco/Compania Sud-Americana de Vapores Terminal Agreement.
Parties:
Port of San Francisco
Compania Sud-Americana de Vapores (''CSAV'')
Synopsis: The proposed amendment extends the current contract term in exchange for consideration of the combined container cargoes of Serpac, FMC Agreement No. 203–011298, for the purposes of compensation to the Port.

Agreement No.: 224–200479–001.
Title: Port of San Francisco/Maruba S.C.A. Terminal Agreement.
Parties:
Port of San Francisco
Maruba S.C.A. (''Maruba'')
Synopsis: The proposed amendment authorizes Maruba to transfer their operations from the North Container Terminal to the South Container Terminal.

Agreement No.: 224–200896.
Title: Port Authority of New York & New Jersey/Gdynia America Line, Inc. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'')
Gdynia America Line, Inc. (''GALI'')
Synopsis: The Agreement provides for the Port to pay GALI an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200897.
Title: Port Authority of New York & New Jersey/Mitsui O.S.K. Lines Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'') Mitsui O.S.K. Lines (''Mitsui'')
Synopsis: The Agreement provides for the Port to pay Mitsui an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200898.
Title: Port Authority of New York & New Jersey/Zim American Israeli Shipping Co., Inc. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'')
Zim American Israeli Shipping Co., Inc. (''Zim'')
Synopsis: The Agreement provides for the Port to pay Zim an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200899.
Title: Port Authority of New York & New Jersey/NYK Line (North America), Inc..
Parties:
Port Authority of New York & New Jersey (''Port'') NYK Line (North America), Inc. (''NYK'')
Synopsis: The Agreement provides for the Port to pay NYK an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200900.
Title: Port Authority of New York & New Jersey/Safbank Line Ltd. Container Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'') Safbank Line Ltd. (''Safbank'')
Synopsis: The Agreement provides for the Port to pay Safbank an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200901.
Title: Port Authority of New York & New Jersey/P&O Containers Container Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'') P&O Containers (''P&O'')
Synopsis: The Agreement provides for the Port to pay P&O an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200902.
Title: Port Authority of New York & New Jersey/Atlantic Container Line Container Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'') Atlantic Container Line (''ACL'')
Synopsis: The Agreement provides for the Port to pay ACL an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200903.
Title: Port Authority of New York & New Jersey/Bermuda Agencies Container Incentive Agreement.
Parties:
Port Authority of New York & New Jersey (''Port'') Bermuda Agencies (''Bermuda'')
Synopsis: The Agreement provides for the Port to pay Bermuda an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: December 30, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–258 Filed 1–4–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Alumar, Incorporated, 4809 N. Armenia Ave., Ste. 104, Tampa, FL 33603. Officers: Marla L. Ruth, President, Marla C. Greer, Vice President.

Logistic Excel Corporation, 1521 W. Magnolia Blvd., Ste. B, Burbank, CA 91506. Officers: Edgardo V. Almendras, President.

Air Tiger Express (Seattle), Inc., Park Ridge Bldg. 15215 52nd Ave. So., Ste. 21, Seattle, WA 98188. Officer: Bryn Heimbeck, President.

Vidura Phojanakong, 150-50 87th Ave., Jamaica, NY 11432. Sole Proprietor.

Colonial Storage Co. dba Nations Capitol Forwarding, 9900 Fallard Ct., Upper

Marlboro, MD 20772. Officers: Richard C. Myers, President, Carol L. Weinburg, Asst. Secretary, Sai Sam Hla, Asst. Treasurer.

Savannah Steamship Company, Inc., 12 West State Street, Savannah, GA 31402. Officers: William M. Ferrelle, President, Christine B. Ferrelle, Secretary.

Overseas Express Services, 8901 South LaCienega Blvd., #205A, Inglewood, CA 90301. Abdulrazak Morgan, Sole Proprietor.

G.O.D. Express Co., 6684 Grant Street, Chino, CA 91710. Fen Lan, Wang, Sole Proprietor.

Time Definite Services, Inc., 2745 South Armstrong Court, Des Plaines, IL 60018. Officer: Michael Suarez, President.

World Cargo Corporation, 4408 NW 74th Ave., Miami, FL 33166. Officer: Diana Obregon-Bader, President.

Trans Express, Inc., 7801 NW 37th Street, Miami, FL 33166. Officer: Hector J. Guzman, President.

Combined Transport Services, Inc., 16234 42nd Ave. South, Seattle, WA 98188. Officers: Paul Newcombe, President, Jal Dinshaw, Exec. Vice President.

Hankyu International Transport (U.S.A.), Inc., 1039 Hillcrest Blvd., Inglewood, CA 90301. Officers: Kimio Sawada, President, Katsuaki Yoshida, Vice President, Toru Fuji, Secretary.

Dated: December 28, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–200 Filed 1–4–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and a request for public comments.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83–I and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following items have received initial Board approval for publication and comment. Following review of public comments, the proposed information collections will be considered by the Board in light of comments and recommendations received. The Board will then take final action on the proposal under OMB delegated authority. The specific proposed changes to the reports are summarized below.

DATES: Comments must be submitted on or before February 6, 1995.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (OMB No. 83–I), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Telecommunications Device for the Deaf (TTD) (202–452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Proposal to approve under OMB delegated authority the extension with revision (or the implementation) of the following report(s):

1. *Report title:* Annual Report of Foreign Banking Organizations; Structure Report of U.S. Banking and Nonbanking Activities, Foreign Banking Organization Confidential Report of Operations

Agency form number: FR Y–7; FR Y–7A; FR 2068

OMB Docket number: 7100–0125

Frequency: Annual. FR Y–7A frequency annual, with changes after initial filing to be reported on a flow basis within 30 days of occurrence.

Reporters: Foreign Banking Organizations

Annual reporting hours: 13,244

Estimated average hours per response: 20.5

Number of respondents: 323

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. §§ 1844(c), 3106, and 3108(a)]. Upon request from a respondent, certain information in the FR Y–7 and FR Y–7A may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b) (4) and (6)).

The FR 2068 is a confidential report of operations that is exempted from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b) (8) and 12 C.F.R. § 261.11(h).

SUMMARY: The Board of Governors of the Federal Reserve System proposes to give approval, under delegated authority from the Office of Management and Budget (OMB), to the extension, with revisions, of the Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0125) and the Foreign Banking Organization Confidential Report of Operations (FR 2068; OMB No. 7100–0125) for three years through December 31, 1997, and to discontinue the Notification Required Pursuant to Section 211.23h of Regulation K on Acquisitions by Foreign Banking Organizations (FR 4002; OMB No. 7100–0110). The FR Y–7 and FR 2068 reports currently are scheduled to expire on May 31, 1995. The Federal Reserve proposes that the revisions be effective for reports covering the period ending December 31, 1994. The deadline for filings as of this date would be April 30, 1995. The Federal Reserve also proposes to collect information currently in Section II of the existing FR Y–7 and the FR 4002 in a new FR Y–7A, which will provide for more efficient collection of structure information.

These reports reflect annual reporting requirements for foreign banking organizations that engage in banking in the United States either indirectly through a subsidiary bank, Edge corporation, agreement corporation, or commercial lending company, or directly through a branch or agency. The information contained in these reports is used by the Federal Reserve System to assess the foreign banking organization's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

The Annual Report of Foreign Banking Organizations (FR Y–7) and the Foreign Banking Organization Confidential Report of Operations (FR 2068) are filed as of the end of the reporter's fiscal year. These reports are filed by all foreign banking organizations that engage in the business of banking in the United States. The FR Y–7 collects information on the structure of their activities in the United States, as well as the following financial and managerial information: financial statements prepared in accordance with home country accounting principles and practices; separate financial statements for U.S. nonbanking subsidiaries; an organization chart reflecting investments in U.S. companies and foreign companies that do business in the United States; disclosure of large shareholders of registered shares and disclosure of known large shareholders of bearer shares; a list of officers and directors; information to determine continuing eligibility as a qualified foreign banking organization under sections 2(h) and 4(c)(9) of the Bank Holding Company Act; and information on U.S. banking and nonbanking activities.

A foreign banking organization is currently exempt from filing the FR 2068 if it meets certain criteria related to the size and type of its U.S. banking operations. This report collects information that enables the Federal Reserve System to carry out its responsibilities by assessing the impact of the worldwide operations of a foreign banking organization on its U.S. banking business. The FR 2068 currently requires disclosure of revenues and expenses as calculated in accordance with local accounting practices; it also requests an explanation or general description of the accounting practices used in the recognition and the timing of revenue and expense items. The report requests disclosure of loan loss experience, asset quality, gains and losses on securities, and hidden reserves not disclosed in the FR Y–7. The report provides flexibility to enable a foreign banking organization to submit requested information in a manner that will not impose any undue burden.

The FR 2068 also collects financial data on non-U.S. subsidiaries. The report requires financial statements on all majority-owned, unconsolidated, material foreign subsidiaries. The report requires that foreign banking organizations with investments of between 25 and 50 percent in material foreign companies provide financial data detailing the total assets, total stockholders' equity, and net income of such companies.

Finally, the FR 2068 requires that reporters provide an organization chart that details all foreign companies that the foreign banking organization directly or indirectly owns, controls, or holds with power to vote 25 percent or more of any class of voting stock. This requirement differs from the organization chart required by the FR Y–7 in that the FR Y–7 is limited to all related U.S. companies and foreign companies that engage in business in the United States. In the instructions for both reports, foreign banking organizations are advised that they must request alternative reporting criteria when the specific reporting requirements would result in undue burden or expense or when the information is otherwise unavailable in the requested format.

Proposed Revisions

The Federal Reserve proposes the following revisions to the FR Y–7 report.

(1) Move information collected in Section II of the current FR Y–7, Activities Conducted in the United States, to a new report: the FR Y–7A, Structure Report on U.S. Banking and Nonbanking Activities, containing two report items: U.S. Banking Activities and U.S. Nonbanking Activities. Existing reporters would complete the FR Y–7A as of December 31, 1994; new FR Y–7 filers would complete the FR Y–7A at the time of their first filing. Subsequent changes would be reported within 30 days of the change.

As a result, the FR 4002, Notification Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations (OMB No. 7100–0100), will no longer be needed.

(2) Add a new schedule to the FR Y–7 report item 1, Financial Statements, that breaks out the details of a foreign banking organization's risk-based capital computations. Foreign banking organizations would have the option of providing this information in the FR 2068. For banks from countries that do not follow a risk-based capital format, information on their capital computations, as required by the home country banking supervisor(s), would be required.

(3) Include with report item 1 copies of the foreign banking organizations' most recent 20–F filing with the SEC, if applicable.

(4) Replace the existing free form financial statements for U.S. nonbank subsidiaries with specific schedules to gather core financial information that will be processed electronically. The proposed reporting format will include a principal schedule consisting of thirty-one balance sheet and income statement items (such as loans, securities, assets, capital, and income) and four supporting schedules. U.S. nonbanking subsidiaries with total assets of more than $1 billion would complete the principal and supporting schedules; U.S. nonbanking subsidiaries with total assets between $150 million and $1 billion would complete only the principal schedule; and U.S.nonbanking subsidiaries with total assets of less than $150 million would respond to only four core items: total assets, equity capital, net income, and total off-balance-sheet items.

(5) Eliminate report item 5B which currently requires foreign banking organizations to report the ownership of shares by directors and officers of the foreign banking organization in that organization and each related company.

(6) Expand the organization chart to identify U.S. companies that are owned by individuals who own 25 percent or more of the foreign banking organization.

(7) Add several questions that require a yes or no response to assist the respondents in providing a complete report. These include questions relating to certification and consolidation of financial statements, home country requirements regarding the Basle Capital Accord and changes, if any, in accounting policies, and ownership of nonbank subsidiaries since the most recent filing of the FR Y–7.

(8) Add a glossary as part of the FR Y–7 and FR 2068 instructions, and require that the general discussion provided by respondents of the accounting principles used in the preparation of the initial submission of the FR Y–7 be updated by all respondents every five years, beginning with the 1995 fiscal year filing.

The Federal Reserve proposes the following revisions to the FR 2068 report.

(1) Eliminate the filing exemption for those foreign banking organizations with small U.S. operations. The exemption was made several years ago under the premise that ''small'' organizations, because of their size, would not pose a threat to the financial system. The Federal Reserve no longer supports this premise.

(2) Eliminate the ''Earnings'' item on the current page 5.

(3) Collect information on past due loans in a more comprehensive and consistent format.

(4) As with the FR Y–7, expand the organization chart to include non-U.S. companies that are owned by

individuals who own 25 percent or more of the foreign banking organization.

(5) Change the official place of filing from the Board to the appropriate Federal Reserve Bank in a manner consistent with all other regulatory filings. This will promote more timely analysis of financial information by the Federal Reserve System.

Legal Status

The Legal Division of the Board of Governors of the Federal Reserve System has determined that 12 U.S.C. §§ 1844(c), 3106, and 3108(a) authorize the Federal Reserve to require each report.

Upon request from a respondent, certain information in the FR Y–7 and FR Y–7A may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b) (4) and (6)).

All information provided in the FR 2068 report is confidential. The Legal Division, in consultation with the Department of Justice, has determined that the data are exempt from disclosure pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. § 552(b)(8)). Section (b)(8) provides exemption for information ''contained in or related to examinations, operating or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''

Board of Governors of the Federal Reserve System, December 30, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–269 Filed 1–4–95; 8:45 am]

BILLING CODE 6210–01–P

AMBANC 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 January 27, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. AMBANC Corp., Vincennes, Indiana; to acquire 100 percent of the voting shares of First Robinson Bancorp, Robinson, Illinois, and thereby indirectly acquire First National Bank in Robinson, Robinson, Illinois.

2. First Tennessee National Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Peoples Commercial Services Corporation, Senatobia, Mississippi, and thereby indirectly acquire Peoples Bank, Senatobia, Mississippi.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire 16.5 percent of the voting shares of Onaga Bancshares, Inc., Onaga, Kansas, and thereby indirectly acquire First National Bank of Onaga, Onaga, Kansas.

2. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 46.5 percent of the voting shares of Onaga Bancshares, Inc., Onaga, Kansas, and thereby indirectly acquire First National Bank of Onaga, Onaga, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Peoples Bancorp of Delaware, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Plano Bank & Trust, Plano, Texas.

2. Peoples Bancorp, Inc., Plano, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bancorp of Delaware, Inc., Dover, Delaware, and thereby indirectly acquire Plano Bank & Trust, Plano, Texas.

Board of Governors of the Federal Reserve System, December 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–203 Filed 1–4–95; 8:45 am]

BILLING CODE 6210–01–F

Bank of Ireland; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Ireland, Dublin, Ireland; Bank of Ireland, First Holdings, Inc. Manchester, New Hampshire; and First

NH Bank, Manchester, New Hampshire; have applied to acquire 100 percent of the voting shares of Great Bay Bankshares, Inc. Dover, New Hampshire, and thereby indirectly acquire Southeast Bank for Savings, Dover, New Hampshire.

In connection with this application, Applicants also have applied to acquire Constitution Trust Company, Dover, New Hampshire (''Constitution''), and to merge Constitution into an existing subsidiary of First NH Bank, First NH Investment Services, Inc., Manchester, New Hampshire. The applicants are seeking prior approval for the resulting entity to engage in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and providing investment of financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in New Hampshire and Southern Maine.

Board of Governors of the Federal Reserve System, December 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–204 Filed 1–4–95; 8:45 am]

BILLING CODE 6210–01–F

Port St. Lucie National Bank Holding Corp., et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Port St. Lucie National Bank Holding Corp., Port St. Lucie, Florida; to engage *de novo* through its subsidiary Spirit Mortgage Company, Port St. Lucie, Florida, in making, acquiring, or servicing mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Banner Bancorp, Ltd., Birnamwood, Wisconsin; to engage *de novo* through its subsidiary Eitzen Independents, Inc., Eitzen, Minnesota, in insurance agency activities, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Eitzen, Minnesota.

2. ISB Financial Corp., Iowa City, Iowa; to engage *de novo* through its subsidiary Paymaster, Inc., Solon, Iowa, through a joint venture with Thomas L. Goedken, in providing payroll services to small business entities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–205 Filed 1–4–95; 8:45 am]

BILLING CODE 6210–01–F

Persons Banking Company, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

The 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 indicated for that application 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.

Comments regarding this application must be received not later than January 30, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Persons Banking Company, Inc., Lithonia, Georgia; to acquire 100 percent of the voting shares of Spivey Bank Shares, Inc., Swainsboro, Georgia, and thereby indirectly acquire Spivey State Bank, Swainsboro, Georgia.

Board of Governors of the Federal Reserve System, December 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–270 Filed 1–4–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951 0001]

IVAX Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, IVAX, a Florida corporation, to acquire Zenith Laboratories, except for Zenith's rights to market or sell extended release generic verapamil under Zenith's exclusive distribution agreement with G.D. Searle & Co. The consent agreement also would require IVAX, for ten years, to obtain Commission approval before acquiring any stock in any entity that manufactures, or is an

exclusive distributor for another manufacturer of, extended release generic verapamil in the United States.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: IVAX Corporation, a corporation.

[File No. 951–0001]

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by IVAX Corporation (''IVAX'') of all of the voting securities of Zenith Laboratories, Inc. (''Zenith''), and it now appearing that IVAX, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between IVAX, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent IVAX is a corporation organized, existing, and doing business under and by virtue of the laws of Florida, with its offices and principal place of business located at 8800 Northwest 36th Street, Miami, Florida 33178–2404.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirements that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''IVAX'' means IVAX Corporation, its subsidiaries, divisions, and groups and affiliates controlled by IVAX Corporation, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. ''Zenith'' means Zenith Laboratories, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Zenith, their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. ''Commission'' means the Federal Trade Commission.

D. ''Acquisition'' means the acquisition of all voting securities of Zenith by IVAX.

E. ''FDA'' means the United States Food & Drug Administration.

F. ''Isoptin SR'' means the sustained-release form of Verapamil hydrochloride for which Knoll Pharmaceutical Company holds an approved New Drug Application.

G. ''Verapamil HC1'' means any pharmaceutical drug receiving the therapeutic equivalence evaluation code ''AB'' by the FDA, which designates such product as being therapeutically equivalent to Isoptin SR.

H. ''Searle Distribution Agreement'' means the agreement, dated March 7, 1994, between G.D. Searle & Co. (''Searle'') and Zenith, pursuant to which Zenith is appointed the exclusive distributor of Verapamil HC1 for Searle.

II

It is further ordered That respondent shall not acquire, or otherwise obtain, any rights to market or sell Verapamil HC1 pursuant to the Searle Distribution Agreement.

III

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not,

without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition in, or within the two (2) years preceding such acquisition engaged in, the manufacture of Verapamil HC1 in the United States, or any concern that is an exclusive distributor of Verapamil HC1 in the United States for a manufacturer of Verapamil HC1, provided, however, that each pension, benefit, or welfare plan or trust controlled by respondent may acquire, for investment purposes only, an interest of not more than two (2) percent of the stock or share capital of such person or concern, and further provided, however, that an acquisition will be exempt from the requirements of this Paragraph III.A. if it is solely for the purposes of investment and respondent will hold cumulatively no more than two (2) percent of the shares of any class of security;

B. Acquire any assets used in or previously used in (and still suitable for use in) the manufacture of Verapamil HC1 in the United States; provided however, that this Paragraph III.B. shall not apply to any acquisition of goods, services, or equipment in the ordinary course of business;

C. Enter into any agreement with a manufacturer of Verapamil HC1 granting respondent the exclusive right to distribute such manufacturer's Verapamil HC1 for resale.

IV

It is further ordered That one year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report setting forth in detail the manner and form in which it has complied and is complying with this order.

V

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege and upon written request with reasonable notice, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from IVAX Corporation (''IVAX''), which prohibits IVAX from acquiring any rights to market or sell generic verapamil hydrochloride in the extended release form (''generic verapamil'') pursuant to Zenith Laboratories' exclusive distribution agreement with G.D. Searle & Co. (''Searle'').

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On August 26, 1994, IVAX and Zenith Laboratories, Inc., (''Zenith'') entered into an agreement whereby IVAX agreed to acquire all of the voting securities of Zenith in a share exchange valued at $593 million. The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the sale of generic verapamil in the United States. IVAX is the only company with an approved Abbreviated New Drug Application (''ANDA'') to manufacture and sell generic verapamil in the United States, and Zenith has exclusive rights to market and sell generic verapamil for Searle, a company that manufactures a branded equivalent of the generic drug.

The proposed Consent Order would remedy the alleged violation by prohibiting IVAX from acquiring Zenith's rights to market or sell generic verapamil pursuant to the exclusive distribution agreement between Zenith and Searle. In an effort to address antitrust concerns, Zenith and Searle had terminated the exclusive distribution agreement on November 28, 1994, and agreement that Zenith would transfer its generic verapamil customers to Searle or Searle's designee, which would continue to sell generic verapamil. As a result, two independent competitors will remain in the market following the proposed acquisition. The proposed Consent Order ensures that IVAX will not be able to renegotiate an exclusive arrangement with Searle after it acquires Zenith.

Under the provisions of the Consent Order, IVAX is also required to provide to the Commission a report of its compliance with the provisions of the Order one (1) year from the date the Order becomes final, and annually thereafter for nine (9) years.

The proposed Order will prohibit IVAX, for a period of ten (10) years, from acquiring, without Federal Trade Commission approval, any stock in any concern engaged in the manufacture of generic verapamil or in any concern that is an exclusive distributor in the United States for another manufacturer of generic verapamil, or any assets used in the manufacture of generic verapamil in the United States, unless they are acquired in the ordinary course of business. In addition, the Proposed Order requires IVAX to seek prior Commission approval before entering into any exclusive agreement to distribute another manufacturer's generic verapamil. The Consent Order also requires IVAX to notify the Commission at least thirty (30) days prior to any change in the structure of IVAX resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–250 Filed 1–4–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request for the continued use of an information collection titled: ACF–233–AT–RISK CHILD CARE PROGRAM QUARTERLY REPORT OF EXPENDITURES AND ESTIMATES.

Addresses: Copies of the request for approval may be obtained from Robert A. Sargis of the Office of Information Systems Management, ACF, by calling (202) 690–7275.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the following: Wendy Taylor, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503, (202) 395–7316.

Information on Document

Title: ACF–233–At–Risk Child Care Program Quarterly Report of Expenditures and Estimates

OMB No.:

Description: The At-Risk Program provides child care to families who are not receiving AFDC, need child care to work and would otherwise be at risk of becoming eligible for AFDC. The information required on this form will allow the Federal Government to compute the quarterly grant awards for the program and to compute funds required to operate the program for the upcoming quarter.

Annual Number of Respondents: 54 sites

Number of responses per respondent: 4

Total annual responses: 216 sites

Hours per response: 2

Total Burden Hours: 432

Dated: December 23, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 95–181 Filed 1–4–95; 8:45 am]

BILLING CODE 4184–01–M

Runaway and Homeless Youth Program Proposed Priorities for Fiscal Year 1995

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Fiscal Year 1995 Runaway and Homeless Youth Program Priorities for the Administration for Children and Families.

SUMMARY: Section 384 of the Runaway and Homeless Youth Act, 42 U.S.C. 5732, requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the Act. The final priorities selected will take into consideration the comments and recommendations received from the public in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. The actual solicitations for grant applications will be published at a later date in the **Federal Register**. Solicitations for contracts will be published in the ''Commerce Business Daily'' or addressed to the eight Master Contractors for the ''Policy and Program Studies'' consortium recently established by the Administration on Children, Youth and Families (ACYF). No proposals, concept papers or other forms of application should be submitted at this time.

DATES: To be considered, comments must be received no later than February 21, 1995.

ADDRESSES: Please address comments to: Olivia A. Golden, Commissioner, Administration on Children, Youth and Families. Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION:

I. Background

The Family and Youth Services Bureau (FYSB) administers three Federal programs dealing with runaway and homeless youth:

- The Runaway and Homeless Youth Basic Center Program (BCP),
- The Transitional Living Program for Homeless Youth (TLP), and
- The Drug Abuse Prevention Program for Runaway and Homeless Youth (DAPP).

The first two of the FYSB programs listed above—the BCP and the TLP—are authorized under the Runaway and Homeless Youth Act (Title III of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended) and are the primary subject of the priorities proposed in this notice.

The Act specifically authorizes the Secretary to make grants to entities that establish and operate local runaway and homeless youth centers (Basic Centers) to address the immediate needs of at-risk youth. Currently, 341 such projects are being supported. The Act also authorizes activities that support the local centers, and that gather knowledge about the conditions of runaway and homeless youth and their families.

The Act further authorizes the Secretary to make grants to entities that establish and operate transitional living projects for homeless youth to enable the youth to become self-sufficient and to avoid long-term dependency on social services. Currently, 74 such projects are being supported.

The Act also authorizes financial support for:

- A national communications system (a toll-free 24-hour runaway hotline) which serves as a neutral channel of communication between at-risk youth and their families and as a source of referral to needed services;
- Grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; and
- Grants to conduct research, demonstration, evaluation, and service projects.

Annual Program Priorities. The Runaway and Homeless Youth Act instructs the Secretary to develop for each fiscal year, and to publish annually in the **Federal Register** for public comment, a proposed plan specifying the subject priorities the Department will follow in making grants under the Act (Section 384. [42 U.S.C. 5732] (a)). The Secretary is further instructed to take into consideration the comments received in developing and publishing the subsequent plan specifying the final fiscal year priorities (Section 384. [42 U.S.C. 5732] (b)). The present notice constitutes the Department's proposed priorities for fiscal year 1995.

No acknowledgement will be made of the comments received in response to this notice, but all comments received by the deadline will be considered in preparing the runaway and homeless youth final priorities. Final priorities will be published in the **Federal Register** prior to or at the time of solicitation of grant proposals competing for fiscal year 1995 funds.

II. Proposed Priorities for Fiscal Year 1995

The proposed priorities are similar to those of earlier years in that the Department proposes to award 90 percent or more of the funds appropriated under the BCP and approximately 90 percent of the funds appropriated under the DAPP and the TLP to grantees providing direct services to runaway and homeless youth.

The proposed priorities are further similar to those of earlier years in that the Department proposes to award continuation funding to the National Communications System and to a number of program support activities.

The proposed priorities differ from those of earlier years in two major ways:

- The Family and Youth Services Bureau is proposing an approach to youth services that emphasizes comprehensive youth development over attempts to correct the dysfunctional behaviors of youth and their families, and
- The FYSB is proposing administrative changes designed for more efficient delivery of services and more stability among service providers.

A. Priorities for Basic Centers

Approximately 340 Basic Center grants, of which about one-third will be competitive new starts and two-thirds will be non-competitive continuations, will be funded in FY 1995. It is expected that an equal number and distribution will be funded in FY 1996.

It is anticipated that applications for BCP new starts will be solicited in the second or third quarters of FY 1995 (January–June 1995). Eligible applicants for these new starts will be current grantees with project periods ending in FY 1995 and otherwise eligible applicants not holding current grants. The applications will be reviewed by State, and awards will be made during the last quarter of FY 1995 (July–September 1995).

Section 385(a)(2) of the Act requires that 90 percent of the funds appropriated under Part A (The Runaway and Homeless Youth Grant Program) be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under Part A of the Act for FY 1995 is expected to be approximately $40.5 million. This sum, which is an increase over the FY 1994 level, will trigger the provision in the Act calling for a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the five offshore territories: the Virgin Islands, Guam, American Samoa, Palau, and the Commonwealth of the Northern Marianas.

An announcement of the availability of funds for the Basic Centers, along with the instructions and forms needed to prepare and submit applications, will be published in the **Federal Register**.

B. Priorities for Transitional Living Grants

Part B, Section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

In FY 1995, approximately $12.3 million will be available for TLP direct service grants. Approximately $6.0 million has already been awarded as new start FY 1995 funding to applicants that were successful in the competition conducted at the end of FY 1994 and the remaining $6.3 million will be awarded as continuation funding to TLP grants awarded in FY 1994. Further, it is projected that all potential FY 1996 TLP funds will be awarded in the form of continuation grants. In consequence, it is anticipated that no applications for new start Transitional Living Program grants will be solicited for FY 1995 or FY 1996.

C. The National Communications System

Part C, Section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. It is anticipated that continuation funding will be awarded to the grantee in FY 1995 and FY 1996.

D. Support Services for Runaway and Homeless Youth Programs

1. Training and Technical Assistance

Part D, Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations that are eligible to receive service grants under the Act. Eligible organizations include the Basic Centers authorized under Part A of the Act (The Runaway and Homeless Youth Grant Program) and the service grantees authorized under Part B of the Act (The Transitional Living Grant Program). Section 3511 of the Anti-Drug Abuse Act of 1988, which authorizes the Drug Abuse Prevention Program for Runaway and Homeless Youth (DAPP), also authorizes support for T&TA to runaway and homeless youth service providers. The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1994, the Family and Youth Services Bureau made ten Cooperative Agreement Awards, one in each of the ten Federal Regions, to provide T&TA to agencies funded under the three Federal programs for runaway and homeless youth (the BCP, the TLP, and the DAPP). Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions. Each has a five-year project period that will expire in FY 1999.

It is anticipated that continuation funding will be awarded to the ten T&TA grantees in FY 1995 and FY 1996.

2. National Clearinghouse on Runaway and Homeless Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Runaway and Homeless Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse:

- Collects, evaluates and maintains reports, materials and other products regarding service provision to runaway and homeless youth;
- Develops and disseminates reports and bibliographies useful to the field;
- Identifies areas in which new or additional reports, materials and products are needed; and
- Carries out other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.
- It is anticipated that non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1995 and FY 1996.

3. Runaway and Homeless Youth Management Information System (RHYMIS) Implementation

In FY 1992, a three-year contract was awarded to implement the Runaway and Homeless Youth Management

Information System (RHYMIS) across three FYSB programs: the BCP, the TLP, and the DAPP. In FY 1993, using an existing computer-based, information gathering protocol, the contractor began providing training and technical assistance to these grantees in the use of the RHYMIS. The data generated by the system will be used to produce reports and information regarding the programs, including information for the required reports to Congress on each of the three programs. The RHYMIS is also designed to serve as a management tool for FYSB and for the individual programs.

It is anticipated that optional continuation funding for the RHYMIS will be provided in FY 1995 and FY 1996.

4. Monitoring Support for FYSB Programs

In FY 1992, FYSB began developing a comprehensive monitoring instrument and set of site visit protocols, including a peer-review component for the BCP, the TLP, and the DAPP. Pilot implementation of the instrument and related protocols began in FY 1993. Also in FY 1993 a new contract to provide logistical support for the peer review monitoring process was awarded, including nationwide distribution of the new materials. Use of the new instrument and peer review process during the first full year of operation has resulted in identification of a number of strengths and weaknesses among individual grantees. These findings have been used by the Regional T&TA providers as a basis for their activities.

It is anticipated that continuation funding for the logistical contractor will be provided in FY 1995 and that a new contract for the effort may be solicited in FY 1996.

5. Research and Demonstration Initiatives

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

a. Services for Youth in Rural Areas

Because of geographic distances, population density and, in some cases, cultural differences, it is difficult to provide effective services to runaway and homeless youth in rural areas. In many such areas, scarcity of funds and other resources precludes funding of separate, autonomous Basic Center programs. The need exists for innovative and effective models for the provision of runaway and homeless youth services in rural areas, including Indian reservations. The new models would make services accessible to youth without setting up inordinately expensive service agencies in low populated areas. In FY 1993, first-year funding was awarded to eight grants to develop such models. Continuation funding was provided in FY 1994, and it is anticipated that final continuation funding of these grants will be provided in FY 1995.

b. Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth Programs

Over the past few years, considerable new knowledge and information has been developed concerning the runaway and homeless youth programs administered by FYSB, and concerning the youth and families served. The main sources of this new information are the Runaway and Homeless Youth Management Information System (RHYMIS) and a number of evaluation studies underway or recently completed. The RHYMIS and the evaluation studies contain descriptions of FYSB's grantee agencies, along with detailed data on the youth and families served, such as demographic profiles, presenting problems, services provided, and service outcomes. There is need for analysis, synthesis, and interpretation of this new information, leading to development of comprehensive plans and policies for the Family and Youth Services Bureau.

A contract may be considered in FY 1995 to analyze, synthesize, and develop the program and policy implications of the new information now becoming available. The study would be developed within a context of the most significant, current comprehensive theories of youth development, drawing from the fields of physical and mental health, biology, psychology, sociology, education, and preparation for careers and family life. Proposals to conduct the study would be solicited from the eight Master Contractors for the ''Policy and Program Studies'' consortium recently established by the Administration on Children, Youth and Families.

c. Consolidated Youth Services Demonstration Grants

The Family and Youth Services Bureau now administers three programs targeting runaway and homeless youth: the BCP, the TLP, and the DAPP. Each program was established independently by the Congress, each to address a specific need or problem related to runaway and homeless youth. Funds for each program are appropriated annually by the Congress and are awarded to individual grantees across the country following submission and review of separate applications. In practice, there is considerable overlap among the populations and problems addressed by the separate programs as well as considerable overlap among the grantee-administrators of the local projects; some grantees administer two of the three programs (BCP and DAPP, for example) and a few administer all three programs.

The overlap among targeted youth populations and youth services grantees suggests that program efficiency and coordination might be improved by consolidating the three programs into one, setting up in their stead comprehensive youth services programs designed to address the broad range of needs of at-risk runaway and homeless youth populations. An obvious immediate benefit would be that applicants wishing to provide services in all three areas would have to submit only one application instead of the three now required.

To this end, ACYF may consider funding in FY 1995 four to six ''Consolidated Youth Services Demonstration Grants,'' each for a four-year project period and each at a funding level of $325,000 to $400,000 per year. Applicants would be invited to design and, if successful in the competition, to implement youth service models combining features of the BCP, the DAPP, and the TLP. Successful applicants would, in fact, be required to provide in their respective geographic areas the complete array of services mandated for the three programs and to coordinate these services through a single administration. In consequence, it would be appropriate to fund these demonstration grants from the regular BCP, DAPP, and TLP appropriations from the Congress. Further, grantees funded from consolidated BCP, DAPP, and TLP appropriations must be able to show that the funds from each appropriation were expended to serve the purposes of that appropriation. Each grantee would document the advantages and disadvantages of the consolidated approach and would participate in a comprehensive evaluation of the projects.

d. Demonstration Grants for Developmentally Disabled Runaway and Homeless Youth

It is proposed that from two to four demonstration grants be awarded to develop models of service provision to developmentally disabled runaway and homeless youth, or to youth at risk of becoming so. The models would address issues of coordination of services, removing barriers to service delivery, identification of effective training materials, and development of policies and strategies. The grants would be funded jointly by FYSB and the Administration on Developmental Disabilities (DD) at a level of $150,000 per year for three-year project periods. Eligible applicants would include current and potential BCP, DAPP, and TLP grantees. Funded grantees would be required to show that the funds from each appropriation were expended to serve the purposes of that appropriation.

E. Priority for a Comprehensive Youth Development Approach

Over the past several decades, the Federal government has established many programs designed to alleviate discrete problems identified among American youth. Examples are programs for school dropout prevention, juvenile delinquency prevention, abuse and neglect prevention, compensatory programs to improve the performance of minority and non-English-speaking youth in the public schools, adolescent pregnancy prevention, youth gang prevention, and drug abuse prevention among youth. Among these many programs are the BCP, the DAPP, and the TLP.

A shared feature of all these programs is their emphasis on undesirable behavior, with a number of negative consequences. Youth ''problems'' are commonly used to define and blame, even to punish, the youth. Further, the labeling of a youth as a drug abuser or a delinquent may lead to interventions too narrow to take into account the full array of causes leading to the abuse or delinquency, such as parental neglect, school failure, or poverty. Practicing youth workers are well aware that ''single-problem'' youth are rare, and that interventions from many different perspectives, and supports, including funding, from many different sources, are required to effectively help troubled youth.

The disjointed services that often follow from this Federal pattern of categorical funding to correct undesirable behavior (funding that targets a single problem behavior of the youth) may be avoided if interventions grow out of a ''developmental'' perspective. A developmental perspective views adolescence and youth as the passage from the almost total dependence of the child into the independence and self-sufficiency of the young adult. The various changes, stages, and growth spurts of the passage may be considered as the youth's natural, healthy responses to the challenges and opportunities provided by functional families, peers, neighborhoods, schools and churches. The tasks of youth services providers are seen, thus, not as correcting the ''pathologies'' of troubled youth, but rather as providing for the successive ''needs'' of maturing individuals: the psychological need to develop a clear self-identity; the sociological need to resolve disagreements through talking and not through flight or fighting; the economic need to prepare for and enter into a career; and the familial needs for sharing, for trusting, for giving love and receiving love, for commitment, and for all that establishing a family entails.

This developmental approach will become central to all FYSB activities and programs over the next two years.

F. Priorities for Administrative Changes

To support the increased emphasis on youth development, a number of management or administrative changes are being considered for implementation over the coming years:

- Current holders of BCP and TLP grants may be invited to submit applications for Demonstration Grants for Developmentally Disabled Runaway and Homeless Youth, or for DD youth who are at risk of running away or becoming homeless. Holders of Consolidated Youth Services Demonstrations Grants may also be asked to incorporate DD services into their projects, always with the proviso that grantees be able to show that funds from the DD appropriation were expended to serve the purposes of that appropriation.
- The Regional Offices currently play a significant role in the assessment of grant applications. We are considering an expansion of this role that will involve allowing Regional Office staff to add from zero (0) to ten (10) additional points to the total average score of the application based on (1) the experience, effectiveness, quality, and potential of the applicant agencies and staffs and (2) the geographic distribution of the grantees in their respective States and Regions. Final funding decisions will remain the responsibility of the Commissioner of the Administration on Children, Youth and Families.
- The Administration on Children and Families (ACF) may consider changing the deadline for receipt of grant applications from the postal date of the application to the actual receipt date of the application by ACF. Applicants should carefully examine upcoming announcements to assure that they meet deadlines in the manner prescribed.
- Efforts will be continued to avoid the problems of gaps in financial support between the expiration of one grant and the beginning of a new grant for current grantees that are successful in competition.
- Procedures may be established to increase grant funding levels so that all grantees will receive an award sufficient to support the required youth services. Therefore, we suggest that all applicants examine carefully the program announcements to ensure that they request sufficient funds. A minimum annual BCP award of $75,000 is proposed.

(Catalogue of Federal Domestic Assistance, Program Number 93.623, Runaway and Homeless Youth Program, and Program Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: December 27, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 95–237 Filed 1–4–95; 8:45 am]

BILLING CODE 4184–01–P

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–37–0024, ''Studies of Preventive Medicine, Health Promotion, and Disease Prevention, HHS/OASH/ODPHP.'' records. We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed routine use on or before (*30 days after publication*). PHS has sent a Report of New System of Records to the Congress and to the Office of Management and Budget (OMB) on December 28, 1994. The system of records will be effective 40 days after the date of publication unless PHS receives comments that

would result in a contrary determination.

ADDRESSES: Please submit comments to: PHS Privacy Act Officer, Room 17–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301–443–2055 (This is not a toll-free number).

Comments received will be available for inspection at the above address from 8:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Hurdis M. Griffith, Senior Policy Advisor, Office of Disease Prevention and Health Promotion, 2132 Switzer Building, 330 C Street, SW, Washington, DC 20201, 202–205–8660 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: PHS proposes to establish a new system of records: 09–37–0024, ''Studies of Preventive Medicine, Health Promotion, and Disease Prevention, HHS/OASH/ODPHP.'' This system of records will be used by the Office of Disease Prevention and Health Promotion (ODPHP) in the Office of the Assistant Secretary for Health (OASH) to study the impact of preventive medicine interventions and public education efforts on health service delivery, patient behavior, and health outcome.

The system will contain records of patients of the clinicians participating in these studies, as well as normal volunteers, relatives of the patients, and the providers of services. Examples of the information collected are: Patient or provider name, study identification number, address, relevant telephone numbers, Social Security Number (voluntary), date of birth, weight, height, sex, race; medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; immunization status; insurance and hospital cost data, employers; characteristics and activities of health care providers.

The records in this system will be maintained in a secure manner commensurate with their content and use. The System Manager will control access to the data. Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System Manager. Researchers authorized to conduct research will typically access the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual. The collection and maintenance of data is consistent with legislation and regulations regarding the protection of human subjects, informed consent, and confidentiality.

The proposed routine uses are compatible with the stated purposes of the system. The first routine use permits the disclosure of information to researchers under carefully controlled conditions. The second routine use permits the disclosure of information to a member of Congress when a constituent has requested assistance. The third routine use permits HHS to disclose information to the Department of Justice in the event of litigation. The fourth routine use permits disclosure of information to a contractor for the purpose of analyzing or refining the data. The fifth routine use permits disclosure of information for the purpose of quality assessment, audit, or utilization review. The sixth routine use permits disclosure to Federal and State agencies, and private organizations for the purpose of locating individuals for follow-up studies. The seventh routine use permits the disclosure of information to student volunteers who need the records to carry out their official functions.

The following notice is written in the present, rather than the future tense, to avoid the unnecessary expenditures of public funds for republishing the notice after the system has become effective.

Dated: December 30, 1994.

Ellen Wormser,

Director, Office of Organization and Management Systems.

09–37–0024

SYSTEM NAME:

Studies of Preventive Medicine, Health Promotion, and Disease Prevention, HHS/OASH/ODPHP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Office of Disease Prevention and Health Promotion (ODPHP) and Contractor research facilities that collect or provide research data for this system. Primary record storage sites are listed in Appendix I. A current list of additional contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients (adults and children) of the clinicians participating in these studies; individuals who are representative of the general population or of special groups including, but not limited to: Normal controls, normal volunteers, family members and relatives; providers of services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records about individuals as relevant to these studies: (1) Medical records (treatment, laboratory screening and diagnostic tests, and preventive services); (2) clinician surveys (use of screening, counseling and preventive services); and (3) patient surveys (height, weight, race/ethnicity, health behavior, health conditions). Examples of information include, but are not limited to: Patient or provider name, study identification number, address, relevant telephone numbers, Social Security Number (voluntary), date of birth, weight, height, sex, race; medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; immunization status; insurance and hospital cost data, employers; characteristics and activities of health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorization to collect these data is provided under section 301 of the Public Health Service Act (42 U.S.C. 241), General Powers and Duties of Public Health Service.

PURPOSE(S):

The purpose of this system of records is to enable the study of the impact of preventive medicine interventions and public education efforts of health service delivery, patient behavior, and health outcome. Information from the system of records will be shared within the Department of Health and Human Services (DHHS) with such Public Health Service (PHS) agencies as the Centers for Disease Control and Prevention (CDC) including the National Center for Health Statistics (NCHS), the Health Resource Services Administration (HRSA), the Indian Health Service (IHS), the National Institutes for Health (NIH), the Agency for Health Care Policy and Research

(AHCPR), and the Health Care Financing Administration (HCFA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations (42 U.S.C. 290 (dd–2), 42 U.S.C. 241 and 405, 42 CFR part 2), and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 242a and 42 CFR part 2a; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions. Examples of organizations and agencies of which records from this system may be disclosed include, but are not limited to Health Maintenance Organizations (HMOs) and other service providers participating in the studies and various federal and state agencies, such as the Veteran's Administration, branches of the Armed Forces, and state and local health department.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service, based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such an individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

4. ODPHP may contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records may be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

5. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

6. Information from this system may be disclosed to Federal agencies, State agencies (including the Motor Vehicle Administration and State vital statistics offices), private organizations, and other third parties (such as current or prior employers, acquaintances, relatives), in order to obtain information on morbidity and mortality experiences and to locate individuals for follow-up studies. Social Security numbers may be disclosed to the Social Security Administration to ascertain disabilities and/or location of participants. Social Security numbers may also be given to other Federal agencies, and State and local agencies for purposes of locating individuals for participation in follow-up studies.

7. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in hard copy, index cards, file folders, computer tapes and disks (including optical disks), photography media, microfiche, microfilm, and audio and video tapes. Typically, factual data with study code numbers are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in locked paper files.

RETRIEVABILITY:

During data collection stages and follow-up retrieval is by personal identifier (e.g., name, Social Security Number, medical record or study identification number etc.). During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

1. *Authorized Users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers, and statisticians involved in designing sampling plans.

Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System Manager.

Researchers authorized to conduct research will typically access the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

A separate key list linking ID codes to respondents will be maintained by the contractor conducting the survey,

during the data collection period in order to permit follow-up with non-respondents. This key list will be kept in a locked file when not actively in use. As soon as data cleaning is completed this key list will be destroyed. No data that could be used to identify respondents will be entered on the computer database.

Likewise the name of individual settings will not appear on data collection forms or the computerized database. Again a separate key matching the ID code to the hospital name will be maintained during the course of data collection in order to permit follow-up of non-respondents. They key listing will be kept in a secure location when not actively in use, and destroyed as soon as the data cleaning is completed.

3. *Procedural Safeguards:* Collection and maintenance of data is consistent with legislation and regulations regarding the protection of human subjects, informed consent, and confidentiality. When anonymous data is provided to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The ODPHP project officers and contract officers oversee compliance with these requirements.

RETENTION AND DISPOSAL:

The records are maintained with individual identifiers only until analysis and follow-up are completed, generally a two- to three-year period. Removal or disposal of identifiers will be done according to the storage medium (e.g., erase computer tape, shred, pulp or burn paper records etc.). A staff person designated by the System Manager or an authorized Contractor will oversee and confirm the disposal in writing. Long-term retention is only in aggregate form without individual identifiers in accordance with the OASH Records Disposition Schedule.

SYSTEM MANAGER AND ADDRESS:

Senior Policy Advisor, Office of Disease Prevention and Health Promotion, 2132 Switzer Building, 330 C Street, SW, Washington, DC 20201.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager listed above. Notification requests should include: individual's name; current address; date of birth; date, place and nature of participation in the research study; address at the time of participation. The System Manager may accept a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, or other health professional, or other responsible individual. The subject individual will be granted direct access unless it is determined that such access is likely to have a adverse effect on him or her. In this case, the medical/dental record will be sent to the designated representative.

Individuals will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), written questionnaire, or observations. Information is also obtained from other sources, including but not limited to: referring physicians; hospitals; State and local health agencies; relatives; guardians; schools, employers; and clinical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Location sites

Office of Disease Prevention and Health Promotion (ODPHP), 2132 Switzer Building, 330 C Street, SW, Washington, DC 20201

Battelle Memorial Institute, Centers for Public Health Research and Evaluation, 2101 Wilson Boulevard, Suite 800, Arlington, VA 22201

Battelle Memorial Institute, Centers for Public Health Research and Evaluation, Room 100E, 505 King Avenue, Columbus, OH 43201–2693

Battelle/SRA, 401 North Lindbergh Boulevard, Suite 330, St. Louis, MO 63141–7816

[FR Doc. 95–268 Filed 1–4–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–050–1220–00–24–1A]

Supplemental Shooting Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The following supplemental shooting regulations would apply to developed recreational areas/sites and to undeveloped Bureau of Land Management administered public lands (that are not closed to shooting) within the Ukiah District, California.

(1) No person shall have in their possession an assault weapon(s) as defined under the California ''Assault Weapons Control Act of 1989'' and listed under the authority of Assembly Bill 357 (CPC 12276.5) and further identified under Senate Bill 263, Chapter 954 STATS 1991.

(2) Unless otherwise posted, no persons shall target shoot with a weapon within 50 feet of the center line of any public road. ''Target Shoot'' is defined as shooting a weapon for recreational purposes for which game is not being pursued. Under this definition, the shooting of clay pigeons is considered to be a form of target shooting. ''Public Road'' is defined as any road, dirt or otherwise, on which public vehicular traffic is permitted.

''Weapon'' is defined as any firearm, cross bow, bow and arrow, paint gun, fireworks or explosive device capable of propelling a projectile either by means of an explosion or by, string or spring. ''Firearm'' is defined as an instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it.

(3) No person shall shoot or discharge any weapon within 150 yards of any developed recreational area/site. ''Developed Recreational Area/Site'' is defined as any site or area that contains structures or capital improvements primarily used by the public for recreation purposes. Such areas or sites may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

(4) No person shall shoot or discharge any weapon towards or in the direction of any public road, signed trail, or developed recreational areas/site where this action could create a hazard to life or property.

(5) For safety reasons, no person shall have in their possession, an open container of alcoholic liquor while shooting or discharging any weapon. And, no person shall be under the influence of a controlled substance or have a blood alcohol content (BAC) of 0.05 (0.01 if under 21 years of age) while shooting or discharging any weapon. ''Alcoholic Liquor'' is defined in Black's Law Dictionary as any intoxicating liquors which can be used as a beverage, and which, when drunk to excess, will produce intoxication. ''Controlled Substance'' is defined in Black's Law Dictionary as any drug so designated by law whose availability is restricted, included are narcotics, stimulants, depressants, hallucinogens, and marijuana.

(6) No person shall shoot or discharge any firearm loaded with tracers, armor piercing or steel jacketed bullets.

(7) No person shall shoot or discharge any weapon at any appliance, television, object containing glass, or other target material which can shatter and cause a public safety hazard as a result of the projectile impact or explosion. The shooting or discharging of any shotgun at ''clay pigeons'' is permitted. Persons on these public lands which shoot or discharge any weapon are required to remove and properly dispose of all shooting materials; including shell boxes, targets, shell casings, etc.

(8) No person shall transport in a vehicle or conveyance or its attachments on any public road a firearm unless it is unloaded or dismantled. A firearm is considered loaded for the purposes of this section when there is an unexpended cartridge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including but not limited to, in the firing chamber, magazine, or clip thereof, attached to the firearm; except, that a muzzle loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the cylinder or barrel.

(9) No person shall have a loaded firearm on display when in any developed recreational area.

(10) No person shall discharge any weapon from a powerboat, sailboat, motor vehicle or aircraft while under power or still moving from use of sail or motor.

(11) Except with a valid permit, no person shall carry a concealed weapon.

(12) No person shall have in their possession a shotgun which has an overall length of less than 26 inches and/or barrel or barrels of less than 18 inches in length.

(13) No person shall have in their possession a rifle which has an overall length of less than 26 inches and/or barrel of less than 16 inches in length.

DATES: All comments and information shall be submitted in writing by February 6, 1995.

ADDRESSES: All comments concerning this proposed rulemaking should be addressed to David Howell, District Manager, Bureau of Land Management, Ukiah District Office, 2550 North State Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Patrick Hagan, Ranger, Ukiah District Office, (707) 468–4076.

SUPPLEMENTARY INFORMATION: These shooting regulations are being established to provide consistency and uniformity for shooting on Bureau of Land Management administered lands throughout the Ukiah District of California, and to prevent user conflicts and provide greater safety to the visiting public. These supplementary rules or shooting do not supersede regulations already established.

Authority for these regulations is contained in CFR title 43, Chapter II, Part 8360, Subpart 8364.1 and 8365.1–6. Violations of the supplementary rules under authority of 43 CFR 8365.1–6 are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

David Howell,

District Manager.

[FR Doc. 95–207 Filed 1–4–95; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: American Type Culture Collection, Rockville, MD, PRT–773392

The applicant has applied for a permit to export frozen cell lines of chimpanzee (*Pan troglodytes*), orangutan (*Pongo pygmaeus*), gorilla (*Gorilla gorilla*) and golden lion tamarin (*Leontopithecus rosalia*) for the purpose of scientific research.

Applicant: American Type Culture Collection, Rockville, MD, PRT–773390

The applicant has applied for a permit to export frozen cell lines of cotton-top tamarin (*Saguinus oedipus*) and white-handed Gibbon (*Hylobates lar*) for the purpose of scientific research.

Applicant: Robert Dunn, Sylmar, CA, PRT–795517

The applicant has applied for a permit to export and re-import a pair of captive-born orangutans (*Pongo pygmaeus*) to Canada for the purpose of conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 30, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 95–216 Filed 1–4–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–358]

Certain Recombinantly Produced Human Growth Hormones; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Withdraw a Patent Claim

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation granting complainant Genentech, Inc.'s motion to amend the complaint and notice of investigation by withdrawing claim 38 of U.S. Letters Patent 5,221,619 from the investigation.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. The following five firms were named as respondents: Novo Nordisk A/S of Denmark; Novo Nordisk of North America, Inc. of New York; ZymoGenetics, Inc. of Seattle, Washington (collectively, ''the Novo respondents''); Bio-Technology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, ''the BTG respondents'').

At the pre-hearing conference on April 8, 1994, complainant Genentech orally moved to amend the complaint by withdrawing claim 38 of the '619 patent from the investigation. The parties addressed complainant Genentech's motion in their post-hearing submissions. The Commission investigative attorneys (IAs) supported complainant's motion. The Novo respondents and the BTG respondents opposed complainant's motion. No petitions to review the ID were filed and no government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53 (19 C.F.R. 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–202 Filed 1–4–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (Sub-No. 164X), Louisiana Southern Railway Company—Abandonment—at Chalmette, Louisiana—Notice of Exemption. EA available 12/16/94.

AB–290 (Sub-No. 165X), Norfolk & Western Railway Company—Abandonment—In Cincinnati, Ohio. EA available 12/19/94.

AB–103 (Sub-No. 10X), Kansas City Southern Railway Company—Abandonment—Independence Air Line Branch. EA available 12/26/94. Comments on the following assessment are due 30 days after the date of availability: None.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 95–225 Filed 1–4–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32629]

Pioneer Railcorp; Continuance in Control Exemption; Minnesota Central Railroad Company

Pioneer Railcorp (Pioneer), a noncarrier holding company, has filed a notice of exemption to continue in stock ownership control of Minnesota Central Railroad Company (MNCR), its wholly owned noncarrier subsidiary, when MNCR becomes a class III rail carrier. MNCR concurrently filed a notice of exemption in *Minnesota Central Railroad Company—Acquisition and Operation Exemption—MNVA Railroad, Inc.,* Finance Docket No. 32628, to acquire from MNVA Railroad, Inc. (MNVA), a class III rail carrier, and operate a 146-mile rail line in Minnesota. Consummation was scheduled for December 13, 1994.

Pioneer owns and controls seven other class III rail carriers: West Jersey Railroad Co., operating in New Jersey; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Mississippi Central Railroad Co. (formerly Natchez Trace Railroad), operating in Mississippi and Tennessee; Alabama & Florida Railway Co., operating in Alabama; Decatur Junction Railway Co., operating in Illinois; and Vandalia Railroad Company, operating in Illinois.[1]

Pioneer states that: (1) The properties operated by these carriers do not connect with each other or any railroads in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on: Donald G. Avery and Patricia E. Dietrich, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

[1] See *Pioneer Railcorp—Continuance in Control Exemption—Vandalia Railroad Company,* Finance Docket No. 32594 (ICC served Oct. 28, 1994).

Decided: December 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–229 Filed 1–4–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32628]

Minnesota Central Railroad Company; Acquisition and Operation Exemption; Rail Lines of MNVA Railroad, Inc.

Minnesota Central Railroad Company (MNCR), a noncarrier,[1] has filed a notice of exemption to acquire and operate approximately 146 miles of MNVA Railroad, Inc.'s (MNVA) Hanley Falls-Minneapolis rail line between milepost 145.08, at Hanley Falls, MN, and milepost 0.0, at Minneapolis, MN.[2] As part of this transaction MNCR will purchase MNVA's right, title and interest in certain incidental trackage rights agreements. MNCR and MNVA executed an agreement on November 4, 1994 for the purchase and operation of MNVA's Hanley Falls-Minneapolis rail line, along with its incidental trackage rights agreements, rail operating assets, and other contract rights. The parties intend to consummate the transaction on or after December 14, 1994, the effective date of the exemption.

This proceeding is directly related to a concurrently filed notice of exemption in Finance Docket No. 32629, *Pioneer Railcorp—Continuance in Control Exemption—Minnesota Central Railroad Company,* wherein Pioneer Railcorp seeks to continue in control of MNCR when MNCR becomes a class III rail carrier upon consummation of the transaction described in this notice.[3]

Any comments must be filed with the Commission and served on: Donald G. Avery, 1224 Seventeenth Street, N.W., Washington, D.C. 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab 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: December 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–228 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32650]

Eastern Maine Railway Company; Acquisition Exemption; Rail Line of Canadian Pacific Limited Between Brownville Junction and Vanceboro, ME

Eastern Maine Railway Company (Eastern Maine), a noncarrier,[1] has filed a notice of exemption to acquire the eastern portion of Canadian Pacific Limited's (CP) rail line between Skinner and Vanceboro, ME.[2] The portion of the line involved in the transaction is 99.5 miles and extends from milepost 105.1 at Brownville Junction, ME, to milepost 5.6 at the Maine-New Brunswick border near Vanceboro, ME.[3]

Eastern Maine, Irving, and NBR, have concurrently filed a related petition in *Eastern Maine Railway Company, J.D. Irving, Limited and New Brunswick Railway Company—Petition for Disclaimer of Jurisdiction or, Alternatively, for an Exemption From 49 U.S.C. 11343(a)(5),* Finance Docket No. 32651. In that proceeding, Eastern Maine, NBR, and Irving seek to enable Irving to continue in control of Eastern Maine should Eastern Maine become a class III rail carrier upon consummation of the acquisition. Consummation of the acquisition by Eastern Maine in the instant proceeding is contingent upon the Commission granting the petition in the related Finance Docket No. 32651.

Any comments must be filed with the Commission and served on: William C. Evans, 901 15th Street, N.W., Suite 700, Washington, DC 20005–2301; and W. David Jamieson, P.O. Box 5777—300 Union Street, 12th Floor, Saint John, New Brunswick, Canada E2L 4M3.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab 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.

Because this line is the subject of a pending abandonment application (*see* n.2 *supra*), and labor protective conditions would have been imposed if abandonment had been authorized in that proceeding, the Commission will seriously consider in this case the imposition of the conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). Petitions to revoke for purposes of imposing labor protective conditions should address the exceptional circumstances which would permit the Commission to impose such conditions on this 49 U.S.C. 10901 transaction.

Decided: December 29, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–227 Filed 1–4–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32646]

Canadian American Railroad Company; Acquisition and Operation Exemption; Certain Lines of Canadian Pacific Limited in Maine

Canadian American Railroad Company (CDAC), a noncarrier, has filed a notice of exemption to acquire and/or operate Canadian Pacific Limited's (CP) line between Skinner and Vanceboro, ME.[1] CDAC will acquire and operate 101.7 miles of the western portion of CP's line of railroad between milepost 0.0 at Brownville Junction, ME, and milepost 101.7 at the Maine-Quebec border near Skinner, ME, and

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[1] MNCR is a wholly owned subsidiary of Pioneer Railcorp, a noncarrier holding company.

[2] Originally established in 1983, MNVA operates over a former Chicago & North Western (C&NW) rail line between milepost 145.08 at Hanley Falls, Yellow Medicine County, MN, and milepost 51.3, at Norwood, Carver County, MN, under a contract for sale agreement with the Minnesota Valley Regional Rail Authority. MNVA also has trackage rights over the C&NW from milepost 51.3, at Norwood to milepost 0.0, at Minneapolis, Hennepin County, MN.

[3] Pioneer Railcorp already controls seven class III shortline rail carriers: West Jersey Railroad Co. (operating in New Jersey); Fort Smith Railroad Co. (operating in Arkansas); Alabama Railroad Co. (operating in Alabama); Mississippi Central Railroad Co. (operating in Mississippi and Tennessee); Alabama & Florida Railway Co. (operating in Alabama); Decatur Junction Railway Co. (operating in Illinois); and Vandalia Railroad Company, (operating in Illinois).

[1] Eastern Maine, is a wholly owned subsidiary of New Brunswick Railway Company (NBR). Both Eastern Maine and NBR are represented to be noncarriers. NBR is controlled by J.D. Irving Limited (Irving).

[2] This CP line is the subject of a pending abandonment application in *Canadian Pacific Limited—Abandonment—Line Between Skinner and Vanceboro, ME,* Docket No. AB–213 (Sub-No. 4).

[3] Acquisition of the western portion of CP's line between Brownville Junction and the Maine-Quebec border near Skinner and operation of the entire CP line between Skinner and Vanceboro is the subject of a notice of exemption filed concurrently by Canadian American Railroad Company (CDAC) in *Canadian American Railroad Company—Acquisition and Operation Exemption—Certain Lines of Canadian Pacific Limited in Maine,* Finance Docket No. 32646. Related to that notice is a petition for exemption filed concurrently in *Fieldcrest Cannon, Inc. and Downeast Securities Corporation—Continuance in Control—Canadian American Railroad Company,* Finance Docket No. 32647.

[1] This CP line is the subject of a pending abandonment application in *Canadian Pacific Limited—Abandonment—Line Between Skinner and Vanceboro, ME,* Docket No. AB–213 (Sub-No. 4).

will operate 99.5 miles of the eastern portion of CP's line of railroad between milepost 105.1 at Brownville Junction and milepost 5.6 at the Maine-New Brunswick border, near Vanceboro, ME.[2]

This proceeding is related to a petition for exemption filed concurrently in *Fieldcrest Cannon, Inc. and Downeast Securities Corporation—Continuance in Control—Canadian American Railroad Company,* Finance Docket No. 32647. In that proceeding, Fieldcrest Cannon, Inc. (Fieldcrest), and Downeast Securities Corporation (Downeast) (collectively, petitioners), noncarriers, seek an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–11344 for the acquisition of control by petitioners of CDAC, upon CDAC becoming a class III rail carrier.[3] Consummation of the acquisition and/or operation by CDAC in the instant proceeding is contingent upon an exemption being granted by the Commission in the related Finance Docket No. 32647.

Any comments[4] must be filed with the Commission and served on: James E. Howard, One International Place, Boston, MA 02110.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab 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.

Because this line is the subject of a pending abandonment application (*see* n.1 *supra*), and labor protective conditions would have been imposed if abandonment had been authorized in that proceeding, the Commission will seriously consider in this case the imposition of the conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). Petitions to revoke for purposes of imposing labor protective conditions should address the exceptional circumstances which would permit the Commission to impose such conditions on this 49 U.S.C. 10901 transaction.

Decided: December 29, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–226 Filed 1–4–95; 8:45 am]

BILLING CODE 7035–01–P

[2] Acquisition of the eastern portion of CP's line is the subject of another notice of exemption simultaneously filed by Eastern Maine Railway Company (Eastern Maine) in *Eastern Maine Railway Company—Acquisition Exemption—Rail Line of Canadian Pacific Limited Between Brownville Junction, ME, and Vanceboro, ME,* Finance Docket No. 32650. Eastern Maine is represented to be a noncarrier and is a wholly owned subsidiary of New Brunswick Railway Company (NBR), also represented to be a noncarrier controlled by J.D. Irving Limited (Irving). Eastern Maine, NBR and Irving have filed a related petition in *Eastern Maine Railway Company, J.D. Irving, Limited and New Brunswick Railway Company—Petition for Disclaimer of Jurisdiction or, Alternatively, for an Exemption From 49 U.S.C. 11343(a)(5),* Finance Docket No. 32651.

[3] Fieldcrest owns all of the outstanding stock of Downeast. Downeast owns all of the outstanding stock of Bangor and Aroostook Railroad Company (BAR), a class II carrier, which owns and operates approximately 400 miles of rail line in Maine. Downeast also owns all of the outstanding stock of CDAC. Upon CDAC becoming a class III rail carrier, Fieldcrest and Downeast will control two carriers.

[4] A comment was filed on December 28, 1994, by Springfield Terminal Railway Company (ST) requesting issuance of certain orders by the Commission. ST's requests will be dealt with by the Commission in the related Finance Docket No. 32647.

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Rules of Civil Procedure and the Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure and the Advisory Committee on Rules of Evidence.

ACTION: Notice of cancellation of open hearings.

SUMMARY: The Evidence Rules public hearing scheduled to be held in New York, New York on January 5, 1995, has been cancelled. The Civil Rules public hearing scheduled to be held in Dallas, Texas on January 10, 1995, has been cancelled. [Original notice of both hearings appeared in the **Federal Register** of November 18, 1994 (59 FR 59793).]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C., telephone (202) 273–1820.

Dated: December 28, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–168 Filed 1–4–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time established for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS MORE Application Kit.

(2) COPS 004/01. Office of Community Oriented Policing Services.

(3) On occasion.

(4) State and local governments. The COPS MORE Application Kit is a grant application to be used to apply for grants to redeploy current sworn law enforcement officers to community policing by state, local, and Indian tribal law enforcement agencies.

(5) 1150 annual respondents estimated at 26 hours per response.

(6) 35,880 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–196 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–21–M

Shelter Care and Child Welfare Services to Alien Minors; Availability of Funding for Cooperative Agreements

AGENCY: Community Relations Service (CRS), DOJ.

ACTION: Notice of Availability of Funding for Cooperative Agreements to support a program which provides shelter care and other related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service (INS).

SUMMARY: This announcement governs the award of Cooperative Agreements to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide shelter care and related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service. The programs providing such services shall hereafter be referred to as the Alien Unaccompanied Minors Shelter Care Programs (AUMSCPs).

AUMSCPs have the specific goal of providing shelter care and other related child welfare services to male and female alien minors under 18 years of age who are referred to the CRS by the INS. These child welfare services will afford alien minors a structured, safe and productive environment which meets or exceeds respective State guidelines and standards for similar services designed to serve minors in AUMSCP care and custody. Applications submitted pursuant to this announcement must plan for the delivery of services to a population of alien minors (90 shelter and 10 foster care beds).

DATES: Closing Date: 5:00 p.m. Eastern Daylight Time; February 21, 1995.

APPLICATION REQUESTS AND CONTACT PERSON: Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Orin McCrae, Grants Officer.

Proposal Application Packages may also be obtained by contacting CRS at (301) 492–5995, or FAX (301) 492–5984.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The purpose of the AUMSCPs is to provide temporary shelter care and other related services to alien minors in INS custody. Shelter care services will be provided for the interim period beginning when the minor is transferred into the AUMSCP and ending when a final disposition of the child's status is implemented. Final disposition may result in either the bond, release, or removal of the minor from the United States.

These minors, although released to the physical custody of the CRS Recipient, shall remain in the legal custody of the INS.

The population level of alien minors is expected to fluctuate as arrivals and case dispositions occur. Program content must, therefore, reflect differential planning of services to children in various stages of personal adjustment and administrative processing. Although the population of minors is projected to consist primarily of adolescents, the Recipient is expected to be able to serve some minors who are 12 years of age or younger.

The CRS Recipients are expected to facilitate the provision of assistance and services for each alien minor including, but not limited to: physical care and maintenance, access to routine and emergency medical care, comprehensive needs assessment, education, recreation, individual and group counseling, access to religious services and other social services.

Other services that are necessary and appropriate for these minors may be provided if CRS determines in advance that the service is reasonable and necessary for a particular minor.

The Recipients are expected to develop and implement an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in an intake assessment. In addition, the Recipients are required to implement and administer a case management system which tracks and monitors client's progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner.

Shelter care services shall be provided in accordance with applicable State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services must be delivered in an open type of setting without a need for extraordinary security measures′.

However, the Recipients are required to design programs and strategies to discourage runaways and prevent the unauthorized absence of minors in care.

Service delivery is expected to be accomplished in a manner which is sensitive to the culture, native language, and needs of these children.

Application review

Applications submitted by the closing date and meeting the requirements of this Notice will be competitively reviewed, evaluated, rated, and numerically ranked by an independent panel of experts on the basis of weighted criteria listed in this Notice. All final funding decisions are at the discretion of the Associate Director, Office of Immigration and Refugee Affairs, Community Relations Service. The awards made are subject to the availability of funds and the concurrence of the Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service.

Authorization

Authority for the provisions of shelter care and related child welfare services to alien minors detained in the custody of the Immigration and Naturalization Service is contained in a Memorandum of Agreement and Cost Reimbursable Agreement, dated October 1, 1994, between the Immigration and Naturalization Service and the Community Relations Service.

Legislative authority for CRS Cuban/Haitian Entrant child welfare activities is contained in Title V, Section 501(c), of Public Law 96–422 (The Refugee Education Assistance Act of 1980).

Available Funds

Funds will be available on a Fiscal Year basis to support the number of shelters needed to provide 100 beds (90 shelter beds and 10 foster home beds). The number of shelters to be funded will depend on the design of the programs proposed.

The awards made will not exceed a 36 month program performance period. Funding will be for 12 month budget periods. Continuation of funding is dependent upon successful completion of prior year objectives, the level of need as defined by the Federal government, and the availability of future fiscal year funding.

The number of beds listed above do not bind CRS to any specific number of

Cooperative Agreements or to any specific level of funding.

Award Instrument

The awards issued by CRS to support AUMSCP services will be in the form of Cooperative Agreements, as defined in the Federal Grant and Cooperative Agreement Act of 1977, P.L. 95–224. The administration of the Cooperative Agreement awards will require the substantial programmatic involvement of the Federal Government.

CRS will negotiate Cooperative Agreements with the applicants approved by the Associate Director for Immigration and Refugee Affairs, CRS. Prior to these negotiations, the CRS will visit the proposed program locations to conduct a management review and to evaluate the applicants' financial and programmatic capability.

Eligible Applicants

Non-profit organizations incorporated under State law which have demonstrated child welfare, social service or related experience and are appropriately licensed or can expeditiously meet applicable State licensing requirements for the provision of shelter care, foster care, group care, and related services to dependent children are eligible to apply.

For-profit organizations Incorporated under State law which have demonstrated child welfare, social service or related experience, and are appropriately licensed or can expeditiously meet State licensing requirements for the provision of shelter care, foster care, group care, and other related services to dependent children, and which can clearly demonstrate that only actual costs and not profits, fees, or other elements above cost have been budgeted, are also eligible to apply.

Client Population

It is anticipated that the client population will consist primarily of males, 13–17 years of age. Females generally comprise 15% of the total population of alien minors. These minors are primarily nationals of El Salvador, Nicaragua, Guatemala, Honduras, and the People's Republic of China; however, the Recipients should expect to provide services to children from other countries. The Recipients should also be prepared to provide emergency shelter care to a limited number of children 12 years of age and younger. Clients would generally be considered to be dependent children without significant behavioral or psychological problems. Many children, however, have inconsistent or sporadic educational histories, and some children may be illiterate in their own language.

Definition of Alien Minor

An alien minor is defined as a male or female foreign national under 18 years of age who is detained in the custody of the Immigration and Naturalization Service and is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act.

Designated Program Area:

The shelters should be within a fifty mile radius of the INS District Office-San Diego, California; the INS District Office-Los Angeles, California; the INS District Office-Phoenix, Arizona; the INS Suboffice-Tucson, Arizona; the INS District Office-Chicago; the INS District Office-El Paso; the INS District Office-New Orleans, Louisiana; the INS District Office-Newark, New Jersey; the INS District Office-Philadelphia, Pennsylvania; the INS District Office-Baltimore; and the INS District Office-Washington, D.C.

Geographical Location:

The geographical location of the applicants is not restricted to its selected area of service; however, the applicants must be able to substantiate that its network of local affiliates or its subcontractor(s) or subrecipient(s) will be able to deliver the required services effectively and appropriately and that local service provider organizations are licensed under applicable State law to provide emergency shelter care and related services to dependent children.

Technical Assistance Conference:

The CRS will hold a public meeting regarding this solicitation. Further information regarding the time, date and location will be included in the Proposal Application Package.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the ''Alien Unaccompanied Minors Shelter Care Program—Program Guidelines and Requirements'' (available with the application package). Applicants are required to set forth in detail the following:

A. Program Abstract. The Program Abstract is intended to be a brief summary of the proposal.

B. Organization/Agency Background. Applicants must include a detailed discussion of:

1. The applicant's professional history, philosophy, and goals;

2. Its particular demonstrated experience with respect to: provision of services to unaccompanied alien minors; the administration of residential shelters for minors; or, the administration of similar type of shelters; and

3. The applicant's history of service delivery and institutional presence in the proposed city where the shelter will be located.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as their service provider and for use of such a subcontractual arrangement.

C. Program Design: The applicants must set forth in detail information concerning the following:

1. Target Population

A comprehensive overview of the applicant agency, agency qualifications and history, including philosophy, goals and history of experience with respect to the provision of child welfare or related services to minors under 18 years of age.

2. Management Plan

a. A plan for overall fiscal and program management and accountability.

b. A description of the organizational structure and lines of authority.

c. A comprehensive program staffing plan and information regarding staff qualifications.

d. A comprehensive plan for coordination of activities between the various program components and coordination with other community and governmental agencies.

e. Staff supervisory model.

f. Provisions for staff training.

g. Proposed staff schedule(s).

h. A description of the role(s) and responsibility(ies) of the proposed consultants and the rationale for their use.

3. Individual Client Service Plans

Applicants shall describe in detail:

a. The methodology regarding the development of individual client service plans;

b. The process to ensure that service plans will be periodically reviewed and updated; and,

c. The staff who will have responsibility for the development and updating of the plans.

4. Case Management

Describe in detail the case management system for tracking and monitoring client progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner. Identify the staff positions responsible for coordinating the implementation and maintenance of the case management system.

5. Structure and Accountability

Applicants must fully describe:

a. The plan for developing and maintaining internal structure, control and accountability through programmatic means.

b. Utilization of daily logs, statistical reports, etc.

c. Other security measures.

D. Characteristics of Program Site

Residential/Office Facility. Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of shelter and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially-based social service program. Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report must consist of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and that means and time-lines from obtaining the documentation.

E. Community Support

Applicants must identify those measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

F. Client Services

Applicants are required to describe, in a detailed and comprehensive manner, the following services and the methodology for service delivery:

1. Physical Care and Maintenance;
2. Routine and Emergency Medical/Dental Care;
3. Orientation;
4. Individual Counseling;
5. Group Counseling;
6. Acculturation/Adaptation;
7. Education;
8. Recreational, Social and Work Activities;
9. Visitation Procedures;
10. Access to Legal Services; and,
11. Family Reunification Services.

G. Client Records

Applicants must provide descriptive information regarding the development, maintenance and content of individual client case records, including a description of all material/information which will be maintained in these records.

H. Program Records

Applicants are required to set forth comprehensive information regarding the types of program records to be maintained by the program (daily activity logs, records of staff meetings, cash disbursement systems, daily and weekly status of population reports, etc.).

I. Program Evaluation

Applicants must set forth a plan for program evaluation including identification of evaluative criteria.

J. Budget and Budget Narrative

Applicants are required to submit a comprehensive line item budget.

The following budget structure should be used to provide appropriate costs breakdown:

a. Personnel;
b. Fringe Benefits;
c. Travel Costs;
d. Equipment, including computer hardware and software;
e. Supplies;
f. Contractual Obligations;
g. Rearrangement and Alteration Costs (if applicable);
h. Direct Client Costs;
i. Other; and
j. Indirect Costs.

A narrative explanation for each line item, included in each object class, must accompany the proposed budget.

K. Supportive Addenda Material

Applicants are required to submit the following supporting material as an addendum to the proposal:

1. Administrative Requirements:

a. Agency Administration and Organization

(1) Agency organizational *chart* describing the agency as a whole and the organizational relationship of the proposed program to other agency programs;

(2) Comprehensive organizational *chart* of the proposed program;

(3) Copies of Article of Incorporation;

(4) Proof of IRS status as a non-profit organization, if applicable;

(5) List of Officers and Board Members, if applicable;

(6) List of professional affiliations and certifications, and;

(7) Copy(ies) of applicable State child welfare license(s).

b. Organizational Standards/Policies and Policies Regarding Clients

(1) Personnel Handbook and Standards of Conduct;

(2) Statement regarding professional and agency liability;

(3) Copy of Disciplinary Procedures;

(4) Copy of Agency policy regarding the confidentiality of client information and records;

(5) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information;

(6) Copy of Grievance Policy and Procedures, and;

(7) Fire and earthquake evacuation procedures, as applicable.

c. Staff

(1) Job/Position Descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for the program including documented evidence of the availability of bi-lingual and culturally sensitive personnel, and;

(2) Resumes and qualifications of program consultants.

d. Community Support of the Program

(1) Letters of program support from local political representatives, social service agencies, etc. Letters should reflect writers' awareness of program's intent, potential Federal funding source and location of the program. Letters should also contain a recommendation or comment regarding the proposed program;

(2) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided, and;

(3) A listing of voluntary and/or donated resources, including letters of intent from the agency or entity providing the resources, if applicable.

e. Implementation Plan

A plan for program implementation including timelines regarding significant milestones.

2. Finance

a. A copy of the most recent agency/organization audit.

b. A description of the agency/organization Financial Management System.

c. A listing of other Federal, State, local or foundation grants, cooperative agreements or contracts, etc., being administered by the applicant. This material should include information regarding the funding source(s); grant, cooperative agreements or contract number; level of financial support; purpose of award; grant, cooperative agreement or contract performance period; and name, address and telephone number of grant, cooperative agreement and/or contract office (Federal, State or local).

d. Subrecipients and/or Subcontractors.

(1) Identify all proposed services which are to be awarded to subrecipients/subcontractors;

(2) Provide relevant background material regarding the proposed subrecipient(s)/subcontractor(s), and;

(3) Provide letters from the proposed subrecipient(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

e. (1) Itemized budget.

(2) A narrative explaining the budget.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Review Panel. An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the closing date;

3. The application omits:

a. Documented written evidence of community support for the program;

b. A comprehensive line-item budget with appropriate descriptive narrative, or;

c. A copy of the latest financial audit of the applicant.

Criteria for Evaluating Applications

Applications will be reviewed, evaluated, and ranked numerically according to the following weighted criteria:

1. The degree to which the entire proposed plan for developing, implementing and administering a shelter care program is clear, succinct, integrated, efficient, cost effective and likely to achieve program objectives. (15 points)

2. The quality of the applicant's program management and staffing plans as demonstrated by:

a. The adequacy of the plan for program management and the plan for coordination between the components of the program.

b. The adequacy of the plan for coordination with community and governmental agencies.

c. The adequacy of the qualifications of the applicant organization, and the extent to which this organization has a demonstrated record as a provider of child welfare or other social services.

d. The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.

e. The extent to which sub-recipient(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.

f. The adequacy of the plans for staff supervision and intro-program communication.

g. The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibilities of the staff in the program, and the education and relevant experience required for the position.

h. Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

3. Program Services—The applicant's response to the required program services, including a description of program resources which demonstrates:

a. The capacity of the program to offer comprehensive, integrated and differential services which meet the needs of the clients.

b. Utilization of resources in a manner which enhances program control, structure and accountability.

c. Provision of services in a manner which promotes and fosters cultural identification and mutual support.

d. Sensitivity to the issues of culture, race, ethnicity and native language. (20 points)

4. The degree to which the applicant provides effective strategies of programmatic control, predictability and accountability as evidenced by the structure and continuity inherent in the program design. (15 points)

5. The adequacy of the plans for:

a. developing and updating individual client service plans; and,

b. the proposed system of case management. (10 points)

6. The reasonableness of the proposed budget and budget narrative, in relation to proposed program activities. (10 points)

7. The plan for program evaluation, including the methodology and criteria for evaluation of the program. (5 points)

8. The degree to which the application has provided written documented evidence of community support and acceptance of the program. (5 points)

Application Submission

Applicants must submit a signed original and two copies of the Proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Odin McCrae, Grants Officer by 5 p.m. (Eastern Time) of the closing date.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of the following:

1. A legible 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.

If an application is sent through the U.S. Postal Service, CRS does not accept either of the following as proof of mailing:

(1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office. Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), February 21, 1995, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550, Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date. Applications hand delivered on or before the closing date shall be considered as timely applications.

Public Program Orientation Meeting for Prospective Applicants

CRS will hold a public program orientation meeting for prospective

applicants in regard to this Notice. Information regarding the time, date and location of the meeting(s) will be included in the proposal application package.

Proposal Review: Proposals will be reviewed, evaluated, and ranked numerically by an independent review panel on the basis of weighted criteria listed on this Notice. All funding decisions are at the discretion of the Associate Director for Immigration and Refugee Affairs, CRS. Awards will be subject to the availability of funds.

Processing Time: CRS expects that all eligible submissions will be reviewed and rated within 45 days of the closing date.

Past Performance: Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities: Any costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk, and will not be reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Justice to cover pre-award costs.

No Obligation for Future Funding: If an application is selected for funding, the Department of Justice has no obligation to provide any additional future funding beyond the first budget period. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Justice.

Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) the delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or, (3) other arrangements satisfactory to the Department of Justice are made.

Name Check Review: All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Primary Applicant Certification: All primary applicants must submit completed OJP Form–4061–6, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying:''

A. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

B. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

C. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000;

D. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed OJP Form 4061–6, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower-Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' OJP Form 4061–6 is intended for the use of Recipients and should not be transmitted to the Department of Justice. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Justice in accordance with the instructions contained in the award document.

False Statements: A false statement on an application is grounds for denial or termination of funds, and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Disclosure of Federal Participation: Recipients and subrecipients receiving Federal funds must adhere to the requirements of Section 136 of the Department of Defense Appropriation Act (Steven's Amendment of October 1, 1988). The Steven's Amendment requires grantees and subgrantees to state clearly in writing, during time of application submission: 1) the percentage of the total cost of the program or project which will be financed with Federal money; and 2) the dollar amount of Federal funds for the project or program. All grantees and subgrantees shall make this statement when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Federal Policies and Procedures: Recipients and subrecipients are subject to all applicable Federal laws and Federal, Department of Justice, and CRS policies, regulations, and procedures applicable to Federal financial assistance awards.

Dated: December 27, 1994.

Catalog of Federal Domestic Assistance Number: 16.201

Jeffrey Weiss,

Acting Director, Community Relations Service.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all States have the option of designing procedures for review and comment on applications for Federally assisted programs from State and local applicants.

Each applicant is required to notify each State in which it is proposing activities under this announcement and to comply with the State's established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 30 days after the date of publication, addressed to: Kenneth Leutbecker, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 95–175 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act; ASARCO Inc.

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on December 23, 1994, a proposed Consent Decree was lodged with the United States District Court for

the Western District of Washington in *United States* v. *ASARCO Inc.*, Civil Action No. C94–5714RJB. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (EPA) for releases of hazardous substances at the Ruston/North Tacoma Study Area operable unit of the Commencement Bay Nearshore/ Tideflats Superfund Site in the Town of Ruston and City of Tacoma, Washington. The defendant in the action is ASARCO Incorporated (Asarco). The claims of the United States on behalf of EPA are based upon contamination of the Ruston/North Tacoma Study Area (the Study Area), an area of approximately 950 acres that lies within approximately a one mile radius of the former Asarco smelter.

In the complaint, the United States asserted claims against Asarco pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, for injunctive relief to abate an imminent and substantial endangerment to public health or welfare or the environment due to the release or threatened release of hazardous substances at the Study Area. The United States also sought recovery of costs that have been and will be incurred in response to releases and threatened releases of hazardous substances at the Study Area.

Pursuant to the Consent Decree, Asarco has agreed to sample properties and areas within the Study Area, excavate soil and slag from properties that exceed action levels for lead and arsenic, and replace excavated soil and slag with clean soil and gravel. The estimated value of the work to be performed is $26 million. Asarco will also develop and implement a community protection measures (CPM) program for the Study Area. The CPM program will contain provisions to ensure the integrity of clean soil caps where they are placed over contaminated soil that is deeper than the maximum depth to which Asarco must excavate, and to inform current and future property owners wherever a clean soil cap covering contaminated soil exists on their property. The CPM program will also advise residents how to reduce exposure to soils that are not removed but that contain concentrations of arsenic or lead that exceed either action levels or levels commonly found in urban areas. The Consent Decree further requires Asarco to develop and implement a soil testing, collection and disposal program to apply when contaminated soil is excavated in the future from beneath a clean cap or other area where contaminated soil remains, including from areas beneath roadways and other hard surfaces. Asarco will also reimburse EPA for $2,668,443 in past response costs that EPA has incurred in the Study Area and will reimburse EPA for all of its future response costs.

In exchange, Asarco will receive a covenant not to sue from the United States with respect to the Study Area for claims pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA, 42 U.S.C. 6973.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ASARCO Inc.*, D.J. Ref. No. 90–11–2–698C.

The proposed Consent Decree and exhibits may be examined at the following locations: the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; ASARCO Information Center, 5311 North Commercial, Ruston, Washington 98407; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Ruston/North Tacoma Study Area may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $20.25 (without exhibits) or $202.50 (with exhibits) (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–184 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Bay Area Battery Inc.

In accordance with the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on December 21, 1994, a proposed Consent Decree in *United States v. Bay Area Battery, Inc.*, Civil No. 94–50390–RV, was lodged with the United States District Court for the Northern District of Florida. The proposed Consent Decree concerns the Sapp Battery Superfund Site in Jackson County, Florida. The Site is contaminated with heavy metals caused by a battery cracking business that operated on the Site from 1970 until 1980. Pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9696 and 9607(a), the Complaint in this action seeks defendants' performance of the remedy selected by EPA for the Site, as well as recovery of previously unreimbursed response costs incurred and to be incurred by the United States in connection with the Site.

The 20 Settling Defendants have agreed in the proposed Consent Decree to reimburse the United States in the amount of $214,500, which comprises a portion of its response costs incurred at the Site. The proposed decree also provides that the settlors will pay $54,800 to another group of potentially responsible parties, who are performing a portion of the remedy selected by EPA for the Site under consent decree entered by the Court in *United States v. Aaron Scrap, et al.*, Civ. No. 92–50244/ LAC, on March 10, 1993.

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, D.C., 20044, and should refer to *United States v. Bay Area Battery, Inc.*, D.J. Ref. 90–11–2–699G.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Northern District of Florida, 114 E. Gregory Street, Pensacola, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the proposed Decree may be obtained by mail from

the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. For a copy of the Consent Decree, please enclose a check for $11.50 ($.25 per page reproduction charge) payable to ''Consent Decree Library.''

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 95–185 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental; Blackbird Mining Response, Co. et al., Compensation, and Liability Act

Consistent with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on December 22, 1994, a proposed consent decree in *United States v. Blackbird Mining Co., et al.* and *State of Idaho, et al. v. The M.A. Hanna Company,* Consolidated Case No. 83–4179 (D. Idaho), was lodged with the United States District Court for the District of Idaho. The consent decree resolves claims against the Union Carbide Corporation, one of several defendants named in this action, brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, to accomplish the clean up of the contamination, and restoration of the natural resources, at the Blackbird Mine in central Idaho and for the recovery of past and future response costs. The United States' claims were filed in June 1993 against the past and current owners and operators of the mine on behalf of the United States Forest Service and United States National Oceanic and Atmospheric Administration acting as natural resource trustees and on behalf of the EPA. The United States case was consolidated with a case filed by the State of Idaho in 1983 against most of the same parties.

This settlement is with Union Carbide, a successor to the Haynes-Stellite Company, which mined a very small amount of copper and cobalt at the Site for a brief period during World War I. With the exception of Union Carbide, all the named defendants either conducted mining activities during the later years of production or are the current owners. The area of the Site impacted by the Haynes-Stellite Company is distinct and separated geographically from the main mine workings of concern. The total waste contributed to the Site from the Haynes Stellite Company is minimal. The proposed consent decree resolves the United States' and Idaho's claims only against Union Carbide and has no effect on the claims against any of the other defendants, or any counterclaims or cross-claims against any of the other parties. Pursuant to the proposed consent decree, Union Carbide Corporation will pay $250,000 to the Plaintiff Governments in return for dismissal from the action and contribution protection.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and refer to *United States v. Blackbird Mining Co., et al.* and *State of Idaho, et al. v. The M.A. Hanna Company*, DOJ number 90–11–2–816.

Copies of the proposed consent decree may be examined at the Office of the Attorney General, Chief Natural Resources Division, 700 W. Jefferson, Suite 210, Boise, Idaho; Office of the United States Attorney, 877 W. Main Street, Suite 201, Boise, Idaho; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $4.25 (25 cents per page reproduction costs) payable to the ''Consent Decree Library''. When requesting a copy please refer to *United States v. Blackbird Mining Co., et al.* and *State of Idaho, et al. v. The M.A. Hanna Company,* Consolidated Case No. 83–4179 (D. Idaho), DOJ Case number 90–11–2–816.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–186 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed modified consent decree in *United States* v. *City of Brodhead, Kentucky and Commonwealth of Kentucky,* Civil Action No. *88–331,* was lodged on December 16, 1994, with the United States District Court for the Eastern District of Kentucky, (London Division).

The proposed modified consent decree resolves the United States' civil claims against the City of Brodhead (''City'') and the Commonwealth of Kentucky for violations of the City's National Pollutant Discharge Elimination System (''NPDES'') Permit, the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and the consent decree originally entered in this case on January 31, 1989. The proposed modified consent decree requires that the City pay the United States $5,000 in stipulated penalties for its violations of the original consent decree. The proposed modified decree also requires the City to perform additional construction and rehabilitation of its existing wastewater treatment plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modified consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Brodhead, and Commonwealth of Kentucky,* DOJ Ref. #90–5–1–1–3205A.

The proposed consent decree may be examined at the office of the United States Attorney, 110 W. Vine Street, Suite 400, Lexington, Kentucky 40507; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–187 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act; Gulf Chemical & Metallurgical Corp.

In accordance with Departmental policy, 28 CFR and 50.7, notice is hereby given that on December 21, 1994,

a proposed consent decree in *United States v. Gulf Chemical & Metallurgical Corp.*, Civil Action No. H–93–0100, was lodged with the United States District Court for the Southern District of Texas. This consent decree represents a settlement of claims against Gulf Chemical and Metallurgical Corp. for violations of the Clean Water Act.

On January 12, 1994, the United States filed a Complaint pursuant to Section 309 of the Clean Water Act (''CWA'' or ''the Act''), 33 U.S.C. 1319, for injunctive relief and assessment of civil penalties against Gulf Chemical and Metallurgical Corporation. On December 6, 1993, the United States filed its Second Amended Complaint. The Second Amended Complaint sought injunctive relief and the assessment of civil penalties from GCMC and alleged that Gulf violated the conditions and limitations of its NPDES Permit No. TX0034738 by discharging pollutants in excess of the permit's effluent limitations, failing to comply with the compliance schedule in Part I.B. of the permit, failing to comply with the permit's monitoring and reporting requirements, and bypassing Outfall 001 in violation of Part II.B.4 of the permit; and that Gulf failed to comply with the requirements of Administrative Order VI–89–058 issued by EPA on November 30, 1988. Subsequently, the United States and Gulf Chemical and Metallurgical Corp. reached a settlement which resolves the issues set forth in the Second Amended Complaint. Under this settlement between the United States and Gulf Chemical and Metallurgical Corp, Gulf Chemical and Metallurgical Corp. will pay the United States a civil penalty of $750,000. In addition, the consent decree provides for stipulated penalties for violations by Gulf Chemical and Metallurgical Corp. of effluent limitations in NPDES permit TX0034738.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Gulf Chemical and Metallurgical Corp.*, D.J. ref. 90–5–1–1–2297A.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Texas, 910 Travis, Suite 1500, Houston, TX, and at Region VI, Office of The Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202–2733, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–188 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act; J.F. Shea, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *J.F. Shea, Inc.*, Civil Action No. 94–2100 GEB (E.D. Calif.), was lodged on December 21, 1994, with the United States District Court for the Eastern District of California. This is a civil action against J.F. Shea, Inc., under Section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b), for violation of provisions of the Act and of the regulations for New Source Performance Standards (''NSPS'') applicable to owners and operators of hot mix asphalt facilities, 40 CFR Part 60, Subpart I.

The violations of the NSPS regulations involved emissions of excessive particulate matter at J.F. Shea, Inc.'s hot mix asphalt facility at Redding, California. The Complaint sought civil penalties and injunctive relief to ensure future compliance with the NSPS regulations. Under the Consent Decree, J.F. Shea will pay a civil penalty of $100,000. J.F. Shea is required by the Consent Decree to conduct a source performance test within one year to establish continued compliance with the applicable particulate matter emission limitation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J.F. Shea, Inc.*, DOJ Ref. #90–5–2–1–1904.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, 555 Capitol Mall, Suite 1550, Sacramento, California 95814; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–189 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279), will meet on February 1, 1995, starting at 1 p.m., in Room S–4215 ABC, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The meeting will adjourn at approximately 4 p.m., and will be open to the public.

The agenda provides for:

I. Call to Order
II. Appointments to FACOSH
III. Voluntary Protection Program (VPP) in the Federal sector
IV. Re-energizing the Federal safety and health program
V. OSHA Reform in the Federal sector
VI. Priorities of OSHA's Office of Federal Agency Programs
VII. Revise Executive Order 12196
VIII. Revising the 1960 Regulations
IX. Evaluations of Federal safety and health programs
X. New Business
XI. Adjournment

Written data, views or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs, at the address provided below. All such submissions, received by close of business January 25, 1995, will be provided to the members of the

Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by close of business January 25, 1995. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairperson of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact John E. Plummer at the address indicated below, if special accommodations are needed.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–9329. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 29th day of December 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–210 Filed 1–4–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions throughout calendar year 1995, subject to availability of funds. Application procedures for qualified low-income credit unions are set forth in Part 705, NCUA Rules and Regulations.

DATES: Applications may be submitted throughout calendar year 1995.

ADDRESSES: Applications for participation may be obtained from and should be admitted to: NCUA, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: The Office of Community Development Credit Unions at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705, NCUA Rules and Regulations, implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities which result in increased income, ownership and employment. The Program makes available low interest loans and deposits in amounts up to $300,000 in qualified participating ''low-income'' credit unions. Program participation is limited to existing credit unions with an official ''low-income'' designation.

This notice is published pursuant to Part 705.9, NCUA Rules and Regulations, which states that NCUA will provide notice in the **Federal Register** when funds in the Program are available.

Dated: December 14, 1994.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 95–169 Filed 1–4–95; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 70th meeting on January 18 and 19, 1995, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Wednesday, January 18, 1995—8:30 A.M. until 6:00 P.M.

Thursday, January 19, 1995—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. *Nuclear Waste Container Materials Research Program*—The Committee will hear presentations for representatives of the NRC Office of Nuclear Materials Safety and Safeguards (NMSS), the NRC Office of Nuclear Regulatory Research (RES) and the Center for Nuclear Waste Regulatory Analyses. Relevant discussions on topics such as the use of regulatory analysis, the engineered barrier system and the integrated waste package program are anticipated.

B. *History of Groundwater Travel Time*—The Committee will hear a presentation on the history and perceived significance of the unsaturated zone in the 10 CFR Part 60 regulation.

C. *Meet with the Director, Division of Waste Management, NMSS*—The Director will provide information to the Committee on current waste management issues, such as the NRC staff's perspectives on the proposed Environmental Protection Agency's low-level waste standard.

D. *Rock Mechanics Research and Technical Assistance Programs*—The Committee will receive an overview by representatives from the NRC's Office of NMSS and RES on related technical assistance and research projects. A discussion of selected research and technical assistance projects will follow the overview presentation.

E. *NRC Probabilistic Risk Assessment Policy and Implementation Plan* (tentative)—An overview by NRC Office of Nuclear Reactor Regulation (NRR) and NMSS representatives will be followed by a general discussion of the policy and its applicability to radioactive waste disposal issues.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

G. *Miscellaneous*—Discuss miscellaneous matter related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify

the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 A.M. and 4:15 P.M. EST.

Dated: December 29, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–218 Filed 1–4–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clearance Officer:
Richard T. Redfearn, (202) 942–8800
Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Proposed Amendments:

Rule 17Ad–2(c)
File No. 270–149
Rule 17Ad–10
File No. 270–265

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval on proposed amendments to the following rules:

Rule 17Ad–2(c) under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*), requires registered transfer agents to file a notice with the Commission or the appropriate regulatory agency whenever the transfer agent fails to meet certain minimum performance standards as set by Commission rules. The proposed amendment expands the group of such reportable items, by requiring the transfer agent to report all items held in its possession for more than three business days, instead of four business days as currently required. As proposed, an average of ten respondents will incur a total of five annual burden hours to comply with Rules 17Ad–2(c), (d), and (h).

Rule 17Ad–10 (17 CFR § 240.17a–10) under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a *et seq.*), requires transfer agents to create and maintain accurate securityholder files. The proposed amendment to Rule 17Ad–10 would require certain exempt transfer agents to update the master securityholder files every 10 days of transfer instead of 30 days, as is currently required. Approximately 1,800 recordkeepers incur a total of 36,000 hours complying with Rule 17Ad–10.

General comments regarding the estimated burden hours should be directed to the Clearance Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, (Project Numbers 3235–0130 and 3235–0273), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 27, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–190 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–91–M

[Rel. No. IC–20807; 812–9152]

Putnam Adjustable Rate U.S. Government Fund, et al.; Notice of Application

December 29, 1994.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Putnam Adjustable Rate U.S. Government Fund, Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds, Putnam Balanced Government Fund, Putnam California Tax Exempt Income Trust, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Capital Growth and Income Fund, Putnam Capital Manager Trust, Putnam Convertible Income-Growth Trust, Putnam Corporate Asset Trust, Putnam Diversified Equity Trust, Putnam Diversified Income Trust, Putnam Dividend Growth Fund, Putnam Equity Funds, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Federal Income Trust, Putnam Florida Tax Exempt Income Fund, The George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Growth Fund, The Putnam Fund for Growth and Income, Putnam Growth and Income Fund II, Putnam Health Sciences Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate Tax Exempt Fund, Putnam Investors Fund, Putnam Managed Income Trust, Putnam Massachusetts Tax Exempt Income Fund II, Putnam Michigan Tax Exempt Income Fund II, Putnam Minnesota Tax Exempt Income Fund II, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam Natural Resources Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Trust, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund II, Putnam OTC Emerging Growth Fund, Putnam Overseas Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Research Analysts Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Income Trust, Putnam Total Return Bond Funds, Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Vista Fund and Putnam Voyager Fund, (collectively, the ''Open-End Trusts''), Putnam California Investment Grade Municipal Trust, Putnam Dividend Income Fund, Putnam High Income Convertible and Bond Fund, Putnam High Yield Municipal Trust, Putnam Intermediate Government Income Trust, Putnam Investment Grade Intermediate Municipal Trust, Putnam Investment Grade Municipal Trust, Putnam Investment Grade Municipal Trust II, Putnam Investment Grade Municipal Trust III, Putnam Managed

High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Municipal Opportunities Trust, Putnam New York Investment Grade Municipal Trust, Putnam Premier Income Trust and Putnam Tax-Free Health Care Fund (collectively, the ''Closed-End Trusts,'' and together with the Open-End Trusts, the ''Trusts''), and Putnam Investment Management, Inc. (the ''Manager'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act, and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Trusts to enter into deferred compensation arrangements with their trustees.

FILING DATE: The application was filed on August 9, 1994 and amended on December 9, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Post Office Square, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Open-End Trust is a registered open-end management investment company organized as a Massachusetts business trust. Certain of the Open-End Trusts consist of more than one series of shares. Each Closed-End Trust is a registered closed-end management investment company organized as a Massachusetts business trust and each consists of only a single series of shares. The Manager serves as the investment adviser for the Trusts. Putnam Mutual Funds Corp. serves as the Open-End Trusts' principal underwriter. Applicants request that the proposed relief apply to the Trusts and all subsequently registered investment companies advised by the Manager (such registered investment companies, together with the Trusts, being referred to collectively as the ''Funds''). Any relief granted from section 13(a)(3) of the Act would extend only to existing Trusts.

2. Each Trust has a board of trustees, a majority of whom are not interested persons of the Manager or any of the Trusts. Each trustee of the Trusts receives an annual retainer fee and an additional fee for each trustees' meeting attended. Trustees who are not interested persons of the Manager or any of the Trusts and who serve on committees of the trustees receive additional fees for attendance at committee meetings. The proposed deferred fee arrangements would be implemented by means of a fee deferral plan (the ''Plan''), which would permit individual trustees to elect to defer receipt of all or a portion of their fees. This would enable these trustees to defer payment of income taxes on such fees.

3. Under the Plan, the deferred trustee's fees will be credited to a book entry account established by each participating Fund (the ''Deferred Fee Account''), as of the date the fees would have been paid to a trustee. The value of the Deferred Fee Account will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the ''Underlying Securities''). The Underlying Securities for a Deferred Fee Account will be shares of the Funds that a participating trustee designates. Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends and other earnings and all gains and losses that would have been realized had such account been invested in such Underlying Securities.

4. The Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from each Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of a trustee to the Fund will be only that of a general unsecured creditor. The Fund will be under no obligation to the trustee to purchase, hold or dispose of any investments but, if the Trust chooses to purchase investments to cover its obligations under the Plan, then any and all such investments will continue to be a part of the general assets and property of the Trust.

5. As a matter of prudent risk management, each Fund intends to, and with respect to any money market Fund that values its assets by the amortized cost method will, purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts. The Plan will not obligate any Fund to retain the services of a trustee, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee.

Applicants' Legal Analysis

1. Applicants request an order that would exempt the Funds under section 6(c) of the Act from sections 13(a)(2), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act, the rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act from section 17(a)(1) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to enter into the deferred fee arrangements. The existing Trusts also request an exemption under section 6(c) from section 13(a)(3) of the Act. The finding required by section 17(b)(2) for the existing Trusts is predicated on the assumption that relief is granted from section 13(a)(3).

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or

profits, affect control of any Fund, confuse investors or convey a false impression as to the safety of their investments, or be inconsistent with the theory of mutuality of risk. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the participating trustees and would not adversely affect the interests of the trustee, the Fund or of any shareholder.

4. Sections 22(g) and 23(a) prohibit registered open-end investment companies and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan merely would provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Certain of the Trusts have a fundamental investment restriction specifically or effectively prohibiting them from investing in securities of other investment companies, except in connection with a merger, consolidation or acquisition of assets. Applicants believe that it is appropriate to exempt applicants as necessary from section 13(a)(3) so as to enable the existing Trusts to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the statement of additional information of the deferred fee arrangement with the trustees. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees. Because investment companies that might exist in the future could establish fundamental policies that would accommodate purchases of shares of investment companies in connection with the deferred fee arrangement, the relief requested from section 13(a)(3) would extend to existing Trusts only.

6. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds,'' as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be ''affiliated persons'' under section 2(a)(3)(C) of the Act. Applicants believe that an exemption from this provision would not implicate Congress' concerns in enacting section 17(a)(1) but would facilitate the matching of each Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability. Applicants assert that the proposed transaction satisfies the criteria of sections 6(c) and 17(b).

8. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement without SEC approval. Under the Plan, participating trustees will not receive a benefit that otherwise would inure to a Fund or its shareholders. When all payments have been made to a participating trustee, the participating trustee will be no better off (apart from the effect of tax deferral) than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–234 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20806; 811–5535]

FN Network Tax Free Money Market Fund, Inc.

December 29, 1994.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: FN Network Tax Free Money Market Fund, Inc. (the ''Fund'').

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, NY 11556–0144.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Maryland corporation. On April 14, 1988, applicant filed a notice of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement on Form N–1A to register its shares. The registration statement became effective on June 7, 1988, and the initial public offering commenced on June 28, 1988.

2. On March 8, 1994, applicant's board of directors approved a proposal to liquidate and distribute applicant's assets to shareholders. Shareholders with account values of at least $1,000 were provided with a Notice of Liquidation and Offer of Exchange allowing them the option of exchanging Fund shares for shares of General Municipal Money Market Fund, Inc. (''General Fund''), a money market mutual fund managed by The Dreyfus Corporation, or to redeem their shares with the remaining shareholders. Shareholders were required to respond by April 17, 1994 to accept the offer of exchange. No formal vote by shareholders was required to take any action to exchange out of or to liquidate Fund shares. On April 18, 1994, all outstanding shares of applicant were liquidated at the then-current net asset value of $1.00 per share and the proceeds of such liquidation were paid to the record holders of applicant's shares or exchanged into the General Fund.

3. Distributions to all securityholders in complete liquidation of their interests have been made. No brokerage commissions were incurred.

4. On April 17, 1994, approximately 23,371,812.98 shares of common stock were outstanding at a net asset value of $1.00 per share. At such date, aggregate net assets of applicant were $23,371,812.98.

5. In connection with its liquidation, applicant incurred approximately $4,000 of aggregate expenses, consisting primarily of printing and mailing costs, all of which were paid by FN Investment Center, a subsidiary of 1st Nationwide Bank F.S.B.

6. As of the date of this application, applicant has no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file all documents required to terminate its existence as a Maryland corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–233 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Numbering and Terminology of Rules and Correction of Cross References

[Release No. 34–35150; File No. SR–NASD–94–64]

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Articles I, III, IV, V, VII, VIII, IX, XII and XVII of the By-Laws; and Articles I, II, III, IV and V of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

By-Laws

Article I

Definitions

When used in these By-Laws, and any rules of the Corporation, unless the context otherwise requires, the term:

(a) Unchanged.

(b) Unchanged.

[(r)] *(c)* ''Board'' means the Board of Governors of the Corporation.

[(c)] *(d)* ''branch office'' means an office defined as a branch office in *Rule*.[2]

[(d)] *(e)* ''broker'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

[(e)] *(f)* ''Commission'' means the Securities and Exchange Commission;

[(f)] *(g)* ''Corporation'' means the National Association of Securities Dealers, Inc.;

[(g)] *(h)* ''dealer'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or other legal entity engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(p)] *(i)* means ''government securities broker'' shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act.

[(q)] *(j)* means ''government securities dealer'' shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act.

[(s)] *(k)* ''Governor'' means a member of the Board.

[(h)] *(l)* ''investment banking or securities business'' means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others;

[(i)] *(m)* ''member'' means any broker or dealer admitted to membership in the Corporation;

[(j)] *(n)* ''municipal securities'' means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development

[1] The NASD originally submitted the proposed rule change on November 28, 1994. On December 13, 1994, the NASD filed Amendment No. 1 to its filing requesting that certain language be deleted and substituted with the word ''unchanged.'' This notice reflects the amendment.

[2] Rule numbers will be inserted upon completion of the Manual revision project.

bond as defined by Section 3(a)(29) of the Act;

[(k)] *(o)* ''municipal securities broker'' means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

[(l)] *(p)* ''municipal securities dealer'' means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include any person insofar as he buys or sells securities for his own account either individually or in some fiduciary capacity but not as a part of a regular business;

[(m)] *(q)* ''person associated with a member'' or ''associated person of a member'' means every sole proprietor, partner, officer, director, or branch manager of any member, or any natural person occupying a similar status or performing similar functions, or any natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by such member, whether or not any such person is registered or exempt from registration with the Corporation pursuant to these By-Laws;

[(n)] *(r)* ''registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer'' means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act;

[(o)] *(s)* ''rules of the Corporation'' means all rules of the Corporation including the Certificate of Incorporation, By-Laws, Rules of Fair Practice, Government Securities Rules, Code of Procedure, Uniform Practice Code, *any other rules*, and any interpretation thereunder.

* * * * *

Article III

Membership

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the Corporation may transfer its membership or any right arising therefrom and the membership of a corporation, partnership or any other business organization which is a member of the Corporation shall terminate upon its liquidation, dissolution or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of the membership under the By-Laws and Rules [of Fair Practice] of the Corporation have been fulfilled.

* * * * *

District Committees' Right to Classify Branches

Sec. 10. A District Committee may classify any branch of a member not meeting the definition of Article [I(c)] *I(d)* of the By-Laws as a ''branch office'' if such Committee is satisfied that the definition of Article [I(c)] *I(d)* of the By-Laws is substantially met and that the business of said branch in the district is of sufficient importance to justify such a classification.

Article IV

Registered Representatives and Associated Persons

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the Corporation or a person whose registration has been revoked shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the termination or revocation or upon such person's failure, while subject to the Corporation's jurisdiction as provided herein, to provide information requested by the Corporation pursuant to [Article IV, Section 5 of the NASD Rules of Fair Practice] *Rule* _____, but any such complaint shall be filed within:

(a) two (2) years after the effective date of termination of registration pursuant to Section 3 above, provided, however, that any amendment to a notice of termination filed pursuant to Section [2(b)] *3(b)* that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation shall operate to recommence the running of the two-year period under this paragraph.

(b) Two (2) years after the effective date of revocation of registration pursuant to [Article V, Section 2 of the Association's Rules of Fair Practice] *Rule* _____; or,

(c) in the case of an unregistered person, within two (2) years after the date upon which such person ceased to be associated with the member.

* * * * *

Article V

Affiliates

Agreement of Affiliate

Sec. 3. No applicant may become an affiliate of the Corporation unless it agrees:

(a) Unchanged.

(b) Unchanged.

(c) That, after affiliation, it will at all times keep its charter, by-laws, [rules of fair practice and code of procedure] *and other rules* so integrated with the corresponding Charter, By-Laws, [Rules of Fair Practice and Code of Procedure] *and other rules* of the Corporation as not to conflict in any way therewith; and

(d) Unchanged.

Conditions of Affiliation

Sec. 4. No applicant may become an affiliate of the Corporation unless it appears to the Board of Governors.

(a) Unchanged.

(b) That the charter, by-laws, [rules of fair practice and code of procedure] *and other rules* of the applicant are so integrated with the Corresponding Charter, By-Laws, [Rules of Fair Practice and Code of Procedure] *and other rules* of the Corporation as not to conflict in any way therewith.

* * * * *

Article VII

Board of Governors

Powers and Authority of Board of Governors

Sec. 1. (a) Unchanged.

(1) Unchanged.

(2) adopt such Rules [of Fair Practice] and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change or addition to the Rules [of Fair Practice];

[(3) (a) adopt such rules as the Board of Governors deems appropriate to implement the provisions of the Act as amended and the rules and regulations promulgated thereunder, and (b) make such regulations, issue such orders, resolutions, interpretations, including interpretations of the rules adopted pursuant to this Section, and directions, and make such decisions as it deems necessary or appropriate.]

[(4))*3)* make such regulations, issue such orders, resolutions, interpretations, including interpretations of the Rules [of Fair Practice], and directions, and make such decisions as it deems necessary or appropriate;

[(5)](*4*) prescribe a code of arbitration procedure providing for the required or voluntary arbitration of controversies

between members and between members and customers or others as it shall deem necessary or appropriate;

[(6)](*5*) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof;

[(7)](*6*) require all over-the-counter transactions in securities between members, other than transactions in exempted securities, to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

[(8)](*7*) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the Corporation or by one or more independent firms under contract with the Corporation as the Board of Governors may deem necessary or appropriate. The Board of Governors may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

[(9)](*8*) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the Corporation, a division or subsidiary thereof, or a clearing agency registered under the Act; and

[(10)](*9*) engage in any activities or conduct necessary or appropriate to carry out the Corporation's purposes under its Certificate of Incorporation and the federal securities laws.

(b) Unchanged.

* * * * *

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. (a) The Board of Governors, or between meetings of the Board, a Committee consisting of the Chairman of the Board (or in his absence, a Vice Chairman of the board), the President of the Corporation, and a member of the Executive Committee, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding [(i)](*1*) the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the Corporation or any subsidiary thereof, and the participation in any such system of any or all persons or the trading therein of any or all securities and [(ii)](*2*) the operation of any or all member firms' offices or systems, if, in the opinion of the Board of the Committee hereby constituted, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

(b) Unchanged.

(c) Unchanged.

Composition of Board

Sec. 4. (a) The management and administration of the affairs of the Corporation shall be vested in a Board of Governors composed of from twenty-five to twenty-nine Governors as determined from time to time by the Board. The Board shall consist of: [(i)](*1*) at least thirteen but not more than fifteen Governors to be elected by the members of the various districts in accordance with the provisions of subsection (b) hereof; [(ii)](*2*) at least eleven but not more than thirteen Governors to be elected by the Board in accordance with the provisions of subsection (c) hereof; [(iii)](*3*) the President of the Corporation to be selected by the Board in accordance with the provisions of Article X, Section 2 of the By-Laws. The Board, in exercising its power to determine its size and composition under this subsection (a), shall be required to select its members in a manner such that when all vacancies, if any, are filled, the number of Governors elected by the members of the various districts in accordance with subsection (b) hereof shall exceed the number of Governors (including the President) not so elected.

(b) Unchanged.

(c) The Board shall elect [(i)](*1*) at least three Governors representative of investors, none of whom are associated with a member or any broker or dealer; [(ii)](*2*) at least three Governors representative of issuers, at least one of whom is not associated with a member or any broker or dealer; [(iii)](*3*) at least three Governors chosen from members; [(iv)](*4*) at least one Governor representative of the principal underwriters of investment company shares or affiliated members; and [(v)](*5*) at least one Governor representative of insurance companies or insurance company affiliated members.

* * * * *

Election of Board Members

Sec. 7. The Governors elected under subsection (b) of Section 4 of this Article shall be chosen as follows:

Procedure for Nominations by Nominating Committees

(a) Unchanged.

Nomination of Additional Candidates

(b) Unchanged.

Contested Elections

(c) If any additional candidate or candidates are nominated, as provided in subsection (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate and of all other duly nominated candidates for each office to be placed upon a ballot, which shall be sent to all members of the Corporation eligible to vote in the district. Each member of the Corporation having its principal place of business in the district shall be entitled to one vote, and each member having one or more registered branch offices in the district shall be entitled to vote as provided in Section [8] *9* of Article III. The District Committee shall fix a date before which ballots must be returned to be counted. All ballots shall be opened and counted by such officer or employee of the Corporation as the Chairman of the District Committee may designate and in the presence of a representative of each of the candidates if such representation is requested in writing by any candidate named on the ballot. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the Board of Governors, and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this subsection voting shall be made by secret ballot, the procedure for which shall be prescribed by the Board of Governors.

Tansitional Procedures

(d) Unchanged.

Filling of Vacancies on Board

Sec. 8. All vacancies in the Board other than those caused by the expiration of a Governor's term of office, shall be filled as follows:

(a) Unchanged.

(b) Unchanged.

(c) If the unexpired term is that of a Governor elected by the Board such vacancy shall be filled in accordance with the provisions of subsections [(c)(i)]*(c)(1)* through [(c)(v)] *(c)(5)* of

Section 4 of this Article as the case may be.

* * * * *

Article VIII

District Committees

* * * * *

Election of District Committee Members

Sec. 4. Members of the District Committees shall be elected as follows:

Procedure for Nominations by Nominating Committees

(a) Unchanged.

Nomination of Additional Candidates

(b) Unchanged.

Contested Elections

(c) If any additional candidate or candidates are nominated, as provided in paragraph (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate for any contested office and of all other candidates for such office to be placed upon a ballot, which shall be sent to all members of the Corporation eligible to vote in the district. Each member of the Corporation having its principal place of business in the district shall be entitled to one vote, and each member having one or more registered branch offices in the district shall be entitled to vote as provided in Section [8] (*9*) of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the Corporation as the Chairman of the District Committee may designate, and in the presence of a representative of each of the candidates if such representation is requested in writing by any candidate named in the ballot. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the District Committee, and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.

* * * * *

Article IX

Nominating Committees

* * * * *

Election of Nominating Committees

Sec. 3 Members of the Nominating Committee shall be elected as follows:

Procedures for Nominations by Nominating Committees

(a) Unchanged.

Nomination of Additional Candidates

(b) Unchanged.

Contested Elections

(c) If additional candidates are nominated, as provided in paragraph (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate and all other candidates for any contested office to be placed upon a ballot, which shall be sent to all members of the Corporation eligible to vote in the District. Each member of the Corporation having its principal place of business in the District shall be entitled to one vote, and each member having one or more registered branch offices in the District shall be entitled to vote as provided in Section [8] (*9*) of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the Corporation as the Chairman of the District Committee may designate, and in the presence of a representative of each of the candidates, if such representation is requested in writing by any candidate named in the ballot. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the Nominating Committee and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be run-off election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.

* * * * *

Article XII

Rules [of Fair Practice]

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the Corporation, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Corporation and of the Act, the Board of Governors is hereby authorized to adopt such Rules [of Fair Practice] for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such Rules [of Fair Practice] or amendments thereto are approved by the Commission as provided in the Act, they shall become effective [Rules of Fair Practice] *Rules* of the Corporation as of such date as the Board of Governors may prescribe. The Board of Governors is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules [of Fair Practice] adopted hereunder.

* * * * *

Article XVII

Procedure for Adopting Amendments to By-Laws

Sec. 1. Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members, may propose amendments to these By-Laws. Every proposed amendment shall be presented in writing to the Board of Governors and a record shall be kept thereof. The Board of Governors may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the members of the Board of Governors then in office. The Board of Governors, upon adoption of any such amendment to these By-Laws, except *as to spelling or numbering corrections or* as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the Corporation. If such amendment to these By-Laws is approved by a majority of the members voting within thirty (30) days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board of Governors may prescribe.

* * * * *

Rules [of Fair Practice]

Article I

Adoption and Application

Adopting of Rules

Sec. 1. The following provisions are adopted pursuant to Article VII of the By-Laws of the Corporation and the provisions of Article III hereof are adopted as the Rules [of Fair Practice] of the Corporation, pursuant to Section 1 of [the] Article VII.

Effective Date

Sec. 2. The Rules shall become effective as provided in Section 1 of Article [VII] *XII* of the By-Laws.

* * * * *

Applicability

Sec. 5. (a) These Rules [of Fair Practice] shall apply to all members and persons associated with a member, other than those members registered with the Securities and Exchange Commission solely under the provisions of Section 15C of the Act and persons associated with such members. Persons associated with a member shall have the same duties and obligations as a member under these Rules [of Fair Practice].

(b) Unchanged.

(c) A member or person associated with a member who has been suspended from membership or from registration shall be considered as a non-member during the period of suspension for purposes of applying the provisions of these Rules [of Fair Practice of the Corporation] which govern dealings between members and non-members. However, such member or person associated with a member shall have all of the obligations imposed by the [By-Laws, Rules of Fair practice and other regulations] *rules* of the Corporation.

Article II

Definitions

Definitions in Rules

Sec. 1. When used in these Rules, unless the context otherwise requires—

(a)–(c) Unchanged.

''Rules''

(d) The term ''Rules'' means [the] Rules [of Fair Practice] as adopted and approved pursuant to Article VII of the By-Laws, or as the same may be hereafter amended or supplemented, as provided in the By-Laws.

''Code of Procedure''

(e) The term ''Code of Procedure'' means the [Code of Procedure for Handling Trade Practice Complaints prescribed by the Board of Governors pursuant to Article VII of the By-Laws] *procedural rules contained in the Rule series.*

(f) through (m) Unchanged.

* * * * *

Article III

Rules [of Fair Practice]

* * * * *

The Corporate Financing Rule

Underwriting Terms and Arrangements

Sec. 44.

(a)–(c) Unchanged.

[(d) Power of the Board of Governors

The Board of Governors shall have the power to alter, amend, supplement or modify the provisions of Subsection (b) of this Section from time to time without recourse to the membership for approval as would otherwise be required by Article III of the By-Laws.]

* * * * *

Article IV

Complaints

Availability to Customers of [Certificate, By-Laws, Rules and Code of Procedure] Rules of the Corporation

Sec. 1. Every member of the Corporation shall keep in each branch office maintained by him, in the form to be supplied by the Board of Governors, a copy of the [Certificate of Incorporation, By-Laws, Rules of Fair Practice, and Code of Procedure] *rules* of the Corporation, and of all additions and amendments from time to time made thereto, and of all published interpretive rulings made by the Board of Governors, all of which shall be available for the examination of any customer who makes requests therefor.

Complaints by Public Against Members for Violations of Rules

Sec. 2. Any person feeling aggrieved by any act, practice or omission of any member or any person associated with a member of the Corporation, which such person believes to be in violation of any of the Rules [of Fair Practice] of the Corporation, may, on the form to be supplied by the Board of Governors, file a complaint against such member or such persons associated with a member in regard thereto with any District Business Conduct Committee of the Corporation, and any such complaint shall be handled in accordance with the Code of Procedure of the Corporation *as set forth in the Rule series.*

Complaints by District Business Conduct Committees

Sec. 3. Any District Business Conduct Committee which, on information and belief, is of the opinion that any act, practice, or omission of any member of the Corporation or any person associated with a member is in violation of any of the Rules [of Fair Practice] of the Corporation, may, on the form to be supplied by the Board of Governors, file a complaint against such member or such person associated with a member in regard thereto with itself or with any other District Business Conduct Committee of the Corporation, as the necessities of the complaint may require, and any such complaint shall be handled in accordance with the Code of Procedure *as set forth in the Rule series* and in the same manner as if it had been filed by an individual or member.

Complaints by the Board of Governors

Sec. 4. The Board of Governors shall have authority when on the basis of information and belief it is of the opinion that any act, practice or omission of any member of the Corporation or of any person associated with a member is in violation of any [rule of fair practice] *Rule* of the Corporation to file a complaint against such member or such person associated with a member in respect thereto or to instruct any District Business Conduct Committee to do so, and any such complaint shall be handled in accordance with the Code of Procedure *as set forth in the Rule series.*

Reports and Inspection of Books for Purpose of Investigating Complaints

Sec. 5. For the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Corporation or any person associated with a member made or held in accordance with the Code of Procedure *as set forth in the Rule series,* any Local Business Conduct Committee, any District Business Conduct Committee, or the Board of Governors, or any duly authorized member or members of any such Committees or Boards or any duly authorized agent or agents of any such Committee or Board shall have the right (1) to require any member of the Corporation, person associated with a member, or person no longer associated with a member when such person is subject to the Corporation's jurisdiction to report, either informally or on the record, orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such member or person with relation to any matter involved in any such investigation or hearing. No such member or person shall fail to make any report as required in this Section, or fail to permit any inspection of books, records and accounts as may be validly called for under this Section. Any notice requiring an oral or written report or calling for an inspection of books, records and accounts pursuant to this Section shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of

such member or person as reflected on the Corporation's records.

* * * * *

Article V

Sanctions for Violation of the Rules

Sec. 1. Any District Business Conduct Committee, Market Surveillance Committee, the National Business Conduct Committee, any other committee exercising powers assigned by the Board, or the Board in the administration and enforcement of these Rules, and after compliance with the Code of Procedure *as set forth in the Rule series*, may (1) censure any member or person associated with a member, and/or (2) impose a fine upon any member or person associated with a member, and/or (3) suspend the membership of any member or suspend the registration of a person associated with a member, if any, for a definite period, and/or for a period contingent on the performance of a particular act, and/or (4) expel any member or revoke the registration of any person associated with a member, if any, and/or (5) suspend or bar a member or person associated with a member from association with all members, and/or (6) impost any other fitting sanction deemed appropriate under the circumstances, for each or any violation of any of these Rules by a member or person associated with a member or for any neglect or refusal to comply with any orders, directions or decisions issued by any such committee or by the Board in the enforcement of these Rules, including any interpretative ruling made by the Board, as any such committee or the Board, in its discretion, may deem to be just; provided, however, that no such sanction imposed by any such committee shall take effect until the period for appeal therefrom or review thereof by the National Business Conduct Committee or the Board, as applicable, has expired and any such appeal or review has been completed in accordance with the Code or Procedure *as set forth in the Rule series;* and provided, further, that all parties to any proceeding resulting in a sanction shall be deemed to have assented to or to have acquiesced in the imposition of such sanction unless any party aggrieved thereby shall have made application for review thereof pursuant to the Code of Procedure *as set forth in the Rule series*, within fifteen (15) days after the date of the decision rendered in such proceeding.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The amendments are part of a multi-phase program in which the NASD is reorganizing the NASD Manual to make it more usable by members and other users of the Manual. It is contemplated that this will be a non-substantive reordering of the existing rules, interpretations, and other provisions of the Manual to establish a more logical progression of rules within the Manual. The program envisions that all rules in the NASD Manual, including not only the current Rules of Fair Practice but also such specialized rules as the Government Securities Rules, Nasdaq Rules, Code of Arbitration Procedure, etc., will be numbered consecutively throughout the Manual and considered together as ''Rules.'' This project will require certain changes in numbering and terminology in the By-Laws and Rules of the NASD. In addition, a common numbering and naming scheme for subdivisions within a Rule will be used. Discussion of specific changes is set forth below.

By-Laws

The sections of Article I have been rearranged, so that the definitions are now in alphabetical order for easier use. In Section (d), space has been left for the proposed new number for Article III, Section 27, to be inserted. That number will not be printed in the Manual until the Rules have been entirely renumbered. The number is subject to later change by Board and staff action, if necessary, as provided in the proposed rule change to Article XVII of the By-Laws, below. The term ''rules of the Corporation'' in proposed Section(s) currently includes all rules that may now be referred to as Rules of Fair Practice, Government Securities Rules, the Code of Procedure, and the Uniform Practice Code. In the Manual revision project, all rules of the Corporation other than the Certificate of Incorporation and By-Laws will be referred to as ''Rules,'' with a capital ''R.'' For purposes of proposed Section(s), however, the existing names for these types of rules have been retained to make clear exactly what types of rules are included. To make the provision more broadly applicable as well, the language ''any other rules'' has been added. This would include, for example, the text of any Schedules that are converted to rules in the Manual revision project.

In Article III, Section 7, the term ''Rules of Fair Practice'' is proposed to be replaced with the general term ''Rules,'' as described above. In Section 10, the reference to Article I(c) has been changed to reflect the new letter for the definition of ''branch office,'' which was placed in alphabetical order and relettered as I(d).

In Article IV, Section 4, references to specific Rules of Fair Practice will be changed to the proposed new rule numbers that will be used in the Manual revision project. These new numbers will not be printed in the By-Laws until the entire Manual revision is completed. In accordance with authorization provided in Article XVII of the By-Laws, which is proposed to be amended in this filing, the staff will be able to adjust the final cross-references to various Rule numbers as the Manual revision proceeds. In Section 4(a), an existing, erroneous reference to Section 2(b) has been corrected. That change will be made in the Manual when this rule filing is approved.

In Article V, Sections 3 and 4, references to Rules of Fair Practice and the Code of Procedure have been changed to the more general term ''other rules'' as part of the Manual revision project.

In Article VII, Section 1, references to the ''Rules of Fair Practice'' have been changed to ''Rules'' to conform to the new terminology used in the Manual revision. In light of this change, former subsection (a)(3), which referred to the Rules of Fair Practice, would duplicate subsections (a)(2) and (4), which give the Board general authority to adopt rules and issue orders relating to the rules. The reference to implementing the provisions of the Act in Section 1(a)(3) is duplicative of Article XII, Sec. 1, which provides that the Board is authorized to adopt Rules ''to carry out the purposes of the Corporation and of the Act.'' Therefore, it is proposed to delete subsection (a)(3) as part of the Manual revision project. The remaining subsections have been renumbered accordingly. In Sections 3 and 4, in

order to make the numbering scheme of the By-Laws internally consistent, using the method employed throughout the rules in the proposed Manual revision wherein subdivisions follow the format of (a)(1)(A)(i), the subsection numbers in lower-case Roman numerals have been replaced with Arabic numerals. In Section 7(b), the reference to ''subsections (1) through (5) of Section 3(b)'' is incorrect, as there are no longer such subsections. These provisions were replaced by Section 4(b) in 1990, but the cross reference was inadvertently left unchanged at that time. In Section 7(c), the reference to Section 8 of Article III should have been changed to Section 9 when those sections were renumbered in 1992. The proposed changes to Section 8 are related to the renumbering of subsections in Section 4 to conform to the standard numbering scheme.

The proposed changes to Article VIII, Section 4, and Article IX, Section 3, correct the same erroneous cross reference described previously under Article VII, Section 7(c). The changes are not related to the Manual revision project and will be implemented upon Commission approval.

The change to Article XII, Section 1, reflects the new terminology of ''Rules'' rather than ''Rules of Fair Practice'' that will be used in the Manual the revision.

The proposed amendment to Article XVII, Section 1, would provide latitude for the Board to approve minor changes to spelling or numbering in the By-Laws in order to correct errors or to conform to the renumbering of Rules referred to in the By-Laws, without the necessity of a membership vote. Such changes would continue to be called to the attention of members through the regular CH Report Letters updating the looseleaf Manuals.

* * * * *

Rules of Fair Practice

The amendments to Article I, Sections 1 and 5 reflect the change in terminology from ''Rules of Fair Practice'' to ''Rules'' as described above. These introductory provisions to the Rules of Fair Practice will be placed at the beginning of the entire set of Rules in the Manual revision. The Rules will then include not only the former Rules of Fair Practice, but also all other rules and codes of the NASD, by whatever name they may now be known. At that time, the Rules will no longer be divided into Articles, and the reference to ''Article III'' will be deleted. Also in Section 1, a superfluous word ''the'' has been deleted. In Section 2, a reference to the process for setting the effective date of Rules is proposed to be changed to clarify that the relevant provision is in Article XII, not VII, of the By-Laws. In Section 5, paragraph (c), the term ''rules'' (of the Corporation) has been substituted for the longer list of provisions imposing obligations upon members, because, as defined in Article I, Section (o) of the By-Laws (to be relettered as Section (s) in this filing), the term ''rules for the Corporation'' includes all such provisions. In addition, a hyphen has been inserted in the word ''nonmember'' to conform to usage elsewhere in the Rules.

InArticle II, Section 1(d), the reference to ''Rules of Fair Practice'' has been shortened to ''Rules'' in connection with the Manual revision, as described previously. In Section 1(e), the reference to the Code of Procedure has been amended to refer to the new portion of the Rules in which the Code will be found, and to correct an obsolete reference to the former name of the Code. The Board's authority to promulgate any type of rule is already stated in Section 1(d) above, and need not be repeated in Section 1(e). The proposed rule change would insert the new term ''Rules'' throughout the NASD Manual wherever the term ''Rules of Fair Practice'' is currently used. The new terminology and references to new Rule numbers will not be added to the Manual until the Rules are renumbered in connection with the Manual revision project.

In Article III, the title ''Rules of Fair Practice'' is proposed to be shortened to ''Rules,'' as described above. In Section 44, the provision allowing the Board to amend the Filing Requirements paragraph of the Corporate Financing Rule is no longer necessary in light of the recent amendments to Article VII and XII of the By-Laws, which allow the Board to amend any Rules of the NASD. It is, therefore, proposed to be deleted at this time. The previous amendments were contained in SR-NASD–93–48, which was approved by the Commission on March 8, 1994.

In Article IV, Section 1, references to the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Code of Procedure have been changed to ''rules of the Corporation,'' as that term is defined in Article I, Section (o) of the By-Laws (to be relettered as Section(s) in this filing). In Sections 2, 3 and 4, the new terminology for Rules has been inserted. In Article IV, Sections 2, 3, 4, and 5; and Article V, Section 1, the term ''Code of Procedure'' has been retained for ease of recognition by members, but reference is also included to the proposed new Rule number series for the Code (to be inserted at a later date) so that it can easily be found in the Manual. The new Rule number will not be used in the Manual until the Code of Procedure has been renumbered.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] in that the proposed rule change does not alter the substance of the NASD's By-Laws or Rules of Fair Practice; rather the proposed rule changes simplifies the terminology used for rules and corrects inadvertent errors and omissions. Making the NASD's Manual easier to use enhances the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received by the NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[3] 15 U.S.C. Sec. 78o–3.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–191 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35157; File No. SR–NASD–94–73]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Increase in the Automated Confirmation Transaction Service Fees

December 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1994 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to increase, by 15%, all existing service fees paid by NASD members that participate in the Automated Confirmation Transaction Service (''ACT'' or ''Service'').[1] The revised fees, which will take effect January 1, 1995, will be set forth in Section A(10) of Part VIII of Schedule D to the NASD By-Laws. The full text of the proposed rule change reflecting the 15% increase in ACT fees is set forth below. (New language is underlined and deletions are bracketed).

Part VIII—Schedule for NASD Charges for Services and Equipment

A. System Services

* * * * *

10. Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction related charges:	
Comparison	[$0.0125] *$0.0144*/side per 100 shares (minimum 40 shares; maximum 7,500 shares).
Late report—T+1	[$0.25] *$0.288*/side.
Browse/query	[$0.25] *$.288*/query.[1]
Terminal fee	[$50.00] *$57.00*/month (ACT only terminals).
CTCI fee	[$500.00] *$575.00*/month.
Service desk	[$50.00] *$57.50*/month.[2]
Trade reporting	[$.025] *$0.029*/month (applicable only to reportable transactions not subject to trade comparison through ACT).[3]
Risk Management Charges	[$.03] *$0.035*/side and [$15] *$17.25*/month per correspondent firm.

[1] Each Act query incurs the [$0.25] *$0.288* fee; however, the first accept or decline processed for a transaction is free, to insure that no more than [$0.25] *$0.288* is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the [$0.25] *$0.288* query charge.

[2] No change.

[3] No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to effect a 15% across-the-board increase in each of the service fees related to usage of ACT. This increase, which would take effect on January 1, 1995, constitutes the first increase in ACT fees since the Service became operational in the fourth quarter of 1989.[2] The necessity for this fee change traces to expanded ACT usage as a result of (i) increased trading volumes in The Nasdaq Stock Market (''Nasdaq'') and in the segment of the over-the-counter (''OTC'') equities market supported by the OTC Bulletin Board service (''OTCBB'') and (ii) the NASD mandate of real-time trade reporting in Nasdaq SmallCap issues and OTC equities. The aforementioned factors have caused ACT processing to consume a much larger share of network capacity than was originally projected in 1989.

In this regard, a positive correlation exists between Act usage and growth in trade volume as well as the number of securities subject to the NASD's trade reporting requirements. Between 1989 and 1993, the total share volume of Nasdaq grew from 33.5 to 66.5 billion shares, an increase of 98.5%. For the first ten months of 1994, the corresponding figure is approximately 62 billion shares. With respect to growth

[4] 17 CFR 200.30–3(a)(12).

[1] The computer facilities that support the provision of ACT are operated by The Nasdaq Stock Market, Inc. (''NSMI''), a wholly owned subsidiary of the NASD.

[2] *See* Securities Exchange Act Release No. 27551 (December 19, 1989); 54 FR 53408 (December 28, 1989).

in the number of Nasdaq-listed securities, there were 4,965 Nasdaq listings at year-end 1989 compared with 5,731 in October, 1994; this represents an increase of 15.5%. Real-trade reporting for OTC equities was initiated in December, 1993 with a total of 3,652 issues in the OTCBB at year-end. By October, 1994, this figure increased to 5,168 issues, which represents an increase of 41.5%.[3] Thus, at the present time, NASD members routinely use the Service to report and compare trades in nearly 11,000 securities. The foregoing information was factored into the calculation of the revised ACT fees.

Additionally, the proposal is designed to recoup certain network costs attributable to provisions of ACT through the Enterprise Wide Network (''EWN'').[4] The EWN is the communications component of Nasdaq's system upgrade which will deliver the second generation of Nasdaq Workstation service functionality (''NWII'') to market participants. NWII is currently being phased-in. While the NWII phase-in proceeds, ACT functionality must be provided via the EWN as well as the older network. Therefore, a portion of the fee increase will recoup the network costs associated with providing ACT to member firms using the NWII service.[5]

The NASD believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the association operates or controls. In this instance, the increased fees being proposed relate to a package of automation services available only to NASD member firms that qualify as ACT participants. The proposed fee increase is the first such increase since ACT became operational in 1989 and is necessary to offset the network costs associated with delivering ACT to approximately 1300 member firms.[6] As noted above, the increased network costs which this proposal is designed to recoup have occurred as a result of the NASD's expanded trade reporting requirements, the growth in trade volume experienced by the Nasdaq and OTCBB market segments in recent years, and the roll-out of the NWII. In light of these factors, the NASD and NSMI submit that the proposed increase in ACT fees is necessary and appropriate to achieve an equitable allocation of reasonable fees among NASD members using the Service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the proposal constitutes a change in a due, fee, or other charge for a package of automated services provided only to NASD member firms. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing with also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR–NASD–94–73) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–192 Filed 1–4–95; 8:45 am]

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[3] Additionally, ACT processes trade reports and effects trade comparisons on approximately 1,000 OTC equities that are not quoted in the OTCBB. This subset of OTC equities is characterized by moderate trade volume and the regular submission of trade reports by member firms.

[4] The EWN will increase the capacity of the communications network supporting Nasdaq more than fivefold (9,600 baud to 56,000 baud). The software driving NWII is windows-based and will contain a number of data management features that are not available in the original Nasdaq Workstation service that resides in the 9600 baud network.

[5] Section (a)(2) of the Rules of Practice and Procedure for the Automated Confirmation Transaction Service defines an ACT participant to be a member firm registered with the NASD in a market making capacity, or a member firm that functions as an order entry firm, a clearing broker-dealer, correspondent executing broker-dealer, or introducing broker-dealer. Because ACT participation is defined in this manner, ACT fees are only assessed against those member firms that actually use the Service.

[6] During the second half of 1995, ACT fees and ACT-related network costs will be reviewed to determine if the 1995 increase was sufficient to recover those costs. That review may reveal that a further increase is necessary.

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–35167; File No. SR–NASD–94–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Modification of Filing Fees Under Sections 43(e) and 44(e) of the NASD's Code of Arbitration Procedure

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Sections 43(e) and 44(e) of the Code of Arbitration Procedure (''Code'') to modify the non-refundable filing fee for industry parties when submitting claims, disputes or controversies which do not involve, disclose or specify monetary relief.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Code presently provides in Section 43(a) that an industry claimant whose dispute, claim or controversy involves, discloses or specifies a money claim, regardless of the amount, must submit a non-refundable claim filing fee of $500. However, the Code also provides in Sections 43(e) and 44(e) that any party, including public customers and industry parties, whose dispute, claim or controversy does not involve, disclose or specify monetary damages shall submit a non-refundable filing fee of only $250.

The NASD has determined that there have been situations in which industry parties have purposely not disclosed the monetary amount of their claim in order to reduce the non-refundable fee from $500 to $250. Therefore, the NASD is proposing to amend Sections 43(e) and 44(e) of the Code to require that a uniform, non-refundable $500 filing fee be assessed against all industry parties, regardless of whether the dispute, claim or controversy involves, discloses or specifies a money claim. However, Section 43(e) will retain the current claim-filing fee of $250 for public customers whose dispute, claim or controversy does not involve, disclose, or specify a money-claim.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[1] of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members, and the provisions of Section 15A(b)(6) of the Act, which require that the rules of the Association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest, in that the proposed rule clarifies that the correct filing fee for industry parties in an arbitration case, regardless of whether an amount of claim is stated, is $500, which prevents industry parties from unfairly and improperly avoiding the proper amount of fees to be assessed when filing a claim under the Code.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR–NASD–94–75) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. § 78o–3.

[Release No. 34–35170; File No. SR–NASD–94–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Member Arbitration Surcharge

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to the Code of Arbitration Procedure amending Section 45(a) to adjust the surcharge on members applied to all new case filings from a flat rate to a graduated rate based on the amount in dispute. Proposed new language is in

italics; proposed deletions are in brackets.

Part III—Uniform Code of Arbitration

* * * * *

Member Surcharge

Sec. 45.

(a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a [$200] non-refundable surcharge *pursuant to the schedule below* when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsections 43(c) and 44(c) of the Code.

Amount in Dispute	Surcharge
$.01—$10,000	$100
$10,000.01—$50,000	200
$50,000.01—$100,000	300
$100,000.01—$500,000	350
Over $500,000	500

(b) For purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In early 1994, the NASD added new Section 45 to the Code requiring any member named as a party to an arbitration proceeding to be assessed a non-refundable, flat $200 surcharge in order to offset significantly increasing resourcing needs resulting from, among other things, case growth and increased arbitrator recruitment and training. However, the NASD has long recognized that the amount in dispute in arbitration cases and controversies is generally directly proportional to the amount of resources the NASD needs to expend in order to resolve the case or controversy.

In recognition of the fact that larger cases require greater resources, the NASD is proposing to replace the flat surcharge of $200 in Section 45 with a graduated surcharge based on the amount in dispute, ranging from a low surcharge of $100 for amounts in dispute not exceeding $10,000 to surcharge of $500 for amounts in dispute exceeding $500,000.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[1] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule fairly adjusts the surcharge on members for new cases to more closely reflect the costs associated with resolving controversies involving varying amounts in dispute.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. § 78*o*–3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–194 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35171; File No. SR–NYSE–94–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the New York Stock Exchange's Specialist Combination Review Policy

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 9, 1994, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the New York Stock

[2] 17 CFR 200.30–3(a)(12)

Exchange's Specialist Combination Review Policy (the ''Policy'') which would require proponents of certain specialist unit combinations to address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide uniformity to the Quality of Markets Committee's consideration of combinations of specialist units with respect to matters of capitalization, risk management, and operational efficiency.

The Policy requires Exchange approval of proposed specialist unit combinations exceeding five percent of any one of four concentration measures.[1] In any instance where a proposed combination will result in a specialist unit accounting for more than five percent of any concentration measure, the Exchange's Quality of Markets Committee (the ''Committee'') is required to conduct a review of the proposed combination. This review includes an analysis of specialist performance and market quality in the stocks subject to the proposed combination. The Committee looks at the effects of the proposed combination in terms of strengthening the capital base of the new unit, minimizing the potential for financial failure of the new unit and maintaining or increasing operational efficiencies within the resulting specialist organization. The Committee also considers the proposed unit's commitment to the Exchange market and the effect of the proposed combination on overall concentration of specialist organizations.

Where a proposed combination would result in a specialist unit which accounts for more than ten percent of a concentration measure, the primary consideration during the Committee's review is the effect of the proposed combination on overall concentration of specialist units. If the new unit accounts for more than ten percent, but less than or equal to 15%, of a concentration measure, the Policy requires the proponents of the combination to prove, by a preponderance of the evidence, that the proposed combination:

(i) would not cause detrimental concentration, in the specialist business, to the Exchange and its markets;

(ii) would foster competition among specialist units; and

(iii) would enhance the performance of the constituent specialist unit and the quality of the markets in the stocks involved.

The Policy also requires the proponents of any combination greater than ten percent, but less than 15%, to prove, by a preponderance of the evidence, that the proposed combination, if approved, is otherwise in the public's interest.

Where the proposed combination would result in a specialist unit which accounts for greater than 15% of a concentration measure, the Policy requires the proponents of the combination to provide clear and convincing evidence of the factors stated in (i) through (iii) above. The proponents of the combination would also be required to provide clear and convincing evidence that the proposed combination is otherwise in the public's interest.

The Exchange is proposing to amend the Policy to add several requirements which address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units. The proposed rule changes require proponents of a combination that would exceed 10% of a concentration measure to:

- Submit an acceptable risk management plan with respect to any line of business in which they engage;
- Submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations;
- Agree to maintain a minimum of 1.5 times (2 times, in the case of a 15% combination) the total capital requirement specified in Rule 104.20[2] with respect to the combined entity's stocks;
- Agree to maintain 2 times (2.5 times, in the case of a 15% combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and
- Agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations.

The Exchange is also proposing to require that proponents of a proposed combination that would result in a specialist unit accounting for more than five percent, but less than or equal to 10%, of a concentration measure, maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are components stocks of the Standard and Poor's 500 Stock Price Index.

The Exchange believes that these new requirements are appropriate in that the requirements are intended to minimize the risk of financial and/or operational failure of larger-sized units, and to ensure that such units have sufficient, separately dedicated capital with which to meet their market making responsibilities.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendments are consistent with these objectives in that they address concerns about capitalization, operational efficiency, and risk management where proposed combinations would result in large sized specialist units.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[1] The measures include specialist share of:
- Allocation for all listed common stocks
- Allocation for the 250 most active listed common stocks
- Total share volume of stock trading on the Exchange
- Total dollar value of stock trading on the Exchange.

[2] NYSE Rule 104.20 lists the capital requirements of specialist units with respect to the requisite: position of trading units it is capable of assuming for various forms of securities; net liquid assets; and minimum capital requirement it is capable of meeting with its own net liquid assets.

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited not received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–46 and should be submitted by January 26, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–232 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35172; File No. SR–NASD–94–79]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through January 31, 1995

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1994, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service (''OTCBB Service'' or ''Service'') in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as ''OTC'' Equities'').[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on December 31, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through January 31, 1995. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending November 30, 1994, the Service reflected the market making positions of 378 NASD member firms displaying quotations/indications of interest in approximately 5,223 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, ''foreign/ADR issues'') will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's January 1994 approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 34613 (August 30, 1994), 59 FR 46278.

[4] The Commission notes that the NASD has filed with the Commission Amendment Nos. 1 and 2 to File No. SR–NASD–92–07, concerning the eligibility of unregistered foreign securities and American Depositary Receipts for inclusion in the OTCBB. The amendments were published in the **Federal Register** for comment on November 18, 1994. *See* Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2-11 under the Act. During the proposed extensions, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for ''penny stocks.''

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1), 15A(b) (6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through January 31, 1995, is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through December 31, 1994. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,223 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Part XII of Schedule D to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System (''QEQS'') status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to Section 17B(b).

exchanges and quoted in the OTCBB by NASD members.

it is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through January 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12)

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–231 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35168; File No. SR–NASD–94–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure

December 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 3 of the Code of Arbitration Procedure [1] to expressly provide that the Director of Arbitration may delegate decision making authority as appropriate. Below is the text of the proposed rule change. Proposed new language is in italics; proposed elections are in brackets.

Code of Arbitration Procedure

Director of Arbitration

Sec. 3. The Board of Governors of the Association shall appoint a Director of Arbitration *(''Director'')* who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. *The Director* [He] shall be directly responsible to the National Arbitration Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. *The duties and functions of the Director may be delegated by the Director, as appropriate. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and responsibilities of the Director, the President or an Executive Vice President of the Association may appoint an interim Director.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The current provisions of Section 3 of the Code provide for the appointment of a Director of Arbitration by the NASD Board of Governors to perform all administrative duties and functions in connection with matters submitted to the NASD for arbitration. The Director has found it necessary to delegate certain functions of the Director to senior management employees of the NASD's Arbitration Department, especially as a result of the significant growth in the Department's staff and workload. The NASD believes this delegation power is inherent in the authority of the Director to manage the functions of the NASD's Arbitration Department. Nevertheless, the NASD is proposing to amend Section 3 of the Code to expressly provide for such delegation.

The proposed rule change to Section 3 provides that the duties and functions of the Director may be delegated by the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is permanently or indefinitely disabled from the performance of the duties and functions of the Director, the proposed rule change provides that the President of the Association or an Executive Vice President may appoint an interim Director to perform this functions and responsibilities of the Director.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act [2] in that the proposed rule change will protect investors and the public interest by avoiding disruptions and uncertainly about the authority to Act under the Code by permitting the duties and functions of the Director to be delegated by the Director and by permitting certain other NASD officers to appoint an interim Director if certain circumstances render the Director unable to discharge the duties vested in the Director.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment by the SEC as part of SR–NASD–93–51 in Securities Exchange Act Release No. 33108 (October 26, 1993), 58 FR 58573 (November 2, 1993). No comments were received by the SEC specifically directed at the proposed amendment to Section 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] *NASD Manual*, Code of Arbitration Procedure, (CCH) ¶ 3703.

[2] 15 U.S.C. § 78*o*–3.

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copes of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–230 Filed 1–4–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–107; Notice 1]

Excalibur Automobile Corp.; Receipt of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, has determined that some of its vehicles fail to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly 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 application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain Type 2, three-point harness active restraint systems.

Excalibur supports its application for inconsequential noncompliance with the following. Excalibur also included a brochure with pictures and a description of the subject vehicles. This brochure is available in the NHTSA docket.

The 59 JAC 427 Cobras that are the subject of this exemption petition all contain Type 2, three-point harness active restraint systems. Automatic restraint systems are required for vehicles produced on or after September 1, 1989. Bringing into compliance with paragraph S4.1.4 of FMVSS 208 the 59 JAC 427 Cobras that are the subject of this exemption petition would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur submits that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 by the 59 JAC Cobras at issue is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

1. The Overall Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use and Small Number

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. . . . The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic) type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100–180 JAC 427 Cobras for sale worldwide, or no more than 15 per month. Of the 100–180, only 60% of the JAC 427 Cobras, or 60–108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only 59 JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

2. The Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Due to Probable Existing Cobra Safety Belt Use and to Excalibur's Proposal To Boost Cobra Safety Belt Use

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. *See generally,* NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as ''Interim Report''). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993.* Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due

to increased safety awareness. *See* Interim Report at viii.

An informal survey of Excalibur automobile owners, including those of the JAC 427 Cobra, revealed that these owners on average are 45-year-old males with greater incomes and higher levels of education than the general population. Unlike youthful segments of the population who are more prone to reckless driving, Excalibur automobile owners are predominantly established, responsible people who value their personal safety and the quality and uniqueness of their investment in an Excalibur automobile. As a result, Excalibur opines that the owners of the JAC 427 Cobras are more likely to be wearing a safety belt while driving than other segments of the population, such as young single males.

To ensure even higher safety belt use in its JAC 427 Cobras, and thereby increase the safety of the driver and passenger, Excalibur proposes reminding in the strongest terms possible both the driver and passenger of the consequences of not using their safety belts. Excalibur would accomplish this by posting a warning label plainly and clearly visible to both the driver and passenger which states as follows:

WARNING: YOU MUST USE THE SEATBELT PROVIDED IN THIS VEHICLE. IT IS THE LAW. FAILURE TO USE THE SEATBELT COULD RESULT IN SERIOUS INJURY OR DEATH SINCE THIS CAR DOES NOT HAVE AN AIRBAG OR AUTOMATIC RESTRAINT SYSTEM.

Such a label should boost safety belt use by the drivers and passengers of the 59 JAC 427 Cobras, making the safety risk inconsequential by comparison to the safety risk associated with automobiles having automatic restraint systems.

Interested persons are invited to submit written data, views, and arguments on the application of Excalibur, 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, D.C., 20590. It is requested but not required that six copies by 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 application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 6, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Dated: December 28, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–167 Filed 1–4–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–67; Notice 3]

RIN 2127–AE92

Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data; correction.

SUMMARY: This document corrects the final data on thefts of model year 1992 passenger motor vehicles that occurred in calendar year 1992. The corrections are based on information provided by vehicle manufacturers.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On August 8, 1994, NHTSA published the preliminary theft rates for calendar year 1992 passenger motor vehicles in the **Federal Register** (59 FR 40409). The public was asked to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. NHTSA officials took the precaution of contacting individual manufacturers by telephone, asking them to submit in writing any necessary corrections of the preliminary data. Ten manufacturers provided written corrections. Using all written comments to make necessary corrections to the data, NHTSA published on November 29, 1994 (59 FR 61023) the final data on passenger motor vehicle thefts that occurred in calendar year (CY) 1992.

Subsequently, in a letter dated December 7, 1994, Toyota informed this agency that: ''Although we had been given the opportunity to comment on the preliminary theft data . . . we failed to do so.'' With the letter, Toyota provided final production figures, as they were reported to the U.S. Environmental Protection Agency, for 14 model year (MY) 1992 Toyota passenger motor vehicle lines. In addition, Toyota informed the agency that the MY 1992 Toyota Land Cruiser, a multipurpose passenger vehicle, was not subject to coverage under 49 U.S.C. chapter 331 *Theft Prevention* because the Land Cruiser's gross vehicle weight rating exceeded the statutory limitation of not more than 6,000 pounds.

In response to Toyota's letter, NHTSA is making the necessary corrections to the final theft data. NHTSA took into account all of Toyota's corrections. As a result of the adjustments, the Toyota Land Cruiser, previously ranked No. 6 was removed, reducing the number of vehicle lines listed for CY 1992 from 215 to 214. Changes to the remaining 14 Toyota lines were: the Toyota 4-Runner, previously ranked No. 15 with a theft rate of 10.1542, is now ranked No. 16, with a theft ranking of 9.7346; the Toyota Supra, previously ranked No. 60 with a theft rate of 5.5556, is now ranked No. 56 with a theft rate of 5.7937; and the Toyota MR2, previously ranked No. 66, with a theft rate of 5.2381, is now ranked No. 63 with a theft rate of 5.3619.

The Toyota Corolla/Corolla Sport, previously ranked No. 72, with a theft rate of 5.1778, is now ranked No. 74 with a theft rate of 5.0594; the Toyota Cressida, previously ranked No. 87, with a theft rate of 4.4737, is now ranked No. 86 with a theft rate of 4.5057; the Toyota Celica, previously ranked No. 99 with a theft rate of 3.8929, is now ranked No. 142 with a theft rate of 2.3936; the Toyota Paseo, previously ranked No. 107, with a theft rate of 3.7162, is now ranked No. 103, with a theft rate of 3.7430; and the Toyota Tercel, previously ranked No. 121, with a theft rate of 3.1452, is now ranked No. 118, with a theft rate of 3.1411.

The Toyota Camry, previously ranked No. 133 with a theft rate of 2.6462, is now ranked No. 130, with a theft rate of 2.6455; the Toyota Lexus SC, previously ranked 137 with a theft rate of 2.5694, is now ranked No. 135 with a theft rate of 2.5445; the Toyota Lexus LS, previously ranked No. 140, with a theft rate of 2.4390, is now ranked No. 137, with a theft rate of 2.4517; the Toyota Pickup Truck, previously ranked No. 149, with a theft rate of 2.3149, is now ranked No. 141, with a theft rate of 2.4175; the Toyota Lexus ES, previously ranked No. 165, with a theft rate of 1.9067, is now ranked No. 163 with a theft rate of 1.9286; and the Toyota Previa, previously ranked No. 172, with a theft rate of 1.6972, is now ranked No. 171, with a theft rate of 1.6993.

This notice also corrects the final production numbers for the Mazda Navajo. The Mazda Navajo, previously ranked No. 100 with a theft rate of

3.8601, is now ranked No. 166 with a theft rate of 1.8474.

The following corrected list represents NHTSA's recalculation of theft rates for 1992 passenger motor vehicle lines. This list is intended only to inform the public of calendar year 1992 motor vehicle thefts of model year 1992 vehicles, and does not have any effect on the obligations of regulated parties under 49 U.S.C. chapter 331.

Authority: 49 U.S.C. 33104(b)(4); delegation of authority at 49 CFR 1.50.

Issued on: December 30, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992

Manufacturer	Make/model (line)	Thefts 1992	Production (Mfgr's) 1992	(1992 Thefts per 1,000 vehicles produced) theft rate
1. GENERAL MOTORS	OLDSMOBILE BRAVADA	282	11,863	23.7714
2. FORD MOTOR CO.	MUSTANG	1,634	72,499	22.5382
3. GENERAL MOTORS	GMC JIMMY S–15	746	34,229	21.7944
4. VOLKSWAGEN	GOLF/GTI	218	10,775	20.2320
5. GENERAL MOTORS	CHEVROLET BLAZER S–10	1,895	117,085	16.1848
6. NISSAN	PATHFINDER	494	34,905	14.1527
7. MITSUBISHI	3000GT	105	7,620	13.7795
8. CHRYSLER CORP.	LEBARON COUPE/CONVERTIBLE	536	40,297	13.3012
9. VOLKSWAGEN	CABRIOLET	112	8,628	12.9810
10. FORD MOTOR CO.	LINCOLN MARK VII	67	5,443	12.3094
11. CHRYSLER CORP.	JEEP CHEROKEE	1,432	125,544	11.4064
12. MITSUBISHI	DIAMANTE	269	24,607	10.9318
13. GENERAL MOTORS	CADILLAC BROUGHAM	127	11,892	10.6794
14. GENERAL MOTORS	GMC SIERRA C–1500	731	73,392	9.9602
15. GENERAL MOTORS	CHEVROLET C–1500	2,217	225,458	9.8333
16. TOYOTA	4-RUNNER	395	40,577	9.7346
17. CHRYSLER CORP.	NEW YORKER 5TH AVE/IMPERIAL	386	41,463	9.3095
18. NISSAN	300ZX	64	6,959	9.1967
19. CHRYSLER CORP.	JEEP WRANGLER	443	48,278	9.1760
20. ISUZU	IMPULSE	3	335	8.9552
21. CHRYSLER CORP.	DODGE RAMCHARGER	25	2,925	8.5470
22. VOLKSWAGEN	CORRADO	30	3,548	8.4555
23. CHRYSLER CORP.	DODGE DYNASTY	717	85,218	8.4137
24. SUZUKI	SAMURAI	29	3,599	8.0578
25. GENERAL MOTORS	PONTIAC LEMANS	172	21,482	8.0067
26. BMW	8	5	625	8.0000
27. MITSUBISHI	MONTERO	141	18,340	7.6881
28. GENERAL MOTORS	PONTIAC TRANS SPORT APV	237	30,912	7.6669
29. VOLKSWAGEN	JETTA	250	33,331	7.5005
30. GENERAL MOTORS	BUICK CENTURY	824	112,586	7.3188
31. HONDA/ACURA	VIGOR	174	23,793	7.3131
32. GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	870	120,417	7.2249
33. NISSAN	SENTRA	949	133,275	7.1206
34. GENERAL MOTORS	CHEVROLET CORVETTE	134	18,943	7.0739
35. GENERAL MOTORS	CHEVROLET LUMINA APV	334	47,357	7.0528
36. AUDI	V8 QUATTRO SEDAN	1	142	7.0423
37. CHRYLSER CORP.	DODGE STEALTH	115	16,458	6.9875
38. HONDA	PRELUDE	280	40,516	6.9109
39. FORD MOTOR CO.	PROBE	281	41,067	6.8425
40. GENERAL MOTORS	CHEVROLET CORSICA	825	123,871	6.6602
41. BMW	7	37	5,563	6.6511
42. GENERAL MOTORS	GEO PRIZM	564	85,000	6.6353
43. MITSUBISHI	EXPO	109	16,586	6.5718
44. FORD MOTOR CO.	LINCOLN TOWN CAR	712	109,142	6.5236
45. GENERAL MOTORS	OLDSMOBILE SILHOUETTE APV	101	15,499	6.5165
46. GENERAL MOTORS	PONTIAC SUNBIRD	502	77,170	6.5051
47. CHRYSLER CORP	DODGE SPIRIT	429	66,927	6.4100
48. GENERAL MOTORS	CHEVROLET BERETTA	300	47,244	6.3500
49. NISSAN	MAXIMA	542	86,448	6.2697
50. GENERAL MOTORS	CHEVROLET CAMARO	422	67,909	6.2142
51. GENERAL MOTORS	GEO TRACKER	224	36,230	6.1827
52. FORD MOTOR CO	MERCURY TRACER	145	24,398	5.9431
53. NISSAN	PICKUP TRUCK	396	66,873	5.9217
54. MITSUBISHI	GALANT/SIGMA	251	42,392	5.9209
55. HONDA/ACURA	LEGEND	273	47,071	5.7997
56. TOYOTA	SUPRA	5	863	5.7937
57. GENERAL MOTORS	CHEVROLET ASTRO	708	122,540	5.7777
58. CHRYSLER CORP	PLYMOUTH ACCLAIM	427	74,118	5.7611
59. GENERAL MOTORS	GMC SONOMA	254	44,152	5.7529
60. CHRYSLER CORP	PLYMOUTH SUNDANCE	348	62,645	5.5551
61. ISUZU	AMIGO	50	9,122	5.4813

THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

Manufacturer	Make/model (line)	Thefts 1992	Production (Mfgr's) 1992	(1992 Thefts per 1,000 vehicles produced) theft rate
62. HONDA	ACCORD	2,195	403,898	5.4345
63. TOYOTA	MR2	22	4,103	5.3619
64. GENERAL MOTORS	PONTIAC FIREBIRD	134	25,187	5.3202
65. MITSUBISHI	MIRAGE	277	52,845	5.2417
66. MITSUBISHI	PRECIS	11	2,102	5.2331
67. FORD MOTOR CO	THUNDERBIRD	386	74,011	5.2154
68. GENERAL MOTORS	CADILLAC ALLANTE	10	1,920	5.2083
69. GENERAL MOTORS	GEO METRO	497	95,840	5.1857
70. MERCEDES-BENZ	129	39	7,532	5.1779
71. SUZUKI	SIDEKICK	66	12,862	5.1314
72. CHRYSLER CORP	DODGE SHADOW	390	76,286	5.1123
73. CHRYSLER CORP	DODGE MONACO	10	1,960	5.1020
74. TOYOTA	COROLLA/COROLLA SPORT	1,034	204,374	5.0594
75. FORD MOTOR CO	ESCORT	784	156,043	5.0243
76. BMW	3	229	45,603	5.0216
77. NISSAN	240SX	135	27,033	4.9939
78. MAZDA	626/MX–6	170	34,207	4.9697
79. GENERAL MOTORS	CADILLAC FLEETWOOD/DEVILLE	667	136,318	4.8930
80. GENERAL MOTORS	GEO STORM	335	69,001	4.8550
81. FORD MOTOR CO	MERCURY COUGAR	228	47,032	4.8478
82. PORSCHE	911	9	1,870	4.8128
83. GENERAL MOTORS	PONTIAC GRAND PRIX	514	106,831	4.8113
84. MERCEDES-BENZ	140	72	15,183	4.7421
85. CHRYSLER CORP	DODGE DAYTONA	50	10,943	4.5691
86. TOYOTA	CRESSIDA	17	3,773	4.5057
87. NISSAN	STANZA	272	61,040	4.4561
88. GENERAL MOTORS	GMC SAFARI	178	40,242	4.4232
89. CHRYSLER CORP	LEBARON SEDAN	174	39,553	4.3992
90. FORD MOTOR CO	TEMPO	912	208,614	4.3717
91. GENERAL MOTORS	GMC RALLY SPORTVAN	5	1,167	4.2845
92. CHRYSLER CORP	EAGLE TALON	121	28,246	4.2838
93. SUZUKI	SWIFT	35	8,220	4.2579
94. FORD MOTOR CO	MERCURY TOPAZ	326	77,030	4.2321
95. GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	338	82,532	4.0954
96. GENERAL MOTORS	BUICK SKYLARK	223	55,658	4.0066
97. GENERAL MOTORS	CHEVROLET S–10 PICKUP	725	183,145	3.9586
98. ROVER GROUP	RANGE ROVER MPV	21	5,350	3.9252
99. GENERAL MOTORS	CHEVROLET SPORTVAN G–10	11	2,867	3.8368
100. MAZDA	MX–3	104	27,674	3.7580
101. BMW	5	82	21,859	3.7513
102. FORD MOTOR CO	LINCOLN CONTINENTAL	149	39,792	3.7445
103. TOYOTA	PASEO	220	58,776	3.7430
104. NISSAN	INFINITI Q45	48	13,126	3.6569
105. GENERAL MOTORS	CHEVROLET CAVALIER	804	220,896	3.6397
106. GENERAL MOTORS	CHEVOLET CAPRICE	258	71,559	3.6054
107. HONDA/ACURA	INTEGRA	176	49,099	3.5846
108. FORD MOTOR CO.	F150 PICKUP TRUCK	420	117,887	3.5627
109. GENERAL MOTORS	PONTIAC GRAND AM	670	190,312	3.5205
110. NISSAN	NX COUPE	32	9,202	3.4775
111. MITSUBISHI	ECLIPSE	210	61,005	3.4423
112. ALFA ROMEO	164	2	583	3.4305
113. CHRYSLER CORP	EAGLE PREMIER	16	4,730	3.3827
114. FORD MOTOR CO	FESTIVA	72	21,350	3.3724
115. FORD MOTOR CO	MERCURY SABLE	398	118,357	3.3627
116. HYUNDAI	SONATA	98	29,152	3.3617
117. MAZDA	B SERIES PICKUP	142	44,943	3.1596
118. TOYOTA	TERCEL	312	99,329	3.1411
119. HONDA/ACURA	NSX	4	1,281	3.1226
120. GENERAL MOTORS	CHEVROLET LUMINA	642	217,390	2.9532
121. MAZDA	323/PROTEGE	276	95,583	2.8875
122. GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	20	6,963	2.8723
123. MAZDA	MX–5 MIATA	78	27,749	2.8109
124. GENERAL MOTORS	BUICK REGAL	276	98,281	2.8083
125. ISUZU	RODEO	154	55,013	2.7993
126. SUBARU	LOYALE	56	20,046	2.7936
127. FORD MOTOR CO	TAURUS	927	338,120	2.7416
128. NISSAN	INFINITI M30	9	3,319	2.7117
129. MAZDA	929	76	28,704	2.6477

THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

Manufacturer	Make/model (line)	Thefts 1992	Production (Mfgr's) 1992	(1992 Thefts per 1,000 vehicles produced) theft rate
130. TOYOTA	CAMRY	760	287,275	2.6455
131. NISSAN	INFINITI G20	38	14.398	2.6393
132. GENERAL MOTORS	OLDSMOBILE 98/TOURING	117	44,521	2.6280
133. ALFA ROMEO	SPIDER	2	765	2.6144
134. CHRYSLER CORP	PLYMOUTH VOYAGER/GRAND	485	189,043	2.5656
135. TOYOTA	LEXUS SC	74	29,082	2.5445
136. HYUNDAI	EXCEL	189	74,802	2.5267
137. TOYOTA	LEXUS LS	80	32,630	2.4517
138. VOLKSWAGEN	PASSAT	36	14,801	2.4323
139. CHRYSLER CORP	DODGE CARAVAN/GRAND	660	271,572	2.4303
140. CHRYSLER CORP	TOWN & COUNTRY MPV	32	13,207	2.4230
141. TOYOTA	PICKUP TRUCK	397	164,222	2.4175
142. TOYOTA	CELICA	109	45,538	2.3936
143. MERCEDES-BENZ	201	35	14,677	2.3847
144. FORD MOTOR CO	EXPLORER	737	309,206	2.3835
145. ISUZU	PICKUP	94	40,366	2.3287
146. CHRYSLER CORP	JEEP COMANCHE	7	3,008	2.3271
147. GENERAL MOTORS	PONTIAC BONNEVILLE	272	117,010	2.3246
148. GENERAL MOTORS	BUICK ROADMASTER	137	59,765	2.2923
149. MERCEDES-BENZ	124	64	28,082	2.2790
150. GENERAL MOTORS	CADILLAC ELDORADO	68	29,851	2.2780
151. HONDA	CIVIC	447	200,959	2.2243
152. FORD MOTOR CO.	RANGER PICKUP	553	249,834	2.2135
153. FORD MOTOR CO.	MERCURY CAPRI	16	7,304	2.1906
154. HYUNDAI	ELANTRA	139	64,146	2.1669
155. FORD MOTOR CO.	CROWN VICTORIA	241	111,263	2.1660
156. VOLVO	240	45	20,875	2.1557
157. GENERAL MOTORS	OLDSMOBILE TORONADO/TROFEO	13	6,141	2.1169
158. SAAB	900	30	14,943	2.0076
159. FORD MOTOR CO.	MERCURY GRAND MARQUIS	292	146,546	1.9925
160. VOLVO	960	14	7,139	1.9611
161. DAIHATSU	ROCKY MPV	7	3,600	1.9444
162. JAGUAR	XJS	4	2,065	1.9370
163. TOYOTA	LEXUS ES	74	38,370	1.9286
164. MITSUBISHI	PICKUP TRUCK	47	24,650	1.9067
165. AUDI	80/90	1	541	1.8484
166. MAZDA	NAVAJO	17	9,202	1.8474
167. CHRYSLER CORP.	PLYMOUTH LASER	39	21,808	1.7883
168. JAGUAR	XJ6	10	5,671	1.7634
169. HYUNDAI	SCOUPE	70	40,420	1.7318
170. SUBARU	LEGACY	113	66,424	1.7012
171. TOYOTA	PREVIA	76	44,724	1.6993
172. GENERAL MOTORS	OLDSMOBILE ACHIEVA	123	73,880	1.6649
173. MAZDA	MPV WAGON	73	45,934	1.5892
174. CHRYSLER CORP.	DODGE DAKOTA PICKUP	197	125,804	1.5659
175. VOLVO	740	16	10,718	1.4928
176. GENERAL MOTORS	BUICK RIVIERA	18	12,324	1.4606
177. CHRYSLER CORP.	EAGLE SUMMIT	51	35,535	1.4352
178. ISUZU	TROOPER/TROOPER II	22	15,580	1.4121
179. GENERAL MOTORS	SATURN SC	37	26,865	1.3773
180. GENERAL MOTORS	OLDSMOBILE 88 ROYALE	127	106,099	1.1970
181. GENERAL MOTORS	BUICK PARK AVENUE	70	63,474	1.1028
182. ISUZU	STYLUS	2	1,953	1.0241
183. FORD MOTOR CO.	E150 VAN	10	9,990	1.0010
184. GENERAL MOTORS	SATURN SL	127	128,142	0.9911
185. SUBARU	SVX	9	9,288	0.9690
186. GENERAL MOTORS	CADILLAC SEVILLE	39	40,346	0.9666
187. DAIHATSU	CHARADE	17	18,200	0.9341
188. FORD MOTOR CO.	AEROSTAR	144	155,838	0.9240
189. AUDI	100/S4	10	10,823	0.9240
190. PORSCHE	968	1	1,195	0.8368
191. GENERAL MOTORS	BUICK ESTATE/ROADMAST WAGON	9	11,020	0.8167
192. CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	24	29,971	0.8008
193. GENERAL MOTORS	OLDSMOBILE CUSTOM CRUISER	3	4,347	0.6901
194. GENERAL MOTORS	BUICK LESABRE	104	162,068	0.6417
195. CHRYSLER CORP.	DODGE COLT/COLT VISTA	19	32,372	0.5869
196. SAAB	9000	5	9,486	0.5271
197. VOLKSWAGEN	FOX	1	2,043	0.4895

THEFT RATES OF MODEL YEAR 1992 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1992—Continued

Manufacturer	Make/model (line)	Thefts 1992	Production (Mfgr's) 1992	(1992 Thefts per 1,000 vehicles produced) theft rate
198. CHRYSLER CORP.	DODGE RAM PICKUP	10	83,090	0.1204
199. CHRYSLER CORP.	DODGE RAM WAGON/VAN B150	4	50,618	0.0790
200. VOLVO	940	0	17,750	0.0000
201. SUBARU	JUSTY	0	1,213	0.0000
202. ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS/EIGHT	0	44	0.0000
203. ROLLS-ROYCE	CORNICHE/CONTINENTAL	0	15	0.0000
204. ROLLS-ROYCE	TURBO R	0	37	0.0000
205. PEUGEOT	405	0	218	0.0000
206. PEUGEOT	505	0	224	0.0000
207. MAZDA	RX–7	0	1	0.0000
208. LAMBORGHINI	DIABLO	0	52	0.0000
209. FERRARI	TESTAROSSA	0	240	0.0000
210. FERRARI	MONDIAL	0	49	0.0000
211. FERRARI	F40	0	60	0.0000
212. FERARRI	348	0	161	0.0000
213. CHRYSLER CORP.	DODGE VIPER	0	285	0.0000
214. ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	2	0.0000

[FR Doc. 95–262 Filed 1–4–95; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 29, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the survey described below in February 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by January 10, 1995. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432

Survey Project Number: IRS PC:V 94–014–G

Type of Review: Revision

Title: Automated Substitute For Return (ASFR) Customer Satisfaction Survey

Description: Currently, when an individual taxpayer requests tax forms and/or instruction of the Substitute for Return (SFR) Staff, the SFR employee gives the taxpayer a toll-free number through which the forms and/or instructions can be requested. To promote better customer service, the Automated Substitute for Return (ASR) Core Business Process Team and the SFR Staff developed a procedure that eliminates the need for the taxpayer to make the toll-free call and also provides for next-day shipment of the forms and/or instructions requested. The procedure allows ASFR to electronically request forms and instructions for taxpayers through the Centralized Inventory Distribution System (CIDS). To determine the effectiveness of this procedure and service, this customer survey was developed.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 500

Estimated Burden Hours Per Respondent: 1 minute, 30 seconds

Frequency of Response: Other

Estimated Total Reporting Burden: 13 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–214 Filed 1–4–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

December 29, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the survey described below in February 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by January 10, 1995. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–432

Survey Project Number: IRS PC:V 94–015–G

Type of Review: Revision

Title: Hartford District Practitioner Survey Estate and Gift Tax Returns
Description: The Hartford District has established a Total Quality Organization (TQO) Group to specifically study the Estate and Gift Tax process. The efforts of this group support the IRS Business Master Plan objective to maximize customer satisfaction and reduce burden as well as to achieve quality-driven productivity. The TQO Group has developed this survey to gather information from customers (attorneys and bank trust officers) who are currently involved in estate and gift tax return preparation and taxpayer representation, for their insights into problems they have identified in the processing of estate and gift tax returns.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 150
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 25 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–215 Filed 1–4–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

December 29, 1994

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1130
Form Number: IRS Form 8816
Type of Review: Extension
Title: Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies
Description: Form 8816 is used by insurance companies claiming an additional deduction under IRC section 847, to reconcile their special loss discount, and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 3,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping–6 hrs., 42 min.
Learning about the law or the form–47 min.
Preparing, copying, assembling, and sending the form to the IRS–56 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 25,290 hours
OMB Number: 1545–1151
Form Number: IRS Form 8818
Type of Review: Extension
Title: Optional Form to Record Redemption of College Savings Bonds
Description: If an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. The form can be used by the individual to keep a record of the bonds cashed so that he or she can claim the proper interest exclusion.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 25,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping–7 mins.
Learning about the law or the form–3 mins.
Preparing the form–17 mins.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 21,500 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–213 Filed 1–4–95; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–92]

Extension of 301 Investigation of the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection; Proposed Determinations; Request for Public Comment; and Notice of Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination under section 304(a)(3)(b) of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414(a)(3)(B), to extend the investigation of the acts, policies and practices of the Government of the People's Republic of China (China) on the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection; notice of proposed determination pursuant to section 304(a)(1) of the Trade Act, 19 U.S.C. 2414; request for public comment pursuant to section 304(b) of the Trade Act on the proposed determinations; notice of public hearing.

SUMMARY: Pursuant to section 304(a)(3)(B) of the Trade Act, the United States Trade Representative (USTR) has determined to extend the investigation initiated under section 302(b)(2)(A) of the Trade Act of certain acts, policies and practices of China that deny adequate and effective protection of intellectual property rights and market access to person who rely on intellectual property protection. The USTR is seeking public comment concerning a proposed determination that certain acts, policies and practices of China with respect to its protection of intellectual property and provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR is also seeking public comment and will hold a public hearing on January 24 and 25, 1995, regarding a determination on appropriate action under section 301 being considered in response to these acts, policies and practices.

EFFECTIVE DATE: The investigation is extended, through Saturday, February 4, 1995. Written comments on the proposed determinations are due by noon Monday, January 30, 1995. Requests to testify at the hearing must be submitted by noon Friday, January 13, 1995; written testimony is due by

noon Wednesday, January 18, 1995; and written rebuttals are due by noon Friday, January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Questions concerning the ongoing investigation or the products under consideration should be directed to Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, or Thomas Robertson, Assistant General Counsel (202) 395–6800; questions about the public hearing, written testimony and written comments should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432. All of the above persons are located at the Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On June 30, 1994, pursuant to section 302(b) of the Trade Act, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for identification of China as a priority foreign country (PFC) under section 182 of the Trade Act. See 59 FR 35558 (July 12 1994). China's identification as a PFC was primarily based on its failure to create an effective intellectual property enforcement regime, causing rampant copyright piracy and trademark infringement resulting in significant damage to U.S. interests. Appropriate implementation of China's new patent law and administrative protection program for pharmaceuticals and agricultural chemicals was also of concern. Particular problems with China's present enforcement regime include, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; conflicts of interest; burdensome and discriminatory agency requirements that restrict foreign access to trademark protection; overly-broad compulsory licensing provisions; a failure of enforcement authorities to coordinate; and the absence of an effective border control mechanism.

China's identification as a PFC was also based on its failure to provide fair and equitable market access for persons who rely on intellectual property protection. The most serious market access problems are found in the areas of audiovisual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

Extension of Investigation

Numerous bilateral negotiations have been held on these issues since the initiation of this investigation. While China has indicated that it will take some actions to address U.S. concerns, significant movement on a majority of the U.S. issues has not been shown. These issues are too complex and complicated to resolve before the end of the six-month statutory deadline for concluding this investigation.

In light of the need for further time for negotiations to resolve these remaining issues, the USTR has determined pursuant to section 304(a)(3)(B)(i) of the Trade Act, that ''complex or complicated issues are involved in the investigation that require additional time.'' The investigation has thus been extended to Saturday, February 4, 1995.

Proposed Determinations and Action

If the issues which are the basis of this investigation are not resolved, the USTR proposes to determine pursuant to section 304(a)(1)(A)(ii) of the Trade Act that acts, policies and practices of the Chinese Government with respect to the enforcement of intellectual property rights and the provision of market access to persons that rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce.

In the event the USTR makes such a determination, the USTR must determine pursuant to section 304(a)(1)(B) what action to take in response. The USTR proposes that, pursuant to the authority provided under section 301(c)(1)(B) of the Trade Act, to take the following action: To impose increased duties on certain products of China to be drawn from the list of products set forth in the Annex to this notice. These products represent approximately 2.5 billion dollars in U.S. imports of Chinese-origin goods over the last quarter of 1993 and the first three quarters of 1994. The decision on what specific products could be subject to increased tariffs will take into consideration the written comments provided and any written and oral testimony offered at the public hearing.

Public Comment on Determinations and Hearing Participation

In accordance with section 304(b) of the Trade Act, the USTR invites all interested persons to provide written comments on the proposed determinations. With respect to the proposed trade action under section 301, comments may address: (1) the appropriateness of subjecting the products listed in the Annex to this notice to an increase in duties; (2) the levels at which duties on particular products should be set; and (3) the degree to which an increase in duties on particular products might have an adverse effect on U.S. consumers. Comments will be considered in recommending any determination or action under section 301 to the USTR.

The USTR will also consider the written, oral, and rebuttal comments submitted in the context of public hearings held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR 2006.7 through 2006.9. The hearings will commence at 10 a.m. on Tuesday, January 24, 1995, and continue on Wednesday, January 25, 1995, if necessary. The hearings will be held in the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20506.

Request to Testify: Interested persons wishing to testify orally at the hearings must provide a written request to do so by noon Friday, January 13, 1994, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW., Washington DC 20506. In their request, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a brief summary of their presentation. Requests must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. Remarks at the hearing will be limited to 5 minutes.

Written Testimony: In addition, persons presenting oral testimony must submit their complete written testimony by noon Wednesday, January 19, 1995. In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party by noon Friday, January 27, 1995. In accordance with 15 CFR 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as is possible.

Requirements for Submissions: Written comments on the proposed determinations under section 304 of the Trade Act, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due according to the relevant deadlines noted above. Comments must state clearly the position taken and describe with particularly the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th St., NW., Washington, DC 20506.

Written comments, testimony, and briefs will be placed in a file (Docket 301–92) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked ''Business Confidential'' in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–M

Annex

1994 HTS Subheading	Article Description
	[The bracketed language in this Annex has been included only to clarify the scope of the numbered 6-digit sub-headings covered by the action of this notice, and such language is not itself intended to describe articles on which action is being considered.]
	Sugar confectionery (including white chocolate), not containing cocoa:
	[Chewing gum, whether or not sugar-coated]
	Other:
	Confections or sweetmeats ready for consumption:
	[Candied nuts]
1704.90.20 pt.	Other, put up for retail sale
	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:
	Mushrooms
	[Straw mushrooms]
	Other:
2003.10.00 pt.	In containers each holding not more than 255 g, other than whole or sliced
	Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:
	Carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:
2918.14.00	Citric acid
	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
	[Boxes, cases, crates and similar articles]
	Sacks and bags (including cones):
	Of polymers of ethylene:
	[Reclosable, with integral extruded closure]
	Other:
	[With no single side exceeding 75 mm in length]
3923.21.00 pt.	Other
	Tableware, kitchenware, other household articles and toilet articles, of plastics:
	[Tableware and kitchenware]
	Other:
	[Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings]
3924.90.20	Picture frames
3924.90.55	Other

	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	[Office or school supplies; articles of apparel and clothing accessories (including gloves); fittings for furniture, coachwork or the like; statuettes and other ornamental articles]
	Other:
	[Buckets and pails; nursing nipples and pacifers; ice bags; douche bags, enema bags, colostomy bags, hot water bottles, and fittings therefor; invalid and similar nursing cushions; crutch tips and grips; dress shields; finger cots; pessaries; prophylactics; sanitary belts; bulbs for syringes; syringes (other than hypodermic syringes) and fittings therefor, not in part of glass or metal; handles and knobs, not elsewhere specified or included, of plastics; parts for yachts or pleasure boats of heading 8903; parts of canoes, racing shells, pneumatic craft and pleasure boats which are not of a type designed to be principally used with motors or sails; beads, bugles and spangles, not strung (except temporarily) and not set, and articles thereof, not elsewhere specified or included; imitation gemstones; gaskets, washers and other seals; frames or mounts for photographic slides; belting and belts, for machinery; clothespins; pneumatic mattresses and other inflatable articles, not elsewhere specified or included; waterbed mattresses and liners, and parts of the foregoing; empty cartridges and cassettes for typewriter and machine ribbons; fasteners, in clips suitable for use in a mechanical attaching device; flexible plastic document binders with tabs, rolled or flat]
	Other:
	[Laboratory ware; reflective triangular warning signs for road use]
3926.90.95 pt.	Other
	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical

	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and and similar containers:
4202.11.00 pt.	With outer surface of leather, of composition leather, or of patent leather, other than attache cases, brief cases, school satchels, occupational luggage cases and similar containers
	[Articles of a kind normally carried in the pocket or in the handbag]
	Other:
4202.91.00 pt.	With outer surface of leather, of composition leather or of patent leather, other than golf, travel, sports and similar bags
	Articles of apparel and clothing accessories, of leather or of composition leather:
	Gloves, mittens and mitts:
	[Specially designed for use in sports]
	Other:
	Gloves of horsehide or cowhide (except calfskin) leather:
	Wholly of leather:
4203.29.05	With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers
	Other articles of leather or of composition leather:
	[Shoelaces; straps and strops]
	Other:
	[Of reptile leather]
4205.00.80	Other
4414.00.00	Wooden frames for paintings, photographs, mirrors or similar objects
	Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:
4420.10.00	Statuettes and other ornaments, of wood
	Other:
	Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:
	[Cigar and cigarette boxes]
	Other:
4420.90.65	Lined with textile fabrics

	Other articles of wood:
	[Clothes hangers]
	Other:
	[Wood dowel pins; wood blinds, shutters, screens and shades, all the foregoing with or without their hardware; toothpicks, skewers, candy sticks, ice cream sticks, tongue depressors, drink mixers and similar small wares; pickets, palings, posts and rails, the foregoing which are sawn; assembled fence sections; clothespins; canoe paddles]
	Other:
	[Pencil slats]
4421.90.95 pt.	Other
	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
	[Cartons, boxes and cases, of corrugated paper or paperboard; folding cartons, boxes and cases, of non-corrugated paper or paperboard; sacks and bags, having a base of a width of 40 cm or more]
	Other sacks and bags, including cones:
	[Shipping sacks and multiwall bags, other than grocers' bags]
4819.40.00 pt.	Other
	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationary, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
4820.10.20 pt.	Diaries and address books
	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings:
	[Postcards]
4909.00.40 pt.	Greeting cards
	Gloves, mittens and mitts, knitted or crocheted:
	[Gloves, mittens and mitts impregnated, coated or covered with plastics or rubber]
	Other:
	[Of wool or fine animal hair; of cotton; of synthetic fibers]
	Of other textile materials:
	[Of artificial fibers]
	Other:
	[Subject to cotton, wool, or man-made fiber restraints]
	Other:
6116.99.80 pt.	Of silk and containing 70 percent or more by weight of silk or silk waste

	Handkerchiefs:
	Of silk or silk waste:
6213.10.10	Containing 70 percent or more by weight of silk or silk waste
	Shawls, scarves, mufflers, mantillas, veils and the like:
	Of silk or silk waste:
6214.10.10	Containing 70 percent or more by weight of silk or silk waste
	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather:
	[Sports footwear; footwear with outer soles of leather, and uppers which consist of leather straps across the instep and around the big toe; footwear made on a base or platform of wood, not having an inner sole or protective metal toe-cap]
	Other footwear, incorporating a protective metal toe-cap:
	Welt footwear:
	[With pigskin uppers]
6403.40.30 pt.	Other
	[Other footwear with outer soles of leather]
	Other footwear:
	Covering the ankle
	[Welt footwear]
	Other:
	[For men, youths and boys]
	For other persons:
	[Work footwear]
	Other:
6403.91.90 pt.	For infants
	Other:
	[Footwear made on a base or platform of wood]
	Other:
	[Welt footwear]
	Other:
	[For men, youths and boys]
	For other persons:
	Valued over $2.50/pair
	[House slippers; work footwear]
	Other:
	[Tennis shoes, basketball shoes, and the like for women, misses, children and infants]
	Other:
	[For women]
6403.99.90 pt.	For misses, children, or infants

	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
	Footwear with outer soles of rubber or plastics:
	Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:
6404.11.20 pt.	Having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather, for women
	Footwear with outer soles of leather or composition leather:
	Not over 50 percent by weight of rubber or plastics and not over 50 percent by weight of textile materials and rubber or plastics with at least 10 percent by weight being rubber or plastics:
6404.20.40 pt.	Valued over $2.50/pair, for women
	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
	[Tableware and kitchenware]
6912.00.50	Other
	Statuettes and other ornamental ceramic articles:
	Of porcelain or china:
	[Statues, statuettes and handmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds made from original models produced by professional sculptors]
	Other:
	[Of bone chinaware]
6913.10.50	Other
	Other:
	[Statues, statuettes and handmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds made from original models produced by professional sculptors]
	Other:
	[Of ceramic tile; of earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze, and mottled, streaked or solidly colored brown to black with metallic oxide or salt]
6913.90.50	Other

	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:
	Of precious metal whether or not plated or clad with precious metal:
	[Of silver, whether or not plated or clad with other precious metal:]
	Of other precious metal, whether or not plated or clad with precious metal:
	[Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in this heading]
	Other:
	[Necklaces and neck chains, of gold; clasps and parts thereof]
7113.19.50	Other
	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Non-threaded articles:
	[Spring washers and other lock washers]
7318.22.00	Other washers
	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:
	[Iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like]
	Other:
	[Of cast iron, enameled or not enameled]
	Of stainless steel:
	Cooking and kitchen ware:
	[Teakettles]
	Other:
	[Cooking ware]
7323.93.00 pt.	Kitchen ware
	Other articles of copper:
	[Chain and parts thereof]
	Other:
	[Cast, molded, stamped or forged, but not further worked]
	Other:
	[Containers of a kind normally carried on the person, in the pocket or in the handbag]
	Other:
	[Coated or plated with precious metal]
7419.99.50 pt.	Other, except brass plumbing goods

	Electric motors and generators (excluding generating sets):
	[Motors of an output not exceeding 37.5 W, universal AC/DC motors of an output exceeding 37.5 W]
	Other DC motors; DC generators:
	Of a output not exceeding 750 W:
	Motors:
8501.31.40	Exceeding 74.6 W but not exceeding 735 W
	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
	Headphones, earphones and combined microphone/speaker sets:
	[Telephone handsets]
8518.30.20	Other
	Audio-frequency electric amplifiers:
	[For use as repeaters in line telephony]
8518.40.20	Other
	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
	[Dictating machines not capable of operating without an external source of power]
	Telephone answering machines:
8520.20.00 pt.	Announce and record machines
	Other magnetic tape recorders incorporating sound reproducing apparatus:
	Cassette type
	[Microcassette type]
	Other:
	[AC only]
	Other:
	[Without speakers other than headphones, earphones or headsets]
8520.31.00 pt.	Other
	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:
	Transmission apparatus incorporating reception apparatus:
	Transceivers:
	Citizens Band (CB):
	[Hand-held]
8525.20.15 pt.	Other
	Other:
8525.20.50	Cordless handset telephones
	Other:
8525.20.60 pt.	Radio telephones designed for installation in motor vehicles for the Public Cellular Radiotelecommunication Service

	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
	Antennas and antenna reflectors of all kinds; parts suitable for use therewith:
	[Television; radar, radio navigational aid and radio remote control]
8529.10.60	Other
	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.10.00 pt.	Burglar alarms
	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
	Lamp-holders, plugs and sockets:
8536.61.00	Lamp-holders
	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
	[Winding wire]
8544.20.00	Coaxial cable and other coaxial electric conductors
	[Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships]
	Other electric conductors, for a voltage not exceeding 80 V:
8544.41.00	Fitted with connectors
	Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V:
	Fitted with connectors:
	[Fitted with modular telephone connectors]
8544.51.80	Other
	Bicycles and other cycles (including delivery tricycles), not motorized:
8712.00.15 pt.	Bicycles having both wheels exceeding 50 cm but not exceeding 55 cm in diameter
	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:
	Wrist watches, battery powered, whether or not incorporating a stop watch facility:
	With mechanical display only:
	Having no jewels or only one jewel in the movement:
	Other:
	[With gold- or silver-plated case]
	Other:
9102.11.45 pt.	Movement

	Parts and accessories of articles of headings 9301 to 9304:
	Of shotguns or rifles of heading 9303:
	[Shotgun barrels]
	Other:
	[Of muzzle-loading shotguns or rifles]
	Other:
	[Of shotguns, including shotgun-rifle combinations]
	Of rifles:
	[Stocks]
9305.29.50	Other
	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
	[Seats of a kind used for aircraft or motor vehicles; swivel seats with variable height adjustment; seats other than garden seats or camping equipment, convertible into beds; seats of cane, osier, bamboo or similar materials]
	Other seats, with wooden frames:
	Upholstered:
	Chairs:
	[Of teak]
9401.61.40 pt.	Household, other than teak
	Other:
	[Bent-wood seats]
	Other:
	Chairs:
	[Of teak]
9401.69.60 pt.	Household, other than teak
	Other seats, with metal frames:
	[Upholstered]
	Other:
	Outdoor:
	With textile covered cushions or textile seating or backing material:
	[Household]
9401.79.00 pt.	Other
	Other:
	[Household]
9401.79.00 pt.	Other
	Other:
9401.79.00 pt.	Household

	Other furniture and parts thereof:
	[Metal furniture of a kind used in offices]
9403.20.00	Other metal furniture
	[Wooden furniture of a kind used in offices or in the kitchen]
	Wooden furniture of a kind used in the bedroom:
	[Bent-wood furniture]
	Other:
	[Designed for motor vehicle use]
9403.50.90 pt.	Other, except beds
	Other wooden furniture:
	[Bent-wood furniture]
9403.60.80	Other
	[Furniture of plastics]
	Furniture of other materials, including cane, osier, bamboo or similar materials:
	[Of cane, osier, bamboo or similar materials]
9403.80.60 pt.	Other, except household
	Parts:
	[Of furniture of a kind used for motor vehicles]
	Other:
	[Of cane, osier, bamboo or similar materials, of rubber or plastics, of textile material, except cotton, of wood]
9403.90.80 pt.	Other, of metal
	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:
	Of base metal:
9405.10.40 pt.	Household, of brass
	Electric table, desk, bedside or floor-standing lamps:
	Of base metal:
	[Of brass]
9405.20.60 pt.	Other, household only
9405.20.80 pt.	Other, household only
	Non-electrical lamps and lighting fittings:
	[Incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline]
	Other:
	[Of brass]
9405.50.40	Other

	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	[Snow-skis and other snow-ski equipment; parts and accessories thereof:]
	Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof:
	[Sailboards and parts and accessories thereof:]
9506.29.00 pt.	Other, except water skis
	[Golf clubs and other golf equipment, and parts and accessories thereof; articles and equipment for table-tennis, and parts and accessories thereof; tennis, badminton or similar rackets, whether or not strung, and parts and accessories thereof; balls, other than golf balls and table-tennis balls; ice skates and roller skates, including skating boots with skates attached, and parts and accessories thereof]
	Other:
	[Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof]
	Other:
	[Archery articles and equipment and parts and accessories thereof; badminton articles and equipment, except rackets, and parts and accessories thereof; baseball articles and equipment, except balls, and parts and accessories thereof; football, soccer and polo articles and equipment, except balls, and parts and accessories thereof; ice-hockey and field-hockey articles and equipment, except balls and skates, and parts and accessories thereof; lacrosse sticks; lawn-tennis articles and equipment, except balls and rackets, and parts and accessories thereof; skeet targets; sleds, bobsleds, toboggans and the like and parts and accessories thereof; snowshoes and parts and accessories therof]
9506.99.55	Swimming pools and wading pools and parts and accessories thereof
9506.99.60 pt.	Other, except nets not elsewhere specified or included
	Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:
9507.10.00 pt.	Fishing rods
	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:
9608.10.00	Ball point pens

[FR Doc. 95–261 Filed 1–3–95; 8:45 am]
BILLING CODE 3190–01–C

Sunshine Act Meetings

Federal Register

Vol. 60, No. 3

Thursday, January 5, 1995

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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 10, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, January 11, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be opened to the public.

ITEMS TO BE DISCUSSED:

Legislative Recommendations—1995

Administrative Matters.

DATE AND TIME: Thursday, January 12, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC, (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinions:

AOR 1994–34

Peter H. Rodgers, Gregory L. Wortham on behalf of NYMEX PAC

AOR 1994–37

David A. Barrett on behalf of Representative Charles E. Shumer

AOR 1994–39

J. Martin Huber of National Association of Surety Bond Producers

Regulations:

Requests for a Public Hearing on the Proposed Disclaimer Rules

Requests for Public Hearing on Proposed Amendments to the Public Finance Rules

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–00372 Filed 1–3–95; 3:04 pm]

BILLING CODE 6715–01–M

Federal Register

Thursday
January 5, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing Drug Elimination Program; Funding Availability for Fiscal Year 1995; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3839; FR–3822–N–01]

Public and Indian Housing Drug Elimination Program Notice of Funding Availability—FY 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces HUD's FY 1995 funding of $290,000,000 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. Funded programs must be part of a comprehensive plan for addressing the problem of drug-related crime. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results. *Hereafter*, the term housing authority (HA) shall include public housing agencies (PHAs) and Indian housing authorities (IHAs).

DATES: Applications must be received at the local HUD Field Office on or before *Friday, April 14, 1995, at 3 p.m., local time. This application deadline is firm as to date and hour.* In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

ADDRESSES: (a) Application Kit: An application kit may be obtained, and assistance provided, from the local HUD Field Office with delegated public housing responsibilities over an applying public housing authority, or from the Field Offices of Native American Programs (FONAPs) having jurisdiction over an Indian housing authority making an application, or by calling HUD's Community Relations and Involvement (CRI) Clearinghouse, telephone: 1–800–578–3472. The application kit contains information on all exhibits and certifications required under this NOFA.

(b) Application Submission: An applicant *may submit only one application per housing authority* under each Notice of Funding Availability (NOFA). *Joint applications are not permitted under this program* with the following exception: housing authorities (HA) under a single administration (such as housing authorities managing another housing authority under contract or housing authorities sharing a common executive director) may submit a single application, even though each housing authority has its own operating budget. Applications (original and two copies) *must be received by the deadline* at the local HUD Field Office with responsibilities over the applying public housing authorities, Attention: Director, Public Housing Division or, in the case of Indian housing authorities, to the local HUD Field Office of Native American Programs, Attention: Administrator, Native American Programs with jurisdiction over the applying Indian housing authorities, as appropriate. A complete listing of these offices, is provided in appendix ''A'' of this NOFA. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. *Applications received after the deadline date and hour, Friday, April 14, 1995, at 3 p.m., local time, will not be considered.*

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM, PUBLIC HOUSING, CONTACT: The local HUD Field Office, Director, Public Housing Division (Appendix ''A'' of this NOFA), or Malcolm E. Main, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: The local HUD Field Office Administrator, Office of Native American Programs (Appendix ''A'' of this NOFA), or Tracy Outlaw, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, Room B133, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0088. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION REGARDING ASSISTED (NON-PUBLIC AND INDIAN) HOUSING DRUG ELIMINATION PROGRAM CONTACT: Lessley Wiles, Office of Multifamily Housing Management, Department of Housing and Urban Development, Room 6176, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2654. TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0124, expiration date November 30, 1995.

Environmental Review

Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Coordination of Anti-Crime Efforts

To coordinate anti-crime related activities across local, State, tribal, and Federal levels for the purpose of maximizing their effectiveness, applicants are encouraged to contact, and work with, such programs as Operation Weed and Seed, Operation Safe Home, and Operation Pulling America's Communities Together described below.

Operation Weed and Seed, conducted through the U.S. Department of Justice, is a comprehensive, multi-agency approach to combatting violent crime, drug use, and gang activity in high-crime neighborhoods. The goal is to ''weed out'' crime from targeted neighborhoods and then to ''seed'' the targeted sites with a wide range of crime and drug prevention programs, and human services agency resources to prevent crime from reoccurring. Operation Weed and Seed further emphasizes the importance of community involvement in combatting drugs and violent crime. Community residents need to be empowered to assist in solving crime-related problems in their neighborhoods. In addition, the private sector needs to get involved in reducing crime. All of these entities, Federal, State, and local government, the community and the private sector must work together in partnership to create a safer, drug-free environment.

The Weed and Seed strategy involves four basic elements:

1. Law enforcement must ''weed out'' the most violent offenders by coordinating and integrating the efforts of Federal, State, and local law enforcement agencies in targeted high-crime neighborhoods. No social program or community activity can flourish in an atmosphere poisoned by violent crime and drug abuse.

2. Local police departments should implement community policing in each of the targeted sites. Under community policing, law enforcement works closely with residents of the community to develop solutions to the problems of violent and drug-related crime. Community policing serves as a ''bridge'' between the ''weeding'' (law enforcement) and ''seeding'' (neighborhood revitalization) components.

3. After the ''weeding'' takes place, law enforcement and social services agencies, the private sector, and the community must work to prevent crime and violence from reoccurring by concentrating a broad array of human services—drug and crime prevention programs, drug treatment, educational opportunities, family services, and recreational activities—in the targeted sites to create an environment where crime cannot thrive.

4. Federal, State, tribal, local, and private sector resources must focus on revitalizing distressed neighborhoods through economic development and must provide economic opportunities for residents.

For further information on Operation Weed and Seed, contact the Office of Justice Programs, U.S. Department of Justice, 366 Indiana Avenue, NW., Washington, DC 20531. Telephone (202) 307–5966.

Operation Safe Home was announced jointly by Vice President Albert Gore, HUD Secretary Henry G. Cisneros, Treasury Secretary Lloyd Bentsen, Attorney General Janet Reno, and ONDCP Director Dr. Lee Brown at a White House briefing on February 4, 1994. Operation Safe Home will combat violent crime in public housing through tightly coordinated law enforcement and crime prevention operations at targeted sites; Federal initiatives and policies to strengthen law enforcement and crime and drug prevention in public housing; and improved consultation and coordination between HUD and Federal law enforcement agencies and ONDCP on design and implementation of HUD crime-prevention initiatives.

For more information on Operation Safe Home, contact Crime Prevention and Security Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

Operation Pulling America's Communities Together (PACT) conducted through the U.S. Department of Justice, is a comprehensive, multi-agency approach to combatting violent crime in selective metropolitan areas. The goal is to develop a single, seamless strategy and plan using a variety of State and Federal sources, reducing the complexity of applications and program requirements of the variety of agencies and programs. The PACT cities are Atlanta, Georgia; Aurora/Denver, Colorado; District of Columbia; and Omaha, Nebraska.

For further information on Operation Pulling America's Communities Together contact the U.S. Department of Justice, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531. Telephone (202) 307–5966.

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(b) Allocation Amounts

(1) Federal Fiscal Year 1995 Funding. The amount available, to remain available until expended, for funding under this NOFA in FY 1995 is $250,391,741. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. Law 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program. Of the total $290 million appropriated, $13,925,000 will fund the Youth Sports Program; $17,406,250 will fund the Assisted Housing Drug Elimination Program; $10 million will fund drug elimination technical assistance, contracts and other assistance training, program assessments, and execution for or on behalf of public housing and resident organizations (including the cost of necessary travel for participants in such training); and $1,500,000 will fund drug information clearinghouse services. The remaining $247,168,750 of FY 1995 funds are being made available under this NOFA. In addition, $3,222,991 of carryover FY 1994 PHDEP program will be made available under this NOFA for a total amount of $250,391,741.

(2) Maximum Grant Award Amounts. HUD is distributing grant funds under this NOFA on a national competition basis. Maximum grant award amounts are computed on a sliding scale, using an overall maximum cap, depending upon the number of public housing agency or Indian housing authority units. The unit count includes rental, Turnkey III Homeownership, Mutual Help Homeownership and Section 23 leased housing bond-financed projects. Units in the Turnkey III Homeownership and Mutual Help programs are counted if they have not been conveyed to the homebuyers prior to the application deadline in this NOFA. For Section 23 bond-finance projects, units are counted if they have not been conveyed or will not be conveyed with clear title to the housing authorities until the end of the bond term. Eligible projects must be covered by an annual contributions contract (ACC) or annual operating agreement (AOA) during the period of the grant award. *Unit counts will be taken from the housing authority low-rent operating budget (form HUD–52564) for the housing authority fiscal year ending June 30, September 30, December 31, 1994 or March 31, 1995.*

Amendments to the Drug Elimination Program made by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), permit grants, under certain conditions as given in section (c)(9) of this NOFA, below, to be used to eliminate drug-related crime in housing owned by PHAs that is not housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. Where an application is submitted for this category of housing, the amount of eligible funding will be determined on the same per-unit basis as for federally assisted housing units, above.

The maximum grant awards are as follows, although, as discussed below, in section I.(b)(4) (Reduction of Requested Grant Amounts and Special Conditions), the Department may adjust the amount of any grant award:

(i) For housing authorities with 1–499 units: The maximum grant award is either a maximum grant award cap of $500.00 per unit, *or a total minimum grant award of $50,000, whichever is greater;*

(ii) For housing authorities with 500–1,249 units: The maximum grant award is either a maximum grant award cap of $300.00 per unit, *or a total minimum grant award of $250,000, whichever is greater;*

(iii) For housing authorities with 1,250 or more units: The maximum grant award is either a maximum grant award cap of $250.00 per unit, *or a total minimum grant award of $375,000 whichever is greater;*

Example: A housing authority with 780 units could apply for a maximum grant award of $250,000, i.e. the minimum grant award of $250,000 for housing authorities with 500–1,249 units is greater than the per unit award calculation computed at $300.00 per unit × 780 units = $234,000.

Example: A housing authority with 4,234 units could apply for a minimum grant award of $1,058,500, i.e. computed at $250.00 per unit × 4,234 units = $1,058,500.

An applicant shall not apply for more funding than is permitted in accordance with the maximum grant award amount as described above. Any application requesting funding that exceeds the maximum grant award amount permitted will be rejected and will not be eligible for any funding *unless a computational error* was involved in the funding request. Section IV of this NOFA provides guidance regarding application curable and noncurable deficiencies.

Such an error will be considered a curable deficiency in the application. Section III.(d) (Checklist of Application Requirements) of this NOFA requires applicants to compute the maximum grant award amount for which they are eligible, as follows: *eligible dollar amount per unit × (times) number of units listed in the housing authority low-rent operating budget (form HUD–52564) for housing authority fiscal year ending, June 30, September 30, December 31, 1994 or March 31, 1995.* The applicant *is required to confirm the unit count* with the local HUD Field Office prior to submission of the application.

The amount computed in this way must be compared with the dollar amount requested in the application to make certain the amount requested *does not exceed the maximum grant award.*

(3) Reallocation. All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) (Reduction of Requested Grant Amounts and Special Conditions) below.

(4) Reduction of Requested Grant Amounts and Special Conditions. HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12 (PHAs), and 24 CFR 905.135 (IHAs) as applicable, and the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant fails to implement the program in its plan and/or fails to submit required reports;

(vi) The applicant has demonstrated an inability to manage HUD grants, particularly Drug Elimination Program grants; or

(vii) For any other reason where good cause exists.

(c) Eligibility

Funding under this NOFA is available *only for Public Housing Agencies and Indian Housing Authorities.* Although section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) makes public housing resident management corporations (RMCs) eligible for Drug Elimination Program funding, the 95 App. Act limited the funds appropriated ''for grants to public housing agencies''. The authorizing statute includes Indian housing authorities (IHAs) in the term ''public housing agencies'' and, therefore, IHAs are eligible for funding. Because RMCs, unlike IHAs, constitute a separate entity from PHAs under the authorizing statute, no funds are appropriated for RMCs as direct applicants under the 95 App. Act. However, RMCs may continue to receive funding from housing authority grantees to develop security and drug abuse prevention programs involving site residents as they have in the past.

An application for funding under this program may be for one or more of the following eligible activities. An applicant may submit *only one application* under this Notice of Funding Availability (NOFA). *Joint applications are not permitted under this program* with the following exception: housing authorities (HA) under a single administration (such as housing authorities managing another housing authority under contract or housing authorities sharing a common executive director) may submit a single application, even through each housing authority has its own operating budget. The following is a listing of eligible activities under this program and guidance as to their parameters:

(1) *Employment of Security Personnel.*

(i) *Contracted Security Guard Personnel.* Contracting for security guard personnel services in public and Indian housing developments proposed for funding is permitted under this program. Contracting for security guard personnel services is defined as a competitive process in which individual companies and/or individuals participate.

(A) Contracted security personnel funded by this program must perform services *not usually performed by local law enforcement agencies on a routine basis,* such as, patrolling inside buildings, providing guard services at building entrances to check for identification cards (Ids), or patrolling and checking car parking lots for appropriate parking decals.

(B) Contracted security personnel funded by this program must meet all relevant tribal, state or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(C) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel *are required* to enter into and

execute a security personnel contract that includes the following:

(1) The activities to be performed by the security personnel, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(1)(i)(D)) and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the security personnel are expressly prohibited from undertaking.

(3) Expenditures for activities under this section *will not be incurred by the grantee and/or funds released by the local HUD Field Office until the grantee has executed a contract for security guard services.*

(D) Security guard personnel funded under this program *shall be guided by a policy manual* (see below) that regulates, directs, and controls the conduct and activities of its personnel. *All security guard personnel must be trained at a minimum* in the areas described below in paragraph (2) of this section.

(1) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, *must exist or be completed* before a contract for services can be executed.

(2) *Areas that must be covered in the security guard manual include but are not limited to:* use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicle, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(F) *If the security guard contractor* collects officer activity information (which the Department recommends) for the housing authority, the contractor must use a housing authority approved activity form for the collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(ii) *Employment of Housing Authority Police.* Employment of additional housing authority police officers *is permitted only* by housing authorities that already have their own housing authority police departments, which are the following housing authorities:

(1) Baltimore Housing Authority and Community Development, Baltimore, MD.

(2) Boston Housing Authority, Boston, MA.

(3) Chicago Housing Authority, Chicago, IL.

(4) Cuyahoga Metropolitan Housing Authority, Cleveland, OH.

(5) Housing Authority of the City of Los Angeles, LA, CA.

(6) New York City Department of Housing Preservation and Development, NYC, NY.

(7) Housing Authority of the City of Oakland, Oakland, CA.

(8) Philadelphia Housing Authority, Philadelphia, PA.

(9) Housing Authority of the City of Pittsburgh, Pittsburgh, PA.

(10) Waterbury Housing Authority, Waterbury, CT.

(11) Virgin Islands Housing Authority, Virgin Islands.

Housing authorities that have their own housing authority police departments, *but that are not included* on this list must contact Malcolm E. Main, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 to request approval before they may apply for funding under this paragraph. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

(A) *If additional* housing authority police officers are to be employed for a service that is also provided by a local law enforcement agency, *the applicant must provide a cost analysis/budget narrative that demonstrates* the employment of additional housing authority police officers is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional housing authority police officers to be funded under this program *must be an increase* in the number of HA police officers authorized by the housing authority, although such additional housing authority police officers funded under a prior Drug Elimination Program Grant may qualify for funding as a continuing activity under section I.(c)(8) (Continuation of Current Program Activities) of this NOFA.

(C) *An applicant seeking funding for this activity must describe the baseline services by describing the current level of services provided by the local law enforcement agency and then demonstrate to what extent the additional housing authority police officers will represent an increase over these services.* For purposes of this NOFA, *the current level of services* is defined as ordinary and routine services provided or required to be provided under a cooperation agreement to the residents of public housing developments as a part of the overall, city and county-wide deployment of police resources, to respond to crime and other public safety incidents. These include the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding, and the kinds of services provided, e.g., 9–1–1 communications, processing calls for service, and investigative follow-up of criminal activity.

(D) Housing authority police funded by this program *must meet* all relevant state, tribal or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(E) The applicant and the cooperating local law enforcement agency *are required to enter into and execute a contract* that describes the following:

(1) The activities to be performed by the housing authority police, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(1)(ii)(F)), and how they will coordinate their activities with the local, state and Federal law enforcement agencies;

(2) The types of activities that the housing authority police are expressly prohibited from undertaking.

(F) Housing authority police departments funded under this program *shall be guided by a policy manual* (see paragraph (1) below) that regulates, directs, and controls the conduct and activities of its personnel. All HA police officers *must be trained at a minimum* in the areas described in paragraph (2), below.

(1) An up-to-date public housing police department policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, *must either exist or be completed within 12 months of the execution of the grant agreement.* Applicants must submit a plan and timetable for the implementation of training staff.

(2) *Areas that must be covered in the public housing police department manual include but are not limited to:*

use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, prisoner transport procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicle, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(G) *If the housing authority police department collects officer activity information* (which the Department recommends), a housing authority approved activity form must be used for the collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(H) *Applicants for funding of additional housing authority police officers must have* car-to-car (or other vehicles) and portable-to-portable radio communications links between housing authority police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. *The use of scanners (radio monitors) is not sufficient to meet the requirements of this section.* Applicants that do not have such links must submit a plan and timetable for the implementation of such communications links.

(I) Housing authority police departments funded under this program *that are not employing a community policing concept must submit a plan and timetable* for the implementation of community policing.

(1) *Community policing has a variety of definitions; however,* for the purposes of this program, it is defined as follows: Community policing is a method of providing law enforcement services that stresses a partnership among residents, police, government services, the private sector, and other local, state and Federal law enforcement agencies to prevent crime by addressing the conditions and problems that lead to criminal activity and the fear of this type of activity.

(2) *This method of policing involves a philosophy* of proactive measures, such as foot patrols, bicycle patrols, and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods in an effort to: reduce crime and fear of crime; assure the maintenance of order; provide referrals of residents, victims, and the homeless to social services and government agencies; assure feedback of police actions to victims of crime; and promote a law enforcement value system on the needs and rights of residents.

(J) Housing authority police departments funded under this program *that are not nationally or state accredited* must submit a plan and timetable *that may not exceed 24 months, from the execution of the grant agreement,* for such accreditation. Housing authorities may use either their state accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose.

(1) The law enforcement community developed a body of standards in 1981 against which law enforcement agencies could be evaluated. While some states have their own law enforcement accreditation program, the nationwide accreditation program is managed by the CALEA, which is located in Fairfax, VA. The purpose of accreditation is to reduce liability exposure of agencies and personnel, and to assure that law enforcement agencies meet a uniform body of standards.

(2) The *accreditation concept emphasizes* a voluntary, self-motivated approach by which organizations seek to achieve and maintain objectively verified high quality operations through periodic evaluations conducted by an independent, non-governmental body that has established standards for its ''clientele''. In simple terms, ''to accredit'' means to recognize or vouch for an agency as conforming to a body of standards related to a specific discipline—in this instance, law enforcement.

(3) The *process for CALEA consists of* formal application, mutual aid contract, an in-depth self assessment, an on-site assessment by Commission-selected practitioner assessors from outside the state of the requesting agency, and final Commission review and decision. Self-assessment enables an agency to establish proofs of compliance with standards specific to the agency to review its organization, management, operations, and administrative activities to determine if it believes it meets the requirements. Certain standards are mandatory based on health, life, safety, and importance to the community and the agency.

(4) Use of grant funds for public housing police department accreditation activities *is permitted.*

(5) *Funding is not permitted* to purchase or lease any military or law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc.

(K) Expenditures for activities under this section *will not be incurred by the grantee and/or funds released by the local HUD Field Office until the grantee has met all the above requirements.*

(L) In order to assist housing authorities to develop and administer relevant, fair, and productive contracts with local law enforcement agencies for the delivery of effective services to public housing residents, a *sample contract* for law enforcement services is provided with the application kit.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services.*

(i) Additional security and protective services to be funded under this program must be *over and above the baseline services, as defined below,* that the tribal, state or local government provides to the applying housing authority.

(A) *An applicant seeking funding for this activity must first establish a baseline by describing the current level of services* (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate to what extent the funded activity will represent an increase over this baseline.

Baseline services are defined as those law enforcement services the locality is contractually obligated to provide under its Cooperation Agreement with the applying housing authority (as required by the housing authority's Annual Contributions Contract).

(ii) *Communications and security equipment* to improve the collection, analysis, and use of information about drug-related criminal activities in a public housing community, such as surveillance equipment (e.g., Closed Circuit Television (CCTV), software, cameras, monitors, components and supporting equipment), computers accessing national, tribal, state or local government security networks and databases, facsimile machines, telephone equipment, bicycles, and motor scooters may be eligible items *if used exclusively* in connection with the establishment of a *law enforcement substation* on the funded premises or scattered site developments of the housing authority.

(iii) *If the local law enforcement agency collects officer activity information* (which the Department recommends) for the housing authority, it must use a housing authority approved activity form for the

collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(iv) *The Department encourages* housing authorities that are funded under this program to promote the implementation of community policing. For additional background on community policing, see the discussion at section I.(c)(1)(ii)(I), above.

(v) *Funding is not permitted* to purchase or lease any military or law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc.

(vi) Expenditures for activities under this section *will not be incurred by the grantee and/or funds released by the local HUD Field Office until the grantee and the local law enforcement agency execute a contract for the additional law enforcement services.*

(vi) In order to assist housing authorities to develop and administer relevant, fair, and productive contracts with local law enforcement agencies for the delivery of effective services to public and Indian housing residents a *sample contract* for law enforcement services is provided with the application kit.

(3) *Physical Improvements To Enhance Security.*

(i) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of barriers, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), software, cameras, monitors, components and supporting equipment) bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public and Indian housing developments that are designed to enhance security and discourage drug-related activities.

(ii) An activity that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program.

(iii) *Funding is not permitted* for physical improvements that involve the demolition of any units in a development.

(iv) *Funding is not permitted* for any physical improvements that would result in the displacement of persons.

(v) *Funding is not permitted* for the acquisition of real property.

(vi) All physical improvements must also be accessible to persons with disabilities. *For example,* some types of locks, buzzer systems, doors, etc., are not accessible to persons with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(4) *Employment of Investigators.*

(i) Employment of one or more individuals is permitted under this program to:

(A) Investigate drug-related crime in or around the real property comprising any public and Indian housing development; and

(B) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(ii) Investigators funded by this program must meet all relevant tribal, state or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(iii) The applicant, the cooperating local law enforcement agency, and the investigator(s) *are required,* before any investigators are employed, to enter into and *execute a written agreement* that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(4)(v), below) and how they will coordinate their activities with the local, state and Federal law enforcement agencies; and

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(iv) Under this section, reimbursable costs associated with the investigation of drug-related crime (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those incurred by the investigator.

(v) Investigators funded under this program *shall be guided by a policy manual* (see below) that regulates, directs, and controls their conduct and activities. All investigators *must be trained at a minimum* in the areas described below in paragraph (B) of this section.

(A) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, *must either exist or be completed within 12 months of the execution of the grant agreement.* Applicants must submit a plan and timetable for the implementation of training staff.

(B) *Areas that must be covered in the manual include but are not limited to:* use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicle, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(vi) *If an investigator(s) collect activity information* (which the Department recommends) for the housing authority, a housing authority approved activity form must be used for the collection, analysis and reporting of activities by investigators funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(vii) *Funding is not permitted* to purchase or lease any military or law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc.

(viii) Expenditures for activities under this section *will not be incurred by the grantee and/or funds released by the local HUD Field Office until the grantee has met all the above requirements.*

(5) *Voluntary Tenant Patrols.*

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. *Members must be volunteers and must be tenants of the public and Indian housing development that the tenant (resident) patrol represents.* Patrols established under this program are expected to patrol for drug-related criminal activity in the developments proposed for assistance, and to report these activities to the cooperating local law enforcement agency and tribal, state and Federal agencies, as appropriate. Grantees *are required* to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this

program. *The cost of this insurance will be considered an eligible program expense.*

(ii) The applicant, the cooperating local law enforcement agency, and the members of the tenant patrol are required, *before putting the tenant patrol into effect and expending any grant funds, to enter into and execute a written agreement that describes the following:*

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, the established policies, procedures, and practices that will govern the tenant patrol's performance and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightstick, clubs, handcuffs, or mace in the course of their duties under this program;

(C) Initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect); and

(D) *Tenant patrol members must be advised* that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a housing authority's liability insurance.

(iii) *Communication and related equipment* eligible for funding under this program shall be equipment that is reasonable, necessary, justified and related to the operation of the tenant patrol and that is otherwise permissible under tribal, State or local law.

(iv) Under this program, bicycles, motor scooters and uniforms (caps and other all seasonal clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets) to be used by the members of the tenant patrol are eligible items.

(v) *Drug elimination grant funds may not be used* for any type of financial compensation, such as any full-time wages or salaries for voluntary tenant patrol participants.

(6) *Programs To Reduce the Use of Drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing developments, including drug abuse prevention, intervention, referral and treatment programs, are permitted under this program. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. *Funding is permitted* for reasonable, necessary and justified purchasing or leasing of vehicles (whichever can be documented as the most cost effective) for resident youth and adult education and training activities directly related to ''Programs to reduce the use of drugs'' under this section. *Alcohol-related activities/ programs are not eligible for funding under this program.*

(i) *Drug Prevention.* Drug prevention programs that will be considered for funding under this part must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public housing that lead to drug-related problems, and thereby lower the risk of drug usage.

Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing developments, and the applicant must act to bring those available program components onto the premises. *Funding is permitted* for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred *only for training and education activities directly related to ''drug prevention programs''.* Activities that should be included in these programs are:

(A) *Drug Education Opportunities.* The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR 85.36) with professionals to provide appropriate training or workshops. The professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(B) *Family and Other Support Services.* Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the development or the community for public and Indian housing families.

(C) *Youth Services.* Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. *Activities or services funded under this program may not also be funded under the Youth Sports Program.*

(D) *Economic and Educational Opportunities for Residents and Youth.* Drug prevention programs *must demonstrate a capacity* to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(ii) *Intervention.* The aim of intervention is to *identify* public and Indian housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(iii) *Drug Treatment.*

(A) Treatment funded under this program shall be in or around the premises of the public and Indian housing developments proposed for funding.

(B) Funds awarded under this program shall be targeted towards the *development and implementation of new drug referral treatment services and/or aftercare (short and long care aftercare), or the improvement of, or expansion of such program services for public and Indian housing residents.*

(C) Each proposed drug program should address the following goals:

(1) Increase public and Indian resident accessibility to drug treatment services;

(2) Decrease criminal activity in and around public and Indian housing developments by reducing illicit drug use among public and Indian housing residents; and

(3) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal and postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(D) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(1) *Applicants may provide the service of formal referral arrangements* to other treatment programs not in or around public and Indian housing developments where the resident is able to obtain treatment costs from sources other than this program.

(2) Provide family and collateral counseling.

(3) Provide linkages to educational and vocational counseling.

(4) Provide coordination of services to appropriate tribal or local drug agencies, HIV-related service agencies, and mental health and public health programs.

(E) *Applicants must demonstrate a working partnership* with the Single State Agency or current tribal or state license provider or authority with drug/prevention program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(F) The Single State Agency or authority with drug/prevention program coordination responsibilities *must certify that the drug/prevention treatment proposal is consistent with the state treatment plan; and that the treatment service meets all state licensing requirements.*

(G) *Funding Is Not Permitted* for treatment of residents at any in-patient medical treatment programs and facilities.

(H) *Funding Is Not Permitted* for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(I) *Funding Is Not Permitted* for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(7) Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs). Funding under this program is permitted for housing authorities to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, youth programs, referral, and outreach efforts.

(8) Continuation of Current Program Activities. An applicant may apply to continue an existing activity funded under this program. The Department will evaluate an applicant's performance of the activity that the applicant wants to continue with additional funding under this NOFA. The Department will review and evaluate the applicant's conduct of the activity under the previous grant, including financial and program performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program Grant.

(9) PHA-Owned Housing. Funding *may be used for the activities described* in sections I.(c) (1) through (7) (Eligible activities) of this NOFA, to eliminate drug-related crime in housing owned by public housing agencies that is not public housing that is assisted under the United States Housing Act of 1937 and is not otherwise federally assisted (for example, housing that receives tenant subsidies under Section 8 is federally assisted and would not qualify, but housing that receives only state, tribal or local assistance would qualify), but only if they meet all of the following:

(i) The housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988; and

(ii) The PHA owning the housing demonstrates, on the basis of information submitted in accordance with the requirements of sections I.(d)(1), below, of this NOFA, that drug-related activity, and the problems associated with such activity, at the housing has a detrimental affect on or about the housing. For the purposes of this NOFA ''on or about'' means: on the premises or immediately adjacent to the premises of the real property comprising the public or other federally-assisted housing.

The High Intensity Drug Trafficking Areas (HIDTA) are areas identified as having the most critical drug trafficking problems that adversely impact the rest of the country. These areas are designed as HIDTA by the Director, Office of National Drug Control Policy pursuant to the Anti-Drug Abuse Act of 1988. As of November 1994 the following areas were confirmed by the Office of National Drug Control Policy Office, as designated high intensity drug trafficking areas:

—Washington, DC–Baltimore, MD which includes: Washington, DC, Alexandria, Arlington Cty, Fairfax Cty, Montgomery Cty, Prince Georges Cty, Charles Cty, Anne Arundel Cty, Howard Cty, Baltimore Cty, and Baltimore, MD.

—New York City (and a surrounding area that includes Nassau Cty, Suffolk County, and Westchester Cty, New York, and all municipalities therein; and Union Cty, Hudson Cty, and Essex Cty, New Jersey, and all municipalities therein).

—Los Angeles (and a surrounding area that includes Los Angeles Cty, Orange Cty, Riverside Cty, and San Bernardino Cty, and all municipalities therein).

—Miami (and a surrounding area that includes Broward Cty, Dade County, and Monroe Cty, and all municipalities therein).

—Houston (and a surrounding area that includes Harris Cty, Galveston Cty, and all municipalities therein).

—The Southwest Border (and adjacent areas that include San Diego and Imperial Cty, California, and all municipalities therein; Yuma Cty, Maricopa Cty, Pinal Cty, Pima Cty, Santa Cruz Cty, and Cochise Cty, Arizona, and all municipalities therein; Hidalgo Cty, Grant Cty, Luna Cty, Dona Ana Cty, Eddy Cty, Lea Cty, and Otero Cty, New Mexico, and all municipalities therein; El Paso Cty, Hudspeth Cty, Culberson Cty, Jeff Davis Cty, Presidio Cty, Brewster Cty, Pecos Cty, Terrell Cty, Crockett Cty, Val Verde Cty, Kinney Cty, Maverick Cty, Zavala Cty, Dimmit Cty, La Salle Cty, Webb Cty, Zapata Cty, Jim Hogg Cty, Starr Cty, Hidalgo Cty, Willacy Cty, and Cameron Cty, Texas, and all municipalities therein).

—U. S. Virgin Islands and Puerto Rico.

For further information on high intensity drug trafficking areas contact: Rich Yamamoto, at the Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. Telephone number: (202) 395–6755.

(10) *Ineligible Activities.* Funding is not permitted for any of the activities listed below *or Those Specified as Ineligible Elsewhere In This NOFA.*

(i) *Funding Is Not Permitted* for costs incurred before the effective date of the grant agreement, including, *but not limited to,* consultant fees related to the development of an application or the actual writing of the application.

(ii) *Funding Is Not Permitted* for the purchase of controlled substances for any purpose, *including* law enforcement sting operations.

(iii) *Funding Is Not Permitted* for compensating informants, including confidential informants.

(iv) *Funding Is Not Permitted* for the purchase of law enforcement and/or any other vehicles, including cars, vans, buses, and motorcycles.

(v) *Funding Is Not Permitted* to purchase or lease any military or law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles, protective vests, and any other supportive equipment, etc.

(vi) Drug elimination grant funds *may not be Used* for any full-time wages or salaries for voluntary tenant patrol participants.

(vii) *Funding Is Not Permitted* for the costs of leasing, acquiring, constructing or rehabilitating any facility space in a building or unit.

(viii) *Funding Is Not Permitted* for organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(ix) *Funding Is Not Permitted* for the costs of entertainment, amusements, or social activities, and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities *related to these ineligible activities. However, funding is permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, and education activities directly related to ''drug prevention programs.''*

(x) *Funding Is Not Permitted* for the costs (court costs, attorneys fees, etc.) related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings as provided in paragraph I.(c)(4)(i)(B) (Employment of Investigators) of this NOFA.

(xi) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, *the transfer of drug elimination program funds to any federal agency is not permitted.*

(xii) Alcohol-related activities and programs *are not eligible* for funding under this program.

(xiii) *Funding Is Not Permitted* under this NOFA for establishing councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(xiv) Indirect costs as defined in OMB Circular A–87 *are not permitted* under this program. *Only direct costs are permitted.*

(xv) *Funding Is Not Permitted* for any cash awards, such as scholarships, prizes, etc.

(xvi) Grant funds *shall not be used to supplant existing positions or programs.*

(d) Selection Criteria

HUD will review each application that it determines meets the requirements of this NOFA and assign points in accordance with the selection criteria. An application for funding under this program may be for one or more eligible activities.

An applicant may submit only one application under each Notice of Funding Availability (NOFA). Joint applications are not permitted under this program with the following exception: housing authorities under a single administration (such as housing authorities managing another housing authority under contract or housing authorities sharing a common executive director) may submit a single application, even though each housing authority has its own operating budget.

The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in the selection criteria. An application *must receive* a score of at least 70 points out of the maximum of 100 points that may be awarded under this competition to be eligible for funding.

After applications have been scored, Headquarters will rank the applications on a *national basis.* Awards will be made in *ranked order* until all funds are expended. HUD will select the highest ranking applications that can be fully funded. Applications with *tie scores* will be selected in accordance with the procedures in paragraph I.(e) (Ranking Factors). The terms ''housing'' and ''development(s)'' as used in the application selection criteria and submission requirements may include, as appropriate, housing described in section I.(c)(9) (PHA-Owned Housing), above, of this NOFA. Each application submitted for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *First Criterion: The Extent of the Drug-Related Crime Problem in the Applicant's Development or Developments Proposed for Assistance.* (Maximum Points: 40) To permit HUD to make an evaluation on the basis of this criterion, an application must include a description of the extent of drug-related crime and/or problems associated with it, in the developments proposed for funding. *An applicant must explain, in the application,* in what way a problem claimed to be associated with drug-related crime is a result of drug-related crime. The description should provide the following information:

(i) *Objective data.* The *best available objective data* on the nature, source, and frequency of the problem of drug-related crime and/or the problems associated with drug-related crime. This data may include (but not necessarily be limited to):

(A) *The nature and frequency of drug-related crime and problems associated with drug-related crime* as reflected by crime statistics and other data from Federal, tribal, state or local law enforcement agencies.

(B) *Information from records* on the types and sources of drug-related crime in the developments proposed for assistance.

(C) *Descriptive data* as to the types of offenders committing drug-related crime in the applicant's developments (e.g., age, residence, etc.).

(D) The *number of lease terminations or evictions* for drug-related criminal activity.

(E) The *number of emergency room admissions* for drug use or that result from drug-related crime (such information may not be available from police departments but only from fire departments or emergency medical services agencies).

(F) The *number of police calls for service* (not just drug-related) such as, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

(G) The *number of residents placed in treatment for substance abuse.*

(H) The *school dropout rate and level of absenteeism for youth* that the applicant can relate to drug-related crime. (If crime or other statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs, RCs or ROs).

(I) *Where appropriate,* the statistics should be reported both in real numbers, and as an annual percentage of the residents in each development (e.g., 20 arrests in a year for distribution of heroin in a development with 100

residents reflects a 20% occurrence rate). *The data should cover the most recent one-year period (a one-year period ending within 3 months of the date of the application).* If the data from the most recent one-year period is not used, an explanation must be provided. To the extent feasible, the data provided should be compared with data from a prior one-year period to show whether the current data reflects a percentage increase or decrease in drug-related crime and/or its associated problems during that prior period of time.

(J) *A reduction in drug-related crime in public and Indian housing developments where previous Drug Elimination grants have been in effect will not be considered a disadvantage to the applicant.*

(K) If funding is being sought for housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted, the application must demonstrate that the housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988, and the application must demonstrate that drug-related activity, and the problems associated with it, at the housing has a detrimental affect on or about the real property comprising the public or other federally assisted low-income housing. For the purposes of this NOFA ''on or about'' means: on the premises or immediately adjacent to the premises of the real property comprising the public or other federally-assisted housing.

(ii) *Other data on the extent of drug-related crime.* To the extent that objective data as described above may not be available, or to complement that data, the assessment may use data from other sources that have a direct bearing on drug-related crime and/or the problems associated with it in the developments proposed for assistance under this program. *However,* if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it. *Examples* of these data include (but are not necessarily limited to):

(A) *Resident and staff surveys on drug-related issues or on-site reviews to determine drug activity*; and local government or scholarly studies or other research in the past year that analyze drug activity in the targeted developments.

(B) *Vandalism cost and related vacancies attributable to drug-related crime.*

(C) *Information* from schools, health service providers, residents and local, state, tribal, and Federal law enforcement agencies; and the opinions and observations of individuals having direct knowledge of drug-related crime and/or the problems associated with it concerning the nature and frequency of these problems in the developments proposed for assistance. (These individuals *may include* local, state, tribal, and Federal law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(iii) In awarding points, HUD will evaluate the extent to which the applicant has provided the above data that reflects a drug-related crime problem, both in terms of the frequency and nature of the drug-related problems associated with drug-related crime in the developments proposed for funding as reflected by information submitted under paragraph (1)(i) (objective data), and (ii) (other data) of this section; and the extent to which such data reflects an increase in drug-related crime over a period of one year in the developments proposed for assistance. (Maximum Points Under Paragraphs (i) and (ii) of This Section: 15)

(iv) In awarding points, HUD will evaluate the extent to which the applicant has analyzed the data compiled under paragraphs (1)(i) and (ii) of this section, and has clearly articulated its needs for reducing drug-related crime in developments proposed for assistance. (Maximum Points: 5)

(v) In awarding points, HUD will evaluate and assign points between zero (0) and ten (10) according to the per capita incidence of robbery and homicide in their community relative to their per capita incidence on a nationwide basis. Data on robbery and homicide incidence were chosen because of the demonstrated relationship of a substantial portion of these crimes with drug abuse. The community data will be taken from the Uniform Crime Reports (UCRs) of the U.S. Department of Justice (FBI crime data) and will be at the city level, when available, or at the county level. The crime incidence data and the point values will be computed by HUD. (Maximum Points: 10)

(vi) In awarding points, HUD will evaluate and assign points between zero (0) and ten (10) according to the per capita incidence of drug arrests. In instances where the Department of Justice records do not contain community submission data, points will be assigned based on state metropolitan and nonmetropolitan averages relevant to such areas. (Maximum Points: 10)

(2) *Second Criterion: The Quality of the Plan To Address the Crime Problem in the Public or Indian Housing Developments Proposed for Assistance, Including the Extent to Which the Plan Includes Initiatives That Can Be Sustained Over a Period of Several Years.* (Maximum Points: 30) In assessing this criterion, HUD will consider the following factors:

(i) To permit HUD to make an evaluation on the basis of this criterion, an application must include the applicant's plan for addressing drug-related crime and/or its associated problems. This means a narrative description of the applicant's activities for addressing drug-related crime and/or its associated problems in each of the developments proposed for assistance under this part must be included in the application. The activities eligible for funding under this program are listed in section I.(c) of this NOFA, above, although *the applicant's plan must include* all of the activities that will be undertaken to address the problem, whether or not they are funded under this program. If the same activities are proposed for all of the developments that will be covered by the plan, the activities do not need to be described separately for each development. Where different activities are proposed for different developments, these activities and the developments where they will take place must be separately described.

The description of the plan in the application must include (but not necessarily be limited to) the following information:

(A) A *narrative describing each activity proposed* for Drug Elimination Program funding in the applicant's plan, any additional relevant activities being undertaken by the applicant (e.g., a drug treatment program for residents funded by an agency other than HUD), and how all of these activities interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/law enforcement techniques (such as community policing), and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current activities.

(1) *If grant amounts are to be used for contracting security guard personnel*

services in public and Indian housing developments the application must describe how the requirements of section I.(c)(1)(i) (Employment of Security Personnel) of this NOFA will be met.

(2) *If grant amounts are to be used for public housing authority police officers* the application must describe how the requirements of section I.(c)(1)(ii) (HA Police Departments) of this NOFA will be met.

(3) *If grant amounts are to be used for reimbursement of local law enforcement agencies* for additional security and protective services the application must describe how the requirements of section I.(c)(2) (Reimbursement of Local Law Enforcement Agencies) of this NOFA will be met.

(4) *If grant amounts are to be used for physical improvements* in public and Indian housing developments proposed for funding under section I.(c)(3) (Physical Improvements) of this NOFA the application must discuss how these improvements will be coordinated with the applicant's modernization program, if any, under 24 CFR part 968 or 24 CFR part 905, subpart I.

(5) *If grant amounts are to be used for employment of investigators* the application must describe how the requirements of section I.(c)(4) (Employment of Investigators) of the NOFA will be met.

(6) *If grant amounts are to be used for voluntary tenant patrols* the application must describe how the requirements of section I.(c)(5) (Voluntary tenant patrol) of this NOFA will be met.

(7) *If grant amounts are to be used for a prevention, intervention or treatment program* to reduce the use of drugs in and around the premises of public and Indian housing developments as provided in I.(c)(6) (Programs to Reduce the Use of Drugs) of this NOFA, the application *must discuss* the nature of the program, how the program represents a prevention or intervention strategy, and how the program will further the HA's strategy to eliminate drug-related crime and/or its associated problems in the developments proposed for assistance.

(B) The *anticipated cost of each activity in the plan*, a description of how funding decisions were reached (cost analysis), and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each activity.

(C) *An implementation timetable that includes* tasks, deadlines, cost and persons responsible for implementing (beginning, achieving identified milestones, and completing) each activity in the plan.

(D) *The role of tenants, and RMCs, RCs, and ROs (where these organizations exist) in planning and developing the application for funding and in implementing the applicant's plan.* The application must provide the name of the RMC or incorporated RC or RO that will develop any security and drug abuse prevention programs under section I.(c)(7) (RMCs, RCs, and ROs) of this NOFA involving site residents.

(E) *The role of any other entities (e.g., tribal, local and state governments, community organizations and Federal agencies) in planning and carrying out the plan.* This can be shown, *for example*, by providing letters of support or commitment from governmental or private entities of the financial or other resources (e.g., staff or in-kind resources) that they agree to provide.

(F) *The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the plan*, and how they will be allocated to plan activities that can be sustained over a period of years.

(G) *A discussion of how the applicant's plan will serve* to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4). Housing authorities are encouraged to hire qualified residents in all positions.

(H) *Program evaluation.* The plan *must specifically discuss* how the activities funded under this program will be evaluated by the applicant, so that the program's progress can be measured. *The evaluation may also be used to modify activities* to make them more successful or to identify unsuccessful strategies. *The evaluation must identify* the types of information the applicant will need to measure the plan's success (e.g. tracking changes in identified crime statistics); and *indicate the method* the applicant will use to gather and analyze this information.

(ii) In assessing this criterion, HUD will consider the quality and thoroughness of an applicant's plan in terms of the information requested in section I.(d)(2)(i), ''Quality of the plan,'' of this NOFA, including the extent to which:

(A) *The applicant's plan clearly describes the activities* that are being proposed by the applicant, including those activities to be funded under this program and those to be funded from other sources, and indicates *how these proposed activities provide for a comprehensive approach* to eliminate drug-related crime and/or its associated problems (as described under the first criterion, section I.(d)(1), ''The extent of the drug-related crime problem'' of this NOFA, above) in the developments proposed for funding. (Maximum Points: 10)

(B) *The applicant's plan provides* a budget narrative with cost analysis for each activity and describes the financial and other resources (under this program and other sources) that may reasonably be expected to be available to carry out each activity. (Maximum Points: 5)

(C) *The applicant's plan is realistic* in terms of time, personnel, and other resources, considering the applicant's timetable for beginning and completing each component of the plan and the amount of funding requested under this program and other identified resources available to the applicant. (Maximum Points: 2)

(D) *As described in the plan*, tenants, and RMCs/RCs/ROs, where they exist, are involved in planning and developing the application for funding and in implementing the applicant's plan. (Maximum Points: 3)

(E) *As described in the plan*, other entities (e.g., tribal, local and state governments and community organizations) are involved in planning and carrying out the applicant's plan. (Maximum Points: 2)

(F) *The plan includes activities that can be sustained over a period of years* and identifies resources that the applicant may reasonably expect to be available for the continuation of the activities at the end of the grant term. (Maximum Points: 3)

(G) *The applicant's plan will serve* to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4). (Maximum Points: 2)

(H) *The applicant has developed an evaluation process to measure the success of the plan.* (Maximum Points: 3)

(3) *Third Criterion: The Capability of the Applicant To Carry Out the Plan.* (Maximum Points: 15) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its housing developments, as measured by its performance with respect to operative HUD requirements under the ACC or ACA and the Public Housing

Management Assessment Program at 24 CFR part 901. In evaluating administrative capability under this factor, HUD will also consider, and *the application must include in the form of a narrative discussion, the following information:*

(A) Whether there are any unresolved findings from prior HUD reports (e.g. performance or finance), reviews or audits undertaken by HUD, the Office of the Inspector General, the General Accounting Office, or independent public accountants;

(B) Whether the applicant is operating under court order; and,

(C) *If applicable*, the progress made by a troubled housing authority in achieving goals established under a Memorandum of Agreement (MOA) executed with HUD. (Maximum Points Under Paragraph (3)(i)(A)(B) and (C) of This Section: 2)

(ii) *The application must discuss the extent* to which the applicant has implemented effective screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f), 24 CFR 100.202, 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR part 966, subpart B, 25 CFR 905.340 and Section 503 of NAHA; or undertaken other management actions to eliminate drug-related crime and/or its associated problems in its developments. (Maximum Points: 2)

(iii) *The application must identify* the applicant's participation in HUD grant programs (such as CGP, CIAP, youth sports, child care, resident management, Drug Elimination Program grants, etc.) within the preceding three years, and discuss the degree of the applicant's success in implementing and managing these grant programs. (Maximum Points: 4)

(iv) *The local HUD Field Office shall evaluate the extent* of the applicant's success, effort, or failure in implementing and managing an effective program under previous Drug Elimination grants (preceding three years). Successful and effective management of previous Drug Elimination grant program(s) will result in up to 7 (seven) extra points. Evidence of an unjustified failure to make adjustments to an ineffective program will result in a deduction of up to 7 (seven) points. This evaluation will be based upon HUD's Line of Credit Control System (LOCCS) reports, PHDEP performance and financial reports, and HUD reviews. (Maximum Points: Plus (+) 7 or Minus (−) 7 Points)

(4) *Fourth Criterion: The Extent to Which Tenants, the Local Government and the Local Community Support and Participate in the Design and Implementation of the Activities Proposed To Be Funded Under the Application*. (Maximum Points: 15) In assessing this criterion, HUD will consider the following factors:

(i) *The application must include a discussion of the extent to which* community representatives and tribal, local, state and Federal government officials are actively involved in the design and implementation of the applicant's plan, as evidenced by descriptions of planning meetings held with community representatives and local government officials, letters of commitment to provide funding, staff, or in-kind resources, or written comments on the applicant's planned activities. (Maximum Points: 5)

(ii) *The application must discuss the extent to which* the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). The application must also include a certification by the Chief Executive Officer (CEO) of a state or a unit of general local government in which the developments proposed for assistance are located that the locality is meeting its obligations under the Cooperation Agreement with the housing authority, *Particularly* with regard to current baseline law enforcement services. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so. Whether or not a locality is meeting its obligations under the Cooperation Agreement with *the applicant, the application must describe the current level of law enforcement services being provided to the developments proposed for assistance.* (Maximum Points: 4)

(iii) *The extent to which public and Indian housing development residents* (tenants), and an RMC, RC or RO, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application. *The application must include a summary* of each written resident and resident organization comment, as required by 24 CFR 961.18, and the applicant's response to and action on these comments. If there are no resident or resident organization comments, the applicant *must provide an explanation* of the steps taken to encourage participation, even though they were not successful. (Maximum Points: 2)

(iv) The *extent to which the applicant* is already undertaking, or has undertaken, participation in local, state, tribal or Federal anti-drug related crime efforts (such as Operation Weed and Seed, Operation Safe Home, or Operation PACT) or is successfully coordinating its law enforcement activities with local, state, tribal or federal law enforcement agencies. (Maximum Points: 4)

(e) Ranking Factors

(1) Each application for a grant award that is submitted in a timely manner to the local HUD Field Office with delegated public housing responsibilities or, in the case of IHAs, to the appropriate Field Office of Native American Programs (FONAPs), that otherwise meets the requirements of this NOFA, will be evaluated in accordance with the selection criteria specified above.

(2) An application must receive a score of at least 70 points out of the maximum of 100 points that may be awarded under this competition to be eligible for funding.

(3) After applications have been scored, Headquarters will rank the applications on a *national basis.*

(4) In the event that *two eligible applications* receive the same score, and both cannot be funded because of insufficient funds, the application with the highest score in *Selection Criterion 3 ''The Capability of the Applicant To Carry Out the Plan'' will be selected.* If Selection Criterion 3 is scored identically for both applications, the scores in Selection Criteria 1, 2, and 4 will be compared in this order, one at a time, until one application scores higher in one of the factors and is selected. If the applications score identically in all factors, the application that requests less funding will be selected.

(5) All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) (Reduction of Requested Grant Amounts and Special Conditions).

(f) General Grant Requirements. The following requirements apply to this program:

(1) Grantees are required to use grant funds under this program in accordance with this NOFA, 24 CFR part 961, 24 CFR part 85, 24 CFR part 84, applicable statutes, HUD regulations, Notices, Handbooks, OMB circular, grant

agreements/amendments, and the grantee's approved plan, budget (SF–424A), budget narratives and timetable.

(2) *Applicability of OMB Circular and HUD fiscal and audit controls.* The policies, guidelines, and requirements of this NOFA, 24 CFR part 961, 24 CFR part 85, 24 CFR part 84, and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this program; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs, RCs and ROs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; and OMB Circular No. A–133.

(3) *Cost Principles.* Specific guidance in this NOFA, 24 CFR part 961, 24 CFR part 85, 24 CFR part 84, OMB Circular A–87, other applicable OMB cost principles, HUD program regulations, Notices, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements will be followed in determining the reasonableness and allocability of costs. *All costs must be reasonable, necessary and justified with cost analysis.* PHDEP Funds must be disbursed by the grantee within *seven calendar days* after receipt of drawdown. Grant funds must be used only for Drug Elimination Program purposes. *Direct costs are those that can be identified specifically with a particular activity or function in this NOFA and cost objectives in OMB Circular A–87. Indirect cost are not permitted in this program.* Administrative requirements for Drug Elimination Program grants will be in accordance with 24 CFR part 85. Acquisition of property or services shall be in accordance with 24 CFR 85.36. All equipment acquisitions will remain the property of the grantee in accordance with 24 CFR 85.32. ONAP procurement standards are in 24 CFR part 905.

(4) *Grant Staff Personnel.* (i) All persons or entities compensated by the grantee for services provided under a Drug Elimination Program grant *must meet all applicable* personnel or procurement requirements and shall be required as a condition of employment to meet all relevant state, local and tribal government, insurance, training, licensing, or other similar standards and requirements.

(ii) Compensation for personnel (including supervisory personnel, such as a grant administrator or drug program coordinator, and support staff, such as counselors and clerical staff) hired for grant activities *IS PERMITTED* and may include wages, salaries, and fringe benefits.

(iii) All grant personnel must be necessary, reasonable and justified. Job descriptions must be provided for all grant personnel. *Excessive staffing is not permitted.*

(iv) *Housing authority staff responsible for management/coordination of PHDEP programs shall be compensated with grant funds only for work performed directly for PHDEP grant-related activities and shall document the time and activity involved in accordance with 24 CFR 85.20.*

(5) *Term of Grant.* The FY 95 grant project must be completed within, and shall not exceed, 24 months from the date of execution of the grant agreement, unless an extension and grant amendment (HUD Form 1044) are approved by the local HUD Field Office. After the award of the grant the maximum extension allowable for any project period is 6 months. Any funds not expended at the end of the grant term shall be remitted to HUD.

(6) *Duplication of Funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, such as modernization or CIAP, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Grant Program. The grantee must establish an auditable system to provide adequate accountability for funds which it has been awarded. *The applicant has the responsibility to ensure there is no duplication of funding sources.*

(7) *Sanctions.*

(i) HUD may impose sanctions if the grantee:

(A) Is not complying with the requirements of 24 CFR part 961 or of other applicable Federal law;

(B) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports under 24 CFR 961.28;

(C) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(D) Does not adhere to grant agreement requirements or special conditions;

(E) Proposes substantial plan changes to the extent that, if originally submitted, would have resulted in the application not being selected for funding;

(F) Engages in the improper award or administration of grant subcontracts;

(G) Does not submit reports; or

(H) Files a false certification, for example, those listed under section I.(d) of this NOFA.

(ii) HUD may impose the following sanctions:

(A) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(B) Disallow all or part of the cost of the activity or action not in compliance;

(C) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(D) Require that some or all of the grant amounts be remitted to HUD;

(E) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(F) Withhold further awards for the program or

(G) Take other remedies that may be legally available.

(8) *Notification.* After completion of the ranking and environmental reviews as required by 24 CFR 961.15(d), HUD will send written notification to all applicants of whether or not they have been selected.

(9) *Grant Agreement.* After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form HUD–1044) setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions, including sanctions for violation of the agreement. The grant agreement (Form HUD–1044) will be effective upon the signature of the Director, Public Housing Division or Administrator, FONAP.

II. Application Process

(a) Application Kit: An application kit may be obtained, and assistance provided, from the local HUD Field Office with delegated public housing responsibilities over an applying public housing agency, or from the Field Office of Native American Programs having jurisdiction over the Indian housing authority making an application, or by calling HUD's Community Relations and Involvement Clearinghouse, telephone 1–800–578–3472. The application kit contains information on all exhibits and certifications required under this NOFA.

(b) Application Submission: Applications are due on or before *Friday, April 14, 1995, at 3:00 PM, local time. This application deadline is firm as to date and hour.* In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants *should* take this practice into account

and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Applications (original and two copies) must be physically received by the deadline at the local HUD Field Office with delegated public housing responsibilities Attention: Director, Public Housing Division, or, in the case of IHAs, to the local HUD Field Office of Native American Programs Attention: Administrator, Field Office of Native American Programs, as appropriate. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. *Applications received after the deadline date and hour, Friday, April 14, 1995, at 3:00 PM, local time, will not be considered.*

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, the application submitted to HUD shall include, in addition to those requirements listed under section I.(d) (Selection Criteria) of this NOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding, at least the following items:

(a) *Applicant Data Form.* The applicant must complete the form for database entry. The form is provided in the application kit.

(b) *Application for Federal Assistance, Standard Form SF–424.* The SF–424 is the face sheet for the application. The applicant must complete and sign the form. The form is provided in the application kit.

(c) *Standard Form SF–424A Budget Information (non-construction programs), with attached budget narrative(s) for budget preparation, with all supporting justification and documentation.* The SF–424A, with attached budget narrative, must be completed and the applicant must describe each major activity proposed for funding, e.g., employment of security personnel (security guards and housing authority police officers), reimbursement of local law enforcement services, physical improvements, employment of investigators, voluntary tenant (resident) patrols, drug prevention, intervention, and treatment programs to reduce the use of drugs. The budget narrative form(s)/cost analysis must be attached to the SF–424A. The form is provided in the application kit.

(d) *Applicants must verify their unit count with the local HUD field office prior to submitting the application.* Applicants *must* compute the maximum grant award amount for which they are eligible (eligible dollar amount per unit x (times) number of units listed in the housing authority low-rent operating budgets (form HUD–52564) for *housing authority fiscal year ending June 30, September 30, December 31, 1994 or March 31, 1995* and compare it with the dollar amount requested in the application to make certain the amount requested *does not exceed* the permitted maximum grant award.

(e) *Standard Form SF–424B, Assurances, (non-construction programs) for pre-award assurances.* The applicant must complete and sign the form. The form is provided in the application kit.

(f) *Certifications.* Applications must include the following certifications (certifications are provided in the application kit):

(1) A certification that the applicant will maintain a *drug-free workplace* in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(2) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities generally prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan. Indian housing authorities established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, *but* Indian housing authorities established under state law *are not* excluded from coverage.

(3) *If applying for drug treatment program funding,* a certification by the applicant that the applicant has notified and consulted with the relevant local tribal commission, Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the *proposed drug prevention/treatment program* has been reviewed by the relevant local tribal commission, Single State Agency or other local authority and is consistent with the tribal or State treatment plan.

(4) A certification (the certification is provided in the application kit) by the Chief Executive Officer (CEO) of a state, tribal or a unit of general local government in which the developments proposed for assistance are located that:

(i) Grant funds provided under this program will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address drug-related crime and/or its associated problems;

(ii) Any reimbursement of local law enforcement agencies for additional security and protective services to be provided under section I.(c)(2) of this NOFA meet the requirements of that section.

(5) A certification from the chief of the local law enforcement agency:

(i) *If* the application is for employment of security guard personnel, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the provider of the security personnel in accordance with the requirements of sections I.(c)(1) (Employment of security guard personnel) of this NOFA;

(ii) *If* the application is for employment of investigators, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the investigators, in accordance with the requirements of sections I.(c)(4) (Employment of investigators) of this NOFA;

(iii) *If* the application is for voluntary tenant (resident) patrol funding, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the voluntary tenant patrol, in accordance with the requirements of sections I.(c)(5) (voluntary tenant (resident) patrol) of this NOFA.

(6) A certification by the RMC, RC or RO, or other involved resident group where an RMC, RC or RO do not exist, that the residents participated in the preparation of the grant application with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(g) *HUD Form 2880, Applicant Disclosures.* The form is provided in the application kit.

IV. Corrections To Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's

letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(i) Are not necessary for HUD review under selection criteria/ranking factors; and

(ii) Would not improve the quality of the applicant's program proposal.

(c) *An example of a curable technical deficiency* would be the failure of an applicant to submit a required assurance, budget narrative, certification, applicant data form, summaries of written resident comments, incomplete forms such as the SF–424 or lack of required signatures, appendixes and documentation referenced in the application or a computational error based on the use of an incorrect number(s) such as incorrect unit counts. These items are discussed in the application kit and samples, as appropriate, are provided.

(d) *An example of a non-curable defect or deficiency* would be a missing SF–424A (Budget Information).

V. Other Matters

(a) Nondiscrimination and Equal Opportunity. The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); 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-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that ''no Indian tribe in exercising powers of self-government shall...deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.'' The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) 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;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(5) 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.

(b) Environmental Impact. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(c) *Federalism impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have ''Federalism implications'' within the meaning of the Order. The rule implements a program that encourages housing authorities to develop a plan for addressing the problem of drug-related crime, and makes available grants to housing authorities to help them carry out their plans. As such, the program would help housing authorities combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the rule generally tracks the statute and involves little implementing discretion.

(d) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, *the Family* has determined that the provisions of this rule have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This rule would implement a program that would encourage HAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help housing authorities to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

(e) *Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures.* Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) *Section 103 HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to

apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. *However,* a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) *Section 112 HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

(h) *Prohibition Against Lobbying Activities.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. *Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under state law are not excluded from coverage.*

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 21, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A: Listing of Addresses for HUD Field Offices Accepting Applications for the FY 1995 Public Housing Drug Elimination Program.

HUD—New England Area: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts HUD Field Office

Public Housing Division, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5234, TDD Number: (617) 565–5453, Office hours: 8:30 am–5:00 pm local time.

Hartford, Connecticut HUD Field Office

Public Housing Division, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, TDD Number: (203) 240–4665, Office hours: 8:00 am–4:30 pm local time.

Manchester, New Hampshire HUD Field Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD Number: (603) 666–7518, Office hours: 8:00 am–4:30 pm local time.

Providence, Rhode Island HUD Field Office

Public Housing Division, 10 Weybosset Street, Sixth Floor, Providence, Rhode Island 02903–2808, (401) 528–5351, TDD Number: (401) 528–5364, Office hours: 8:00 am–4:30 pm local time.

HUD—New York, New Jersey Area: New York, New Jersey

New York HUD Field Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, TDD Number: (212) 264–0927, Office hours: 8:30 am–5:00 pm local time.

Buffalo, New York HUD Field Office

Public Housing Division, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD Number: Number not available, Office hours: 8:00 am–4:30 pm local time.

Newark, New Jersey HUD Field Office

Public Housing Division, One Newark Center—12th Floor, Newark, New Jersey 07102–5260, (201) 622–7900, TDD Number: (201) 645–6649, Office hours: 8:30 am–5:00 pm local time.

HUD—Midatlantic Area: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania HUD Field Office

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD Number: (215) 597–5564, Office hours: 8:00 am–4:30 pm local time.

Washington, D.C. HUD Field Office

Public Housing Division, 820 First Street N.E., Washington, D.C. 20002–4502, (202) 275–9200, TDD Number: (202) 275–0967, Office hours: 8:00 am–4:30 pm local time.

Baltimore, Maryland HUD Field Office

Public Housing Division, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, TDD Number: (410) 962–0106, Office hours: 8:00 am–4:30 pm local time.

Pittsburgh, Pennsylvania HUD Field Office

Public Housing Division, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428, TDD Number: (412) 644–5747, Office hours: 8:00 am–4:30 pm local time.

Richmond, Virginia HUD Field Office

Public Housing Division, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, TDD Number: (804) 278–4501, Office hours: 8:00 am–4:30 pm local time.

Charleston, West Virginia HUD Field Office

Public Housing Division, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TDD Number: (304) 347–5332, Office hours: 8:00 am–4:30 pm local time.

HUD—Southeast Area: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia HUD Field Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD Number: (404) 730–2654, Office hours: 8:00 am–4:30 pm local time.

Birmingham, Alabama HUD Field Office

Public Housing Division, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7601, TDD Number: (205) 290–7624, Office hours: 7:45 am–4:30 pm local time.

Louisville, Kentucky HUD Field Office

Public Housing Division, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–6161, TDD Number: (502) 582–5139,

Jackson, Mississippi HUD Field Office

Public Housing Division, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 975–4746, TDD Number: (601) 975–4717, Office hours: 8:00 am–4:45 pm local time.

Greensboro, North Carolina HUD Field Office

Public Housing Division, 2306 West Meadowview Road, Greensboro, North Carolina 27407, (919) 547–4000, TDD Number: 919–547–4055, Office hours: 8:00 am–4:45 pm local time.

Caribbean HUD Field Office

Public Housing Division, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, TDD Number: Number not available, Office hours: 8:00 am–4:30 pm local time.

Columbia, South Carolina HUD Field Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, TDD Number: Number not available, Office hours: 8:00 am–4:45 pm local time.

Knoxville, Tennessee HUD Field Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust Street, S.W., Room 333, Knoxville, Tennessee 37902–2526, (615) 545–4384, TDD Number: (615) 545–4379, Office hours: 7:30 am–4:15 pm local time.

Nashville, Tennessee HUD Field Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, TDD Number: (615) 736–2886, Office hours: 7:45 am–4:15 pm local time.

Jacksonville, Florida HUD Field Office

Pubic Housing Division, Southern Bell Towers, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, TDD Number: (904) 232–2357, Office hours: 7:45 am–4:30 pm local time.

HUD—Midwest Area: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois HUD Field Office

Public Housing Division, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5680, TTD Number: (312) 353–7143, Office hours: 8:15 am–4:45 pm local time.

Detroit, Michigan HUD Field Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 1645, Detroit, Michigan 48226–2592, (313) 226–6880, TDD Number: (313) 226–7812, Office hours: 8:00 am–4:30 pm local time.

Indianapolis, Indiana HUD Field Office

Public Housing Division, 151 North Delaware Street, Suite 1200, Indianapolis, Indiana 46204–2526, (317) 226–6303, TDD Number: (317)226–7081, Office hours: 8:00 am–4:45 pm local time.

Grand Rapids, Michigan HUD Field Office

Public Housing Division, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2127, TDD Number: Number not available, Office hours: 8:00 am–4:45 pm local time.

Minneapolis-St. Paul, Minnesota HUD Field Office

Public Housing Division, Bridge Place Building, 220 2nd Street South, Minneapolis, Minnesota 55401–2195, (612) 370–3000, TTD Number: (612) 370–3186, Office hours: 8:00 am–4:30 pm local time.

Cincinnati, Ohio HUD Field Office

Public Housing Division, 525 Vine Street, Suite 700, Cincinnati, Ohio 45202–3188, (513) 684–2884, TDD Number: (513) 684–6180, Office hours: 8:00 am– 4:45 pm local time.

Cleveland, Ohio HUD Field Office

Public Housing Division, Renaissance Building, 1375 Euclid Avenue, Fifth Floor, Cleveland, Ohio 44115–1815, (216) 522–4065, TTD Number: Number not available, Office hours: 8:00 am–4:40 pm local time.

Columbus, Ohio HUD Field Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, TDD Number: Number not available, Office hours: 8:30 am–4:45 pm local time.

Milwaukee, Wisconsin HUD Field Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TDD Number: Number not available, Office hours: 8:00 am–4:30 pm local time.

HUD—Southwest Area: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas HUD Field Office

Public Housing Division, 1600 Throckmorton Street, Room 304, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5934, TDD Number: (817) 885–5447, Office hours: 8:00 am–4:30 pm local time.

Houston, Texas HUD Field Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096, (713) 834–3235, TDD Number: Number not available, Office hours: 7:45 am–4:30 pm local time.

San Antonio, Texas HUD Field Office

Public Housing Division, Washington Square, 800 Dolorosa Street, Room 206, San Antonio, Texas 78207–4563, (512) 229–6783, TDD Number: (512) 229–6783, Office hours: 8:00 am–4:30 pm local time.

Little Rock, Arkansas HUD Field Office

Public Housing Division, TCBY Tower, 425 West Capitol Avenue, Room 900, Little Rock, Arkansas 72201–3488, (501) 324–5935, TDD Number: (501) 324–5931, Office hours: 8:00 am–4:30 pm local time.

New Orleans, Louisiana HUD Field Office

Public Housing Division, Fisk Federal Building, 1661 Canal Street, Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7251, TDD Number: Number not available, Office hours: 8:00 am–4:30 pm local time.

Oklahoma City, Oklahoma HUD Field Office

Public Housing Division, Alfred P Murrah Federal Building, 200 N.W. 5th Street, Room 803, Oklahoma City, Oklahoma 73102–3202, (405) 231–4857, TDD Number: (405) 231–4891, Office hours: 8:00 am–4:30 pm local time.

Albuquerque, New Mexico HUD Field Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463, TDD Number: (505) 262–6463, Office hours: 7:45 am–4:30 pm local time.

Great Plains: Iowa, Kansas, Missouri, Nebraska,

Kansas City, Kansas HUD Field Office

Public Housing Division, Gateway Tower II, 400 State Avenue, Room 400, Kansas City, Kansas 66101–2406, (913) 551–5488, TDD Number: (913) 551–5815, Office hours: 8:00 am–4:30 pm local time.

Omaha, Nebraska HUD Field Office

Public Housing Division, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, TDD Number: (402) 492–3183, Office hours: 8:00 am–4:30 pm local time.

St. Louis, Missouri HUD Field Office

Public Housing Division, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6583, TDD Number: (314) 539–6331, Office hours: 8:00 am–4:30 pm local time.

Des Moines, Iowa HUD Field Office

Public Housing Division, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309–2155, (515) 284–4512, TDD Number: (515) 284–4728, Office hours: 8:00 am–4:30 pm local time.

HUD—Rocky Mountains Area: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado HUD Field Office

Public Housing Division, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5248, TDD Number: (303) 672–5248, Office hours: 8:00 am–4:30 pm local time.

HUD—Pacific/Hawaii Area: Arizona, California, Hawaii, Nevada, Guam, America Samoa

San Francisco, California HUD Field Office

Public Housing Division, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, TDD Number: (415) 556–8357, Office hours: 8:15 am–4:45 pm local time.

Honolulu, Hawaii HUD Field Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Room 500, Honolulu, Hawaii 96813–4918, (808) 541–1323, TDD Number: (808) 541–1356, Office hours: 8:00 am–4:00 pm local time

Los Angeles, California HUD Field Office

Public Housing Division, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TDD Number: (213) 251–7038, Office hours: 8:00 am–4:30 pm local time.

Sacramento, California HUD Field Office

Public Housing Division, 777 12th Avenue, Suite 200, P.O. Box 1978, Sacramento, California 95814–1997, (916) 498–5270, TDD Number: (916) 498–5220, Office hours: 8:00 am–4:30 pm local time.

Phoenix, Arizona HUD Field Office

Public Housing Division, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, Arizona 85004–2361, (602) 261–4434, TDD Number: (602) 379–4461, Office hours: 8:00 am–4:30 pm local time.

HUD—Northwest/Alaska Area: Alaska, Idaho, Oregon, Washington

Seattle, Washington HUD Field Office

Public Housing Division, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5292, TDD Number: (206) 220–5185, Office hours: 8:00 am–4:30 pm local time.

Portland, Oregon HUD Field Office

Public Housing Division, 520 S.W. 6th Avenue, Portland, Oregon 97203–1596, (503) 326–2561, TDD Number: (503) 326–3656, Office hours: 8:00 am–4:30 pm local time.

Anchorage, Alaska HUD Field Office

Public Housing Division, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170, TDD Number: (907) 271–4328.

HUD Offices of Native American Programs

Eastern/Woodlands Area Tribes and IHAs: East of the Mississippi River, Including All of Minnesota and Iowa

Eastern/Woodlands HUD Field Office of Native American Programs

Eastern/Woodlands Office of Native American Programs, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2400, Chicago, IL 60604, (312) 353–1282 or (800) 735–3239, TDD Number: (312) 886–3741 or (800) 927–9275, Office hours: 8:15 am–4:45 pm local time.

Southern Plains Area—Tribes and IHAs: Louisiana, Missouri, Kansas, Oklahoma, and Texas, Except for Isleta Del Sur in Texas

Oklahoma City, Oklahoma HUD Field Office of Native American Programs

Southern Plains Office of Native American Programs, Alfred P Murrah Federal Building, 200 N.W. 5th Street, 8th Floor, Oklahoma City, OK 73102–3201, (405) 231–4101, TDD Number: (405) 231–4891 or (405) 231–4181, Office hours: 8:00 am–4:30 pm local time.

Northern Plains Area—Tribes and IHAs: Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming

Denver, Colorado HUD Field Office of Native American Programs

Northern Plains Office of Native American Programs, First Interstate Tower North, 633 17th Street, 14th Floor, Denver, CO 80202–3607, (303) 672–5462, TDD Number: (303) 844–6158, Office hours: 8:00 am–4:30 pm local time.

Southwest Area—Tribes and IHAs: Arizona, California, New Mexico, Nevada, and Isleta Del Sur in Texas

Phoenix, Arizona HUD Field Office of Native American Programs

Southwest Office of Native American Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: (602) 379–4461, Office hours: 8:15 am–4:45 pm local time or

Albuquerque, HUD Division of Native American Programs

Albuquerque Division of Native American Programs, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TDD Number: None available, Office hours: 7:45 am–4:30 pm local time or

Northern California Division of Native American Programs, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, (415) 556–9200, TDD Number: (415) 556–8357.

Northwest Area—Tribes and IHAs: Idaho, Oregon, and Washington

Seattle, Washington HUD Field Office of Native American Programs

Northwest Office of Native American Programs, Seattle Federal Office Building, 909 First Avenue, Suite 300, Seattle, WA 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185, Office hours: 8:00 am–4:30 pm local time.

Alaska Area—Tribes and IHAs: Alaska

Anchorage, Alaska HUD Field Office of Native American Programs

Alaska Office of Native American Programs, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TDD Number: (907) 271–4328.

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Federal Register

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Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Explosives at Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA84

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise certain provisions of the Mine Safety and Health Administration's (MSHA) safety standards for explosives at metal and nonmetal mines. The proposal would revise the standards for use of a ''laminated partition'' as it relates to requirements for powder chests and the separation of transported explosive material. The proposal would also revise existing provisions related to loading and firing of explosive materials, and establish new requirements when loading is interrupted or firing of explosive materials is delayed. The proposal also clarifies the application of existing provisions concerning the protection of explosive materials from impact and exposure to high temperatures. In addition, the proposal would revise and clarify the existing provisions addressing static electricity dissipation during loading. The Agency's intent concerning requirements for vehicles containing explosive material is clarified, with no proposed regulatory change.

DATES: All comments, information and requests for a public hearing must be submitted by March 6, 1995.

ADDRESSES: Send written comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203. Interested persons are encouraged to send comments on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no information collection or paperwork requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking Background

MSHA published comprehensive revisions to its explosives safety standards for metal and nonmetal mines in January 1991 (56 FR 2070). Prior to the effective date of the rule, MSHA stayed several provisions due to compliance issues raised by the mining community and explosives manufacturers. The provisions involved were subsequently reproposed on October 16, 1992, (57 FR 47524) for revision and clarification. On December 30, 1993, (58 FR 69596), MSHA published the final rule which became effective on January 31, 1994.

In February 1994, the American Mining Congress (AMC) and the Institute of Makers of Explosives (IME) each filed a petition for review of the final rule with the United States Court of Appeals for the District of Columbia Circuit, in *American Mining Congress, et al.* v. *MSHA*, Docket No. 94–1146, and in *IME* v. *MSHA*, Docket No. 94–1144. AMC requested that MSHA reconsider evidence in the rulemaking record regarding the ''continuous loading'' requirements of §§ 56/57.6306(c), Loading and blasting. In addition, AMC requested that the Agency clarify the preamble discussion to §§ 56/57.6202(a)(1), concerning vehicles containing explosive materials.

IME argued for revision of §§ 56/57.6000, the definition of ''laminated partition,'' and corresponding changes in §§ 56/57.6133(b), Powder chests, and §§ 56/57.6201 (a)(2) and (b)(2), Separation of transported explosive material. Also, IME requested that MSHA reconsider information in the rulemaking record regarding the requirements of §§ 56/57.6602, Static electricity dissipation during loading.

MSHA is conducting this rulemaking pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

III. Discussion and Summary of the Proposed Rule

A. General Discussion

Historically, hazards associated with the storage, transportation, and use of explosive materials have been a cause of serious injuries and fatalities in metal and nonmetal mines. Precautions to safeguard against these hazards are an essential part of any effective mine safety program.

This proposal addresses issues raised in the rule challenges noted above. The proposal also addresses issues based upon MSHA's experience and establishes new requirements for blast site security when loading is interrupted or firing is delayed. In addition, the proposal would revise the scope of the existing requirements for protecting explosive material from impact and high temperatures, clarifying MSHA's original intent.

B. Section-by-Section Analysis

The following analysis examines the proposed rule and its effect on existing standards.

Definitions

Sections 56/57.6000 definition of laminated partition. The existing definition of ''laminated partition'' in 30 CFR 56/57.6000 describes the composition of partitions that may be used to separate detonators from other explosive materials and specifically states that the IME–22 container or compartment meets the criteria of a ''laminated partition.'' This definition and the nominal dimensions of the partition's requirements were derived from IME's Safety Library Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' 1985. The IME has informed MSHA that use of the term ''laminated partition'' as defined by MSHA, under the provisions of §§ 56/57.6133 and 56/57.6201, raises safety concerns. Specifically, the IME stated that the IME–22 compartment or container should not be used as a ''laminated partition'' when certain detonators are transported with explosives or blasting agents in the same vehicle or stored together in powder chests because such use is contrary to IME's recommendations.

The use of a ''laminated partition'' to separate certain detonators from explosives or blasting agents when transported or stored together in powder chests is an accepted practice with a good safety record in the mining industry. It is, therefore, MSHA's intention to continue to recognize this practice. At the same time, MSHA acknowledges that the limitations for use of such compartments or containers must be followed to protect miners from the hazards of an unplanned ignition.

MSHA, therefore, proposes to revise the existing definition of ''laminated partition.'' The proposed definition will specify the construction requirements for a ''laminated partition'' as described in the IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993). The definition would also recognize alternative construction requirements specified in these publications.

In addition, MSHA proposes to revise the existing requirements for Powder chests, §§ 56/57.6133, and Separation of transported explosive material, §§ 56/57.6201, to incorporate by reference the

IME Safety Library Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993) and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993). With these revisions, using a ''laminated partition'' to separate certain detonators from explosives or blasting agents would continue to be permitted, provided the limitations set by IME for use of a ''laminated partition'' are followed. These IME publications would be available at MSHA headquarters in Arlington, VA and at all Metal and Nonmetal Mine Safety and Health District Offices. In the future, MSHA will consider modifying these incorporations to reflect substantive updates of the publications.

Storage

Sections 56/57.6133 Powder chests. Existing §§ 56/57.6133, concerning powder chests, provide for the storage of detonators with other explosive materials. Specifically, existing paragraph (b) requires that detonators be kept in separate chests from explosives or blasting agents, except that detonators and explosives may be kept in the same compartment or container if separated by 4 inches of hardwood, laminated partition, or equivalent.

Since the early 1970's, MSHA has required 4 inches of hardwood or equivalent to separate detonators from explosives or blasting agents when stored together. The purpose of the 4 inches of hardwood is to provide sufficient separation of explosive materials from detonators to protect against propagation should detonators be initiated by outside forces.

The proposal will also continue to allow the use of other construction materials that are equivalent to 4 inches of hardwood. This equivalent material must provide at least the same protection as the 4 inches of hardwood as demonstrated by testing.

As discussed above under the definition of ''laminated partition,'' the proposal would permit a compartment or container meeting the definition of a ''laminated partition'' to be used to separate certain detonators from explosives or blasting agents. When a ''laminated partition'' is used, the proposal would require the provisions of IME Safety Library Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993), and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993) to be followed. These IME publications would be incorporated by reference and are available at MSHA headquarters in Arlington, VA and at all Metal and Nonmetal Mine Safety and Health District Offices. In the future, MSHA will consider modifying these incorporations to reflect substantive updates of the publications.

Transportation

Sections 56/57.6201 Separation of transported explosive material. Existing §§ 56/57.6201 contain requirements for transporting detonators with other explosive material. Specifically, paragraphs (a)(2) and (b)(2) provide for detonators to be separated from explosives or blasting agents by 4 inches of hardwood, laminated partition or equivalent.

As discussed above, since the early 1970's, MSHA has required 4 inches of hardwood or equivalent to separate detonators from explosives or blasting agents when transported together in the same vehicle. The purpose of the 4 inches of hardwood is to provide sufficient separation of explosive materials from detonators to protect against propagation should detonators be initiated by outside forces, such as impact.

Likewise, the proposal will continue to allow the use of other construction materials that are equivalent to 4 inches of hardwood. This equivalent material must provide at least the same protection as the 4 inches of hardwood as demonstrated by testing.

As discussed above under the definition of ''laminated partition,'' the proposal would permit a compartment or container meeting the definition of a ''laminated partition'' to be used to separate certain detonators from explosives or blasting agents. When a ''laminated partition'' is used, the proposal would require the provisions of IME Safety Library Publication No. 22 ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993) and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993) to be followed. These IME publications would be incorporated by reference and are available at MSHA headquarters in Arlington, VA and at all Metal and Nonmetal Mine Safety and Health District Offices.

Sections 56/57.6202 Vehicles. The 1993 preamble discussion to §§ 56/57.6202(a)(1) led to some misunderstanding in the mining community that vehicles used on mine property must be able to pass Federal, State, and local licensing requirements for over-the-road use to be in compliance with MSHA regulatory provisions. This was not a requirement included in the regulation, nor the Agency's intent.

On September 30, 1994, MSHA issued Program Policy Letter No. P94–IV–3, clarifying the meaning of the term ''good condition.'' MSHA's use of the term ''good condition'' is intended to mean that the mine vehicle must be in a condition consistent with safe operating practices. A vehicle that is road worthy can generally be expected to be in good condition. MSHA does not intend for the term ''good condition'' to mean that mine vehicles must pass Federal, State and local licensing requirements for over-the-road use. Vehicles carrying explosive materials must comply with the requirements of subpart M of §§ 56/57.14000 et seq. Subpart M—Machinery and Equipment, addresses the maintenance requirements for all self-propelled mobile equipment used on mine property.

Use

Sections 56/57.6302 Separation of explosive material and Sections 56/57.6905 Separation of explosive material and hang-up blasting. Paragraph (a) of existing §§ 56/57.6302 requires that explosives and blasting agents be kept separate from detonators until loading begins. This provision remains unchanged. The section heading of §§ 56/57.6302 would be revised to read ''Separation of explosive material.''

Existing paragraph (b) requires that explosive material be protected from impact and temperatures in excess of 150 °F when taken to the blast site. As discussed below, experience in the application of this standard has led MSHA to propose that these two paragraphs be separated and clarified.

In 1993, MSHA promulgated §§ 56/57.6302 under the ''Use'' portion of the explosives regulations, thereby creating confusion as to whether explosives must be protected from impact during transportation and storage as well. MSHA's intent was to require protection of explosive material from impact and high temperatures generally, not just during use. The proposal would move existing paragraph (b) of §§ 56/57.6302 to ''General Requirements'' and ''General Requirements—Surface and Underground''. For surface mines, the provision would be codified as § 56.6905, with the section heading ''Explosive material protection.'' For underground mines, the provision would be codified as § 57.6905, with the section heading ''Separation of explosive material and hang-up blasting.''

It is well recognized that exposure of explosive material to impact or high temperatures can be hazardous. From 1977 to 1988, as reported in MSHA's Program Circular (PC–7026) on ''Blasting Incidents in Mining,'' (August 1988), there were at least 22 impact- and temperature-related blasting incidents, six of which resulted in fatalities. Therefore, MSHA is proposing that paragraphs (a) and (b) of §§ 56.6905 and 57.6905 require protection against temperatures in excess of 150 °F and impact with the exception of tamping and dropping during loading. When tamping and dropping explosive materials during loading, operators must comply with existing §§ 56/57.6304, Primer protection.

Proposed paragraph (c) of § 57.6905 is derived from the general requirement in § 57.6302 that explosives be protected from impact. It would require the use of detonating cord to initiate explosives placed in raises, chutes, and ore passes to free hang-ups. Freeing hang-ups is inherently hazardous because it potentially exposes both explosives and miners to unsupported material. Detonators could be hit by falling material and prematurely detonate.

Virtually all detonators used in mining contain highly sensitive primary explosive compositions which make them impact sensitive. Detonators, whether electric or nonelectric, are the most impact sensitive of commercially used explosive products. Detonating cord is not highly impact sensitive so long as the outer covering material remains intact.

MSHA has reviewed the available literature on freeing hang-ups and surveyed its field offices and found that a variety of procedures are used. Hang-ups are commonly freed by placing charges of explosives in contact with, or as near as possible to, the blockage, often with poles. Some mine operators use detonating cord to initiate the charges while others use detonators. MSHA believes that the use of detonating cord to initiate the explosives allows for complete control of the firing time and provides greater safety for the miners involved.

The proposal would not preclude the use of such devices as ballistic disks which are initiated by a detonating cord.

Sections 56/57.6306 Loading, blasting, and security. The proposal would revise existing §§ 56/57.6306, which address loading and blasting precautions. In addition, the proposal would add provisions to ensure that the blast site is secure from unauthorized entry when loading is interrupted or firing is delayed. It would replace the security provisions of §§ 56/57.6313.

Existing paragraphs (a) and (b) would be redesignated as paragraphs (b) and (c) without change and a new paragraph (a) would be added. Existing paragraph (d) would be redesignated as (e). Existing paragraphs (c) and (e) would be revised and combined with the provisions of existing §§ 56/57.6313 as proposed paragraph (d). No changes are proposed to existing paragraphs (f) and (g).

When explosive materials or initiating systems are brought to the blast site, proposed paragraph (a) would require that the area be barricaded and posted, or flagged against unauthorized entry. MSHA intends that this new requirement would prevent unauthorized or inadvertent entry by persons onto the blast site. The proposal would ensure that the blast site is clearly demarcated so that all persons are aware of the perimeter of the blast site. This precaution would protect against the risk of unplanned detonations and possible subsequent misfires caused by unauthorized persons, including trespassers, disturbing the blast site. Trespassing is a continuing, recognized problem on mine property. Although explosives were not involved, MSHA records show that there have been four deaths of trespassers on mine property to date in 1994.

Proposed paragraph (d)(1) of §§ 56/57.6306 revises provisions in existing paragraphs (c) and (e) which require loading to be continuous and the blast to be fired without undue delay. This paragraph also replaces §§ 56/57.6313 by addressing blast site security when loading is interrupted or firing is delayed.

The proposal would require that loading and firing of a blast be conducted without undue interruption or delay. This requirement reflects the longstanding and generally accepted safety practice that loading and firing be completed as soon as practicable after the process begins. The Agency recognizes that there are circumstances which cause an interruption of loading or a delay in firing. Examples of these circumstances include emergencies, unfavorable atmospheric conditions, shift changes, and large equipment failure.

When loading is interrupted or firing is delayed for any reason, the proposal would require the mine to be ''attended'' to prevent unauthorized entry to the blast site. ''Attended'' is defined in §§ 56/57.6000. MSHA believes that requiring the mine be attended when loading is interrupted or firing is delayed provides the protection needed to miners. Entry by unauthorized persons on a blast site where explosive materials are present can present hazards to those persons and to miners. For example, a person may throw lighted smoking materials into a blast hole, disturb the initiation system, or kick material into a hole—any one of which could contribute to a premature detonation. Even if premature detonation does not occur, these incidents could later expose miners to the hazards associated with misfires. Further, trespassers could remove explosive materials from a loaded hole which would constitute a violation of Bureau of Alcohol, Tobacco and Firearms (BATF) security regulations. MSHA enforces security regulations on mine property under a Memorandum of Understanding with BATF (45 FR 25564). Requiring the mine to be attended would provide a reasonable measure of protection against these risks.

MSHA believes that the proposed requirement is practicable for the mining industry because interruptions are rare and when they do occur work schedules and the availability of mine personnel generally could be adapted to satisfy the proposed requirement. For example, many large mines are operated continuously with personnel routinely on site around the clock, seven days a week. In some cases, these operations load a series of blast holes sequentially before firing. At small operations working one shift a day, specific arrangements may have to be made for the mine to be attended when an interruption in loading or delay in firing of explosives results in a delay beyond the end of the shift. It is MSHA's experience, however, that small operations ordinarily load and fire explosives during a single work shift. The presence and routine activities of these persons on site could be sufficient to prevent unauthorized entry to the blast site.

With regard to underground blasting, the proposal would require that the mine be attended when loading is interrupted or firing of explosives is delayed. However, the proposal would recognize that underground areas of a mine are secure against unauthorized entry if entrance to the mine is through vertical shafts. Slope and adit mines are secure if surface entries are locked to prevent access by unauthorized persons.

When underground blast sites are not secure against unauthorized entry, however, the proposed rule would require a person to be present at the mine to prevent unauthorized entry to the blast site when loading is interrupted or firing of explosives is delayed. Agency experience indicates that maintenance and other personnel

are often present during off-shifts and weekends at underground mines. The presence of these persons could satisfy the requirements of the proposal, provided they prevent unauthorized entry to the blast site when loading is interrupted or firing is delayed.

Paragraph (d)(2) would require persons securing a blast site at a surface mine or at blast site at the surface area of an underground mine to withdraw from the blast site during the approach and progress of an electrical storm. Persons securing an underground blast site involving an electrical blasting operation that is capable of being initiated by lightning also would be required to withdraw from the blast site to a safe location. These storm precautions correspond with those required under existing §§ 56/57.6604.

The proposed rule would delete the provision in existing paragraph (e) of §§ 56/57.6306 which require MSHA to be notified if loaded holes are not fired within 72 hours. MSHA believes that the proposed requirements that loading and firing be done without undue interruption or delay, and the provisions for blast site security in the event of an interruption or delay in loading and firing, provide greater protection than the existing 72-hour notification requirement.

Sections 56/57.6313 Blast site security. Under the proposal, the security provisions of §§ 56/57.6313 would be revised and incorporated into §§ 56/57.6306 to afford blast site protection when loading is interrupted or when firing is delayed.

Extraneous Electricity

Sections 56/57.6602 Static electricity dissipation during loading. Existing §§ 56/57.6602 address the build-up of static electricity during pneumatic loading or dropping of explosive material into a blasthole. Following publication of the December 30, 1993, safety standards for explosives, MSHA received technical information indicating that the scope of this provision is too broad because the term ''dropping'' encompasses dropping, pouring, or auguring explosive materials into blastholes. Specifically, it was noted that dropping, pouring, and auguring explosives are performed at a low velocity. As a result the generation of static electricity is not sufficient to initiate the primer.

Based on this information, MSHA agrees and, therefore, proposes to delete ''dropping'' from the introductory text of §§ 56/57.6602. As revised, the standard would require that when explosive material is loaded pneumatically into a blasthole in a manner that generates static electricity, certain precautions be taken as specified in the regulation.

IV. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this rulemaking is not a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Based on an analysis of the impact of the proposed rule, MSHA estimates that the total annual recurring cost impact would be about $70,000. All of these costs are attributable to paragraph (d)(1) of §§ 56/57.6306 which requires that if loading is interrupted or firing of the blast is delayed for any reason, the mine must be attended to prevent unauthorized entry to the blast site. The total cost impact on all small mines, those employing fewer than 20 miners, would be nominal.

MSHA anticipates that the revisions to §§ 56/57.6306 would affect all quarries, medium-sized underground mines, and most open pit mines, except for certain operations which mine commodities such as clays and phosphates and do not use explosives. MSHA does not expect small underground mines to be affected as these mines would experience a delay in firing or an interruption in loading only rarely, if ever. Neither does MSHA anticipate that the largest underground mines would be more than nominally affected as many of these mines are operated around the clock, seven days a week. The presence of these persons could satisfy the requirements of the proposal if they are assigned to prevent unauthorized entry to the blast site.

MSHA recognizes that it is a common industry practice to load continuously and to fire explosives promptly. Interruptions in loading and delays in firing, however, can occur infrequently, almost always due to emergency circumstances. In most of these instances, the mine operator would have personnel available on the mine site who could prevent unauthorized entry to the blast site. On occasion, however, circumstances may require the assignment of additional personnel or the payment of additional wages to perform this duty.

Based on these assumptions and its experience, MSHA estimates that the revisions to §§ 56/57.6306 would affect 0.5 percent of the small open pit mines and quarries, 5 percent of the medium underground mines, and 5 percent of the medium and large open pit mines and quarries. MSHA estimates further that an overnight interruption or delay would occur once every 2 years at the smallest mines and up to once every other month at the largest mines. An interruption in loading or a delay in firing that extends over a weekend would occur about once a year at about 5 percent of the medium underground mines and the medium and large open pit mines and quarries.

MSHA estimated that § 57.6905(c) would affect fewer than 60 underground mines which have ore passes, raises, or chutes as an integral part of their mining method. Some of these already may use detonating cord to eliminate ''hang-ups.'' Depending upon how the detonating cord is used, for example, frequency of use, etc., MSHA believes that the proposed requirement may result in increased compliance costs. However, these cost increases are expected to be negligible.

List of Subjects in 30 CFR Parts 56 and 57

Explosives, Incorporation by reference, Metal and nonmetal mining, Mine safety and health.

Dated: December 24, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend parts 56 and 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 956, and 961.

2. Section 56.6000 is amended by revising the definition of ''laminated partition'' to read as follows:

§ 56.6000 Definitions.

* * * * *

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch-thick plywood, ½-inch-thick gypsum wallboard, ⅛-inch-thick low carbon steel, and ¼-inch-thick plywood, bonded together in that order. Alternative construction materials described in the IME Safety Library

Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993), and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993) may be used. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health District Offices.

* * * * *

3. Section 56.6133 is amended by revising paragraph (b) to read as follows:

§ 56.6133 Powder chests.

* * * * *

(b) Detonators shall be kept in separate chests from explosives or blasting agents, unless separated by 4 inches of hardwood or equivalent. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of the IME Safety Library Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993), and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

4. Section 56.6201 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 56.6201 Separation of transported explosive material.

* * * * *

(a) * * *

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent. The hardwood or equivalent shall be fastened to the vehicle or conveyance. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of the IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

(b) * * *

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent. The hardwood or equivalent shall be fastened to the vehicle or conveyance. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

5. Section 56.6302 is revised to read as follows:

§ 56.6302 Separation of explosive material.

Explosives and blasting agents shall be kept separated from detonators until loading begins.

6. Section 56.6306 is revised to read as follows:

§ 56.6306 Loading, blasting, and security.

(a) When explosive materials or initiating systems are brought to the blast site, the area shall be barricaded and posted, or flagged against unauthorized entry.

(b) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or create other hazards.

(c) Once loading begins, the only activities permitted within the blast site shall be those activities directly related to the blasting operation and the activities of surveying, stemming, sampling of geology, and reopening of holes, provided that reasonable care is exercised. Haulage activity is permitted near the base of the highwall being loaded, provided no other haulage access exists.

(d)(1) Loading and firing of a blast shall be performed without undue interruption or delay. If loading is interrupted or firing of the blast is delayed for any reason, the mine shall be attended to prevent unauthorized entry to the blast site.

(2) During the approach and progress of an electrical storm, persons preventing unauthorized entry to a surface blast site shall withdraw from the blast area to a safe location.

(e) In electric blasting prior to connecting to the power source, and in nonelectric blasting prior to attaching an initiating device, all persons shall leave the blast area except persons in a blasting shelter or other location that protects them from concussion (shock wave), flying material, and gases.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) Work shall not be resumed in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person with the ability and experience to perform the examination.

§ 56.6313 [Removed]

7. Section 56.6313 is removed.

8. Section 56.6602 is amended by revising the introductory text to read as follows:

§ 56.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically into a blasthole in a manner that generates static electricity—

* * * * *

9. Section 56.6905 is added to read as follows:

§ 56.6905 Explosive material protection.

(a) Explosive material shall be protected from temperatures in excess of 150 °F.

(b) Explosive material shall be protected from impact, except for tamping and dropping during loading.

PART 57—[AMENDED]

10. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 956, and 961.

11. Section 57.6000 is amended by revising the definition of ''laminated partition'' to read as follows:

§ 57.6000 Definitions.

* * * * *

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch-thick plywood, ½-inch-thick gypsum wallboard, ⅛-inch-thick low carbon steel, and ¼-inch-thick plywood, bonded together in that order. Alternative construction materials described in the IME Safety Library Publication No. 22, ''Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials,'' (May 1993), and the ''Generic Loading Guide for the IME–22 Container,'' (October 1993) may be used. These publications are

incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

* * * * *

12. Section 57.6133 is amended by revising paragraph (b) to read as follows:

§ 57.6133 Powder chests.

* * * * *

(b) Detonators shall be kept in separate chests from explosives or blasting agents, unless separated by 4 inches of hardwood or equivalent. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of the IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

13. Section 57.6201 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 57.6201 Separation of transported explosive material.

* * * * *

(a) * * *

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent. The hardwood or equivalent shall be fastened to the vehicle or conveyance. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of the IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

(b) * * *

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent. The hardwood or equivalent shall be fastened to the vehicle or conveyance. A compartment or container meeting the definition of a laminated partition may be used to separate detonators from explosives or blasting agents. When a laminated partition is used, the provisions of IME Safety Library Publication No. 22 (May 1993) and the Generic Loading Guide for the IME–22 Container (October 1993) shall be followed. These publications are incorporated by reference and are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203 and at all Metal and Nonmetal Mine Safety and Health District Offices.

14. Section 57.6302 is revised to read as follows:

§ 57.6302 Separation of explosive material.

Explosives and blasting agents shall be kept separated from detonators until loading begins.

15. Section 57.6306 is revised to read as follows:

§ 57.6306 Loading, blasting, and security.

(a) When explosive materials or initiating systems are brought to the blast site, the area shall be barricaded and posted, or flagged against unauthorized entry.

(b) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or create other hazards.

(c) Once loading begins, the only activities permitted within the blast site shall be those activities directly related to the blasting operation and the activities of surveying, stemming, sampling of geology, and reopening of holes provided that reasonable care is exercised. Haulage activity is permitted near the base of the highwall being loaded, provided no other haulage access exists.

(d)(1) Loading and firing of a blast shall be performed without undue interruption or delay. If loading is interrupted or firing is delayed for any reason, the mine shall be attended to prevent unauthorized entry to the blast site. Underground areas are secure against unauthorized entry if entrance to the mine is through vertical shafts. Inclined shafts or adits are secure when locked at the surface.

(2) During the approach and progress of an electrical storm—

(i) Persons preventing unauthorized entry to a surface blast site shall withdraw from the blast area to a safe location; and

(ii) Persons preventing unauthorized entry to an underground blast site involving an electrical blasting operation that is capable of being initiated by lightning shall withdraw from the blast area to a safe location.

(e) In electric blasting prior to connecting to the power source, and in nonelectric blasting prior to attaching an initiating device, all persons shall leave the blast area except persons in a blasting shelter or other location that protects them from concussion (shock wave), flying material, and gases.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) Work shall not be resumed in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person with the ability and experience to perform the examination.

§ 57.6313 [Removed]

16. Section 57.6313 is removed.

17. Section 57.6602 is amended by revising the introductory text to read as follows:

§ 57.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically into a blasthole in a manner that generates static electricity—

* * * * *

18. Section 57.6905 is added to read as follows:

§ 57.6905 Explosive material protection and hang-up blasting.

(a) Explosive material shall be protected from temperatures in excess of 150 °F.

(b) Explosive material shall be protected from impact, except for tamping and dropping during loading.

(c) Only detonating cord shall be used to initiate explosives placed in raises, chutes, and ore passes to free hang-ups.

[FR Doc. 95–16 Filed 1–4–95; 8:45 am]

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Federal Register

Thursday
January 5, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the MOWA Band of Choctaw; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the MOWA Band of Choctaw

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(e), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the MOWA Band of Choctaw (MBC), c/o Mr. Framon Weaver, 1080 W. Red Fox Road, Mt. Vernon, Alabama 36560, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the MBC does not meet one of the seven mandatory criteria set forth in 25 CFR 83.7, specifically, criterion 83.7(e). Therefore, the MOWA Band of Choctaw do not meet the requirements necessary for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(e)(1) and 83.10(h) through 83.10(l), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The MOWA Band of Choctaw's petition for Federal acknowledgment claims that ''the contemporary band of Mowa Choctaws of South Alabama are descendants of full and mixed blood Choctaws, Creeks, Cherokees, and Chickasaws who avoided removal West during Indian removal in the 1830s'' (MOWA Pet. Narr. 1988, 1). Upon examination of the petition, this claim was found to be invalid.

The problems with the American Indian ancestry claimed by the petitioner fall into the following major categories:

(1) The petitioner's core ancestral families cannot document American Indian ancestry;

(2) The families which are the actual MBC progenitors from 1880 have not been documented as descendants of the known removal-era, antebellum American Indians claimed as ancestors by the petitioner;

(3) Many of the early nineteenth century persons claimed as members of their ''founding Indian community'' by the petitioner cannot be demonstrated to be Choctaw, or even American Indian.

The MOWA Band of Choctaw petitioning group is derived from two core families that were resident in southwestern Alabama by the end of the first third of the nineteenth century. All persons on the petitioner's membership roll descend from these two families. Neither of these families has demonstrated American Indian ancestry. Neither were the nineteenth century ancestors of these two families members of an historical American Indian tribe, or of tribes which had amalgamated and functioned as a single American Indian entity.

One percent of the petitioner's membership can document American Indian ancestry through other ancestral lines than those going to the two core families.

A substantial body of documentation was available on the petitioning group. This extensive evidence does not demonstrate either the Indian ancestry claimed in the petition or other Indian ancestry. This extensive evidence either does not support at all, or in part disproves, Indian ancestry. Only approximately one percent can demonstrate Indian ancestry of any kind. Thus, no evidence was found to demonstrate that the ancestors of the petitioner were descended from a single historic tribe or tribes which combined and functioned as an autonomous entity. We conclude, therefore, that the MOWA Band of Choctaws clearly does not meet the requirements of criterion 83.7(e).

As provided by 25 CFR 83.10(h) of the new regulations, a report summarizing the evidence, reasoning, and analysis that are the basis for the proposed decision will be provided to the petitioner and other interested parties, and is available to other parties upon written request.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 180-day response period described above, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–73 Filed 1–4–95; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Thursday
January 5, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement; Fort Mojave Indian Reservation, NV and CA; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Mojave Highlands Environmental Impact Statement (EIS) for the Proposed Development of a Planned Community on Fort Mojave Tribal Lands, Clark County, NV, and San Bernardino County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Cancellation of an Environmental Impact Statement.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to cancel all work on the EIS for the Mojave Highlands proposal.

SUPPLEMENTAL INFORMATION: The proposed project in the EIS was for Calmark-Fort Mojave, Inc., a Nevada Corporation, to lease certain tribal lands within the State of California (145 acres) and the State of Nevada (588 acres) from the Fort Mojave Indian Tribe for the development of a planned residential community. Two Conditional Approvals were signed by the BIA on July 7, 1990. The Fort Mojave Indian Tribe requested withdrawal of the Conditional Approvals and on April 7, 1994, the Conditional Approvals were withdrawn for failure of the lessee to complete the environmental process. Both pending leases totaled approximately 733 acres. The Notice of Intent was originally published in the **Federal Register** on February 5, 1990. Several public scoping meetings were held in early February 1990 and the EIS was only completed to a preliminary draft stage and had not been released for public review or comment.

DATES: Effective January 5, 1995.

ADDRESSES: Comments should be addressed to Mr. Walter Mills, Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Environmental Protection Officer, Bureau of Indian Affairs, Phoenix Area Office, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6750; or Mrs. Laura E. Austin, Agency Environmental Coordinator, Bureau of Indian Affairs, Colorado River Agency, Route 1, Box 9–C, Parker, Arizona 85344, Telephone (602) 669–7148.

Dated: December 22, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–72 Filed 1–4–95; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Thursday
January 5, 1995

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 91, et al.

Consolidated Submission for Community Planning and Development Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 91, 92, 570, 574, 576, and 968

[Docket No. R–94–1731; FR–3611–F–02]

RIN 2501–AB72

Consolidated Submission for Community Planning and Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's existing regulations to completely replace the current regulations for Comprehensive Housing Affordability Strategies (CHAS) with a rule that consolidates into a single consolidated submission the planning and application aspects of the Department's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons With AIDS (HOPWA) formula programs with the requirements for the CHAS. This new consolidated submission will replace the current CHAS, the HOME program description, the Community Development plan and the CDBG final statement, and the ESG and HOPWA applications. The rule also consolidates the reporting requirements for these programs, replacing five general performance reports with one performance report. Thus, in total, the consolidated plan and consolidated report will replace 12 documents.

Although this rule does not incorporate the public housing Comprehensive Grant process into the consolidated planning and application process, it makes a modification to the Comprehensive Grants rule to encourage cooperation in the development of the Comprehensive Grant plan and the consolidated plan. The changes are intended to ensure that the needs and resources of public housing authorities are included in a comprehensive planning effort to revitalize distressed neighborhoods and help low-income residents locally.

In addition, the rule amends the separate regulations for the CDBG, HOME, ESG, and HOPWA programs to remove some duplicative provisions, cross-reference the new provisions, and to conform terminology to that used in the consolidated plan rule (revised part 91).

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Policy Coordination, Office of Community Planning and Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements for the planning process, the application process, and the reporting process contained in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and assigned approval number 2506–0117, which expires on March 31, 1995.

II. Background

This final rule providing for a consolidated plan and a single performance report for all HUD community planning and development formula grant programs reflects the Department's view that the purpose to be served by the submissions is to enable States and localities to examine their needs and design ways to address those needs that are appropriate to their circumstances. The planning activities embodied in the rule are those of the Comprehensive Housing Affordability Strategy (CHAS) requirements, enacted by the Cranston-Gonzalez National Affordable Housing Act (NAHA, at 42 U.S.C. 12701), and of the Community Development Plan requirements, added to the CDBG program by NAHA (42 U.S.C. 5304).

The consolidated plan was a result of discussions with local jurisdictions and community groups all over the United States representing many different viewpoints. The intent of this rule is to (1) promote citizen participation and the development of local priority needs and objectives by providing comprehensive information on the jurisdiction that is easy to understand; (2) coordinate these statutory requirements in such a manner as to achieve the purposes of the Acts in a comprehensive way, while reducing paperwork and minimizing the federal intrusion into State and local planning activities and to simplify the process of requesting and obtaining federal funds available to the jurisdictions on a formula basis; (3) promote the development of an action plan that provides the basis for assessing performance; and (4) encourage consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions. In addition, HUD is providing software for jurisdictions to facilitate meeting the planning, application and reporting requirements, helping to move us into the 21st century.

In keeping with this approach, the rule emphasizes the role citizens and community groups should play in identifying their needs and recommending actions government should take in addressing those needs. Thus, the outcome is determined at the level of government closest to the affected persons. However, to assure that a jurisdiction does not ignore identified needs, the rule includes the language from the CHAS instructions to require that the consolidated plan contain a comparative analysis of the needs identified, and explain how the jurisdiction determined priority needs and include proposed actions that address the identified needs.

The proposed rule for the consolidated plan was published on August 5, 1994 (59 FR 40129). During the process of developing both the proposed and final rule, the Department has indicated its intent to apply the new rule to Federal Fiscal Year 1995 funding. Therefore, affected jurisdictions have been in contact with HUD about the expectations for speedy publication of a final rule that would permit them to start preparation of this new consolidated plan in time to make the projected deadlines.

Another proposed rule was published in August of 1994 that would affect some of the provisions dealing with the CDBG program that are covered by this rule. That rule, ''Community Development Block Grant Program: Miscellaneous Amendments to Correct Identified Deficiencies'' (59 FR 41196, August 10, 1994), proposed changes to the citizen participation process and in treatment of CDBG ''float-funded activities,'' for example. This rule makes changes covering both of these topics (discussed below) but leaves other provisions of that ''CDBG miscellaneous amendments'' rule untouched, for final disposition through that separate rulemaking. In fact, the performance standards for the certification found in this rule that a jurisdiction is ''following'' its HUD-approved consolidated plan will be included in that final rule. In light of the emphasis on economic development in the CDBG program, HUD will shortly issue a final

rule on economic development guidelines for the CDBG program.

A proposed rule on citizen participation for the CDBG Entitlement program was published on March 28, 1990 (55 FR 11556). This rule reflects consideration of the public comments on that rule, and constitutes the final rule for that rulemaking.

III. Public Comments

The proposed rule drew 138 public comments from 38 local governments or groups representing their interests, 19 States or groups representing State interests, 62 groups advocating for the interests of low-income persons, 15 groups advocating for the interests of persons with disabilities, three professional organizations with no apparent client constituency, and one individual.

In addition, the Department officials have talked by telephone to representatives of 19 national groups that had submitted written comments, to more fully understand their views. These groups are: National Association for County Community and Economic Development, Council Of State Community Development Agencies, National Community Development Association, Local Initiatives Support Corporation, National Association of Housing and Redevelopment Officials, Housing Assistance Council, AIDS Council, National Coalition for the Homeless, Center for Community Change, National Low Income Housing Coalition, National Alliance to End Homelessness, National Council of State Housing Agencies, Corporation for Supportive Housing, Enterprise Foundation, United Cerebral Palsy, Coalition for Low Income Community Development, Lawyers Committee for Civil Rights under Law, National Association for Developmental Disabilities, and the National Housing Law Project. Low-income advocates, cities and States often had diametrically opposing views on the rule.

The general views of the low-income and disability advocacy groups were that data requirements concerning needs had been removed from the CHAS to produce the consolidated plan; a stronger linkage between need, strategy, and action should be required to be stated in the plan; ''worst case'' needs should be addressed on the basis of a ''fair share'' of the funds to be made available from HUD; the citizen participation process should be augmented and adequate notice should be provided for hearings. Many of these concerns apply equally to the CHAS process as to the consolidated plan. Many low-income advocates also expressed concern about the requirement making the consolidated plan applicable for Fiscal Year 1995 funding of the formula programs, with the short deadlines that this will require for jurisdictions—and the impact it would have on their clients.

To respond to these concerns, the Department has added a clearer statement of specific data requirements on needs (including a specific description of the needs of non-homeless persons with disabilities), a statement on how the priorities in the strategic plan relate to the statement of needs, and a clearer statement on how the activities proposed in the action plan relate to the strategic plan. Citizen participation has been strengthened in a number of places, including improved guidelines for providing adequate notice.

The Entitlement communities responded to the rule with diverse concerns. Some objected to the use of and reporting on ''extremely low-income'' category particularly with regard to CDBG. Many expressed concern about the usefulness of estimating needs for community development facilities in terms of the dollars to address those needs.

Although the term ''extremely low-income'' (0–30 percent) was retained in the plan, since this category was familiar in the CHAS, the reporting burden for CDBG has been reduced by requiring reporting on beneficiaries by income only where income data is required for CDBG eligibility. Language has been added codifying the field office authority to grant exceptions and extensions for FY 1995 for good cause. To meet concerns of these communities that the rule has gone beyond the statute and become too prescriptive, suggestions for revisions that would have added significant detail to the plan were rejected. Other changes to accommodate entitlement community concerns are to require that the basis be assigned for relative priority to each category of needs in the strategic plan rather than each separate need; that flexibility be provided for consortia; that more flexible amendment language be provided; and that the time period for comments on performance reports be reduced to 15 days.

A number of States had a particular concern about being required to implement the plan in FY 1995, particularly those with early program years. Other States wanted specific guidance on citizen participation specifically for the States because of their unique situation. They felt that it was inappropriate to offer technical assistance directly to low-income groups under the citizen participation plan at the State level. Several States suggested that HUD and the Department of Health and Human Services should get together with regard to making estimates of homeless needs. Several States said that the priority needs tables, goals, and target dates for completion are too detailed for the States since they have less degree of control over what actions are taken than entitlement jurisdictions do. Other States felt that it was unrealistic that States show how funds were distributed geographically since most States distributed funds by competition for different categories of assistance and cannot control geographical distribution.

Most States have been in contact with the appropriate HUD field office about the timing and content of their submissions for FY 1995. In most cases, agreement has already been reached on both matters. With respect to tables, the States are expected to complete the information to the extent that they are able to do so. The requirement for information about geographic distribution is included because it is a CHAS statutory requirement. To the extent that funds are distributed by competition and a prediction of the ultimate geographic distribution cannot be made, the State should so indicate. A separate section on citizen participation has been added that applies just to States. The Department believes that it is responsive to the comments of the States, including the request to remove the technical assistance provision.

In order to provide technical assistance, HUD intends to issue supplemental guidance on effective ways to undertake consolidated planning, prepare adequate submissions, and implement subsequent projects and activities. In addition, the Department will issue supplemental guidance on various cross-cutting concerns. These include historic preservation, the role of community based organizations, urban design and strategic planning, environmental justice, viable communities and sustainable development.

One comment that was made by both low-income advocates and local governments was that the status of the guidelines should be clarified. The commenters noted that the regulations specify the requirements for the consolidated plan, and the guidelines appear to state the recommendations for the plan. They asked, ''How closely will grantees be held to the 'recommendations'?''

The Department agrees that this subject needs clarification. The

regulations state the requirements. The guidelines contain the tables and instructions for data submissions, which constitute the ''required format'' referenced in the regulations. Therefore, these tables and instructions are required, but the specific format may be modified with HUD approval. Other suggestions or recommendations included in the guidelines are to assist jurisdictions in the preparation of the plan.

A county and a State complained about the Department's Federalism Impact discussion. They stated that the rule requires duplication of effort by State and local governments, since both will be preparing consolidated plans for their jurisdiction. They argued that consolidation has resulted in overregulation of previously less regulated programs. They suggested that the Department seek legislative change to really streamline the requirements.

The Department believes that there is not much duplication of effort between State and local consolidated plans, since the State plans focus on the nonentitlement areas of the State that are not covered by the consolidated plan of a locality. In creating a new framework for submissions for the CPD formula grant programs covered, a few requirements, such as the more detailed citizen participation requirements, have been applied to programs not previously covered. However, the consolidation will give governments and citizens the advantage of looking at the needs to be addressed by HUD programs all at once. Legislative changes have been sought to combine the McKinney Act programs, but those changes have not been enacted. Statutory change is not necessary just to coordinate the submissions for the different programs.

The following is a section by section summary of comments received and HUD responses.

Section 91.1 Purpose

This section states the goals of the community development and planning programs covered by the part and the function of the consolidated plan. There were four primary areas of comment on the goals portion (§ 91.1(a)) of this section.

First, a low-income advocacy group and the State of Florida took stands on the Department's attempt to restate and consolidate the statutory goals of the various programs covered. The low-income advocacy group praised the broad discussion of goals, while the State criticized the language as confusing and failing to reflect all the goals of the covered programs. For example, the State said that the CDBG goal of eliminating slum and blight is not included. It also stated that the NAHA goal of increasing the supply of decent housing that is accessible to job opportunities has been converted to ''provision of jobs accessible to housing affordable to low-income persons.'' Obviously, the low-income advocacy group recommended preserving the language, while the State advocated citing the specific legislative language of goals to be served by the specific programs.

The Department believes that this statement of broad goals is useful. The language concerning job accessibility mirroring the NAHA statutory language is included in the paragraph on decent housing, while the economic development language of the CDBG statute is reflected in the paragraph on expansion of economic opportunity. Elimination of slum and blight is implicit in the language of the goals provision pertaining to improving the safety and livability of neighborhoods.

Second, several disabilities groups objected to the phrasing of the goals section on supportive housing, stating that it is potentially stigmatizing, because it assumes that all persons with special needs require housing with special features, unlike other housing that exists in the community. The potentially offending section reads ''* * * Decent housing also includes increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.'' These commenters suggested modifying the sentence to read ''* * * Decent housing also includes increasing the supply of housing, which may or may not require certain unique structural features and which can be linked to on-site or community based services desired by persons with special needs.''

The Department does not disagree with the point that many disabled persons may require housing which does not need structural modifications. Jurisdictions are free to provide such housing for persons with disabilities. However, the statement of purpose on this item was taken directly from purposes section of the National Affordability Housing Act, and it is not necessary to change this statement.

Third, several disability groups advocated changing the language about ''assisting homeless persons to obtain appropriate housing'' to include the concept of ''permanent housing.'' The Department agrees that among the actions taken to address the needs of homeless persons is providing permanent housing (along with providing emergency and transitional shelter). Such an approach is part of a total homeless strategy laid out in the strategic plan. However, to carry out this plan, it is not necessary to change the statement of purpose to focus on only one element of this approach. Therefore, the final rule contains no change in response to this request.

Fourth, several States objected to the impact on them of the expanded definition of ''suitable living environment'' and ''economic opportunity'' found in the goals section. They indicated that the requirement that the State's short and long term goals ''must be developed in accordance with the statutory goals described in § 91.1'' puts greater emphasis on these goals than is desirable, from their point of view. They also note that the goals emphasize low-income housing and the effort to tie public facility and economic development activities to low income and public housing, while objectives set forth in the CDBG statute are missing. States indicated that the emphasis on expanding economic opportunity including job creation creates a linkage to community development that is often made at the local level rather than being imposed from the State. States will explore these new linkages in community building, but where such linkages are not appropriate or possible, neither the State nor its grantees should be penalized.

The description of what is meant by expanded economic opportunity is consistent with the current CDBG program requirements for States at § 570.483(b)(4). This language should not limit grantees' flexibility, and therefore, it is not being changed in the final rule.

Section 91.5 Definitions

a. Income Categories

The proposed rule used the terms ''very low-income household'' and ''low-income household'' for the households traditionally identified in the CDBG program as ''low-income households'' and ''moderate-income households.'' This change drew two types of comments. First, a State pointed out that a CDBG proposed rule published on August 10, 1994 used the traditional CDBG terms, and the two rules should be consistent. Second, a city, county, and a professional organization of government CDBG administrators, recommended that the consolidated plan rule should use the terms traditionally used in the CDBG program. They argued that to do otherwise is damaging to the perception of the program in cities that are

struggling to keep income balance in their community, whose citizens are more willing to see CDBG funds devoted to income groups that appear to be more inclusive of average families.

The Department believes that the consolidated plan must use uniform definitions of income categories for all programs covered by the plan. The terms chosen in the proposed rule (as in the CHAS) were drawn from the Cranston-Gonzalez National Affordable Housing Act, which created the Comprehensive Housing Affordability Strategy (that is applicable to all the CPD formula grant programs) and the HOME program. However, we believe that the comments have merit. Therefore, this final rule returns to the Housing and Community Development Act of 1974 terms: ''low-income'' (does not exceed 50 percent of median income) and ''moderate-income'' (does not exceed 80 percent of median income). This rule adds a new term ''middle income'' to encompass the group described as ''moderate income'' in the proposed rule, to fulfill the responsibility under the CHAS statute to consider affordable housing needs for this category of families and to include impact on them in the performance report.

The ''extremely low-income'' category of 0–30 percent of median income was praised by low-income advocacy groups and some States, while local jurisdictions and some States took issue with its addition to the evaluation of needs and performance reports as not statutorily required and too burdensome.

The purpose of including this income category is to assure that jurisdictions consider the needs of the households that have the least ability to improve their access to affordable housing on their own. It is a category that was addressed in the CHAS tables and there was much support from low-income advocates for its use in the consolidated plan.

The data for the needs assessment is census data provided by HUD that has been used under the CHAS rule. The data for the performance report is similarly available. To accommodate the concern about data availability, the language has been changed to require reporting on the number of extremely-low, low-, moderate-income, and middle-income persons served by each activity only where information on income by family size is required to determine the eligibility of the activity.

b. Definitions of Terms That Were in the CHAS

Two local jurisdictions stated that the rule should contain definitions for terms that are used in § 91.205(b) of the rule—moderate income, elderly, large family, cost burden, and severe cost burden—and which were defined in the CHAS rule. An advocate for low-income households stated that the rule needs definitions for additional terms: assisted family, disabled family, federal preference, and overcrowding. These definitions are needed to define ''worst case'' housing needs, which another low-income advocacy group wanted included in the defined terms. (''Worst case needs'' was a term defined only in the CHAS guidelines; it was not a term found in the CHAS rule.)

The terms mentioned above that are essential to the consolidated plan rule are being added in the final rule. Those terms are ''moderate income,'' ''elderly person,'' ''person with disability,'' ''large family,'' ''cost burden,'' ''severe cost burden,'' and ''overcrowding.'' The last three terms are derived from the census, and the definitions used in the rule are, therefore, those of the census. The other definitions being added follow the definitions provided for those terms in the CHAS rule.

One disability group advocate urged HUD to adopt the definition of ''persons with disabilities'' used in the Americans with Disabilities Act. The definition used in the CHAS rule is consistent with the one required for use in the assisted housing programs. The Department sees no reason to abandon this definition.

The terms ''assisted family,'' ''federal preference,'' and ''worst case'' are not being used in the rule, and therefore no definitions for them are needed.

c. Homeless

Legal service agencies, homeless and low-income advocates, and various disability and public interest organizations were concerned that the rule's definition of ''homeless'' was not identical to the definition of that term in the Stewart B. McKinney Homeless Assistance Act. The definition requires the individual or family to both lack ''a fixed, regular, and adequate nighttime residence; and [have] a primary nighttime residence that is [a supervised emergency shelter]; * * * an institution that provides a temporary residence for individuals intended to be institutionalized; or a * * * place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.'' The commenters argued that the McKinney Act defines a homeless individual as either one who lacks a fixed, regular, and adequate nighttime residence or one whose primary nighttime residence is one of the three described types. Their point seems to be that families that are overcrowded, because more than one original family unit resides in a housing unit intended for one, should be considered ''homeless.''

The Department agrees that the definition used in this rule should be essentially the same as the definition in the McKinney Act. This change does not, however, signal that the Department is altering its position that the definition must read within the context of the findings and purpose section of the McKinney Act. It is clear to the Department that the McKinney Act was enacted in 1987 to assist the rapidly growing numbers of persons living on the streets and in shelters. It was not enacted for the purpose of assisting the substantially larger number of persons who unfortunately live in substandard housing or with others in so-called doubled-up arrangements because of the problem of a lack of affordable housing. The latter problems have been the subject of legislation since 1934, and the Department administers many programs designed to address these problems. Persons living in substandard housing or in doubled-up arrangements are not homeless, although they may be at high risk of becoming homeless. Although the Department is not changing the core definition of homelessness in the McKinney Act, it should be noted that the prevention of homelessness is an essential part of a larger homeless program and the homeless plan includes actions to help low-income families avoid becoming homeless. This would include persons who are precariously housed.

The Department does believe that the wording of the definition for ''homeless family'' in the proposed rule was confusing. Therefore, the definition has been renamed ''homeless family with children,'' and the language has been clarified.

d. Other Definitions

A local jurisdiction pointed out that the definition of ''consolidated plan'' indicates that it is a document submitted annually. Only parts of it are submitted annually—the action plan and the certifications. The Department agrees that the definition of consolidated plan needs to be clarified so that it does not appear that every element must be submitted annually. A modification of the proposed language

that adds references to provisions of the rule has been adopted in the final rule.

Local and State governments suggested that the definitions of income categories need to be clarified with respect to whether they apply to ''household'' or ''family.'' The terms seem to be used interchangeably, although they have distinct demographic meanings resulting in different median incomes.

The final rule defines the income categories in terms of ''family''. For planning purposes, the definition HUD uses for that term in its assisted housing programs is used in this rule (in accordance with the definition that is adopted by the Cranston-Gonzalez National Affordable Housing Act). The connection between data supplied by the Census, which uses a different definition of ''family'', is explained in the Guidelines. The individual program definitions govern the actual use of the funds and reporting on beneficiaries.

The District of Columbia points out that the definition of ''State'' includes the District of Columbia and the definition ''unit of general local government'' excludes the District of Columbia; however, the District is defined as an entitlement jurisdiction (local government) for purposes of the CDBG and ESG programs. These definitions should not adversely impact grant allocations or application requirements. The final rule removes reference to the District of Columbia from the definitions, and adds a new section to the rule to specify consolidated plan requirements for the District of Columbia.

A State suggests that the definition of ''jurisdiction'' should be clarified to assure that it includes only those jurisdictions receiving funds directly from HUD. It states that the rule, as written, appears to apply directly to the units of general local government that are State recipients of HOME and CDBG funds. The applicability section, § 91.2(b), states that ''[a] jurisdiction must have a consolidated plan that is approved by HUD as a prerequisite to receiving funds from HUD under the following programs. * * *.'' The provision does not state that a jurisdiction must have such a plan in order to receive funds from a State. However, the section has been revised to clarify its applicability rather than to revise the definition of ''jurisdiction.''

Section 91.10 Program Year

Representatives of county officials and local governments commented on the requirement that a jurisdiction must have one program year for all four of its CPD formula programs. One city praised this change as ''a positive step in streamlining the application process.'' It went on to say that the flexibility of permitting the jurisdiction to select this program year also is beneficial. On the other hand, an organization of county officials stated that the change of program year will cause additional administrative costs. It proposed that HUD permit waiver of the cap on administrative costs in the first year under this rule to accommodate the additional cost of changing program years.

The administrative cap is statutory.

Section 91.15 Submission date

One concern of States, local governments, disability group advocates, and low-income advocates was the timing of the deadline for submission of the first consolidated plan. The proposed rule states that the consolidated plan must be submitted to HUD ''at least 45 days before the start of its program year.'' Since the Department has made it known that it plans to implement the rule for Federal Fiscal Year 1995 funds, many commenters have indicated that there is insufficient time before the required submission date to comply with the process required under the rule. More specifically, they indicate that the stated submission deadlines do not provide for the negotiation of exceptions to a jurisdiction's implementation of the consolidated plan for FY 1995, as expected.

Several alternatives were suggested: (1) Delay implementation until FY 1996 or make implementation optional in FY 1995; (2) implement the new rule by a demonstration, giving incentive grants to several jurisdictions to gain experience with the process; (3) start implementation with jurisdictions that have a program year beginning 180 days following the effective date of the rule; or (4) give explicit authority in the rule to HUD field offices to provide exceptions to the submission deadline where they are warranted. One large city commented that it is pleased with the apparent expanded role of local HUD offices in granting exceptions and would like the criteria for their action to be stated in the final rule.

The Department has chosen option number 4. The rule has been revised to add a provision, § 91.20, that explicitly authorizes HUD field offices to grant three types of exceptions: from the requirement to submit all or part of the consolidated plan in FY 1995 (and permit submission of a CHAS annual update plus the individual program submissions), from the deadline for submission, and from the guidelines. Exceptions to requirements found in the guidelines require that no statutory or regulatory requirements may be overridden and that there must be a finding of good cause by the HUD field office, documented by sending written memoranda periodically to HUD Headquarters stating the authorized exception and the basis for the exception.

Commenters who suggested option number 4 commended HUD for empowering its field offices, a change that will allow local HUD staff to more effectively coordinate the process to accommodate local needs. One commenter recommended that the exception provision state what steps must be taken by a jurisdiction in order to request an exception. The rule does not deal with the procedure in this level of detail. However, any interested jurisdiction should contact its HUD field office for the specific information to be contained in a particular request.

Many States have been in contact with their HUD field offices and have worked out agreed upon schedules for complying with the requirements of this rule. It is anticipated that most jurisdictions will work out arrangements that are mutually agreeable for the submission of a consolidated plan that comes close to that envisioned in this rule for this fiscal year.

Another deadline stated in the proposed rule (§ 91.15(a)(2)) is the date required by the CDBG statute: ''Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled.'' State, county and local government entities stated that this provision does not appear to encompass the flexibility expected from HUD, based on discussions with HUD field office staff. They recommend that the rule allow some flexibility on HUD's part not to penalize jurisdictions that may have a bona fide problem in making the complete submission in any given year.

The August 16 date for CDBG submissions has been established pursuant to section 116(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5316) as the final date for submission of final statements for each fiscal year.

Section 91.100 Consultation

a. Adjacent Local Governments

Several local governments criticized the proposed rule's requirement to notify adjacent local governments regarding priority nonhousing community development needs and

suggested that it should be deleted. On the other hand, two low-income advocates expressed support for the regulatory section providing that the jurisdiction should consult with adjacent local governments.

One local government believed the provision on consultation should be deleted because it is burdensome, particularly for large local governments which have dozens of adjacent local governments. The needs of its own residents are overwhelming and will use all available resources. Consultation with adjacent local governments would unreasonably raise expectations for services and assistance.

Another local government wanted clarification regarding whether consultation with local governments is required or optional and the subject of the consultation. Another local government said the language regarding notification and consultation is vague and the purpose to be served by ''notifying'' another jurisdiction is unclear.

The consultation provision with respect to adjacent local governments is statutorily required. The CDBG statute (section 104(m)(2)(A)) of the HCDA (42 U.S.C. 5304(m)) states, that in preparing the community development plan (''CD plan'') describing the jurisdiction's priority nonhousing community development needs, the jurisdiction must, ''to the extent practicable, notify adjacent units of general local government and solicit the views of citizens on [these] needs.'' The following paragraph of the statute requires submission of the CD plan to the State or any other unit of general local government within which the jurisdiction is located, as well as to HUD.

From the statutory context, the Department presumes that the views of adjacent jurisdictions are to be welcomed on the validity of the needs identified by these governments, just as the comments of the citizens are to be considered. Consultation with adjacent jurisdictions is not to be assumed to entail taking financial responsibility for satisfying the needs of the adjacent jurisdictions, but only reflects the perspective that adjacent jurisdictions may have occasion to know of needs of their neighbors.

With respect to the burden of notifying a multitude of adjacent jurisdictions, the rule does not require personal meetings with each one. The burden of mailing a document that has been prepared by the jurisdiction to a number of adjacent jurisdictions should be minimal.

An urban county asked for clarification on how this provision applies to an urban county. If there is no adjacent unit of general local government, the intergovernmental consultation requirement requires only submission of the CD plan to the State. (The language concerning submission of the CD plan to the State was not included in the proposed rule but has been added to the section in this final rule.)

Two local governments recommended that all jurisdictions in areas that receive funding under the HOPWA program should assist the jurisdiction responsible for submitting the HOPWA allocation in the preparation of its consolidated plan. This is the type of issue that was intended to be covered by the rule's provision concerning consultation for problems that go beyond a single jurisdiction, found in the penultimate sentence of § 91.100(a).

The Department has determined that the provision concerning consultation for problems and solutions that go beyond a single jurisdiction should have one more element added: consultation with ''agencies with metropolitan-wide planning responsibilities where they exist.''

b. Public and Private Service Providers

One county commented that the regulation should recommend, rather than require, consultation with public and private agencies because the current CDBG citizen participation process is sufficient to ensure an open process for citizen participation. On the other side of the issue, several nonprofit disability advocates commented that the regulation should mandate, rather than encourage, consultation with public and private agencies. They suggest that the consultation should be undertaken at least 30 days before the jurisdiction develops its proposed consolidated plan.

The CHAS statute (section 105(b)(17), 42 U.S.C. 12705(b)(17)) requires a jurisdiction to consult with public and private agencies concerning programs and services to be provided in accordance with the housing strategy. Consequently, the proposed rule required such consultation. Section 91.100(a) provides: ''When preparing the plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities—including HIV/AIDS, homeless persons) during preparation of the plan.'' However, the Department does not want to prescribe the precise timetable for these consultations. Presumably, the consultation will take place well in advance of the jurisdiction's submission of its proposed consolidated plan.

Homeless and low-income advocates recommended that the regulation specifically mention consultation with specific entities. Most of the suggested groups are already included in the categories stated in the proposed rule. In addition, as residents, any persons not contacted as part of the consultation process will receive notice of and have the opportunity to participate in the development of the consolidated plan as part of the citizen participation process, described in § 91.105. In fact, residents in public and assisted housing developments are specifically mentioned in paragraph (a)(3) of that section. The Department believes it is unnecessary to lengthen the list of entities consulted.

A homeless advocate suggested adding a new paragraph to this section dealing with consultation on homeless needs. The advocate wanted the regulation to require the jurisdiction to convene a local board whose members are appointed by the jurisdiction and a majority of whom are currently or formerly homeless or nonprofit providers serving the homeless. The local board would be responsible for completing the homeless portions of the consolidated plan, which would be submitted to the jurisdiction for inclusion in the overall plan. The board would be responsible for considering comments on the homeless portion of the plan. This proposal may be authorized by legislative change; however, there is no statutory basis for it now. Elsewhere, the Department is encouraging communities to establish coordinating boards to carry out a homeless plan, but it is inappropriate to require it now in this rule.

c. Public Housing Agency

Paragraph (c) of this section of the proposed rule requires the jurisdiction ''to consult with the local public housing agency participating in an approved Comprehensive Grant program concerning consideration of public housing needs and planned Comprehensive Grant program activities.'' One large housing authority commented that there should be a mutual exchange of information between the jurisdiction and the housing authority needed for the housing authority's Comprehensive Grant Program plan and for the jurisdiction's consolidated plan.

One local government interest group commented that HUD should be

sensitive to the difficulties involved in the requirement of consultation and interagency coordination, particularly with public housing authorities over which the jurisdiction has no control. They recommended that HUD pursue public housing regulation which require public housing agencies (PHAs) to work with the department of the jurisdiction that has responsibility for the consolidated plan. One city commented that the Comprehensive Grant program regulations already provide for local government cooperation in providing resident program and services to low-income public housing residents. The proposed rule contained a change in that regulation (§ 968.320) designed to have exactly the effect suggested by the first commenter.

d. Lead-Based Paint Consultation

The consultation requirement for the portion of the consolidated plan concerning lead-based paint hazards is to consult with State or local health or child welfare agencies and ''examine health department data on the addresses of housing units in which children have been identified as lead poisoned.'' One city stated that the information it receives from its health department is related to areas or blocks in which lead-poisoning cases have been identified, not specific ''addresses,'' due to Privacy Act concerns about making information available to the public.

The CHAS statute (section 105(e)(2), 42 U.S.C. 12705(e)(2)) is stated in terms of requiring the jurisdiction to consult with the agencies and to ''examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.'' The statute does not pre-empt the Privacy Act, and the approach taken in this particular jurisdiction is reasonable. In addition, neither the statute nor the regulation requires the jurisdiction to provide data regarding the addresses to the public. The consolidated plan section for lead-based paint hazards under the housing needs assessment requires the plan to estimate the number of housing units that are occupied by low- and moderate-income families and that contain lead-based paint hazards.

Several low-income advocates point out that the regulation fails to restate the statutory language concerning consultation for lead-based paint hazards to examine ''existing data related to lead-based paint hazards and poisonings,'' although the regulation does include the statutory language to examine data on the addresses of housing units in which children have been identified as lead poisoned. The rule has been revised to include the missing statutory language.

e. Description of the Consultation Process

Disability community and low-income community advocates recommend that the consolidated plan require a description of the consultation process and an identification of those who participated in the process. Such a description is required under the CHAS regulations (§ 91.15, as published on September 1, 1992). The rule has been revised to include such a provision.

Section 91.105 Citizen Participation (''CP'') Plan

a. General

An urban county recommends that a section be added for urban county programs, enabling urban counties to complete a consortium-wide citizen participation plan, instead of a separate plan for each municipality. No change is needed. An urban county is the jurisdiction, and the regulation requires only one citizen participation plan for the jurisdiction.

One State commented that the regulation is not clear regarding what is applicable or required for State governments. The regulation seems to impose additional requirements for the planning process over and above CDBG requirements. The State believes that in the CDBG program, the State passes citizen participation requirements to local governments, which actually propose and carry out activities. It comments that the requirements imposed by the proposed rule are excessive and impractical at the State level.

Two States and two State interest groups commented that the guidelines indicate that States do not have to provide a detailed citizen participation plan for citizens, but must have such a plan for units of general local government. The regulations detail a laundry list of requirements and do not mention the fact that States are exempt from this requirement. Clarification is needed.

One State agency commented that it would be difficult to implement the regulatory provision that encourages the participation of all citizens, including minorities, non-English speaking persons, and persons with disabilities. The State action plan does not require the State to identify the geographic areas within the state that will receive funds or the specific activities to be funded. Therefore, such participation would be required by every potentially involved geographic area of the state and every potentially affected population. The agency suggested that the rule permit States to develop citizen participation plans that include participation of citizens and groups representative of potentially affected geographic areas (i.e., rural, urban and/or suburban) or potentially affected populations.

Two State agencies commented on the provision requiring the jurisdiction to provide information to the public housing agency about housing and community development plan activities related to its development and surrounding communities, so the housing agency can make this information available at the public hearing required under the Comprehensive Grant program. One State said that the provision does not make sense for States and should not apply to States. Another State explained that it does not currently have ties with every public housing authority throughout the State, although it is developing these relationships.

A citizen participation process is statutorily required for the CDBG program and the CHAS. Under the CDBG program, citizen participation requirements are imposed by the statute for both the State and the local governments. The rule has been revised to have a separate section on the citizen participation plan for States, which takes into account the unique situation of States, eliminating the requirement that information be furnished to the public housing agency for its use in developing its Comprehensive Grant program.

One local government thought that this section was extremely confusing; it is not clear whether hearings and comments pertain to the citizen participation plan, the consolidated plan, or both. The Department agrees that the language needs to be more precise. This section has been reorganized and clarified.

Low-income advocates commented that HUD should give clear and precise minimum standards to jurisdictions in terms of time periods for each step in the process and the type of notice, in order to avoid confusion as to whether or not the jurisdiction is complying with HUD's purpose and to ensure meaningful citizen participation. Expressing a different point of view, one local government commented that the requirement for more citizen and agency participation may complicate an already lengthy consultative process. This local government already has a nine month process to include citizens and agencies in determining the elements of the CDBG application; adding components

could significantly slow down an already unwieldy process. On balance, the Department has decided not to prescribe additional detailed minimums for all elements, since that would reduce the flexibility of the jurisdictions. It is up to the jurisdictions to adopt a detailed citizen participation plan (with citizen input) that fits local conditions.

The Department notes that the statutes require more extensive citizen participation for the proposed CHAS/final statement/consolidated plan than for amendments and reports, which only require notice and an opportunity to comment. The final rule has been revised to distinguish the citizen participation required for the consolidated plan from the citizen participation required for reports and amendments.

One local government requested that the rule address the citizen participation process in a jurisdiction where separate agencies administer homeless services and housing services. The city would like to be able to continue to use two separate citizen participation processes and to incorporate the homeless plan into the consolidated plan. The Department believes that two separate processes would hinder a key premise of the consolidated plan, i.e., to require the jurisdiction to comprehensively consider and address the housing and community development needs of all persons within the jurisdiction.

b. Applicability

This section of the regulation requires the jurisdiction to adopt a citizen participation plan for the consolidated plan process before a jurisdiction's start of the next program year. The rule also provides that any amendment of a jurisdiction's current citizen participation plan for the CDBG program to satisfy these requirements must be completed before the beginning of the program year, if it starts on or after 180 days after the effectiveness of the final rule.

Several low-income and disability community advocates recommended that the regulation must clearly provide that the citizen participation plan must be adopted by the jurisdiction before the development of the proposed consolidated plan, and the plan must describe the jurisdiction's specific efforts to ensure participation of housing consumers, including people with mental retardation and other disabilities and their advocates. One individual commenter stated that the new citizen participation plan must be adopted as soon as possible, not after the initial consolidated submission is submitted.

Since the Department is eager to implement the consolidated plan expeditiously, the rule does not require that the citizen participation plan be developed, approved, and used, before any consolidated planning process begins. It merely requires that the citizen participation plan be completed, in accordance with this rule, before the first program year under the consolidated plan begins. In the first year, the jurisdiction must follow the substance of the citizen participation plan requirements, but it does not have to have a written citizen participation plan that follows the specific provisions of § 91.105 if its program year starts within 180 days of the effective date of the rule. In the following years, the new written citizen participation plan will be used in developing the consolidated plan.

Several disability and low-income community advocates suggested that the regulation set forth the process for developing and adopting the citizen participation plan, e.g., publish the citizen participation plan for comment, require one or more public hearings on the plan, require a 30 day comment period, and publish the final plan. The proposed rule's provision requires only a ''reasonable opportunity'' to comment, not a hearing process. The Department has concluded, after listening to the suggestions of jurisdictions, that it should not impose greater procedural requirements on the development of the citizen participation plan, although we have made a few modifications to the citizen participation requirements to reflect improved notice to citizens.

Two local governments commented that it is unclear whether the citizen participation plan is a specific, written document that must be submitted for approval, or whether the jurisdiction may merely report on its activities to meet the requirements of the citizen participation plan. The regulation suggests a separate document is required, but the guidelines are unclear. A separate document is required; however, the citizen plan is not required to be submitted to HUD. The requirement for a citizen participation plan came from the CDBG statute.

c. Affected Citizens

Several disability and low-income community advocates requested that the regulation state that the plan must ''provide for'', not just ''encourage'', participation by residents of low and moderate income neighborhoods. They also wanted the word ''although'' stricken from the beginning of paragraph (a)(2) because it diminishes the importance of the first part of the sentence. These changes have been made.

Several low-income community advocates supported the regulatory language encouraging the participation by minorities, non-English speakers, persons with mobility, visual, or hearing impairments, and public housing residents. One disability community advocate wanted the language broadened to include ''persons with disabilities,'' not just those with physical impairments. Although it may be more difficult for a jurisdiction to determine how to provide for participation of persons with disabilities other than the physical ones specified, the Department agrees that the obligation should relate to the whole category of persons with disabilities. The rule has been revised accordingly.

Several low-income community advocates said that the regulation does not sufficiently address the statutory requirement that ''affected citizens'' must be given a reasonable opportunity to examine the contents of the proposed consolidated plan and to submit comments. They want the regulation to state that ''extremely low and very low-income'' people are among those most ''affected.'' They want the regulation to require the jurisdictions to take additional actions to publicize/give notice to *these* affected citizens, e.g., notice should be in the non-legal section of major daily newspapers, in major non-English newspapers, and in public service announcements on TV and radio.

The rule is written in terms of all citizens, rather than just ''affected'' citizens. One could certainly argue that all citizens in the jurisdiction are affected. This comment is just another way of saying that the citizen participation requirements should be stated in greater detail. That level of detail will be provided not in this section of the HUD rule but in the citizen participation plan prepared by the jurisdiction.

d. Information To Be Provided

This section of the rule requires that, before it adopts a consolidated plan, a jurisdiction must make available to the public ''information that includes the amount of assistance the jurisdiction expects to receive and the range of activities that may be undertaken, including the amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced.''

Fearing that jurisdictions will make this information available the day before a consolidated plan is adopted, low-income advocates urged that the regulation specify a time period for the jurisdiction to make information available to the public. The commenters suggested various periods of 10 to 30 days before the consolidated plan is prepared, and at least 30 days or 60 days before the consolidated plan is adopted.

This requirement is derived from both the CDBG statute and the CHAS statute. Since the Department is not aware of any controversy concerning the implementation of the CDBG requirement to furnish information, it declines to impose a time limit in this rule, whose purpose is to consolidate requirements—not to impose more strict timeframes on jurisdictions. Again, the jurisdiction's citizen participation plan is the appropriate place for these timeframes.

Local governments and local government interest groups supported the regulation for permitting publication of a summary of the proposed consolidated plan, rather than the entire plan. Low-income and disability community advocates indicated disapproval of this proposal. One local government requested that the regulation should list precise content requirements for the plan summary to avoid lengthy disputes about what content is acceptable. The Department continues to believe that publication of a summary of the consolidated plan is more meaningful to stimulate general interest in the process than publication of the lengthy and complicated document. However, the rule is not being revised to specify its precise contents.

Low-income and disability community advocates indicated that the entire draft consolidated plan, plan amendments, and the performance reports, must be made available to citizens within a period such as two working days free of charge. The Department agrees that the documents needed for public comment must be made available without charge in a timely fashion. This requirement is being added to the rule.

Low-income advocates want the consolidated plan computer software to be made available to community-based organizations. They suggested that one local grassroots organization could be chosen to act as a lead and to share the software with other such organizations. The software should also be made available at no or reduced cost to local libraries. Among the options that HUD is considering at this point are participating in a number of demonstrations with city-wide low income coalitions where HUD would provide the software and providing reduced cost copies of the software to various groups.

One local government asked when the period begins for access to records and information relating to the jurisdiction's use of program assistance during the preceding five years. The commenter also said that the CDBG program only requires records to be maintained for three years and suggests the regulation be amended to give access to records for the preceding three years. The current CDBG program regulation requires records to be maintained for three years after the date of submission of the performance report in which the specific activity is reported on for the final time. The CHAS statute requires access to records regarding assistance received during the preceding five year period. Blending these provisions to cover all the programs requires use of the five-year period.

Accordingly, the program regulations are being amended in this rule to require records to be retained for a longer period than is currently required. Since performance reports are submitted after the program year, retention of records for four years after the activity is last included in a performance report yields a five-year retention period. For the CDBG program, the retention period has been changed to four years after the CDBG activity is last included in the performance report. Since program closeout would occur no earlier than the end of the program year in which the activity is initiated, retention of records for four years after closeout yields a five-year retention period. For programs other than the CDBG program, the retention period has been changed to four years after closeout.

e. Notice

Some low-income advocates support the requirements in the proposed regulation for the kind of citizen participation required, but virtually all of the advocates believe that the regulation fails to provide sufficient specificity regarding ''publish'' and ''notice'' and reasonable opportunity to comment.

Suggestions for specific elements to be included in the rule were the following: how notice is given; what groups and populations must receive notice; time period for advance notice before issuance of the draft plan (45 days); and responses provided in draft plan to all oral and written comments received at or before the first public hearing. The notice should be in the non-legal section of major daily newspapers, in major non-English newspapers, and in public service announcements on TV and radio. The jurisdiction should maintain a mailing list of interested individuals, nonprofit organizations, low-income neighborhood organizations, and other interested parties and be required to send written notice of the opportunity to comment on the proposed consolidated plan, as well as a copy of the final plan. Copies also should be available at public and private agencies that provide assisted housing, health services, and social services. In addition, a reasonable number of copies are to be provided without charge to citizens and groups that request a copy.

The Department declines to add all of these elements to the rule. However, recognizing that citizen notice of hearings is critical to success of citizen participation, the Department has added language to indicate that publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Also, the examples provided by commenters are excellent examples of how to provide notice, and they will be included in the Guidelines issued to assist jurisdictions in implementing the rule.

The proposed rule contained three provisions related to accessibility of the process to persons with disabilities: the statement about encouraging the participation in the citizen participation process in paragraph (a)(2), discussed above, the statement that accommodations for persons with disabilities must be made at public hearings in paragraph (b)(5), and the statement about accessibility of the citizen participation plan in paragraph (c).

Several disability community advocates commented that section 504 of the Rehabilitation Act (29 U.S.C. 794) requires each jurisdiction to make the content of the proposed plan available to persons with disabilities in a form that is accessible to them. Further, they stated that it is essential that announcements, materials, training sessions, and hearings related to the plan are accessible to persons with disabilities.

Several cities asked whether the format accessible to persons with disabilities had to be available regardless of demand for the format. Two cities suggested that the regulatory provision for the citizen participation plan to be made available in a format accessible to persons with disabilities should be based upon a specific request. One city based this suggestion on the fact that taped or Braille version of information had not been requested in

the past 20 years. The rule has been revised to require provision of the materials in accessible form, upon request.

f. Comment Period

Comments were received about the appropriateness of the 30-day comment period on the consolidated plan, as well as on the 30-day comment period for plan amendments and for performance reports. Several local governments believe that the 30-day comment period for the consolidated plan is reasonable. Several low-income advocates want the minimum period for the jurisdiction to receive comment from citizens on the consolidated plan to be increased from 30 days to 60 days to give residents more adequate opportunity to research, discuss, and comment on the proposed consolidated plan.

The opportunity to comment on the consolidated plan derives from the CHAS statute, section 107(a), which requires that a jurisdiction provide a reasonable opportunity to examine the content of the proposed housing strategy and to submit comments on the proposed housing strategy and from the CDBG statute, section 104(a)(2)(B), which requires CDBG grantees to provide a reasonable opportunity to examine the content of the proposed statement of CDBG activities and to submit comments on the proposed statement. The Department believes the 30-day period specified in the rule for this process is appropriate, especially given the comments from both sides of the issue.

Thirty days was stated to be too long and burdensome a comment period for amendments by several local governments. The commenters suggested a 15-day comment period for amendments to the plan or suggest that the regulation not prescribe the period and instead required a ''reasonable period.''

One local government stated the 30 day period for receiving comments on reports is a new requirement and is infeasible because the report is due 90 days after the end of the program year and the report will require information on all the formula programs. Two other local governments agreed that the requirement for notification and a 30 day comment period for performance reports is time consuming, redundant, and should be eliminated. Others suggested a 15-day period for the performance report or a ''reasonable period.''

A public comment period is required for substantial amendments and performance reports in accordance with the CHAS statute, section 107(b). Section 91.62 of the current CHAS rule contains this same requirement. The requirement, therefore, is not totally new, although jurisdictions may not have been required to submit performance reports concerning formula grant programs for public comment before submitting them to HUD.

We note that not all changes in activities constitute a ''substantial amendment'' that will trigger this public comment process. See the provision that permits the jurisdiction's citizen participation plan to determine what type of change requires a substantial amendment.

The final rule has been revised to provide that the comment period for performance reports is 15 days, instead of 30 days, and the deadline for submission of the reports is preserved at 90 days after the end of the program year.

Several low-income community advocates also suggested that the regulation specify a period between the end of the comment period and the submission of the plan so that the jurisdiction will be able to make changes in plan based on citizen comments. Different timeframes were suggested: at least 10 working days, 30 days. The final rule has been reorganized so that the provision requiring a minimum 30 day public comment period also requires that the jurisdiction must consider the comments. The jurisdictions need to give themselves adequate time to consider the comments, but the regulation does not prescribe this time period.

g. Technical Assistance

Paragraph (b)(4) of the proposed rule requires that the citizen participation plan ''must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction.''

One State and one State interest group asked for clarification of how this provision would apply to States. They indicated that since some States do not develop proposals for CDBG and HOME programs, but instead receive requests from local governments for funds for what they determine to be their local needs, the States would not be in a position to provide this type of technical assistance. A local government wanted clarification regarding whether this requirement is statutory, and suggested eliminating it if it is not statutorily required.

This provision comes from the CDBG statute and has applied to the CDBG State and Entitlement programs since 1988, so it cannot be eliminated. However, the CDBG rule has applied the requirement to States via the local governments' citizen participation plans (see § 570.486(a)(4)). The final rule has been revised to treat it the same way in the separate States provision on citizen participation.

Two states commented that the regulation is unclear on the extent of the technical assistance that is to be provided. Government interest groups and a local government expressed support for the regulation language, which requires the jurisdiction to determine the level and type of technical assistance. There is no change to the final rule on this issue, although more guidance is provided on it in the Guidelines.

Two agencies from one State wanted to know the source of funds to provide the technical assistance and requested that the regulation specifically permit federal administrative funds to cover the costs of providing technical assistance. One low-income advocate also asked whether funds will be available to jurisdictions to provide this technical assistance to them. Another State also wanted to know the extent of any tracking of such assistance that might be required. Technical assistance is an eligible administrative expense under the CDBG and HOME programs.

One low-income advocate suggested that technical assistance available to groups representative of very low and low-income people should be advertised via mailings to all such groups in the jurisdiction. Available technical assistance should include written guidance, telephone contact and one-on-one meetings. Low-income and disability community advocates want HUD to provide funding to their organizations to develop materials and training for citizen groups to allow for meaningful participation. The rule does not prescribe the forms of technical assistance, but the implementing guidelines will include suggestions.

h. Public Hearings

Local government interest groups stated that they believe that public hearings are not the most effective way to obtain citizen views. One city and low-income advocate recommended neighborhood meetings as useful in the process. The rule follows the statute in requiring public hearings, but is open to other forms of involving the public.

One local government suggested that HUD interpret ''public hearing'' to mean traditional public hearings, as well as, public meetings. This would give jurisdictions flexibility to use public meetings and other public forums to gather citizen comments. Formal public hearings in local government require city council members to be present and for comments to be tape recorded. The requirement for public hearing has been in the CDBG statute for many years, and HUD has not found it necessary to define what this means. Public hearings are governed by state and local law.

The question of how many hearings are required and at what point was raised by a number of commenters. Several local government representatives read the regulation to require two public hearings during the plan development process and believe only one should be required. The low-income advocates commented that the regulation should require three hearings, instead of two, each program year, indicating that they believe the CDBG statute requires three hearings. Various timeframes for these hearings were also suggested.

The proposed rule was based on the requirements of the CDBG statute, which requires (at 42 U.S.C. 5304(a)(3)((D)) that a jurisdiction have a citizen participation plan that

> Provides for public hearings to obtain citizen views and respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance * * *

One local government requested that the regulation clearly say how many hearings are required and what topics are required to be covered. In an attempt to give jurisdictions as much flexibility as possible, the regulation requires a minimum of two public hearings, since the statutory language uses the plural ''hearings,'' to be conducted at two different stages of the process. Under this wording, the jurisdiction may combine the hearing on needs for the coming year's planning with the hearing on the previous year's performance, for example. However, a jurisdiction may choose to hold one public hearing on needs, a second on the draft consolidated plan, and a third on the draft performance report.

One advocate wanted the regulation to require the hearing on needs to be expanded to permit citizens the opportunity to respond to proposals and questions. The rule has been revised to reflect the CDBG statutory language requiring response to proposals and questions.

The low-income and disability community advocates stated that the development of needs in the consolidated plan must be based on determination of housing needs made after public hearings. Several disability community advocates commented that the timeframes for citizen participation through the public hearing process do not require citizen participation in the earliest stages of the consolidated planning process, when ''worst case'' housing needs can be identified. They argued that timeframes permitted by the regulation significantly reduce the likelihood that meaningful housing needs information or housing strategies will be sought from persons with disabilities, advocates, or service providers as the consolidated plan is developed. The rule does require that the hearing on needs be conducted before the proposed consolidated plan is published.

One nonprofit and several low-income advocates stated that HUD must assure that meeting places and times are convenient to the persons most affected by these programs, by providing guidance in the rule. The rule requires the citizen participation plan to provide that hearings be held at times and locations convenient to potential and actual beneficiaries.

A local government interest group commended HUD for not prescribing how the needs of non-English speaking residents will be met. The rule does require that the citizen participation plan specify how the jurisdiction will meet these needs.

Clarification was requested by jurisdictions on whether flexibility is also permitted to meet the needs of disabled persons. Disability advocates stated that the physical accessibility of meeting or hearing sites should be ensured. Since accommodation for persons with disabilities is required by the CDBG statute (42 U.S.C. 5304(a)(3)(D)), by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and by the Americans with Disabilities Act (42 U.S.C. 12101–12213) and implementing regulations, it does not seem necessary for the rule to spell out exactly what is required for accommodation in this rule.

i. Comments and Complaints

Local governments and local government interest groups believe that the requirement to attach a summary of public comments or views and set forth the reasons for not accepting comments should be eliminated because it is not statutory, is too burdensome, and creates additional paperwork. One low income advocate wanted the regulation to require detailed summaries of comments indicating the number of comments for each constituency type and responding appropriately to each comment that was not incorporated into the final version of the consolidated plan.

Section 107(c) of the CHAS statute, 42 U.S.C. 12707(c), requires the jurisdiction to consider comments and views and to attach a summary. Although the statute does not require a discussion of the consideration of the views/comments, the Department believes that such a provision strengthens the citizen participation process.

Low-income advocates suggested that the regulation include a time period from close of the comment period to submission of the consolidated plan to ensure that the jurisdiction has adequate time to consider the comments. The Department is reluctant to specify additional time periods that must be honored, but citizens can certainly seek addition of this element to a local government's citizen participation plan.

One large city and one local government interest group commented that the regulation should not require ''substantive responses'' to every citizen complaint within 15 days because it is not practicable in its city to respond to every comment individually within 15 days. HUD should delete the reference to 15 days in the rule and allow local control over public response time. The CDBG statute and the consolidated plan regulation specify the 15 day period, ''where practicable.''

Several low-income advocates stated that the regulatory requirement for a timely substantive written response to written complaints is not sufficient to provide resolution of the complaints. Advocates also wanted the regulation to set forth an appeals process to HUD on complaints and on comments on the consolidated plan.

The CDBG statute (section 104)(a)(3)(E)) requires a ''written answer,'' while the CHAS statute (section 107(d)) requires a jurisdiction to follow HUD-established ''procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints.'' The rule requires each jurisdiction to specify in its citizen participation plan the procedures it has determined are ''appropriate and practicable'' to resolve complaints. A system involving an appeal to HUD would not be possible, given the limited staff available.

One state agency commented that it is unclear whether each commenter on the consolidated plan is required to be sent an individual response, separately from

the responses that must be prepared as a part of the consolidated plan document. If so, this would be burdensome. The provision on responses to complaints was not intended to cover comments on the consolidated plan. The rule has been revised to have a separate paragraph for comments and a separate paragraph for complaints.

j. Criteria for Amendments

One state interest group commented on behalf of a state that the citizen participation plan is very idealistic and will restrict states' flexibility to amend individual programs. The regulation requires the citizen participation plan to specify the criteria that the jurisdiction will use to determine what constitutes a ''substantial change'' which necessitates citizen participation to amend the consolidated plan.

k. Adoption of Citizen Participation Plan

One state commenter believes that HUD presents no rationale for the provision requiring citizen input on the citizen participation plan and it exceeds the statute. The state is also concerned that the need to allow for input on the citizen participation plan will require a much earlier initiation of actions than may have been contemplated by many states.

The Department believes that input by citizens and their advocates is necessary for a meaningful citizen participation plan that will meet the needs of citizens in the jurisdiction, particularly those who are the intended beneficiaries of programs covered by the consolidated plan. The regulation does not require adoption of a new citizen participation plan each year.

l. Pending CDBG Rule on Citizen Participation

The citizen participation requirements in the consolidated plan regulation incorporate the citizen participation requirements of the CDBG program and supersede the pending rulemaking on citizen participation for the CDBG Entitlement program. In that rulemaking, a proposed rule was published on March 28, 1990 (55 FR 11556). Publication of a final CDBG regulation on citizen participation was delayed primarily by a moratorium on rulemaking.

HUD received comments on citizen participation requirements in the proposed CDBG program from eight commenters. Some of the comments on public hearings duplicated comments made on the proposed consolidated plan regulation and are addressed above. Comments that apply equally to citizen participation under the consolidated plan have been considered by HUD in the development of the final consolidated plan regulation as follows.

Two commenters expressed concern about the proposed requirements that grantees must provide citizens an opportunity to comment on the original citizen participation plan and any amendments to the plan, and must make the plan public. The comments expressed the view that these requirements were duplicative and would only serve to increase costs of compliance with little benefit to the objective of public participation.

The Department disagrees. Because the plan sets forth the detailed mechanisms for involving citizens in the development and review of the grantee's CDBG program and consolidated plan, it must certainly be made public. But it is also important that the citizens, who will be so much affected by the approaches selected by the grantee for involving them, be given the opportunity to comment on the development and amendment of that plan. Although this will be more costly than simply making the plan public, it is largely a one-time added expense and is fully justified in light of the importance placed on meaningful involvement of citizens in the development and review of local CDBG programs and the consolidated plan.

One of the commenting citizen organizations recommended that the rule require that hearings be held each time a final statement is proposed to be amended and that language be added to encourage the use of hearings for the purpose of enabling citizens to participate in project design and implementation. Neither of the suggestions was adopted. The Department believes that to require hearings to discuss amendments would be very costly, since a grantee could be expected to have several amendments during a program year. It is also highly questionable that holding a hearing to discuss an amendment would be more effective in getting citizen views than the current requirement of providing citizens the opportunity to comment in writing. It is reasonable to assume that many citizens would be willing to submit comments in writing about a proposal but would not be willing or able to attend a hearing to register those comments.

In a related matter, another commenter recommended the removal of the requirement that the hearings be held at different times during the year. This requirement is statutory.

A commenter recommended that the requirement that the grantee provide ''reasonable'' notice of public hearings be replaced with the need for providing ''adequate'' notice, noting that the statute had used the word ''adequate'' for this purpose. The Department believes that there is little difference between the meaning of the two words in this application. Accordingly, the final rule uses the word contained in the statute. The commenter also recommended that the rule set a standard for ''adequate notice,'' suggesting as a model what the Department of Treasury has established for small-issue private purpose industrial revenue bonds. The final rule does not contain such a model, since HUD believes that each grantee should be given the flexibility to meet the notice requirement in its own way, describing in its plan how it will provide adequate notice.

One commenter questioned the inclusion of the requirement that grantees provide ''timely notice of local meetings'' (other than for public hearings) in addition to the requirement that they provide ''reasonable and timely access to local meetings, information, and records * * *''. The commenter noted that the requirement to provide timely notice went beyond the provision in the statute, and appeared to require formal legal notices in daily newspapers. Believing this to be unnecessary and costly, the commenter suggested that the regulation simply retain the statutory language. This suggestion is adopted in the final rule.

A large city expressed concern about the need for targeting citizen participation to low- and moderate-income persons residing in certain areas. This requirement is statutory and cannot be removed from the rule. This commenter also objected to the requirement that the citizen participation plan contain information on the types and levels of assistance to be provided to persons who may be displaced by CDBG-assisted activities. It was noted that this information is already required to be made public and the need to duplicate it in another document would be costly. The regulations do not duplicate requirements concerning plans for displacement. Instead, the citizen participation requirements in the proposed CDBG regulation and in the consolidated plan regulation combine all citizen participation requirements, including the requirement the plan for displacement, into a single citizen participation plan.

One of the citizen organizations suggested that grantees be required to

maintain all of the key CDBG materials together in several locations throughout the community to make it easier for citizens to involve themselves in the program. HUD is unwilling to require this of all grantees, but notes that local citizen groups having particular problems in this regard may want to press their grantee to do this on a voluntary basis.

One commenter recommended that grantees be required to identify the amount of ''unexpended'' funds allocated in previous years at the time it provides information to citizens about the amount of CDBG funds available in the coming year. The expressed objectives of this suggestion were that it would help citizens identify problem areas (presumably with performance) and would highlight that certain needs will not have to be addressed in the coming year's program because of earlier allocation decisions.

The Department does not believe that such a change would be appropriate, since the rule already requires sufficient disclosure of performance. (The rule requires that performance be covered at a public hearing and that the grantee's performance report be subjected to public review and comment.)

Section 91.205 Housing and homeless needs assessment

a. Categories of Persons Affected

Numerous low-income and disability community advocates commented that the proposed rule does not require the level of detail on subpopulations that was required in the CHAS Table 1C. They argue that this information is essential to illustrate the needs of special populations. A disability group advocate indicates that the rule fails to create a comprehensive, inclusive and detailed needs analysis for programs that address the needs of persons living with HIV/AIDS. The commenter states that all jurisdictions are likely to be affected by the HIV epidemic and should have a needs assessment for residents in their areas who are living with HIV/AIDS, even if they are not seeking funds under the HOPWA program.

The low-income advocates also note that the proposed rule does not require that the needs of single, non-elderly or households of nonrelated individuals be identified. Also missing is the requirement to identify needs of nonhomeless people with disabilities, especially those with AIDS.

The Department has revised the rule to specify that the needs must be estimated for the number and type of families by income groups and tenure. The requirement now includes specific reference to single persons. Nonelderly persons presumably fall into the general categories of persons whose needs are identified. Households of nonrelated individuals are covered by the HUD definitions.

Nonhomeless people with special needs are now the subject of a separate paragraph (d) in § 91.205. This category covers elderly, frail elderly, persons with disabilities (mental, physical developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and any other categories the jurisdiction may specify.

We note that with regard to identification of special needs populations, the use of HOME tenant-based rental assistance to be used exclusively for assistance to one subpopulation of the disabled will only be permitted if the grantee can demonstrate that (1) the need has been documented in its consolidated plan, and (2) the reason for their preferential treatment is to narrow the gap in available benefits and services to the group. Therefore, this element is essential to the consolidated plan.

The Department declines to require all the information contained in CHAS Table 1C, because that would be contrary to our efforts to avoid unnecessary requirements and detailed tables. However, we have attempted to assure that the categories of special need to be served by the Department's programs are adequately addressed in the assessment of need.

Low-income advocates also stated that an indicator of need which should be included is analysis of the public housing and Section 8 waiting lists. We are including this suggestion in the implementing Guidelines.

Several public interest groups and local government commenters questioned the requirement to collect data on ''extremely low-income'' families, indicating that this information was not statutorily required, not required by the four grant programs included in the proposed rule for targeting program assistance, and not required in the past. As described above in the discussion of definitions, the term ''extremely low-income'' has been preserved in the final rule.

b. Disproportionate Need

Two local governments disagreed with the methodology on disproportionate need, indicating that it should be weighted for population size. Several low-income advocacy commenters thought the approach was excellent. The Department is preserving the language on calculation of disproportionate need from the proposed rule.

c. Lead-Based Paint Hazards

Several local government commenters requested that they not be required to provide data on lead-based paint hazards, since it was not easily available. One local government commenter suggested a rough analysis between Census data on pre-1970 housing and low-income occupancy data as a way to yield a pool of units likely to have some of lead-based paint.

The requirement to provide this information is statutory. The commenter's suggestion for a method to estimate the scope of hazard is not unreasonable. However, the consultation section (§ 91.100) does require consultation with local health and child welfare agencies and examination of health department data on this subject in the preparation of the consolidated plan.

d. Homeless

Several low-income advocates and disability community advocates complained about the deletion of the CHAS rule's more detailed homeless needs assessment. Commenters indicated that the rule should spell out in detail the data required to be submitted. The proposed rule requires that a homeless needs table be included in the plan that is prescribed by HUD. This follows the statutory language. The final rule preserves this provision intact.

e. Racial Impact

A number of low-income advocates stated that racial impact should be addressed in the needs assessment. In fact, several groups advocated that if this rule were implemented without the anticipated Fair Housing Plan rule it should contain consideration of racial impact in every element of the consolidated plan.

The Department has decided to deal with the more comprehensive issue of a Fair Housing Plan in a separate proposed rule, which is expected to be published shortly. To assure that some minimal requirements for compliance with the statutorily required certification that a jurisdiction is affirmatively furthering fair housing, this rule includes, in the certification section, the requirement that an analysis of impediments be done and that the steps to address the impediments be described, mirroring the language added to the CDBG regulations on the same subject. In addition, the performance report now includes for all programs the element of data on race and ethnicity of beneficiaries.

Section 91.210 Housing Market Analysis

a. General Characteristics

A few low-income advocates suggested that a description of housing stock be related to income, race and neighborhoods and ranked as housing needs are. The language of the rule does require the description to relate to income, race, and neighborhoods. Since this section does not deal with needs, but with the available stock, ranking would be inappropriate.

There were several comments on redundancy between what must be reported in the market analysis section and what must be reported in the strategy, especially on coordination, institutional structure and barriers to affordable housing. The final rule has been revised by consolidating the provisions on coordination and institutional structure with the provisions on the same subject in the strategy section. However, the provision on barriers to affordable housing is seen as necessary to an analysis of the housing market and have been retained in this section.

Two commenters suggested that a description of the housing market should include information on vacancy rates and the availability of credit. Such language is not being added to the rule, but it will be included in the implementing Guidelines.

Local definitions of areas of low-income and minority concentrations may be inconsistent with the fair housing rule once it is published, local government commenters suggested. They requested the ability to choose either local or HUD's definitions. This rule will permit local definitions. However, when the Fair Housing Plan rule is published as a final rule, it will prescribe use of its definitions for this purpose.

One low-income advocacy commenter suggested that a city should be required to assess whether it has sufficient sites to meet the low-income housing needs in its community. The consolidated plan rule is not being expanded to require this assessment in this section. However, the Department does plan to address the question of site selection in a later proposed rule.

b. Public and Assisted Housing

Eight disability community advocates indicated that jurisdictions must assess the loss of public housing units which will occur because of the implementation of Title VI of Housing and Community Development Act of 1992. They recommended that an analysis of these issues be required by reviewing the PHA's allocation plan and identifying the number of units lost to persons with disabilities. The provision to which the commenters refer is the provision that permits public housing and Section 8 housing projects to be designated for only elderly families, only disabled families, or for either. The Department is considering how to encourage balancing the resources available for these different groups. If special funding is announced to further this end, applicants will need to supply such information.

c. Barriers to Affordable Housing

Several local government and government interest group commenters objected to the provision requiring cities to identify public policies that affect the cost or incentive to develop affordable housing. They should not be required to do a self-analysis but only relate criticisms they have received. Cities suggested that they be required to list Federal policies that create barriers.

This element is statutorily required, so it has not been eliminated. The Department believes that listing of Federal policies in this part of the local plan is not appropriate. However, HUD will work with localities to assess the impact of HUD policies separately.

Section 91.215 Strategies, Priority Needs, and Objectives

a. General

The majority of low-income and disability community advocates recommended inclusion of the link between needs and priorities, with the worst case needs being given the highest priority. Several commenters wanted to restore the comparative analysis required by the CHAS at 91.19(b)(1), matching housing inventory with severity of needs and types of housing problems of each priority category. Some recommended that the rule require that a jurisdiction commit to providing a ''fair share'' of its resources to meet the ''worst case'' needs.

The Department agrees with the low-income and disability community advocates that the strategy must explain how the priorities have been established and how the strategic plan addresses the needs identified in the needs assessment. The rule has been strengthened to require a comparative analysis of the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners. The rationale for establishing the priorities and determining the relative priorities should flow logically from this analysis. The title of the section has been revised to ''Strategic Plan'' to emphasize the cohesive nature of this section of the document.

The Department declines, however, the suggestion to adopt a ''fair share'' approach. The Department's goal for this rule is to provide the framework for communities to have meaningful plans, serving low-income families. The Department does not want to substitute its judgment for locally developed plans and priorities framed through a strong citizen participation process.

However, by establishing a stronger rationale for relating priorities to needs, the Department hopes to discourage such situations as the following: A major city identified a large need for housing by low-income groups and homeless persons and proposed actions to address these needs. Then the city council overturned these proposals and built a high profile ''trophy'' project which completely ignored those needs.

Several commenters were critical about the level of detail which seems to be required about specific objectives at 91.215(a)(2). This section seems to require localities to quantify and geographically locate Federal grant budget resources for a 3 to 5 year period in the consolidated plan. They claimed this level of specificity is only practical for an annual plan. There was a fear that a listing of projects would preclude the funding of other worthwhile projects not on the list.

The burden of the analysis has been decreased by focusing the discussion of the basis for assigning the relative priority given to priority needs by category of priority needs instead of by each priority need. In addition, the information is to be provided for a specific period of time, which is determined by the jurisdiction.

Some low-income and disability advocacy groups have argued that priority needs of non-homeless persons with disabilities should be added. The Department agrees. A separate section on this group has been added.

b. Affordable Housing

Several low-income advocacy commenters wanted the Department to require jurisdictions to address the proposed availability of affordable housing for each income group, especially extremely low-income, very low-income and low-income (as these terms were used in the proposed rule), and to define affordable housing as housing for which a low-income family pays less than 30 percent of income. The Department agrees, and the rule has been revised accordingly to more closely approximate what was in the CHAS. It requires specific housing

objectives that identify the number of extremely low-, low-, and moderate-income families (using the revised terminology) to whom the jurisdiction will provide affordable housing.

c. Community Development

Several low-income advocates recommended that needs of extremely low-, very low- and low-income people be expressly addressed in the CD plan. One commenter suggested that this discussion of needs belongs in § 91.205 with the discussion of housing and homeless needs. Since there is a statutory requirement for a discussion of priority nonhousing community development needs, the Department is keeping the CD plan as a part of the strategy, and not part of the housing and homeless needs description. The Department agrees that the needs of these income groups need to be discussed in this plan, and language referring to the statutory goal of serving these income groups has been added to the paragraph on the CD plan.

In addition, language has been added indicating that jurisdictions may elect to develop a neighborhood revitalization strategy that includes the economic empowerment of area residents. HUD is willing to provide greater flexibility in program rules governing the use of CDBG funds for jurisdictions that develop such a strategy, in accordance with rule changes being made in another pending rulemaking. Approval of the consolidated plan does not imply approval of a neighborhood revitalization strategy proposal. A jurisdiction's neighborhood revitalization strategy must provide that the area selected is primarily residential and contains a percentage of low-income and moderate-income residents that is no less than 51 percent. In addition, the jurisdiction should consider the following:

(1) Developing the strategy in consultation with the area's stakeholders, including residents, owners/operators of businesses and financial institutions, non-profit organizations, and community groups that are in or serve the area(s);

(2) Including an assessment of the economic situation in the area and examination of economic development improvement opportunities and problems;

(3) Developing a realistic development strategy and implementation plan to promote the area's economic progress;

(4) Focusing on activities to create meaningful jobs for the unemployed and low-income people in the area as well as activities to promote the substantial revitalization of the area(s); and

(5) Identifying the results expected to be achieved, expressing them in terms that are readily measurable.

With respect to the proposed rule, local governments commented that the information required in the table prescribed by HUD to describe the jurisdiction's priority nonhousing community development needs eligible for assistance in dollar amounts is not very useful, only raises expectations concerning infrastructure needs that cannot be met, and is very difficult to cost out. Low-income advocates commented that there is too little information in this section compared to the housing section.

It is clear that Congress wanted data that could be aggregated nationally. The key to the table is ''priority needs'' and those covered in the table are to be those activities that are eligible for CDBG assistance. All needs do not have to be covered. Further, it is not difficult to estimate the dollar amounts when linear or square feet for facilities are known and the average cost per that unit of measure is known. The guidelines will be clarified on this point.

d. Barriers to Affordable Housing

One commenter requested that the rule state that the plan cannot be rejected for the content of its regulatory barrier assessment. One commenter admonished HUD to put stronger teeth in the plan to make cities remove barriers. The CHAS statute does not permit HUD to reject a consolidated plan on the basis of the jurisdiction's inaction to remove identified barriers. The Department will comply with that requirement but sees no need to add a provision to the rule on the subject.

Another public interest group wanted jurisdictions to explain the purpose of the policy perceived as a barrier and offer alternative options. The Department declines to make this a more burdensome requirement.

e. Anti-Poverty Strategy

Several public interest group and city commenters were critical of this paragraph, indicating that it was difficult to measure how HUD programs directly reduced the number of families with incomes below the poverty line. Of primary concern was describing their actions in terms of ''factors over which the jurisdiction has control,'' language from the statute. They recommended that the requirement be restated for programs discussed in the housing component of the consolidated plan that the city directed to poverty families. The rule has been revised accordingly.

Section 91.220 Action Plan

a. Linkage

The low-income and disability community advocates were critical of what they viewed as inadequate linkage in the action plan between the needs of the extremely low-income families and those in the worst housing conditions and the proposed activities to be undertaken by the jurisdiction under the draft language of this section.

In response to these concerns, the rule has been revised to require a clearer statement of priority needs and local objectives covered in the strategic plan, including the number and type of families to be benefitted from the activities proposed for the year, with a required a target date for completion of each activity. We also have required information on location of projects, to allow citizens to determine the degree to which they are affected.

b. Resources

With regard to describing resources, several commenters insisted that only those resources under the control of the jurisdiction should be listed. There was resistance to including private and nonfederal resources. The CHAS statute requires private and nonfederal resources that are reasonably expected to be available to be identified. The CHAS statute also requires the extent of leverage of Federal resources to be discussed. However, all discussion of resources has been moved from the strategic plan section of the rule to the action plan section, in response to commenters suggestions.

c. CDBG Float-Funded Activities

The CDBG ''miscellaneous amendments'' rule included provisions governing float-funded activities that are perceived as providing some risk to the CDBG program. A ''float-funded activity'' is an activity that uses undisbursed funds in the line of credit or program account that have been previously budgeted in an action plan (formerly, the CDBG final statement) for one or more activities that do not need the funds immediately.

Ten comments were received with respect to these requirements. Responses to these comments and the specific requirements for treatment of CDBG float-funded activities will be published in the final miscellaneous amendments rule. However, for purposes of this rule, the Department notes that there are two primary risks to the CDBG program inherent in the float funding process. First, the float-funded activity will not generate sufficient program income in a manner to allow

for timely undertaking of previously budgeted activities. Second, in undertaking a float-funded activity that exceeds a certain size or duration, grantees are apparently relying on additional CDBG funds being received in future years to enable them to continue funding previously budgeted activities until the float-funded activity generates program income.

The paragraph of the action plan dealing with CDBG program-specific requirements now deals with float-funded activities, requiring a jurisdiction to show the stream of income from repayment of float-funded activities. This provision is designed to address: (1) the problems identified by the Department's Inspector General in managing such activities and (2) the need for citizens to have sufficient information for them to know the extent to which they are likely to be affected by these activities, particularly the consequences of their default, so that they may have an opportunity to object to such a use of the funds.

The action plan section also requires that jurisdictions receiving CDBG entitlement funds may generally budget no more than 10 percent of the total available CDBG funds described for the contingency of cost overruns. The Department has had a longstanding requirement that the amount so budgeted must be reasonable in relation to the grant. This is based largely on the statutory requirement under section 104(a) of the HCD Act that, as a prerequisite to receive its annual grant, a community must submit a statement describing how it intends to use the funds. When the grantee's statement contains a set-aside of funds for contingencies in an amount that goes beyond the amount that reasonably may be expected to be needed for cost overruns of activities specifically identified in the statement, the net effect is that the grantee is simply deferring making a decision as to the use of the funds. The Department believes that this is not allowable under the statute. The Department provided guidance in the form of a notice (dated September 18, 1992) that it would not question the ''reasonableness'' of a set-aside of up to 10 percent of the amount of CDBG funds described in the final statement (now part of the action plan) for cost overruns. The regulatory language contained in this rule now reflects this threshold. This would not, however, prohibit a jurisdiction from setting an amount higher than 10 percent if the jurisdiction has data available, drawing on its prior experience, to show that actual cost overruns are likely to require a higher contingency amount.

d. Public Housing

A provision has been added to the housing market analysis section, to the institutional structure paragraph of the strategic plan section, and, most importantly, to the ''other actions'' paragraph of the action plan section, to require a jurisdiction to state any actions it is taking to assist a public housing agency that has been designated as ''troubled'' by HUD to overcome its problems.

Section 91.225 Certifications

One commenter pointed out that the paragraph on consultation ''by States'' is inapplicable to local governments, who are covered by this provision. Another commenter recommended that the certification currently found in the CDBG program that a jurisdiction's notification, inspection, testing and abatement procedures concerning lead-based paint will comply with the provisions of § 570.608 should be included here. We agree with both of these comments, and the rule has been revised accordingly.

One low-income advocate suggested that jurisdictions should be required to certify, in connection with the CDBG program, that they have satisfied their obligations under the regulation interpreting section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), which is found at 24 CFR 570.602. It requires a jurisdiction that has discriminated in the administration of the CDBG program or activity, or where there is sufficient evidence to conclude that there was discrimination, on the basis of race, color, national origin, or sex, to take remedial affirmative action to overcome the effects of the discrimination.

There are two provisions of the certifications section that have a bearing on anti-discrimination laws. The first mirrors the current requirements for the CDBG program to require specific certification of compliance with two civil rights laws: Title VI of the 1964 Act and the Fair Housing Act. Although the Department agrees that section 109 is applicable to the CDBG program, it is encompassed within the second certification, which requires certification that the jurisdiction/State will comply with all applicable laws. We note that the underlying CDBG regulation requiring compliance with section 109 remains in effect.

Section 91.235 Abbreviated Plan

One State pointed out that paragraph (a) appears to make use of the abbreviated plan permissive, but paragraph (b)(1) appears to make it required—if a jurisdiction is permitted to use it. The commenter also complained about the lack of any requirement for the jurisdiction to consult with the State.

The Department agrees that the provision needs clarification, so it is now clear that a jurisdiction eligible to submit an abbreviated plan instead of a full consolidated plan may do so, but is not required to do so. Consultation with the State has been added.

Section 91.305 Housing and Homeless Needs Analysis

Two States complained that the requirement for a State seeking HOPWA funding to collect data about the size and characteristics of the population with HIV/AIDS and their families was too burdensome and costly for States. The language for this provision and its local government counterpart have been revised to require estimation, ''to the extent practicable,'' of the number of persons in various categories of special need, including persons with HIV/AIDS and their families.

Section 91.310 Housing Market Analysis

A few low-income advocates recommended requiring States to describe substate markets, including those that have higher poverty areas. The rule requires analysis of the State's ''housing markets.'' This implies that there is more than one housing market within the State.

One State commented that paragraphs (b) (Low income tax credit use), (e) (Institutional structure), and (f) (Governmental coordination) relate not to market analysis but to strategy. It recommended moving them to § 91.315. The Department agrees and has revised the rule accordingly.

Several low-income advocates recommended that the paragraph on barriers to affordable housing should require that all jurisdictions do their ''fair share'' to provide housing opportunities to low-income persons. They also stated that States should look at cross-jurisdictional barriers. The Department is constrained by the statutory limit that prevents disapproval of a plan that does not provide for removal of barriers to affordable housing. Therefore, it cannot require such a ''fair share'' proposal. Analysis of cross-jurisdictional barriers would be beneficial, but the Department does not want to add to the burden of requirements imposed by this rule.

Section 91.315 Strategy, Priority Needs, and Objectives

Two States stated that the requirement for a statement of the reasons for the State's choice of priority needs is too detailed a requirement for States, since they respond to priorities established by localities and to their requests for funding. Low-income advocates, on the other hand, argued that States should be required to describe the basis for assigning the relative priority to a category of needs since the CHAS statute requires it. The language of this provision has been revised to refer to each category of priority needs since that is the most flexibility the Department can give to States under the statute.

The priority needs table that the rule requires States to complete was criticized as being too detailed. The table is less detailed than the table that was required for the State CHAS. However, HUD recognizes that the States have less control over fulfillment of this section than do local jurisdictions.

Several States objected to the requirement that the States include a target date for completion of specific objectives. The final rule indicates that the State must identify the proposed accomplishments that the State hopes to achieve in quantitative terms, or in other measurable terms as identified and defined by the State.

A number of States objected to the requirement that the State furnish a projection of its resource allocation geographically within the State, since often the funds are awarded on the basis of competitive selection rather than on some geographic distribution plan. The rule has been revised to reflect that a State must describe how the State's method of distribution contributes to its general priorities for allocating investment geographically within the State.

Three commenters recommended that the only non-Federal funds that be included in the resource description be those that are ''available for use in conjunction with Federal funds to address needs identified.'' We decline to make this change, since the CHAS statute does not so limit the language.

Section 91.325 Certifications

One commenter pointed out that the certification concerning excessive force was not applicable to States. That provision has been modified to clarify that the States must require the localities to make this certification.

Sections 91.400–91.435 Consortia

Several local governments complained that the proposed rule was confusing about which units of general local government are directed to participate in the development of a consolidated plan of the consortium as well as submit their own consolidated plan to cover all programs other than HOME. They suggested that § 91.400 should be revised to clarify that units of local government that participate in a consortium must participate in submission of a consolidated plan for the consortium, prepared in accordance with subpart E, as well as submitting for their own jurisdiction the following components of subpart C: § 91.215(e) (CD plan), § 91.220 (Action Plan) and § 91.225 (Certifications). The preparation and submission of a separate housing and homeless needs assessment (§ 91.205), housing market analysis (§ 91.210) and strategies, priority needs and objectives (§ 91.215) for the entitlement jurisdictions should be optional not a requirement. We agree, and the rule has been modified accordingly.

The majority of the commenters on this issue raised the problems presented by the same program year for all consortium members; suggesting this will cause consortia to break up. One suggested solution was to eliminate the requirement. Instead the consortium would develop its housing and homeless needs, housing market analysis and strategy on a planning year that coincides with the program year of the earliest entitlement jurisdiction in the consortium. Individual action plans would be submitted on individual entitlement members' program year cycle. Individual CD plans would be submitted at the same time as the strategic plan or with the individual entitlement submissions. The lead agency's action plan and program year would control the timing of the HOME program year. The rule has not been changed; however, we will develop waiver policies to handle this issue with consortia.

Local governments urged that §§ 91.105 and 91.430 be clarified to explain what citizen participation requirements apply to entitlement jurisdictions that are part of a consortium. Such clarification is now provided in § 91.401.

Section 91.500 HUD Approval Action

Low-income advocacy groups argued that the standards for review of the consolidated plan do not provide adequate guidance to participating jurisdictions, citizens, and HUD field offices about what would constitute an acceptable plan. They suggest that a consolidated plan should be approved by HUD only if it ''demonstrates integrity when read as a whole.'' They suggest that the needs assessment, priority assignments, and action plan must be sound and consistent with each other and with the purposes of the statute. For example, they state that a housing strategy that failed to seriously address ''worst case'' needs would lack the logical link between needs and action required by section 105(b)(8) of the CHAS statute.

We agree that the current regulations provide few guidelines on the standards for approval. We have modified the proposed regulations to make them more similar to the existing CHAS rule. While we agree with the desirability of internal consistency and require a certification that housing activities undertaken under CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan, we feel that the provision recommended by the advocacy groups is needlessly directive.

Section 91.505 Amendments to Consolidated Plan

Several government interest groups, citing HUD's proposed CDBG rule published on August 10, 1994, suggest that jurisdiction be allowed to notify HUD after adoption of amendments to the consolidated plan. The majority of the commenters were concerned that the specificity of the action plan will trigger a number of amendments that will need to undergo citizen participation and submission to the Department. The preference was to list major activities under which projects could fall without creating the need for amendments. One community suggested if the jurisdiction deemed a change consistent with its need section it could be done without citizen participation or HUD review. An alternate suggestion was to consider an increase or decrease in the original allocation mix over 35 percent as a substantial change.

Jurisdictions are free to determine and describe in the citizen participation plan what constitutes a ''substantial amendment,'' upon which public comment is required. The suggestions offered by these commenters may be good options for defining when a change requires a ''substantial amendment.''

Section 91.510 Consistency Determinations

One commenter suggested that HUD clarify the meaning of this section by stating that it only applies to sources of funds that are *not* applied for through

the consolidated plan; for example, the HOPE Program and Section 811. This section has been revised to cover competitive programs only. In addition, because the CHAS statute requires this statement of consistency for the formula grant programs as well, the certifications have been changed to require consistency with the strategic plan.

Section 91.520 Performance Reports

One commenter objected to reporting on the results of on-site inspections of affordable rental housing assisted with HOME funds, citing it as a new requirement. This is a statutory requirement at section 226(b) of the NAHA (42 U.S.C. 12756) and is contained at § 92.504(e)(1) of the HOME regulation. That rule requires annual on-site inspections of projects of 25 units or more, requiring every other year inspections of projects of fewer than 25 units.

Two commenters stated that the 90-day period provided after the program year for submission of the performance report is inadequate time, especially for large cities, given the lack of information about the format of the report and the computer software that HUD says it will make available for this purpose. The 30-day comment period on the performance report increases the difficulty of making the 90-day deadline.

As discussed above in the citizen participation section, the comment period on reports has been shortened to 15 days. Therefore, the final rule retains the 90 day deadline for performance reports. HUD will facilitate the provision of information needed by the jurisdictions to submit the reports.

Several local governments complained about the requirement to report on the degree to which the CDBG program was used to benefit extremely low-income persons. The reasons stated for eliminating the requirement are that it is not required by statute, the program is not targeted to that specific group, and it is burdensome. A low-income community advocate found the language of the provision inadequate in that it was not strong enough in emphasizing the requirement of the CDBG statute that the program benefit low-income and moderate-income persons.

In fact, both the CDBG and HOME programs have specific requirements with regard to income targeting. Previous reporting instructions (if not regulations) have required information about benefits to extremely low-income persons for activities where income information and family data are required to justify the activity. In these cases, the information is readily available, and therefore this reporting is not considered to be a burdensome requirement.

Sections 570.487, 570.601 and 570.904 Fair Housing Certifications

One commenter stated that there was no justification for imposing new CDBG fair housing requirements. The commenter argued that the changes to these sections provide minimal requirements for compliance with the certification that a jurisdiction will affirmatively further fair housing. The rule now states requirements rather than performance standards for affirmatively furthering fair housing. The requirements include conducting an analysis of impediments, taking actions to address the impediments, and maintaining records reflecting both. A jurisdiction need not do an analysis of impediments every year, but is expected to have conducted its first analysis of impediments no later than 12 months following February 6, 1995.

Subpart G Insular Areas

In the proposed rule, there was a heading reserved for a separate subpart to specify the consolidated plan requirements for insular areas. There were no public comments received on this topic. The Department has decided to handle the few jurisdictions that are insular areas individually, through administrative guidance. Therefore, this rule contains no subpart G.

Findings and Certifications

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St., SW., Washington, DC.

Impact on the Environment

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, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to requirements imposed by the statutes being implemented. The final rule reflects revisions to decrease the impact on States, in particular. Duplication of effort by State and local governments is being avoided by focusing the efforts of the States on the CDBG nonentitlement areas within their borders.

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. The rule merely carries out the mandate of federal statutes with respect to planning documents for housing and community development programs.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on jurisdictions.

Regulatory Agenda

This rule was listed as sequence number 1723 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641), under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.218, 14.231. 14.239, and 14.241.

List of Subjects

24 CFR Part 91

Grant programs—Indians, Homeownership, Low and moderate income housing, Public housing.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 570

Administrative practice and procedure, Grant programs—housing and community development, American Samoa, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 91, 92, 570, 574, 576, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

1. Part 91 is revised to read as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

Subpart A—General

Sec.

Subpart B—Citizen Participation and Consultation

Subpart C—Local Governments; Contents of Consolidated Plan

Subpart D—State Governments; Contents of Consolidated Plan

Subpart E—Consortia; Contents of Consolidated Plan

Subpart F—Other General Requirements

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

Subpart A—General

§ 91.1 Purpose.

(a) *Overall goals.* (1) The overall goal of the community planning and development programs covered by this part is to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for low- and moderate-income persons. The primary means towards this end is 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 affordable housing.

(i) Decent housing includes assisting homeless persons to obtain appropriate housing and assisting persons at risk of becoming homeless; retention of the affordable housing stock; and increasing the availability of permanent housing in standard condition and affordable cost to low-income and moderate-income families, particularly to members of disadvantaged minorities, without discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability. Decent housing also includes increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs, including persons with HIV/AIDS and their families, to live with dignity and independence; and providing housing affordable to low-income persons accessible to job opportunities.

(ii) A suitable living environment includes improving the safety and livability of neighborhoods; increasing access to quality public and private facilities and services; reducing the isolation of income groups within a community or geographical area through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods; restoring and preserving properties of special historic, architectural, or aesthetic value; and conservation of energy resources.

(iii) Expanded economic opportunities includes job creation and retention; establishment, stabilization and expansion of small businesses (including microbusinesses); the provision of public services concerned with employment; the provision of jobs involved in carrying out activities under programs covered by this plan to low-income persons living in areas affected by those programs and activities; availability of mortgage financing for low-income persons at reasonable rates using nondiscriminatory lending practices; access to capital and credit for development activities that promote the long-term economic and social viability of the community; and empowerment and self-sufficiency opportunities for low-income persons to reduce generational poverty in federally assisted and public housing.

(2) The consolidated submission described in this part 91 requires the jurisdiction to state in one document its plan to pursue these goals for all the community planning and development programs, as well as for housing programs. It is these goals against which the plan and the jurisdiction's performance under the plan will be evaluated by HUD.

(b) *Functions of plan.* The consolidated plan serves the following functions:

(1) A planning document for the jurisdiction, which builds on a participatory process at the lowest levels;

(2) An application for federal funds under HUD's formula grant programs;

(3) A strategy to be followed in carrying out HUD programs; and

(4) An action plan that provides a basis for assessing performance.

§ 91.2 Applicability.

(a) The following formula grant programs are covered by the consolidated plan:

(1) The Community Development Block Grant (CDBG) programs (see 24 CFR part 570, subparts D and I);

(2) The Emergency Shelter Grants (ESG) program (see 24 CFR part 576);

(3) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(4) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(b) The following programs require either that the jurisdiction receiving funds directly from HUD have a consolidated plan that is approved by HUD or that the application for HUD funds contain a certification that the application is consistent with a HUD-approved consolidated plan:

(1) The HOPE I Public Housing Homeownership (HOPE I) program (see 24 CFR Subtitle A, Appendix A);

(2) The HOPE II Homeownership of Multifamily Units (HOPE II) program (see 24 CFR Subtitle A, Appendix B);

(3) The HOPE III Homeownership of Single Family Homes (HOPE III) program (see 24 CFR part 572);

(4) The Low-Income Housing Preservation (prepayment avoidance incentives) program, when administered by a State agency (see 24 CFR 248.177);

(5) The Supportive Housing for the Elderly (Section 202) program (see 24 CFR part 889);

(6) The Supportive Housing for Persons with Disabilities program (see 24 CFR part 890);

(7) The Supportive Housing program (see 24 CFR part 583);

(8) The Single Room Occupancy Housing (SRO) program (see 24 CFR part 882, subpart H);

(9) The Shelter Plus Care program (see 24 CFR part 582);

(10) The Community Development Block Grant program—Small Cities (see 24 CFR part 570, subpart E);

(11) HOME program reallocations;

(12) Revitalization of Severely Distressed Public Housing (section 24 of the United States Housing Act of 1937, (42 U.S.C. 1437 *et seq.*));

(13) Hope for Youth: Youthbuild (see 24 CFR part 585);

(14) The John Heinz Neighborhood Development program (see 24 CFR part 594);

(15) The Lead-Based Paint Hazard Reduction program (see 24 CFR part 35);

(16) Grants for Regulatory Barrier Removal Strategies and Implementation (section 1204, Housing and Community Development Act of 1992 (42 U.S.C. 12705c)); and

(17) Competitive grants under the Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(c) Other programs do not require consistency with an approved consolidated plan. 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 consolidated plans.

§ 91.5 Definitions.

Certification. A written assertion, based on supporting evidence, that 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.

Consolidated plan (or ''the plan''). The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs (CDBG, ESG, HOME, or HOPWA), which is prepared in accordance with the process prescribed in this part.

Consortium. An organization of geographically contiguous units of general local government that are acting as a single unit of general local government for purposes of the HOME program (see 24 CFR part 92).

Cost burden. The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data available from the U.S. Census Bureau.

Elderly person. A person who is at least 62 years of age.

Emergency shelter. Any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

Extremely low-income family. Family whose income is between 0 and 30 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 30 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.

Homeless family with children. A family composed of the following types of homeless persons: at least one parent or guardian and one child under the age of 18; a pregnant woman; or a person in the process of securing legal custody of a person under the age of 18.

Homeless person. A youth (17 years or younger) not accompanied by an adult (18 years or older) or an adult without children, who is homeless (not imprisoned or otherwise detained pursuant to an Act of Congress or a State law), including the following:

(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.

Homeless subpopulations. Include but are not limited to the following categories of homeless persons: severely mentally ill only, alcohol/drug addicted only, severely mentally ill and alcohol/drug addicted, fleeing domestic violence, youth, and persons with HIV/AIDS.

HUD. The United States Department of Housing and Urban Development.

Jurisdiction. A State or unit of general local government.

Large family. Family of five or more persons.

Lead-based paint hazards. Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

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.

Middle-income family. Family whose income is 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. (This corresponds to the term ''moderate income family'' under the CHAS statute, 42 U.S.C. 12705.)

Moderate-income family. Family whose income does 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.

Overcrowding. A housing unit containing more than one person per room.

Person with a disability. A person who is determined to:

(1) Have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the ability could be improved by more suitable housing conditions; or

(2) Have 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); or

(3) be the surviving member or members of any family that had been living in an assisted unit with the deceased member of the family who had a disability at the time of his or her death.

Poverty level family. Family with an income below the poverty line, as defined by the Office of Management and Budget and revised annually.

Severe cost burden. The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data available from the U.S. Census Bureau.

State. Any State of the United States and the Commonwealth of Puerto Rico.

Transitional housing. A project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living within 24 months, or a longer period approved by HUD. For purposes of the HOME program, there is no HUD-approved time period for moving to independent living.

Unit of general local government. A city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; and a consortium of such political subdivisions recognized by HUD in accordance with the HOME program (24 CFR part 92) or the CDBG program (24 CFR part 570).

Urban county. See definition in 24 CFR 570.3.

§ 91.10 Consolidated program year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, and HOPWA. Except as provided in paragraph (b) of this section, the program year shall run for a twelve month period and begin on the first calendar day of a month.

(b) Once a program year is established, the jurisdiction may either shorten or lengthen its program year to change the beginning date of the following program year, provided that it notifies HUD in writing at least two months before the date the program year would have ended if it had not been lengthened or at least two months before the end of a proposed shortened program year.

(c) See subpart E of this part for requirements concerning program year for units of general local government that are part of a consortium.

§ 91.15 Submission date.

(a) *General.* (1) In order to facilitate continuity in its program and to provide accountability to citizens, each jurisdiction should submit its consolidated plan to HUD at least 45 days before the start of its program year. (But see § 92.52(b) of this subtitle with respect to newly eligible jurisdictions under the HOME program.) With the exception of the August 16 date noted in paragraph (a)(2) of this section, HUD may grant a jurisdiction an extension of the submission deadline for good cause.

(2) In no event will HUD accept a submission earlier than November 15 or later than August 16 of the Federal fiscal year for which the grant funds are appropriated. (Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled.)

(3) A jurisdiction may have a program year that coincides with the Federal fiscal year (e.g., October 1, 1995 through September 30, 1996 for Federal fiscal year 1996 funds. However, the consolidated plan may not be submitted earlier than November 15 of the Federal fiscal year and HUD has the period specified in § 91.500 to review the consolidated plan.

(4) See § 91.20 for HUD field office authorization to grant exceptions to these provisions.

(b) *Frequency of submission.* (1) The action plan and the certifications must be submitted on an annual basis.

(2) The complete submission must be submitted less frequently, in accordance with a period to be specified by the jurisdiction; however, in no event shall the complete submission be submitted less frequently that every five years.

§ 91.20 Exceptions.

The HUD field office may grant a jurisdiction an exception from submitting all or part of the consolidated plan in FY 1995, from the submission deadline, or from a requirement in the implementation guidelines for good cause, as determined by the field office, and reported in writing to HUD Headquarters—to the extent the requirement is not required by statute or regulation.

Subpart B—Citizen Participation and Consultation

§ 91.100 Consultation; local governments.

(a) *General.* (1) When preparing the consolidated plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons) during preparation of the consolidated plan.

(2) When preparing the portion of its consolidated plan concerning lead-based paint hazards, the jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

(3) When preparing the description of priority nonhousing community development needs, a unit of general local government must notify adjacent units of general local government, to the extent practicable. The nonhousing community development plan must be submitted to the state, and, if the jurisdiction is a CDBG entitlement grantee other than an urban county, to the county.

(4) The jurisdiction also should consult with adjacent units of general

local government, including local government agencies with metropolitan-wide planning responsibilities where they exist, particularly for problems and solutions that go beyond a single jurisdiction.

(b) *HOPWA.* The largest city in each eligible metropolitan statistical area (EMSA) that is eligible to receive a HOPWA formula allocation must consult broadly to develop a metropolitan-wide strategy for addressing the needs of persons with HIV/AIDS and their families living throughout the EMSA. All jurisdictions within the EMSA must assist the jurisdiction that is applying for a HOPWA allocation in the preparation of the HOPWA submission.

(c) Public housing. The jurisdiction shall consult with the local public housing agency participating in an approved Comprehensive Grant program concerning consideration of public housing needs and planned Comprehensive Grant program activities. This consultation will help provide a better basis for the certification by the local Chief Executive Officer that the Comprehensive Grant Plan/annual statement is consistent with the local government's assessment of low-income housing needs (as evidenced in the consolidated plan) and that the local government will cooperate in providing resident programs and services (as required by § 968.320(d) of this title for the Comprehensive Grant program). It will also help ensure that activities with regard to local drug elimination, neighborhood improvement programs, and resident programs and services, funded under the public housing program and those funded under a program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals.

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan.* (1) The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation. (Where a jurisdiction, before March 6, 1995, adopted a citizen participation plan that complies with section 104(a)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(A)(3)) but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by the first day of the jurisdiction's program year that begins on or after 180 days following March 6, 1995.)

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report.

(ii) These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing authorities, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdiction shall make an effort to provide information to the housing agency about consolidated plan activities related to its developments and surrounding communities so that the housing agency can make this information available at the annual public hearing required under the Comprehensive Grant program.

(3) Citizen comment on the citizen participation plan and amendments. The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities, upon request.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan.

(1) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur. The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords citizens, public agencies, and other interested parties a reasonable opportunity to examine its contents and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine the contents of the proposed consolidated plan. The requirement for publishing may be met by publishing a summary of the proposed consolidated plan in one or more newspapers of general circulation, and by making copies of the proposed consolidated plan available at libraries, government offices, and public places. The summary must describe the contents and purpose of the consolidated plan, and must include a list of the locations where copies of the entire proposed consolidated plan may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing during the development of the consolidated plan. See paragraph (e) of this section for public hearing requirements, generally.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens on the consolidated plan.

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at the public hearings, in preparing the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to the final consolidated plan.

(c) *Amendments.* (1) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify

the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the use of CDBG funds from one eligible activity to another.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to the substantial amendment of the consolidated plan.

(d) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 15 days, to receive comments on the performance report that is to be submitted to HUD before its submission.

(2) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(e) *Public hearings.* (1) The citizen participation plan must provide for at least two public hearings per year to obtain citizens' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, and review of program performance. To obtain the views of citizens on housing and community development needs, including priority nonhousing community development needs, the citizen participation plan must provide that at least one of these hearings is held before the proposed consolidated plan is published for comment.

(2) The citizen participation plan must state how and when adequate advance notice will be given to citizens of each hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(3) The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(4) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(f) *Meetings.* The citizen participation plan must provide citizens with reasonable and timely access to local meetings.

(g) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(h) *Access to records.* The citizen participation plan must require the jurisdiction to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's consolidated plan and the jurisdiction's use of assistance under the programs covered by this part during the preceding five years.

(i) *Technical assistance.* The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) *Complaints.* The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, and performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).

(k) *Use of citizen participation plan.* The jurisdiction must follow its citizen participation plan.

(l) *Jurisdiction responsibility.* The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.110 Consultation; States.

When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any State housing agency administering public housing), health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons) during preparation of the consolidated plan. When preparing the portion of its consolidated plan concerning lead-based paint hazards, the State shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned. When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the State.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.115 Citizen participation plan; States.

(a) *Applicability and adoption of the citizen participation plan.* (1) The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation. (Where a State, before March 6, 1995, adopted a citizen participation plan that complies with section 104(a)(3) of the Housing and

Community Development Act of 1974 (42 U.S.C. 5304(A)(3)) but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by the first day of the State's program year that begins on or after 180 days following March 6, 1995.

(2) *Encouragement of citizen participation.* The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods, as defined by the State. A State also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(3) *Citizen and local government comment on the citizen participation plan and amendments.* The State must provide citizens and units of general local government a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities, upon request.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan.

(1) The citizen participation plan must require that, before the State adopts a consolidated plan, the State will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed consolidated plan in a manner that affords citizens, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine its contents and to submit comments. The citizen participation plan must set forth how the State will publish the proposed consolidated plan and give reasonable opportunity to examine the contents of the proposed consolidated plan. The requirement for publishing may be met by publishing a summary of the proposed consolidated plan in one or more newspapers of general circulation, and by making copies of the proposed consolidated plan available at libraries, government offices, and public places. The summary must describe the contents and purpose of the consolidated plan, and must include a list of the locations where copies of the entire proposed consolidated plan may be examined. In addition, the State must provide a reasonable number of free copies of the plan to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs before the proposed consolidated plan is published for comment.

(i) The citizen participation plan must state how and when adequate advance notice will be given to citizens of the hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(ii) The citizen participation plan must provide that the hearing be held at a time and location convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(iii) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens and units of general local government on the consolidated plan.

(5) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general received in writing, or orally at the public hearings, in preparing the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final consolidated plan.

(c) *Amendments.* (1) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the State will use for determining what changes in the State's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the method of distribution of such funds.

(2) The citizen participation plan must provide citizens and units of general local government with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general local government received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the substantial amendment of the consolidated plan.

(d) *Performance Reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 15 days, to receive comments on the performance report that is to be submitted to HUD before its submission.

(2) The citizen participation plan shall require the state to consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(e) *Citizen participation requirements for local governments.* The citizen participation plan must describe the citizen participation requirements for units of general local government receiving CDBG funds from the State in 24 CFR 570.486. The citizen

participation plan must explain how the requirements will be met.

(f) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(g) *Access to records.* The citizen participation plan must require the state to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the state's consolidated plan and the state's use of assistance under the programs covered by this part during the preceding five years.

(h) *Complaints.* The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, and performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient).

(i) *Use of citizen participation plan.* The State must follow its citizen participation plan.

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Subpart C—Local Governments; Contents of Consolidated Plan

§ 91.200 General.

(a) A complete consolidated plan consists of the information required in §§ 91.205 through 91.230, submitted in accordance with instructions prescribed by HUD (including tables and narratives), or in such other format as jointly agreed upon by HUD and the jurisdiction.

(b) The jurisdiction shall describe the lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the jurisdiction's consultations with social service agencies and other entities. It also shall include a summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.205 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must describe the jurisdiction's estimated housing needs projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.100 and the citizen participation process conducted in accordance with § 91.105. For a jurisdiction seeking funding on behalf of an eligible metropolitan statistical area under the HOPWA program, the needs described for housing and supportive services must address the needs of persons with HIV/AIDS and their families throughout the eligible metropolitan statistical area.

(b) *Categories of persons affected.* (1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the jurisdiction as a whole.

(2) For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points higher than the percentage of persons in the category as a whole.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness (including rural homelessness), addressing separately the need for facilities and services for homeless individuals and homeless families with children, both sheltered and unsheltered, and homeless subpopulations, in accordance with a table prescribed by HUD. This description must include the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. The plan also must contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Other special needs.* (1) The jurisdiction shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, public housing residents, and any other categories the jurisdiction may specify, and describe their supportive housing needs.

(2) With respect to a jurisdiction seeking funding on behalf of an eligible metropolitan statistical area under the HOPWA program, the plan must identify the size and characteristics of the population with HIV/AIDS and their families within the eligible metropolitan statistical area it will serve.

(e) *Lead-based paint hazards.* The plan must estimate the number of housing units within the jurisdiction that are occupied by low-income families or moderate-income families that contain lead-based paint hazards, as defined in this part.

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§ 91.210 Housing market analysis.

(a) *General characteristics.* Based on information available to the jurisdiction, the plan must describe the significant characteristics of the jurisdiction's housing market, including the supply, demand, and condition and cost of housing and the housing stock available to serve persons with disabilities and to serve persons with HIV/AIDS and their families. The jurisdiction must identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms ''area of low-income concentration'' and ''area of minority concentration'' for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(b) *Public and assisted housing.* (1) The plan must describe the number of public housing units in the jurisdiction,

the physical condition of such units, the restoration and revitalization needs, results from the Section 504 needs assessment (i.e., assessment of needs of tenants and applicants on waiting list for accessible units, as required by 24 CFR 8.25), and the public housing agency's strategy for improving the management and operation of such public housing and for improving the living environment of low- and moderate-income families residing in public housing. The consolidated plan must identify the public housing developments in the jurisdictions that are participating in an approved HUD Comprehensive Grant program. Activities covered by the consolidated plan that are being coordinated or jointly funded with the public housing Comprehensive Grant program must be identified by project and referenced to the approved Comprehensive Grant program. Examples of supportive activities for Comprehensive Grant program activities are efforts to revitalize neighborhoods surrounding public housing projects (either current or proposed); cooperation in provision of resident programs and services; coordination of local drug elimination or anti-crime strategies; upgrading of police, fire, schools, and other services; and economic development projects in or near public housing projects to tie in with self-sufficiency efforts for residents.

(2) The jurisdiction shall include a description of the number and targeting (income level and type of family served) of units currently assisted by local, state, or federally funded programs, and an assessment of whether any such units are expected to be lost from the assisted housing inventory for any reason.

(c) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the emergency shelter, transitional housing, permanent supportive housing, and permanent housing needs of homeless persons within the jurisdiction.

(d) *Special need facilities and services.* The plan must describe, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing, and programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing.

(e) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

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§ 91.215 Strategic plan.

(a) *General.* For the categories described in paragraphs (b), (c), (d), and (e) of this section, the consolidated plan must do the following:

(1) Indicate the general priorities for allocating investment geographically within the jurisdiction (or within the EMSA for the HOPWA program) and among priority needs, as identified in the priority needs table prescribed by HUD;

(2) Describe the basis for assigning the priority (including the relative priority, where required) given to each category of priority needs;

(3) Identify any obstacles to meeting underserved needs;

(4) Summarize the priorities and specific objectives, describing how funds that are reasonably expected to be made available will be used to address identified needs; and

(5) For each specific objective, identify proposed accomplishments the jurisdictions hopes to achieve in quantitative terms over a specified time period (i.e., one, two, three or more years), or in other measurable terms as identified and defined by the jurisdiction.

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and must do the following:

(1) The description of the basis for assigning relative priority to each category of priority need shall state how the analysis of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.205 provided the basis for assigning the relative priority given to each priority need category in the priority housing needs table prescribed by HUD. Family and income types may be grouped together for discussion where the analysis would apply to more than one of them;

(2) The statement of specific objectives must indicate how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units; and

(3) The description of proposed accomplishments shall specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

(c) *Homelessness.* With respect to homelessness, the consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(d) *Other special needs.* With respect to supportive needs of the non-homeless, the consolidated plan must describe the priority housing and supportive service needs of persons who are not homeless but require supportive housing (i.e., elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents).

(e) *Nonhousing community development plan.* (1) If the jurisdiction seeks assistance under the Community Development Block Grant program, the consolidated plan must describe the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity, in accordance with a table prescribed by HUD. This community development component of the plan must state the jurisdiction's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(2) A jurisdiction that elects to carry out a neighborhood revitalization

strategy that includes the economic empowerment of low-income residents with respect to one or more of their areas may submit this strategy as part of its community development plan. If HUD approves such a strategy, the jurisdiction can obtain greater flexibility in the use of the CDBG funds in the revitalization area(s). The additional flexibility that the jurisdiction would be entitled to for this purpose will be described in 24 CFR part 570, subpart C, at a future date. The criteria for approval of the strategy will not be established by regulation, but jurisdictions will be notified of these criteria.

(f) *Barriers to affordable housing.* The consolidated plan must describe the jurisdiction's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing, as identified in accordance with § 91.210(d), except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph (f), as determined by HUD, the unit of general local government may submit its assessment submitted to the State to HUD and shall be considered to have complied with this requirement.

(g) *Lead-based paint hazards.* The consolidated plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(h) *Anti-poverty strategy.* The consolidated plan must describe the jurisdiction's goals, programs, and policies for reducing the number of poverty level families and how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing, set forth in the housing component of the consolidated plan, will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of poverty level families, taking into consideration factors over which the jurisdiction has control.

(i) *Institutional structure.* (1) The consolidated plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system.

(2) The jurisdiction shall describe the organizational relationship between the jurisdiction and the public housing agency, including the appointing authority for the commissioners or board of the housing agency; relationships regarding hiring, contracting and procurement; provision of services funded by the jurisdiction; and review by the jurisdiction of proposed development sites, of the comprehensive plan of the public housing agency, and of any proposed demolition or disposition of public housing developments.

(3) The plan must describe what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs. If the public housing agency is designated as ''troubled'' by HUD, or otherwise is performing poorly, the jurisdiction shall describe any actions it is taking to assist the public housing agency in addressing these problems.

(j) *Coordination.* The consolidated plan must describe the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the implementation of its consolidated plan.

(k) *Public housing resident initiatives.* The consolidated plan must describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership.

§ 91.220 Action plan.

The action plan must include the following:

(a) *Form application.* Standard Form 424;

(b) *Resources.* (1) *Federal resources.* The consolidated plan must describe the Federal resources expected to be available to address the priority needs and specific objectives identified in the strategic plan, in accordance with § 91.215. These resources include grant funds and program income.

(2) *Other resources.* The consolidated plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the jurisdiction deems it appropriate, it may indicate publicly owned land or property located within the jurisdiction that may be used to carry out the purposes stated in § 91.1;

(c) *Activities to be undertaken.* A description of the activities the jurisdiction will undertake during the next year to address priority needs in terms of local objectives that were identified in § 91.215. This description of activities shall estimate the number and type of families that will benefit from the proposed activities, the specific local objectives and priority needs (identified in accordance with § 91.215) that will be addressed by the activities using formula grant funds and program income the jurisdiction expects to receive during the program year, proposed accomplishments, and a target date for completion of the activity. This information is to be presented in the form of a table prescribed by HUD;

(d) *Geographic distribution.* A description of the geographic areas of the jurisdiction (including areas of minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically;

(e) *Homeless and other special needs activities.* Activities it plans to undertake during the next year to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with § 91.215(d);

(f) *Other actions.* (1) *General.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies and foster public housing improvements and resident initiatives (see § 91.215 (a), (b), (f), (g), (h), (i), (j), and (k)).

(2) *Public housing.* Appropriate reference to the annual revisions of the action plan prepared for the Comprehensive Grant program. If the public housing agency is designated as ''troubled'' by HUD, or otherwise is performing poorly, the jurisdiction's plan, if any, to assist the public housing

agency in addressing these problems; and

(g) *Program-specific requirements.*— (1) *CDBG.* (i) A jurisdiction must describe activities planned with respect to all CDBG funds expected to be available during the program year (including program income that will have been received before the start of the next program year), except that an amount generally not to exceed ten percent of such total available CDBG funds may be excluded from the funds for which eligible activities are described if it has been identified for the contingency of cost overruns.

(ii) CDBG funds expected to be available during the program year includes the following:

(A) Any program income that will have been received before the start of the next program year and that has not yet been programmed;

(B) Surplus from urban renewal settlements;

(C) Grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan; and

(D) *Income from float-funded activities.* The full amount of income expected to be generated by a float-funded activity must be shown, whether or not some or all of the income is expected to be received in a future program year. To assure that citizens understand the risks inherent in undertaking float-funded activities, the recipient must specify the total amount of program income expected to be received and the month(s) and year(s) that it expects the float-funded activity to generate such program income.

(iii) An ''urgent needs'' activity (one that is expected to qualify under § 570.208(c) of this title) may be included only if the jurisdiction identifies the activity in the action plan and certifies that the activity is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.

(iv) This information about activities shall be in sufficient detail, including location, to allow citizens to determine the degree to which they are affected.

(2) *HOME.* (i) For HOME funds, a participating jurisdiction shall describe other forms of investment that are not described in § 92.205(b) of this title.

(ii) If the participating jurisdiction intends to use HOME funds for homebuyers, it must state the guidelines for resale or recapture, as required in § 92.254 of this subtitle.

§ 91.225 Certifications.

(a) *General.* The following certifications, satisfactory to HUD, must be included in the annual submission to HUD. (See definition of ''certification'' in § 91.5.)

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

(2) *Anti-displacement and relocation plan.* Each jurisdiction is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(3) *Drug-free workplace.* The jurisdiction must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(4) *Anti-lobbying.* The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(5) *Authority of jurisdiction.* The jurisdiction must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(6) *Consistency with plan.* The jurisdiction must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is the most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided.

(7) *Acquisition and relocation.* The jurisdiction must submit a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24.

(8) *Section 3.* The jurisdiction must submit a certification that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(b) *Community Development Block Grant program.* For jurisdictions that seek funding under CDBG, the following certifications are required:

(1) *Citizen participation.* Each jurisdiction must certify that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of § 91.105.

(2) *Community development plan.* A certification that this consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in 24 CFR 570.2, and requirements of this part and 24 CFR part 570.

(3) *Following a plan.* A certification that the jurisdiction is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

(4) *Use of funds.* A certification that the jurisdiction has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years, shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.3 for definition of ''CDBG funds''); and

(iii) The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG

funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

(5) *Excessive force.* A certification that the jurisdiction has adopted and is enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(6) *Compliance with anti-discrimination laws.* The jurisdiction must submit a certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its notification, inspection, testing, and abatement procedures concerning lead-based paint will comply with the requirements of 24 CFR 570.608.

(8) *Compliance with laws.* A certification that the jurisdiction will comply with applicable laws.

(c) *Emergency Shelter Grant program.* For jurisdictions that seek funding under the Emergency Shelter Grant program, the following certifications are required:

(1) In the case of assistance involving major rehabilitation or conversion, the applicant will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, the applicant will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (including but not limited to employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, the applicant will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) It will obtain matching amounts required under § 576.71 of this title;

(7) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter;

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program; and

(9) It is following a current HUD-approved consolidated plan (or CHAS).

(d) *HOME program.* Each participating jurisdiction must provide the following certifications:

(1) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) A certification that it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(3) A certification that before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(e) *Housing Opportunities for Persons With AIDS.* For jurisdictions that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the jurisdiction that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any building or structure assisted under that program shall be operated for the purpose specified in the plan:

(i) For a period of not less than 10 years in the case of assistance involving new construction, substantial rehabilitation, or acquisition of a facility; or

(ii) For a period of not less than three years in the case of assistance involving non-substantial rehabilitation or repair of a building or structure.

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.

§ 91.235 Special case; abbreviated consolidated plan.

(a) *Who may submit an abbreviated plan?* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, and is not expected to be a participating jurisdiction in the HOME program under 24 CFR part 92, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD instead of a full consolidated plan.

(b) *When is an abbreviated plan necessary?* (1) *Jurisdiction.* When a jurisdiction that is permitted to use an abbreviated plan applies to HUD for

funds under a program that requires an approved consolidated plan (see § 91.2(b)), it must obtain approval of an abbreviated plan (or full consolidated plan) and submit a certification that the housing activities are consistent with the plan.

(2) *Other applicants.* When an eligible applicant other than a jurisdiction (e.g., a public housing agency or nonprofit organization) seeks to apply for funding under a program requiring certification of consistency with an approved consolidated plan, the jurisdiction—if it is permitted to use an abbreviated plan—may prepare an abbreviated plan appropriate to the project. See § 91.510.

(3) *Limitation.* For the HOME program, an abbreviated consolidated plan is only permitted with respect to reallocations to other than participating jurisdictions (see 24 CFR part 92, subpart J). For the CDBG program, an abbreviated plan may be submitted for the HUD-administered Small Cities program, except an abbreviated plan may not be submitted for the HUD-administered Small Cities program in the State of Hawaii.

(c) *What is an abbreviated plan?* (1) *Assessment of needs, resources, planned activities.* An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD.

(2) *Nonhousing community development plan.* If the jurisdiction seeks assistance under the Community Development Block Grant program, it must describe the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity, in accordance with a table prescribed by HUD. This community development component of the plan must state the jurisdiction's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the Housing and Community Development Act of 1974, 42 U.S.C. 5301(c), of the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(3) *Separate application for funding.* In addition to submission of the abbreviated consolidated plan, an application must be submitted for funding is sought under a competitive program. The applicable program requirements are found in the regulations for the program and in the Notice of Funding Availability published for the applicable fiscal year. For the CDBG Small Cities program, the applicable regulations are found at 24 CFR part 570, subpart F.

(d) *What consultation is applicable?* The jurisdiction must make reasonable efforts to consult with appropriate public and private social service agencies regarding the needs to be served with the funding sought from HUD. The jurisdiction must attempt some consultation with the State. (Section 91.100 does not apply.)

(e) *What citizen participation process is applicable?* If the jurisdiction is seeking CDBG funds under the CDBG Small Cities program, before submitting the abbreviated consolidated plan and application to HUD for funding, the jurisdiction must comply with the citizen participation requirements of 24 CFR 570.431. If it is not seeking such funding, the jurisdiction must conduct a citizen participation process as provided in section 107 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12707). (Section 91.105 does not apply.)

§ 91.236 Special case; District of Columbia.

For consolidated planning purposes, the District of Columbia must follow the requirements applicable to local jurisdictions (§§ 91.100, 91.105, and 91.200 through 91.230). In addition, it must submit the component of the State requirements dealing with the use of Low Income Housing Tax Credits (§ 91.315(j)).

(Approved by the Office of Management and Budget under control number 2506–0117).

Subpart D—State Governments; Contents of Consolidated Plan

§ 91.300 General.

(a) A complete consolidated plan consists of the information required in §§ 91.305 through 91.330, submitted in accordance with instructions prescribed by HUD (including tables and narratives), or in such other format as jointly agreed upon by HUD and the State.

(b) The State shall describe the lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the State's consultations with social service agencies and other entities. It also shall include a summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.305 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must describe the State's estimated housing needs projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the State clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.110 and the citizen participation process conducted in accordance with § 91.115. For a State seeking funding under the HOPWA program, the needs described for housing and supportive services must address the needs of persons with HIV/AIDS and their families in areas outside of eligible metropolitan statistical areas.

(b) *Categories of persons affected.* (1) The consolidated plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the State as a whole.

(2) For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points

higher than the percentage of persons in the category as a whole.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness (including rural homelessness) within the State, addressing separately the need for facilities and services for homeless individuals and homeless families with children, both sheltered and unsheltered, and homeless subpopulations, in accordance with a table prescribed by HUD. This description must include the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. The plan also must contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Other special needs.* (1) The State shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and any other categories the State may specify, and describe their supportive housing needs.

(2) With respect to a State seeking assistance under the HOPWA program, the plan must identify the size and characteristics of the population with HIV/AIDS and their families within the area it will serve.

(e) *Lead-based paint hazards.* The plan must estimate the number of housing units within the State that are occupied by low-income families or moderate-income families that contain lead-based paint hazards, as defined in this part.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.310 Housing market analysis.

(a) *General characteristics.* Based on data available to the State, the plan must describe the significant characteristics of the State's housing markets (including such aspects as the supply, demand, and condition and cost of housing).

(b) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the needs for emergency shelter and transitional housing needs of homeless persons within the State.

(c) *Special need facilities and services.* The plan must describe, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing, and programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing.

(d) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by its policies, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

§ 91.315 Strategic plan.

(a) *General.* For the categories described in paragraphs (b), (c), (d), and (e) of this section, the consolidated plan must do the following:

(1) Indicate the general priorities for allocating investment geographically within the State and among priority needs;

(2) Describe the basis for assigning the priority (including the relative priority, where required) given to each category of priority needs;

(3) Identify any obstacles to meeting underserved needs;

(4) Summarize the priorities and specific objectives, describing how the proposed distribution of funds will address identified needs;

(5) For each specific objective, identify the proposed accomplishments the State hopes to achieve in quantitative terms over a specific time period (i.e., one, two, three or more years), or in other measurable terms as identified and defined by the State.

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must do the following:

(1) The description of the basis for assigning relative priority to each category of priority need shall state how the analysis of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.305 provided the basis for assigning the relative priority given to each priority need category in the priority housing needs table prescribed by HUD. Family and income types may be grouped together for discussion where the analysis would apply to more than one of them;

(2) The statement of specific objectives must indicate how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units; and

(3) The description of proposed accomplishments shall specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in § 92.252 of this subtitle for rental housing and § 92.254 of this subtitle for homeownership over a specific time period.

(c) *Homelessness.* With respect to homelessness, the consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the State's strategy for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(d) *Other special needs.* With respect to supportive needs of the non-homeless, the consolidated plan must describe the priority housing and supportive service needs of persons who are not homeless but require supportive housing (i.e., elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents).

(e) *Nonhousing community development plan.* If the State seeks assistance under the Community Development Block Grant program, the consolidated plan must describe the State's priority nonhousing community development needs that affect more than one unit of general local government and involve activities typically funded by the State under the CDBG program. These priority needs must be described by CDBG eligibility category, reflecting the needs of persons or families for each type of activity. This community development component of the plan must state the State's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(f) *Barriers to affordable housing.* The consolidated plan must describe the State's strategy to remove or ameliorate negative effects of its policies that serve as barriers to affordable housing, as identified in accordance with § 91.310.

(g) *Lead-based paint hazards.* The consolidated plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(h) *Anti-poverty strategy.* The consolidated plan must describe the State's goals, programs, and policies for reducing the number of poverty level families and how the State's goals, programs, and policies for producing and preserving affordable housing, set forth in the housing component of the consolidated plan, will be coordinated with other programs and services for which the State is responsible and the extent to which they will reduce (or assist in reducing) the number of poverty level families, taking into consideration factors over which the State has control.

(i) *Institutional structure.* The consolidated plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the State will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system. The plan must describe what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(j) *Coordination.* The consolidated plan must describe the State's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its consolidated plan.

(k) *Low-income housing tax credit use.* The consolidated plan must describe the strategy to coordinate the Low-income Housing Tax Credit with the development of housing that is affordable to low-income and moderate-income families.

(l) *Public housing resident initiatives.* For a State that has a State housing agency administering public housing funds, the consolidated plan must describe the State's activities to encourage public housing residents to become more involved in management and participate in homeownership.

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§ 91.320 Action plan.

The action plan must include the following:

(a) *Form application.* Standard Form 424;

(b) *Resources.* (1) *Federal resources.* The consolidated plan must describe the Federal resources expected to be available to address the priority needs and specific objectives identified in the strategic plan, in accordance with § 91.315. These resources include grant funds and program income.

(2) *Other resources.* The consolidated plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the State deems it appropriate, it may indicate publicly owned land or property located within the State that may be used to carry out the purposes stated in § 91.1;

(c) *Activities.* A description of the State's method for distributing funds to local governments and nonprofit organizations to carry out activities, or the activities to be undertaken by the State, using funds that are expected to be received under formula allocations (and related program income) and other HUD assistance during the program year and how the proposed distribution of funds will address the priority needs and specific objectives described in the consolidated plan;

(d) *Geographic distribution.* A description of the geographic areas of the State (including areas of minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically;

(e) *Homeless and other special needs activities.* Activities it plans to undertake during the next year to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with § 91.315(d);

(f) *Other actions.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing (including the coordination of Low-Income Housing Tax Credits with the development of affordable housing), remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies and foster public housing resident initiatives. (See § 91.315 (a), (b), (f), (g), (h), (i), (j), (k), and (l).)

(g) *Program-specific requirements.* In addition, the plan must include the following specific information:

(1) *CDBG.* (i) An ''urgent needs'' activity (one that is expected to qualify under § 570.208(c) of this title) may be included only if the State identifies the activity in the action plan and certifies that the activity is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.

(ii) The method of distribution shall contain a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria—if the relative importance has been developed. The action plan must include a description of how all CDBG resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. If the State intends to aid nonentitlement units of general local government in applying for guaranteed loan funds under 24 CFR part 570, subpart M, it must describe available guarantee amounts and how applications will be selected for assistance. (The statement of the method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications.)

(2) *HOME.* (i) The State shall describe other forms of investment that are not described in § 92.205(b) of this subtitle.

(ii) If the State intends to use HOME funds for homebuyers, it must state the guidelines for resale or recapture, as required in § 92.254 of this subtitle.

(3) *ESG.* The State shall state the process for awarding grants to State recipients and a description of how the State intends to make its allocation

available to units of local government and nonprofit organizations.

(4) *HOPWA.* The State shall state the method of selecting project sponsors.

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the State, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See § 570.487(b)(2)(ii) of this title.)

(2) *Anti-displacement and relocation plan.* The State is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(3) *Drug-free workplace.* The State must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(4) *Anti-lobbying.* The State must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(5) *Authority of State.* The State must submit a certification that the consolidated plan is authorized under State law and that the State possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(6) *Consistency with plan.* The State must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

(7) *Acquisition and relocation.* The State must submit a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(8) *Section 3.* The State must submit a certification that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(b) *Community Development Block Grant program.* For States that seek funding under CDBG, the following certifications are required:

(1) *Citizen participation.* A certification that the State is following a detailed citizen participation plan that satisfies the requirements of § 91.115, and that each unit of general local government that is receiving assistance from the State is following a detailed citizen participation plan that satisfies the requirements of § 570.486 of this title.

(2) *Consultation with local governments.* A certification that:

(i) It has consulted with affected units of local government in the nonentitlement area of the State in determining the method of distribution of funding;

(ii) It engages or will engage in planning for community development activities;

(iii) It provides or will provide technical assistance to units of general local government in connection with community development programs;

(iv) It will not refuse to distribute funds to any unit of general local government on the basis of the particular eligible activity selected by the unit of general local government to meet its community development needs, except that a State is not prevented from establishing priorities in distributing funding on the basis of the activities selected; and

(v) Each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of the low-income and moderate-income families, and the activities to be undertaken to meet these needs.

(3) *Community development plan.* A certification that this consolidated plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in 24 CFR 570.2, and requirements of this part and 24 CFR part 570.

(4) *Use of funds.* A certification that the State has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the State, consisting of one, two, or three specific consecutive program years, shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.481 for definition of ''CDBG funds''); and

(iii) The State will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than with CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the State certifies that it lacks CDBG funds to cover the assessment.

(5) *Compliance with anti-discrimination laws.* A certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

(6) *Excessive force.* A certification that the State will require units of general local government that receive CDBG funds to certify that they have adopted and are enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such

non-violent civil rights demonstrations within its jurisdiction.

(7) *Compliance with laws.* A certification that the State will comply with applicable laws.

(c) *Emergency Shelter Grant program.* For States that seek funding under the Emergency Shelter Grant program, a certification is required by the State that it will ensure that its State recipients comply with the following criteria:

(1) In the case of assistance involving major rehabilitation or conversion, it will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, it will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (including but not limited to employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, it will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) It will obtain matching amounts required under § 576.71 of this title;

(7) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter;

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program; and

(9) It is following a current HUD-approved consolidated plan.

(d) *HOME program.* Each State must provide the following certifications:

(1) If it plans to use program funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) A certification that it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(3) A certification that before committing funds to a project, the State or its recipients will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(e) *Housing Opportunities for Persons With AIDS.* For States that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the State that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any building or structure purchased, leased, rehabilitated, renovated, or converted with assistance under that program shall be operated for not less than 10 years specified in the plan, or for a period of not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.330 Monitoring.

The consolidated plan must describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements.

Subpart E—Consortia; Contents of Consolidated Plan

§ 91.400 Applicability.

This subpart applies to HOME program consortia, as defined in § 91.5 (see 24 CFR part 92). Units of local government that participate in a consortium must participate in submission of a consolidated plan for the consortium, prepared in accordance with this subpart. CDBG entitlement communities that are members of a consortium must provide additional information for the consolidated plan, as described in this subpart.

§ 91.401 Citizen participation plan.

The consortium must have a citizen participation plan that complies with the requirements of § 91.105. If the consortium contains one or more CDBG entitlement communities, the consortium's citizen participation plan must provide for citizen participation within each CDBG entitlement community, either by the consortium or by the CDBG entitlement community, in a manner sufficient for the CDBG entitlement community to certify that it is following a citizen participation plan.

§ 91.402 Consolidated program year.

(a) *Same program year for consortia members.* All units of general local government that are members of a consortium must be on the same program year for CDBG, HOME, ESG, and HOPWA. The program year shall run for a twelve month period and begin on the first calendar day of a month.

(b) *Transition period.* (1) A consortium in existence on March 6, 1995, with all members having aligned program years must comply with paragraph (a) of this section. A consortium in existence on March 6, 1995, in which all members do not have aligned program years will be allowed a transition period during the balance of its current consortium agreement to bring the program year for all members into alignment.

(2) During any such transition period, the lead agency (if it is a CDBG entitlement community) must submit, as its consolidated plan, a plan that complies with this subpart for the consortium, plus its nonhousing Community Development Plan (in accordance with § 91.215). All other CDBG entitlement communities in the consortium may submit their respective nonhousing Community Development Plans (§ 91.215(e)), an Action Plan (§ 91.220) and the certifications (§ 91.425(a) and (b)) in accordance with their individual program years.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.405 Housing and homeless needs assessment.

Housing and homeless needs must be described in the consolidated plan in accordance with the provisions of § 91.205 for the entire consortium. In addition to describing these needs for the entire consortium, the consolidated plan may also describe these needs for individual communities that are members of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.410 Housing market analysis.

Housing market analysis must be described in the consolidated plan in accordance with the provisions of § 91.210 for the entire consortium. In addition to describing market conditions for the entire consortium, the consolidated plan may also describe these conditions for individual communities that are members of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.415 Strategic plan.

Strategies and priority needs must be described in the consolidated plan in accordance with the provisions of § 91.215 for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members of the consortium. The consortium must set forth its priorities for allocating housing (including CDBG and ESG, where applicable) resources geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.420 Action plan.

(a) *Form application.* The action plan for the consortium must include a Standard Form 424 for the consortium for the HOME program. Each entitlement jurisdiction also must submit a Standard Form 424 for its funding under the CDBG program and, if applicable, the ESG and HOPWA programs.

(b) *Description of resources and activities.* The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the area, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

(ii) *Anti-displacement and relocation plan.* Each consortium must certify that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the HOME or CDBG program.

(iii) *Drug-free workplace.* The consortium must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(iv) *Anti-lobbying.* The consortium must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(v) *Authority of consortium.* The consortium must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the consortium possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(vi) *Consistency with plan.* The consortium must certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

(vii) *Acquisition and relocation.* The consortium must certify that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24.

(viii) *Section 3.* The consortium must certify that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(2) *HOME program.* The consortium must provide the following certifications:

(i) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(ii) That it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(iii) That before committing funds to a project, the consortium will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(b) *CDBG entitlement community certifications.* A CDBG entitlement community that is a member of a consortium must submit the certifications required by § 91.225 (a) and (b), and, if applicable, of § 91.225 (c) and (d).

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.430 Monitoring.

The consolidated plan must describe the standards and procedures that the consortium will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.

Subpart F—Other General Requirements

§ 91.500 HUD approval action.

(a) *General.* HUD will review the plan upon receipt. The plan will be deemed approved 45 days after HUD receives the plan, unless before that date HUD has notified the jurisdiction that the plan is disapproved.

(b) *Standard of review.* HUD may disapprove a plan or a portion of a plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), or it is substantially incomplete. The following are examples of consolidated plans that are substantially incomplete:

(1) A plan that was developed without the required citizen participation or the required consultation;

(2) A plan that fails to satisfy all the required elements in this part; and

(3) A plan for which a certification is rejected by HUD as inaccurate, after HUD has inspected the evidence and provided due notice and opportunity to the jurisdiction for comment.

(c) *Written notice of disapproval.* Within 15 days after HUD notifies a jurisdiction that it is disapproving its plan, it must inform the jurisdiction in writing of the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval. Disapproval of a plan with respect to one program does not affect assistance distributed on the basis of a formula under other programs.

(d) *Revisions and resubmission.* The jurisdiction may revise or resubmit a plan within 45 days after the first notification of disapproval. HUD must respond to approve or disapprove the plan within 30 days of receiving the revisions or resubmission.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.505 Amendments to the consolidated plan.

(a) *Amendments to the plan.* The jurisdiction shall amend its approved plan whenever it makes one of the following decisions:

(1) To make a change in its allocation priorities or a change in the method of distribution of funds;

(2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or

(3) To change the purpose, scope, location, or beneficiaries of an activity.

(b) *Criteria for substantial amendment.* The jurisdiction shall identify in its citizen participation plan the criteria it will use for determining what constitutes a substantial amendment. It is these substantial amendments that are subject to a citizen participation process, in accordance with the jurisdiction's citizen participation plan. (See §§ 91.105 and 91.115.)

(c) *Submission to HUD.* (1) Upon completion, the jurisdiction must make the amendment public and must notify HUD that an amendment has been made. The jurisdiction may submit a copy of each amendment to HUD as it occurs, or at the end of the program year. Letters transmitting copies of amendments must be signed by the official representative of the jurisdiction authorized to take such action.

(2) See subpart B of this part for the public notice procedures applicable to substantial amendments. For any amendment affecting the HOPWA program that would involve acquisition, rehabilitation, conversion, lease, repair or construction of properties to provide housing, an environmental review of the revised proposed use of funds must be completed by HUD in accordance with 24 CFR 574.510.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.510 Consistency determinations.

(a) *Applicability.* For competitive programs, a certification of consistency of the application with the approved consolidated plan for the jurisdiction may be required, whether the applicant is the jurisdiction or another applicant.

(b) *Certifying authority.* (1) The certification must be obtained from the unit of general local government if the project will be located in a unit of general local government that: is required to have a consolidated plan, is authorized to use an abbreviated consolidated plan but elects to prepare and has submitted a full consolidated plan, or is authorized to use an abbreviated consolidated plan and is applying for the same program as the applicant pursuant to the same Notice of Funding Availability (and therefore has or will have an abbreviated consolidated plan for the fiscal year for that program).

(2) If the project will not be located in a unit of general local government, the certification may be obtained from the State or, if the project will be located in a unit of general local government authorized to use an abbreviated consolidated plan, from the unit of general local government if it is willing to prepare such a plan.

(3) Where the recipient of a HOPWA grant is a city that is the most populous unit of general local government in an EMSA, it also must obtain and keep on file certifications of consistency from such public officials for each other locality in the EMSA in which housing assistance is provided.

(c) *Meaning.* A jurisdiction's certification that an application is consistent with its consolidated plan means the jurisdiction's plan shows need, the proposed activities are consistent with the jurisdiction's strategic plan, and the location of the proposed activities is consistent with the geographic areas specified in the plan. The jurisdiction shall provide the reasons for the denial when it fails to provide a certification of consistency.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.515 Funding determinations by HUD.

(a) *Formula funding.* The action plan submitted by the jurisdiction will be considered as the application for the CDBG, HOME, ESG, and HOPWA formula grant programs. The Department will make its funding award determination after reviewing the plan submission in accordance with § 91.500.

(b) *Other funding.* For other funding, the jurisdiction must still respond to Notices of Funding Availability for the individual programs in order to receive funding.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.520 Performance reports.

(a) *General.* Each jurisdiction that has an approved consolidated plan shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its strategic plan and its action plan. The performance report must include a description of the resources made available, the investment of available resources, the geographic distribution and location of investments, the families and persons assisted (including the racial and ethnic status of persons assisted), actions taken to affirmatively further fair housing, and other actions indicated in the strategic plan and the action plan. This performance report shall be submitted to HUD within 90 days after the close of the jurisdiction's program year.

(b) *Affordable housing.* The report shall include an evaluation of the jurisdiction's progress in meeting its specific objective of providing affordable housing, including the number and types of families served. This element of the report must include the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

(c) *CDBG.* For CDBG recipients, the report shall include a description of the use of CDBG funds during the program year and an assessment by the jurisdiction of the relationship of that use to the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities that were identified. This element of the report must specify the nature of and reasons for any changes in its program objectives and indications of how the jurisdiction would change its programs as a result of its experiences. This element of the report also must include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

(d) *HOME.* For HOME participating jurisdictions, the report shall include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations, an assessment of the jurisdiction's affirmative marketing actions and outreach to minority-owned and women-owned businesses, and data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics.

(e) *HOPWA.* For jurisdictions receiving funding under the Housing Opportunities for Persons With AIDS program, the report must include the number of individuals assisted and the types of assistance provided.

(f) *Evaluation by HUD.* HUD shall review the performance report and determine whether it is satisfactory. If a satisfactory report is not submitted in a timely manner, HUD may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.525 Performance review by HUD.

(a) *General.* HUD shall review the performance of each jurisdiction covered by this part at least annually, including site visits by employees—insofar as practicable, assessing the following:

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with the consolidated plan;

(3) Accuracy of performance reports;

(4) Extent to which the jurisdiction made progress towards the statutory goals identified in § 91.1; and

(5) Efforts to ensure that housing assisted under programs administered by HUD is in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD shall report on the performance review in writing, stating the length of time the jurisdiction has to review and comment on the report, which will be at least 30 days. HUD may revise the report after considering the jurisdiction's views, and shall make the report, the jurisdiction's comments, and any revisions available to the public within 30 days after receipt of the jurisdiction's comments.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

2. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

3. In § 92.2, the definition of ''housing strategy'' is removed and a definition of ''consolidated plan'' is added in alphabetical order, to read as follows:

§ 92.2 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this subtitle, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this subtitle.

* * * * *

4. Section 92.52 is revised to read as follows:

§ 92.52 Formula allocations.

Not later than 20 days after funds become available to HUD, HUD will allocate HOME funds and then will promptly notify all jurisdictions receiving a formula allocation the amount of each jurisdiction's formula allocation.

5. In § 92.103, paragraph (a) is revised to read as follows:

§ 92.103 Notification of intent to participate.

(a) A jurisdiction must notify HUD in writing, not later than 30 days after receiving notice of its formula allocation amount under § 92.52, of its intention to become a participating jurisdiction.

* * * * *

6. Section 92.104 is revised to read as follows:

§ 92.104 Submission of consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD or has submitted an abbreviated consolidated plan (as provided for in § 91.235 of this subtitle) must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with part 91 of this subtitle.

(Approved by the Office of Management and Budget under control numbers 2501–0013).

7. Section 92.105 is revised to read as follows:

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with part 91 of this subtitle, HUD will designate the jurisdiction as a participating jurisdiction.

(Approved by the Office of Management and Budget under control numbers 2501–0013 and 2506–0117).

8. Section 92.150 is revised to read as follows:

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 92.151 [Removed]

9. Section 92.151 is removed.

§ 92.152 [Removed]

10. Section 92.152 is removed.

§ 92.200 [Amended]

11. In § 92.200, the term ''housing strategy'' is removed from each place where it appears, and the term ''consolidated plan'' is added in each place.

§ 92.201 [Amended]

12. In § 92.201, the term ''housing strategy'' is removed from paragraphs (a) and (b)(1) from each place where it appears, and the term ''consolidated plan'' is added in each place.

§ 92.204 [Amended]

13. Section 92.204 is amended by removing from paragraph (c) the phrase, ''subpart D (Program Description),''.

§ 92.207 [Amended]

14. Section 92.207 is amended by removing from paragraph (f) the term ''housing strategy'' in each place where it occurs and adding in its place the term ''consolidated plan''.

15. In § 92.211, paragraph (a)(1) is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) * * *

(1) The participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with §§ 91.225(d)(1), 91.325(d)(1), or 91.425(b)(1)) of this subtitle; and

* * * * *

§ 92.220 [Amended]

16. Section 92.220 is amended by removing the last sentence from paragraph (a)(6)(ii).

§ 92.222 [Amended]

17. Section 92.222 is amended by removing from paragraphs (a)(3) and (a)(4) the word ''published'' in each place where it appears, and adding in its place the word ''made''.

§ 92.300 [Amended]

18. Section 92.300 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.302 [Amended]

19. Section 92.302 is amended by removing from paragraph (b)(2) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.350 [Amended]

20. Section 92.350 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.450 [Amended]

21. Section 92.450 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.451 [Amended]

22. Section 92.451 is amended by removing from paragraph (a)(1)(iii), the phrase ''housing strategy in accordance with § 92.104'' and by adding in its place, the phrase ''consolidated plan, in accordance with part 91 of this subtitle''; and by removing from paragraph (a)(2) the phrase ''§ 91.70 of this title'' and by adding in its place, the phrase ''part 91 of this subtitle''.

§ 92.453 [Amended]

23. Section 92.453 is amended by removing from paragraph (b)(2)(ii) the phrase ''housing strategy'' each place where it occurs, and by adding the phrase ''consolidated plan''.

§ 92.508 [Amended]

24. Section 92.508 is amended by removing from paragraph (c)(1) the word ''three'' and adding in its place the word ''four''.

25. In § 92.509, paragraph (b) is revised to read as follows:

§ 92.509 Performance reports.

(a) * * *

(b) *Annual performance report.* For annual performance report requirements, see part 91 of this subtitle.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

26. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

27. In § 570.3, the definition of ''Comprehensive Housing Affordability Strategy (CHAS or housing strategy)'' is removed, and the definition of ''consolidated plan'' is added in alphabetical order, to read as follows:

§ 570.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with 24 CFR part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

* * * * *

§ 570.205 [Amended]

28. In § 570.205, paragraph (a)(3)(i) is amended by removing the term ''Comprehensive Housing Affordability Strategy'', and adding in its place the term ''consolidated plan''.

§ 570.301 [Removed]

29. Section 570.301 is removed.

30. Section 570.302 is revised to read as follows:

§ 570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117).

31. Section 570.303 is revised to read as follows:

§ 570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

32. In § 570.304, paragraphs (a) and (c)(1) are revised to read as follows:

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91.

* * * * *

(c) * * *

(1) The consolidated plan is not received by the first working day in September or is not approved under 24 CFR part 91, subpart F, in which case the grantee will forfeit the entire entitlement amount; or

* * * * *

§ 570.305 [Removed]

33. Section 570.305 is removed.

§ 570.306 [Removed]

34. Section 570.306 is removed.

§ 570.308 [Amended]

35. In § 570.308, paragraph (d) is amended by removing the phrase, ''this subpart'', and adding in its place the phrase, ''24 CFR part 91''.

§ 570.420 [Amended]

36. In § 570.420, paragraph (d) is amended by removing the word ''*CHAS*'' and adding in its place the phrase ''*consolidated plan*''; and by removing the phrase ''Comprehensive Housing Affordability Strategy'' and adding in its place the phrase ''consolidated plan''.

37. In § 570.423, paragraphs (a), (b), and (c)(1) are revised to read as follows:

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with citizen participation requirements as described in § 570.431, and in 24 CFR part 91—if the application contains housing activities and the applicant is required to prepare and submit an abbreviated consolidated plan.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD office. The application also must contain a priority nonhousing community development plan, in accordance with 24 CFR 91.235.

(c) *Certifications.* (1) Certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its abbreviated consolidated plan, as described at 24 CFR part 91.

* * * * *

38. Section 570.429 is amended as follows:

a. By removing from paragraph (b) the word ''through'' and by adding, in its place, the word ''and''; and

b. By revising paragraphs (f) and (g) to read as follows:

§ 570.429 Hawaii general and grant requirements.

* * * * *

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will follow the requirements of 24 CFR 91.500.

* * * * *

§ 570.430 [Amended]

39. Section 570.430 is amended by removing paragraph (f).

§ 570.431 [Amended]

40. Section 570.431 is amended by removing paragraph (f).

41. In § 570.485, paragraphs (b), (c), and (e) are removed; paragraph (d) is redesignated as paragraph (b); and paragraph (a) is revised to read as follows:

§ 570.485 State submissions and state citizen participation requirements.

(a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

* * * * *

42. Section 570.487 is amended by revising paragraph (b) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Conducting an analysis to identify impediments to fair housing choice within the State;

(2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;

(3) Maintaining records reflecting the analysis and actions in this regard; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

* * * * *

43. Section 570.491 is revised to read as follows:

§ 570.491 Performance and evaluation report.

The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(Approved by the Office of Management and Budget under control number 2506–0117).

44. In § 570.502, paragraph (a)(16) is revised to read as follows:

§ 570.502 Applicability of uniform administrative requirements.

(a) * * *

(16) Section 85.42, ''Retention and access requirements for records,'' except that the period shall be four years;

* * * * *

45. In § 570.506, paragraphs (e) and (g)(1) are revised to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(e) Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients.

* * * * *

(g) * * *

(1) Documentation of the analysis of impediments and the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any impediments to fair housing choice in the recipient's community.

* * * * *

46. In § 570.507, paragraph (a) is revised to read as follows:

§ 570.507 Reports.

(a) *Performance and evaluation report*—(1) *Entitlement grant recipients and HUD-administered small cities recipients in Hawaii.* The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(2) *HUD-administered small cities recipients in New York.* (i) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by HUD, including a summary of the citizen comments received on the report.

(ii) *Timing.* The performance and evaluation report on each grant shall be submitted:

(A) No later than October 31 for all grants executed before April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on October 31 until completion of the activities funded under the grant;

(B) Hawaii grantees will submit their small cities performance and evaluation report for each pre-FY 1995 grant no later than 90 days after the completion of their most recent program year. After the initial submission, the performance and evaluation report will be submitted annually until completion of the activities funded under the grant; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met.

(iii) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

* * * * *

§ 570.509 [Amended]

47. Section 570.509 is amended by removing from paragraph (b)(1) the word, ''§ 570.507'' and adding in its place the words, ''24 CFR part 91''; and by removing from paragraph (d) the phrases, ''*comprehensive housing affordability strategy*'', ''Comprehensive Housing Affordability Strategy (CHAS)'', and ''fiscal year'', and adding, in their place, the phrases, ''*consolidated plan*'', ''Consolidated Plan'', and ''program year'', respectively.

§ 570.601 [Amended]

48. In § 570.601, paragraph (b) is amended by adding the following sentence to the end of the paragraph, to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

* * * * *

(b) * * * For each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

* * * * *

§ 570.605 [Amended]

49. Section 570.605 is amended by removing the phrase, ''final statement pursuant to § 570.302'', and by adding, in its place, the phrase, ''consolidated plan, in accordance with 24 CFR part 91''.

§ 570.606 [Amended]

50. In § 570.606, paragraph (c)(3)(iv) is amended by removing the term ''Comprehensive Housing Affordability Strategy'', and adding in its place the term ''consolidated plan''.

§ 570.704 [Amended]

51. Section 570.704 is amended as follows:

a. In paragraph (a)(1)(v), the phrase, ''statements of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301'' is removed, and the phrase, ''consolidated plan'' is added in its place; and the phrase, ''include in these statements'', is removed and the phrase, ''include in the consolidated plan'', is added in its place.

b. In paragraph (b) introductory text, the phrase ''final statement'' is removed and the phrase ''consolidated plan'' is added in its place.

c. In paragraph (a)(2), the third and fourth sentences are revised to read as follows:

§ 570.704 Application requirements.

(a) * * *

(2) *Citizen participation plan.* * * * The plan may be the citizen plan required for the consolidated plan, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its consolidated plan and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. * * *

* * * * *

§ 570.901 [Amended]

52. Section 570.901 is amended by removing from paragraph (d) the phrase, ''presubmission requirements at § 570.301, the amendment requirements at § 570.305'', and adding in its place the phrase, ''submission requirements of 24 CFR part 91''.

53. In § 570.904, paragraph (c) is revised to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review Criteria.

* * * * *

(c) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601–3620) and the grantee's certification that it will affirmatively further fair housing.

* * * * *

§ 570.910 [Amended]

54. Section 570.910 is amended by removing from paragraph (b)(2)(iii) the phrase, ''subpart D'', and adding in its place the phrase, ''24 CFR part 91''.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

55. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

56. Section 574.2 is revised to read as follows:

§ 574.2 Overview.

(a) *Available funds.* The Department awards funds appropriated for any fiscal year for the program through a formula allocation and a competitive grant process. Ninety percent of funds appropriated for this program are distributed by formula entitlement. The remaining ten percent is awarded through the competitive process.

(b) *Formula entitlements.* The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain States and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

(c) *Competitive grants.* The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funds Availability published in the **Federal Register**. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

57. In § 574.3, the definitions for ''Eligible State'' and ''Qualifying city'' are revised to read as follows:

§ 574.3 Definitions.

* * * * *

Eligible State means a State that has:

(1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and

(2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. (A State may carry out activities anywhere in the State, including within an EMSA.)

* * * * *

Qualifying city means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

* * * * *

58. In § 574.100, the existing text is designated as paragraph (a), and a new paragraph (b) is added, to read as follows:

§ 574.100 Eligible applicants.

* * * * *

(b) HUD will notify eligible States and qualifying cities of their formula eligibility and allocation amounts and EMSA service areas annually.

59. Section 574.120 is revised to read as follows:

§ 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a

consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

§ 574.160 [Removed]

60. Section 574.160 is removed.

§ 574.170 [Removed]

61. Section 574.170 is removed.

§ 574.180 [Removed]

62. Section 574.180 is removed.

63. In § 574.190, the first sentence is revised to read as follows:

§ 574.190 Reallocation of grant amounts.

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year.
* * *

§ 574.240 [Amended]

64. In § 574.240, paragraph (c)(11) is amended by removing the phrase, ''CHAS approved by HUD (see § 574.160(a))'' and by adding in its place the phrase, ''consolidated plan approved by HUD in accordance with 24 CFR part 91''.

65. Section 574.520 is revised to read as follows:

§ 574.520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

§ 574.530 [Amended]

66. In § 574.530, the word ''three-year'' is removed and the word ''four-year'' is added in its place.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

67. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

68. In § 576.3, the definition of ''Comprehensive Housing Affordability Strategy'' is removed and a definition of ''Consolidated plan'' is added in alphabetical order, to read as follows:

§ 576.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this title, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this title.

* * * * *

Subpart C—[Removed and Reserved]

69. Subpart C is removed and reserved.

70. Section 576.51 is revised to read as follows:

§ 576.51 Application requirements.

In order to receive a grant under this part, a State or formula city or county must submit and obtain HUD approval of a consolidated plan in accordance with 24 CFR part 91 that includes activities to be funded under this part. 24 CFR part 91 includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process. This plan serves as the jurisdiction's application for funding under this program.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 576.53 [Amended]

71. In § 576.53, paragraphs (a), (b), and (e) are removed; and paragraphs (c) and (d) are redesignated as paragraphs (a) and (b), respectively.

72. In § 576.61, the section heading and paragraph (a) are revised to read as follows:

§ 576.61 Reallocation of grant amounts; formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to submit or obtain HUD approval of its consolidated plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year.

* * * * *

73. In § 576.63, the section heading, paragraph (a), paragraph (d) introductory text, and paragraph (d)(1) are revised, to read as follows:

§ 576.63 Reallocation of grant amounts; States and Territories.

(a) *Applicability.* This section applies where a State or Territory fails to submit or obtain HUD approval of its consolidated plan by the deadline specified in § 576.61(a), or grant amounts cannot be reallocated to a State under § 576.61.

* * * * *

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, or State or Territory, must:

(1) Submit an amendment, in accordance with 24 CFR part 91, to its consolidated plan for that program year to cover activities for the reallocation amount it wishes to receive; and

* * * * *

74. In § 576.67, paragraphs (c)(5) and (f)(1) are revised to read as follows:

§ 576.67 Reallocation of grant amounts; returned or unused amounts.

* * * * *

(c) * * *

(5) The responsible HUD field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications, and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted.

* * * * *

(f) * * *

(1) For purposes of this section, emergency shelter grant amounts are considered ''returned'' when they become available for reallocation because a jurisdiction does not execute a grant agreement with HUD for them.

* * * * *

§ 576.85 [Removed]

75. Section 576.85 is removed.

§ 576.87 [Amended]

76. In § 576.87, the word ''three-year'' is removed and the word ''four-year'' is added in its place.

PART 968—PUBLIC HOUSING MODERNIZATION

77. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, 3535(d).

78. Section 968.320 is amended by:

a. Revising the first sentence of paragraph (c) introductory text;

b. Redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively;

c. Adding a new paragraph (d);

d. Amending the newly redesignated paragraph (e) by adding two new sentences preceding the last sentence of the introductory text;

e. Revising the last sentence of paragraph (e)(4)(i); and

f. Removing from paragraph (e)(6)(ii) the phrase ''Comprehensive Housing Affordability Strategy'' and adding in its place the phrase ''consolidated plan''; to read as follows:

§ 968.320 Comprehensive Plan (including Five-Year Action Plan).

* * * * *

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of a comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their residents. * * *

* * * * *

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) * * * Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. * * *

* * * * *

(4) * * * (i) * * * Where necessary, HUD will review the PHA's documentation in support of its cost reasonableness and taking into account broader efforts to revitalize the neighborhoods in which the development are located;

* * * * *

Dated: December 22, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–32150 Filed 12–29–94; 3:48 pm]

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Thursday
January 5, 1995

Part VII

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant Program Economic Development Guidelines; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–94–1729; FR–3474–F–02]

RIN 2506–AB53

Community Development Block Grant Program Economic Development Guidelines

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule and guidelines.

SUMMARY: This rule establishes guidelines to assist Community Development Block Grant (CDBG) recipients in evaluating and selecting economic development activities for assistance with CDBG funds. The guidelines deal with project costs and financial requirements and with the public benefit provided by such activities. This rule also makes certain other changes to facilitate the use of CDBG funds for economic development objectives.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Office of Block Grant Assistance, Room 7286, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3587; TDD: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: One of the Department of Housing and Urban Development's (HUD's) expressed goals is to provide an economic lift for distressed cities. Toward this end, HUD has embarked on a course designed to make the Community Development Block Grant (CDBG) program a potentially major contributor to the provision of jobs, especially for low-income persons residing in our poorest areas. To accomplish this goal, the Department recognizes that it will need to change both the perception and the reality concerning the usefulness of CDBG for economic development objectives.

Section 806 of the Housing and Community Development Act of 1992 (the 1992 Act) requires the Secretary to establish, by regulation, guidelines to assist CDBG recipients to evaluate and select economic development activities for assistance with CDBG funds. The 1992 Act also made further changes in the CDBG program affecting the use of funds for economic development activities, particularly those carried out under the national objective of benefiting low- and moderate-income persons through the creation or retention of jobs. These changes necessitate revisions to the CDBG regulations. HUD has also determined that it is appropriate to take this opportunity to make certain other changes to the regulations to facilitate the use of CDBG funds for economic development objectives. These changes are designed to reduce the administrative burden on grantees while, at the same time, focusing efforts on assisting the residents of low- and moderate-income neighborhoods.

A proposed rule regarding these issues was published on May 31, 1994, at 59 FR 28175. The rule gave the public 30 days in which to submit comments. Fifty-one comments were received, and many of the comments were extensive. The following types and numbers of commenters were represented: 14 local government agencies, 7 state agencies, 12 national associations, 7 development organizations, 1 regional planning agency, 3 private citizens, and 7 HUD Field staff.

Applicability of This Rule to the State CDBG Program

Separate regulatory language for the Entitlement and State CDBG programs is contained in this rule. This preamble generally discusses the changes for the two programs together, with differences between the requirements for the two programs noted. Overall, such differences have been kept to a minimum.

The State CDBG program regulations do not contain an explanatory list of eligible activities, and relatively few terms are defined in regulation. The changes to §§ 570.201, 570.203, 570.204, 570.500 and 570.506 (and the accompanying preamble discussions thereof) are thus not applicable to the State CDBG program, as there are no comparable sections in the State regulations. In interpreting the list of eligible activities found in Section 105 of the Housing and Community Development Act of 1974, as amended, states may use the Entitlement regulations as interpretive guidance.

Applicability of This Rule to the HUD-Administered Small Cities and Insular Areas CDBG Programs

Portions of the Entitlement CDBG Program regulations are incorporated by reference into the regulations for the HUD-Administered Small Cities program and the Insular Areas CDBG program. Thus, the changes to the Entitlement regulations also apply to the HUD-Administered Small Cities and Insular Areas programs. Further clarification will be provided (such as through annual Notices of Funding Availability or other instructions) for those programs, particularly regarding applications proposing a limited number of activities subject to the public benefit guidelines.

Applicability of This Rule to the Indian CDBG Program

It has been determined by the Office of Native American Programs that this regulation will not be applicable to the Indian Community Development Block Grant (ICDBG) program. The nature of the ICDBG program is so separate and distinct from the Entitlement or the State and Small Cities program that it is in the best interest of the ICDBG to address these issues separately. A specific rule will be proposed at a later date to address the needs of the Indian Tribes and Alaskan Native Villages served by the ICDBG program to comply with the requirements of the Housing and Community Development Act of 1992.

Summary of Public Comments and HUD Responses

Assistance for Microenterprises

Issue. Three commenters requested that the maximum number of employees permitted in order for a business to be considered a microenterprise be increased. (2 local government agencies and 1 state agency)

Response. The term ''microenterprise'' is defined by Section 807(c)(2) of the 1992 Act as a ''commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.'' With this statutory limitation, the maximum number of employees cannot be increased.

Issue. Four commenters requested further clarification of the definition of a microenterprise. Issues raised included: whether the limitation on the number of employees applies to actual persons or full-time-equivalent positions; the scope of the term ''commercial''; and the length of time a CDBG-assisted microenterprise must remain within the five-employee maximum. (2 national associations, 1 state agency, and 1 private citizen)

Response. The Department interprets the statutory language regarding the size limitations for a microenterprise as referring to number of actual persons employed by the business, including the owner(s).

As noted above, the statutory definition of a microenterprise describes

such a business as a ''commercial enterprise. . . .'' The Department does not believe that it was Congress' intent to construe the term ''commercial'' so narrowly in this instance that it would encompass only retail businesses. Rather, the HUD interprets this term broadly to mean any ''entity engaged in commerce,'' subject to the size limitations further imposed by the statutory definition of a microenterprise. Definitions of the terms ''microenterprise'' and ''small business'' are being incorporated into the CDBG regulations at § 570.3 in this final rule.

In regard to the length of time a CDBG-assisted microenterprise must remain within these size limitations, the same general rule that applies to other CDBG activities would also apply to microenterprise assistance. That is, the size limitation applies only at the time the CDBG assistance is provided. There may often be the expectation that, in the future, the business will grow beyond five employees; that expectation should not block assistance to a currently qualified microenterprise. A grantee need not track the size of the business throughout the term of any CDBG loan received, as the commenters feared might be the case. However, it should be noted that when CDBG assistance is provided on an ongoing basis, as may often be the case for ''general support'' activities, such assistance ceases to qualify under the microenterprise eligibility category at the point when the business grows beyond the five-employee size limitation. Further assistance to the business after that time must qualify under other existing eligibility categories.

Issue. Two commenters requested that HUD further define the term ''persons developing microenterprises.'' (1 state agency and 1 private citizen)

Response. HUD agrees that it is useful to include such a definition in the regulations. Thus, a new paragraph § 570.201(o)(3) has been added to this final rule to provide such a definition. Generally, the term ''persons developing microenterprises'' is defined as persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed. It should be noted that HUD does not expect that *all* such persons will actually start a microenterprise; some ''fallout'' is expected. However, patterns of excessive ''fallout'' rates in a grantee's microenterprise activities may cause HUD to question whether such activities truly serve ''persons developing microenterprises.''

Issue. Two commenters requested that HUD revise the regulations to permit ''general support'' services to also be provided, outside of the public service cap, to businesses larger than microenterprises. (1 state agency and 1 national association)

Response. The Department cannot accommodate the requested change. Flexibility to provide such services outside the public service category is only statutorily provided for microenterprise assistance carried out under Section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, and, to a less direct extent, qualified activities carried out under Section 105(a)(15) of the Act (§ 570.204 of the Entitlement regulations). As noted above, the statute also imposes the five-employee size limitation on microenterprises.

Issue. Seven commenters requested that HUD clarify various aspects of the ''general support'' portion of the microenterprise eligibility provision. Issues raised included: whether there were any circumstances in which such support activities would be considered public service activities; whether ''general support'' could be provided to employees of microenterprises who are not part-owners; whether ''general support'' included costs related to the delivery of microenterprise assistance; and whether the entities providing assistance under this category would be those most attuned to the special needs of microenterprises. (1 local government agency, 3 national associations, 2 development organizations, and 1 private citizen)

Response. As noted above, the statute limits the instances in which ''general support'' services may be provided to businesses outside the public service eligibility category. In any circumstances which fall outside the specified instances, the provision of such support services would need to qualify as public service activities.

Under the microenterprise eligibility provision, the statute limits the direct provision of ''general support'' to ''owners of microenterprises and persons developing microenterprises.'' Thus, ''general support'' cannot be provided directly to employees of microenterprises who are not part-owners. However, there may often be other ways of structuring the activity to achieve essentially the same end result. For example, financial assistance may be provided to the microenterprise owner under § 570.201(o)(1)(i) to permit the owner to provide certain benefits to his/her employees if that can be shown to assist in the ''development, stabilization, or expansion'' of the microenterprise. Alternatively, the extent of financial assistance provided to the microenterprise owner for the capital needs of the business could be sized taking into account the owner's cost of providing such benefits for his/her employees.

The term ''general support'' as it is used in the statute and § 570.201(o)(1)(iii) is not intended to specifically include the activity administrator's cost of delivering microenterprise assistance to owners of microenterprises and persons developing them. As with any CDBG activity, it is recognized that there are various necessary costs associated with carrying out a microenterprise assistance activity. As the commenters note, these may include the costs of outreach and screening, curriculum development, coordination with other agencies, formation and management of peer lending groups, and certain staff training and development. As with any other CDBG activity, such costs directly related to carrying out the microenterprise assistance activity are considered eligible as part of that activity, without being categorized as ''general support.'' Such ''activity delivery'' costs are not considered to be general administrative costs that would be subject to the 20 percent cap.

In regard to the nature of the entities carrying out activities under this eligibility category and their familiarity with the needs of microenterprises, HUD has interpreted the statutory provision as broadly as possible in developing this rule. This should permit grantees significant flexibility in determining how, and by whom, microenterprise assistance activities should be carried out, based on local needs and priorities. The specific selection of service providers is a matter of local discretion.

Issue. Four commenters recommended that some form of ''appropriate'' test be required for microenterprise assistance carried out under the new eligibility category or that the rule include some language stating that such assistance must be reasonable and necessary. (2 local government agencies, 1 state agency, and 1 HUD Field staff person)

Response. As noted in the preamble to the proposed rule, this new microenterprise eligibility category was added to the Act as a new Section 105(a)(23). This new paragraph of the statute does not contain any requirement that assistance for such activities be determined to be ''appropriate.'' In addition, this new paragraph is not included among those eligibility categories listed as covered by

the economic development ''guidelines'' to be established pursuant to the new Section 105(e) of the statute, as added by Section 806(a) of the 1992 Act. HUD does not believe that adding any regulatory requirements to this eligibility category that are not required by statute is warranted. As with any other CDBG activity, however, grantees are free to develop more restrictive local policies as they feel are appropriate to meeting their local needs and objectives. Also, pursuant to §§ 570.200(a)(5) and 570.502 of the CDBG regulations, all costs incurred for CDBG assisted activities must be in conformance with the applicable uniform administrative requirements. This includes the requirement that the costs be necessary and reasonable for the proper and efficient administration of the program. Thus, HUD does not believe it is necessary to include any special language in this regard in § 570.201(o).

Issue. A concern was raised over the fact that no revision to the Section 108 Loan Guarantee regulations at § 570.703 was proposed to reflect the addition of microenterprise assistance as a separate eligibility category. (1 HUD Field staff person)

Response. Activities eligible for assistance under the Section 108 Loan Guarantee program are specifically delineated at Section 108(a) of the Act. While the 1992 Act added the separate microenterprise eligibility category as a new Section 105(a)(23) of the statute, no reference to this new paragraph was added to Section 108(a) of the statute. Thus, this eligibility category is not directly eligible for assistance using Section 108 Loan Guarantees. However, the provision of direct assistance to microenterprises has long been, and continues to be, eligible as a special economic development activity under Section 105(a)(17) of the Act (§ 570.203(b) of the Entitlement regulations). Section 105(a)(17) is included at Section 108(a) among the list of activities eligible for Loan Guarantee assistance under that section. Therefore, grantees may use Section 108 Loan Guarantees to directly assist microenterprises, subject to the statutorily required ''appropriateness'' determination and coverage under the economic development ''guidelines'' (established in this final rule as a new § 570.209 of the Entitlement regulations and additions to § 570.482 of the State regulations). These ''guidelines'' take into account the special needs and limitations arising from the size of such businesses assisted under § 570.203(b) as required by the new Section 105(g)(1) of the statute (as added by Section 807(c)(1) of the 1992 Act).

Issue. One commenter asked whether (or how) certain assistance to in-home day care providers might be eligible under the proposed § 570.201(o) or § 570.203. The commenter noted that day care is often provided by people within their own homes. Improvements to the house may be necessary or beneficial to the provision of day care services. The existing regulations do not provide guidance as to whether improvements to a residence in this case should be classified as rehabilitation or as assistance to a business.

Response. The Department agrees that this issue is not clear in the existing regulations; the addition of the microenterprise assistance eligibility section further muddies the issue, as many home day care providers might also qualify as a microenterprise. Situations in which businesses are operated from a residence are not limited to day care provision. To address this comment, the Department has revised § 570.202 (eligible rehabilitation activities) of the Entitlement regulations. With this revision, certain situations in which physical improvements to a residence are undertaken to benefit a business operated therein may be classified as housing rehabilitation.

Ensuring That Economic Development Projects Minimize Displacement

Issue. Section 907(a) of the National Affordable Housing Act of 1990 amended Section 105(a)(17) of the statute to require, in part, that economic development projects assisted under this provision must minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The proposed rule implemented this provision by amending § 570.203 of the Entitlement regulations with language on displacement that was identical to that contained in the statute. Six commenters addressed this issue, and several of them recommended that further guidance be provided. However, few specific recommendations were received. (3 national associations, 1 local government agency, 1 private citizen, and 1 HUD Field staff person)

Response. HUD has determined that it is most appropriate to leave the final rule provision as proposed on this issue. Within the parameters of the statutory language, grantees will have flexibility to demonstrate compliance with this requirement as appropriate for their circumstances. One possible way in which a grantee could demonstrate compliance with this requirement is by conducting an analysis for each covered economic development project to determine that any displacement of existing businesses and jobs that is likely to occur as a result of the economic development project, both in the neighborhood in which the project is located and in other surrounding neighborhoods, is justifiable given an examination of possible alternatives.

Additional Changes to § 570.203, Special Economic Development Activities

Issue. A total of eight commenters addressed the new paragraph (c) that was proposed to be added to § 570.203 of the Entitlement regulations to specifically address items that may be considered activity delivery costs in conjunction with special economic development activities assisted under this section. The Department's principal purpose in proposing the addition of this paragraph was to permit certain job training and placement activities in direct conjunction with otherwise assisted CDBG special economic development activities to be considered part of the ''delivery cost'' of those special economic development activities. All eight commenters supported this general concept, but five of them requested modification or clarification of the provision. The recommended modifications included: extending this provision to include construction jobs created as part of CDBG projects; extending it to include all ''CDBG-eligible'' economic development projects rather than just actual ''CDBG-assisted'' projects; limiting the job training and placement activities permitted under this provision to actual low- and moderate-income persons; and reclassifying the outreach and monitoring portions of this provision as general administrative costs subject to the 20 percent cap. Clarification was also requested as to whether there were any circumstances where the job training activities discussed would still be considered a public service. (3 local government agencies, 3 national associations, and 2 development organizations)

Response. HUD has determined that it is not appropriate to extend the coverage of this provision to include job training for construction jobs created as part of all CDBG projects in general. This new economic development services provision specifically applies only to activities qualifying as special economic development activities under the CDBG program. Costs for training and apprenticeship programs directly related to the construction for these activities can generally be considered to be covered under this provision. Costs of such programs for other types of

CDBG projects can often be considered as activity delivery costs of the respective projects to which they pertain.

In regard to the comment that the proposed provision should be extended to include all ''CDBG-eligible'' economic development projects rather than just otherwise ''CDBG-assisted'' projects, the Department has determined that this recommendation has merit. Under the CDBG program, grant funds may be used to assist an activity ''in whole or in part,'' as noted at § 570.200(a) of the Entitlement regulations. There are many cases in which ''activity delivery'' costs are the only portion of an activity's overall costs that are paid for with CDBG funds. Thus, § 570.203(c) has been revised in this final rule to reflect the recommended change. In order to qualify under this provision, job training and placement activities must still constitute activity delivery costs for an economic development project that would otherwise be eligible for further assistance under § 570.203. HUD considers this to permit such training activities only where the grantee has an agreement with a specific business(es) to actually employ the person(s) trained. This provision does not authorize programs that will merely create a ''pool'' of trained persons from which a business(es) may possibly hire. (Such activities must continue to qualify as public service activities under § 570.201(e) of the Entitlement regulations unless they meet the requirements of the new § 570.201(o) or § 570.204.) It should also be noted that the use of CDBG funds for activity delivery costs qualifying under § 570.203(c) constitutes CDBG assistance to the related economic development project, regardless of the funding sources for any other portion of the project. Thus, that project becomes subject to all applicable CDBG requirements, including national objective and public benefit requirements.

In regard to the comment that the job training and placement activities permitted under this provision should be limited to actual low- and moderate-income persons, the Department has decided not to adopt this recommendation. Such a proposal confuses the distinction between eligibility and national objective requirements. As activity delivery costs, job training and placement activities carried out under § 570.203(c) are considered part of the economic development project to which they relate. Thus, they are generally considered to qualify under the same national objective as that economic development project. Such CDBG special economic development activities can qualify under a variety of national objective provisions; they are not limited to creating or retaining jobs for low- and moderate-income persons.

This comment has raised an issue, however, that HUD found to merit further consideration. Under existing regulations, with very few exceptions, the majority of persons benefiting from a CDBG-assisted activity must be low- and moderate-income persons. HUD is aware of various proposals under which certain entities have indicated a willingness to train low- and moderate-income persons for jobs and/or provide such persons with other employment opportunities, but these entities cannot agree that 51 percent of all assisted persons will be low or moderate income. HUD believes that such proposals can often provide valuable opportunities for employment of low- and moderate-income persons and that a way should be found to permit CDBG funds to assist such efforts. Thus, HUD is amending the low- and moderate-income limited clientele national objective requirements in this final rule [with a new § 570.208(a)(2)(iv) in the Entitlement regulations and a new § 570.483(b)(2)(v) in the State regulations] to authorize the use of CDBG funds for such activities that provide training and/or other employment support services in limited circumstances. This provision is discussed more fully in detail in the national objective portion of this preamble.

There also appears to be some general confusion regarding what can be considered as activity delivery costs and what must be classified as general administration subject to the 20 percent cap. Apart from the job training and placement activities discussed above, most of the remaining types of activities delineated in the proposed § 570.203(c) are already considered to be activity delivery costs eligible under the currently-existing § 570.203. The proposed new paragraph only provides a more specific statement of this point. One commenter specifically took issue with the outreach and monitoring portions of this provision, arguing that such activities should be considered part of general administration. HUD agrees that ''monitoring'' should be considered a general administration activity, and thus, that term has been deleted from the new § 570.203(c) in this final rule. However, reasonable outreach efforts by grantees to obtain applicants for available assistance and the direct management of resulting activities are routinely considered part of the delivery cost of such activities. The commenter compares the above type of outreach and marketing efforts to activities designed to help inform low-income residents about CDBG. If that reference is to activities that are designed to make residents generally aware of the CDBG program and how they may participate in determining what types of activities the community funds, such a comparison is imprecise. Rather, the type of outreach and marketing efforts included under the new § 570.203(c) would be comparable to activities designed to make residents aware of how they could apply for assistance under specific activities, such as a housing rehabilitation program.

Special Activities by Community-Based Development Organizations (CBDOs)—§ 570.204 (Section 105(a)(15) of the Act)

Issue. Six commenters addressed the eligible activities and project definition sections of the proposed rule changes at § 570.204 (a) and (b). Most of these commenters requested clarification of the proposed definitions and discussion of eligible activities. (2 national associations, 1 local government agency, 1 private individual, and 2 HUD Field staff persons)

Response. HUD has not accepted the recommendation from one national association to add language to the beginning of § 570.204(a) to specifically state that the recipient may provide CDBG funds to a subrecipient under this section ''if permitted by state or local law.'' Compliance with applicable state or local laws is a requirement for recipients in carrying out all CDBG activities; thus, there is no need to make a special statement here.

In response to the various requests for clarification of the definitions for the projects made eligible by Section 105(a)(15) of the Act, HUD has made minor changes to those definitions included in § 570.204(a) (1), (2), and (3) in this final rule. For the definition of a ''community economic development project,'' this includes a cross-reference to the Consolidated Plan rule at 24 CFR 91.1(a)(1)(iii), which describes the types of activities HUD generally considers to aid in ''expanding economic opportunities,'' which is part of the primary objective of the CDBG program as delineated at Section 101(c)(1) of the Act. The definition also notes the general conditions under which the construction or rehabilitation of housing may be included as part of a ''community economic development project.''

One commenter, a private citizen, raised a question as to whether a ''project'' qualifying under § 570.204 included only activities for which there is funding committed and which are occurring now or whether it could include proposed future activities for which no funding has yet been secured. HUD has determined that specific limits on the scope of a project cannot easily be prescribed in this regard. Thus, it has not been addressed in the text of this final rule. HUD expects recipients to use a plausible interpretation of the term ''project'' and only include activities that are to be carried out within a reasonable period of time. Such an interpretation should at least exclude activities which have not yet received necessary conceptual approvals from the local government.

HUD has also revised the reference to permitted services under § 570.204. Two commenters, a private citizen and a HUD Field staff person, requested clarification of this provision. Also, under a similar expansion of service activities as part of the new microenterprise eligibility category at § 570.201(o), one of those same commenters raised a concern about potential abuse of the expanded flexibility if the requirements were not clearly defined. HUD has reconsidered the proposed provision and has determined that it is appropriate to limit the type of services that may be excluded from the public service cap by qualifying under this section to those (1) that are specifically designed to increase economic opportunities by supporting the development of permanent jobs, or (2) services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of § 91.215(e). To reflect this change, the proposed paragraph § 570.204(a)(5) has been deleted, the proposed paragraph § 570.204(b)(2) has been renumbered to (b)(3), and a new paragraph § 570.204(b)(2) has been added to this final rule. In the State program regulations, proposed § 570.482(c)(2) has been deleted, and a new paragraph § 570.482(d) has been added to discuss the eligibility of employment-related services and microenterprise support services.

Issue. One commenter recommended that the Department consider the eligible project carried out by the qualified organization under § 570.204 to be a single eligible activity instead of ''only a loose grouping of other eligible activities.'' The commenter recommends that this approach be reflected throughout the regulations, including national objective requirements, the economic development guidelines, and record keeping requirements. (1 HUD Field staff person)

Response. In regard to eligibility requirements under § 570.204, it already is the overall project that is assessed to determine if it qualifies as one of the three types of projects authorized by this section. Problems arise when trying to apply this approach for assessing compliance with national objective requirements, economic development guidelines, and other applicable requirements, however, because of statutory requirements that must be applied to specific types of activities that may be part of the qualified project. For example, Section 105(c)(3) of the Act limits the manner in which any housing activities may be considered to benefit low- and moderate-income persons. Also, Section 105(e) of the Act, as added by Section 806(a) of the 1992 Act, subjects economic development activities to compliance with the public benefit requirements. Beyond such statutory restrictions, the Department also believes that requiring detailed information on what the organization is actually doing with the CDBG funds helps ensure accountability to both the local citizens and HUD. However, HUD has determined that the commenter's recommendation does have a certain degree of merit. Thus, HUD has made certain changes to the CDBG regulations in this final rule to ease grantees' burden in tracking national objective compliance for certain activities that may qualify for eligibility under this category. These changes are discussed further in the respective national objective portions of this preamble.

Issue. In regard to the types of entities that qualify under § 570.204, one commenter noted that such entities are commonly referred to by practitioners as ''community-based development organizations (CBDOs)'' or ''community development corporations (CDCs).'' (1 national association)

Response. HUD has determined that is appropriate, in adopting a single generic name for the entities that may qualify under § 570.204, to use a name that is commonly understood by practitioners. It was also apparent from various comments that the proposed rule's use of the term ''local development corporations (LDCs)'' in this regard caused some confusion with some commenters thinking HUD was ''picking'' one of the entities in the current rule over the others. Use of the ''CDC'' term noted by the above commenter could create confusion with existing entities funded under other Federal programs. Therefore, to reduce confusion, the term ''community-based development organization (CBDO)'' is now used in this final rule as the generic term to describe all entities that may qualify under § 570.204.

Issue. Five commenters addressed the proposed revision to the definition of the term ''subrecipient'' at § 570.500(c). The proposed revision was intended only to expand that current provision to include for-profit entities that are now specifically authorized by statute to carry out microenterprise assistance activities under the new eligibility provision implemented in this final rule by a new § 570.201(o) in the Entitlement regulations [Section 105(a)(23) of the Act]. Most of the commenters recommended that HUD not consider any entities carrying out activities under the new microenterprise category as ''subrecipients'' but rather as ''end beneficiaries.'' These commenters also requested a similar change in classification for entities receiving CDBG assistance under § 570.204 of the Entitlement regulations [Section 105(a)(15) of the Act]. Other commenters asked only for a clarification of the proposed revision to § 570.500(c). (1 local government agency, 1 development organization, and 3 HUD Field staff persons)

Response. The comments regarding entities carrying out activities under the new microenterprise category will be discussed later in this preamble in further discussion of the revision to § 570.500(c) in this final rule. This specific section will only respond to these comments as they relate to entities receiving CDBG assistance under § 570.204 of the Entitlement regulations (Section 105(a)(15) of the Act). The Department has re-examined the status of these entities within the context of the statutory language at Section 105(a)(15). This section of the statute authorizes the provision of CDBG assistance to certain qualified entities to carry out specific types of projects. Upon review, HUD has determined that the comments questioning the status of these entities as subrecipients have merit. The Department has determined that, similar to for-profit businesses carrying out economic development projects, the entities carrying out qualified activities under § 570.204 (Section 105(a)(15) of the Act) can be considered not to be an intermediary organization in the grant assistance chain acting for the grantee, but rather as being specifically eligible to receive CDBG assistance itself. While these entities are not true ''end beneficiaries'' as the commenters argue (that term applies to the persons served by the activities), they are not strictly intermediaries either. Thus, the Department has determined that such

eligible entities carrying out qualified activities under this section will no longer be considered as subrecipients under the CDBG program. In this final rule, § 570.500(c) has been amended, in part, to reflect this change.

Issue. Two commenters addressed the general jurisdictional limitations for organizations qualifying under this section as proposed at § 570.204(c)(1)(i). One of these, a national association, recommended that these regulations mirror the Community Housing Development Organization (CHDO) requirements which permit an entity to operate in a rural ''multi-county area (but not a whole state).'' The other commenter, a local government agency, recommended that the proposed regulatory language be amended to read: ''. . . *primarily* within an identified geographic area of operation *within* the jurisdiction of the recipient. . . .'' The commenter argues that this would permit an organization with a successful track record to share its experience by consulting or entering into a joint venture to support a project in other areas. (1 national association and 1 local government agency)

Response. HUD has determined not to accept the ''multi-county'' recommendation because maintaining local community control of a organization qualifying under § 570.204 is crucial. Also, it should be noted that truly rural organizations would not be subject to these regulatory restrictions anyway. This is because Section 807(f) of the 1992 Act expanded the list of organizations eligible to carry out activities in *nonentitlement* areas under Section 105(a)(15) of the Housing and Community Development Act of 1974, as amended. ''Nonprofit organizations serving the development needs of the communities of nonentitlement areas'' now qualify under Section 105(a)(15) of the Act. Since the State CDBG program regulations contain no listing of eligible activities, no regulatory language is needed to implement that change.

In regard to the second comment above regarding jurisdictional limitations, the Department agrees with the commenter's reasoning and has revised § 570.204(c)(1)(i) to reflect the recommended language in this final rule. In this regard, however, HUD does note that it interprets the term ''primarily'' as it is used in this section to mean that most of the organization's projects are located, funds are used, and staff time is expended on a project or projects within the identified geographic area of operation and that outside projects are largely incidental to the organization's activities and purposes.

Issue. One commenter recommended that HUD provide a definition for the term ''particular attention'' as it is used in the new § 570.204(c)(1)(ii) regarding addressing the needs of low- and moderate-income persons. (1 national association)

Response. The ''particular attention'' language as used in the above-noted section comes from those statutes that have been referenced for several years in the CDBG regulations at § 570.204(c)(3) defining local development corporations. The Department is not aware of any significant problems with conflicting interpretations of this language, which is the commenter's stated concern. Thus, the rule has not been modified to include a formal definition of this term. In general, HUD would expect the charter, bylaws, etc., of the CBDO to reflect a commitment to meeting the needs of low- and moderate-income persons.

Issue. In reference to the new § 570.204(c)(1)(iii), another commenter expressed ''serious reservations'' about allowing for-profit organizations to qualify under this section of the regulations. (1 development organization)

Response. The statute at Section 105(a)(15) and the CDBG regulations at § 570.204 have long permitted for-profit organizations under this section with the inclusion of Small Business Investment Companies. The rule now includes only a clearer statement of what already is permitted. The rule does provide a stipulation that any monetary profits to a CBDO's shareholders or members must be only incidental to its operations.

Issue. Four commenters addressed the board structure requirements under § 570.204(c)(1)(iv). Concerns raised included an objection to excluding organizations composed solely of institutional members from qualifying under this section and comments both for and against the inclusion of business owners in defining permitted board structures. One of the commenters also recommended that HUD permit the low- and moderate-income presumptions added by the 1992 Act to be used under this section in determining whether a sufficient percentage of board members are low- and moderate-income persons. (1 local government agency, 2 development organizations, and 1 national association)

Response. HUD has determined that all of the comments regarding the inclusion of institutions and business owners on the boards of qualifying CBDOs have some merit. Thus, the Department has refined the requirements at § 570.204(c)(1)(iv) in this final rule to permit consideration of *both* institutional board members and business owners, but only to the extent that the entities that they represent are both located in *and serve* the CBDO's geographic area of operation. In regard to the comment about permitting the presumption of low- and moderate-income residents status under this section, it is noted that the presumptions at Section 105(c)(4) of the HCD Act, as added by Section 806(e) of the 1992 Act, apply only to activities qualifying under the national objective of job creation or retention for low- and moderate-income persons. Permitting them to be used in determining compliance with the board structure requirements of this section would include too broad of a spectrum of organizations to qualify under this provision. Thus, the Department has rejected this comment.

Issue. Three commenters addressed the proposed § 570.204(c)(2) that provided further ways in which an organization might qualify as an eligible CBDO under this section. These commenters requested clarification of when this paragraph would apply, and two of the commenters specifically requested that HUD expand the jurisdictional restrictions imposed on CHDOs, as designated by the HOME program, qualifying under this paragraph. (1 national association, 1 development organization, and 1 HUD Field staff person)

Response. HUD's intent in the proposed § 570.204(c)(2) was to give organizations that did not meet the general qualification requirements of (c)(1) certain additional ways of qualifying as a CBDO under this section of the CDBG regulations. It was not intended that qualifying organizations would have to meet both (c) (1) and (2); an entity can qualify under *either* standard. HUD has revised the introductory language to § 570.204(c)(2) in this final rule to clarify that intent. An understanding of this approach is critical in assessing the requirements that a CHDO under the HOME program must meet in order to qualify under § 570.204 of the CDBG Entitlement regulations. A CHDO qualifying under the HOME program may or may not meet the general qualification requirements for a CBDO under the CDBG Entitlement program, as delineated at § 570.204(c)(1) of this final rule. If a CHDO meets those requirements, it may have an area of operation as large as the jurisdiction of the recipient, just as any other qualified CBDO. The more restrictive jurisdictional limits at § 570.204(c)(2)(iii) are only applicable to

CHDOs that cannot meet the general CDBG Entitlement qualification requirements for CBDOs. An example of such an entity would be a CHDO that meets only the minimum HOME percentage requirement for low- and moderate-income persons on its board (33 percent) and cannot show that it has sufficient types of representatives on that board to meet the 51 percent standard delineated in § 570.204(c)(1)(iv).

In assessing the comments on this issue, HUD has determined that it is appropriate to provide organizations with an additional alternative for qualifying as a CBDO under this section of the CDBG regulations. Thus, in this final rule, HUD has added a new § 570.204(c)(3) under which an organization that does not qualify under either § 570.204(c) (1) or (2) may also be determined to qualify as an eligible entity under this section if the grantee demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under the above-referenced paragraphs. The Department intends to have this determination made at the HUD Field Office level.

Also in this regard, it should be noted that HUD expects that many Community Development Financial Institutions meeting the criteria in Title I, Subtitle A of the Riegle Community Development and Regulatory Improvement Act of 1994 (P. L. 103–325, enacted September 23, 1994) will qualify as CBDOs under § 570.204 of the CDBG Entitlement regulations. The above-referenced subtitle comprises the Community Development Banking and Financial Institutions Act. The purpose of this subtitle is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in, and assistance to, CDFIs, including enhancing the liquidity of such institutions. The CDFI Fund is to be a wholly-owned Government corporation that will not be affiliated with any other agency of the Federal Government. In this final rule, HUD is adding to the Entitlement regulations a definition of the term CDFI that references the above-noted new legislation. A CDFI is generally defined at Section 103 of that Act as an entity that (i) has a primary mission of promoting community development; (ii) serves an investment area or a targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains accountability to residents of its investment area or targeted population; and (v) is not a government agency or instrumentality. An ''investment area'' is defined as an area that either (i) meets objective criteria of economic distress developed by the Fund and has significant unmet needs for loans or equity investments; or (ii) is located in a designated Empowerment Zone or Enterprise Community. These CDFI criteria are similar to those now set forth in § 570.204(c).

It should again be noted that the requirements of § 570.204 only apply to the qualification of CBDOs serving *Entitlement* jurisdictions under the CDBG program. As discussed earlier in this preamble, Section 807(f) of the 1992 Act expanded the list of organizations eligible to carry out activities in *nonentitlement* areas under Section 105(a)(15) of the HCD Act. *Any* nonprofit organization serving the development needs of nonentitlement areas now qualifies under Section 105(a)(15) of the Act for the State CDBG program.

Issue. One commenter also recommended that HUD allow a limited partnership in which the managing general partner is an eligible CBDO to qualify under § 570.204. The commenter argues that the use of low-income tax credits (LITCs) necessitates a limited partnership structure and that adding the limited partnership itself as a qualifying entity would remove the necessity of having two levels of contracts—one between the grantee and the CBDO and one between that CBDO and the limited partnership. (1 local government agency)

Response. Limited partnerships are single purpose entities which exist to syndicate and develop one project. It would be difficult to construe the definitions of the statutorily eligible entities to include limited partnerships. Thus, HUD has decided against expressly adding a provision to the regulations to include the type of limited partnership described by the commenter. However, in cases in which the activities of an LIHTC limited partnership are controlled by a § 570.204 qualified entity, usually by that entity either serving as the general partner of the limited partnership or establishing such an entity as a subsidiary, the Department has accepted that CDBG assistance may be provided by the § 570.204 qualified entity to the limited partnership for the purpose of carrying out all or part of the eligible project. The Department will continue to explore ways of removing unnecessary administrative burdens for such projects.

Issue. Specifically in regard to qualified entities in nonentitlement areas, one commenter (a state agency) took issue with the discussion of such entities contained in the preamble to the proposed rule. The state agency disagreed with HUD's statutory interpretation that the term ''nonprofit organizations serving the development needs of communities in non-entitlement areas'' excludes units of general local government. This interpretation, according to the state, would restrict the use of CDBG funds by certain State-sanctioned local entities.

Response. The Department has chosen not to accept this comment. The preamble to the proposed rule noted that a public nonprofit organization which meets Internal Revenue Service requirements for nonprofit status may qualify under Section 105(a)(15) of the Act. The Department does not define a number of terms (''neighborhood revitalization project'', ''community economic development project'', ''energy conservation project'', ''carrying out an activity'') which are significant to the discussion of CBDOs above, in order to give States maximum flexibility to implement Section 105(a)(15) within the context of their particular situations.

National Objective Standards for Low- and Moderate-Income Area Benefit Activities

Issue. A total of seven commenters addressed the proposed revisions to § 570.208(a)(1)(i) of the Entitlement regulations and § 570.483(b)(1)(i) of the State regulations dealing with activities qualifying under the national objective of benefiting low- and moderate-income persons as area benefit activities. This revision relates specifically to a proposed presumption of compliance for special economic development activities that may be carried out under § 570.203 [Sections 105(a) (14) and (17) of the HCD Act] by a community development financial institution (CDFI) meeting certain criteria. Concerns raised by the commenters included statements both for and against the proposed presumption; requests for clarification of the types of entities that would qualify as CDFIs; and requests for revisions to the ''primarily residential'' and other aspects of the regulation. (1 local government agency, 1 state agency, 1 development organization, 1 national association, 1 private citizen, and 2 HUD Field staff persons)

Response. Supporting the development and growth of CDFIs can be a critical component in the comprehensive revitalization of

distressed neighborhoods because they often address the financing needs of these areas that are otherwise unmet. Existing CDFIs have demonstrated their ability to identify and respond to community needs for equity investments, loans, and development services. Thus, HUD has decided to include a modified version of the proposed presumption in this final rule.

First, it is important to define the types of entities that may qualify as CDFIs, as some of the commenters noted. As noted earlier in this preamble, HUD is herein adding to the CDBG regulations a definition of the term CDFI that references the Title I, Subtitle A of the Riegle Community Development and Regulatory Improvement Act of 1994 (P. L. 103–325, enacted September 23, 1994). Secondly, HUD has determined that it is more appropriate to create separate paragraphs in § 570.208 of the Entitlement regulations and § 570.483 of the State regulations to reflect the options that may be used for activities carried out by certain CDFIs, rather than to simply include the proposed presumption in § 570.208(a)(1)(i) and § 570.483(b)(1). Thus, in this final rule, HUD has added new paragraphs under the ''additional criteria'' section of the national objective requirements at § 570.208(d)(6) of the Entitlement regulations and § 570.483(e)(4) of the State regulations to list the options that may be used for CDBG activities carried out by any CDFI whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons. The new paragraphs § 507.208(d)(6)(i) and § 570.483(e)(4)(i) cross reference with additional new paragraphs § 570.208(a)(1)(v) and § 570.483(b)(1)(iv) of the Entitlement and State regulations, respectively. Pursuant to these paragraphs, job creation or retention activities carried out by CDFIs meeting the above criteria may be presumed to meet the low- and moderate-income area benefit criteria. It should be noted that with the area benefit presumption applied in this manner, the ''exception criteria'' for Entitlement communities cannot be used in this regard. Thus, in order to take advantage of the area benefit presumption, the CDFI's investment area must be at least 51 percent low- and moderate-income regardless of the community's usual area benefit threshold requirement.

HUD has determined that it is also appropriate to offer a similar benefit for job creation or retention activities carried out under certain other circumstances. Thus, in this final rule, HUD has also added § 570.208(d)(5) in the Entitlement regulations, which is cross-referenced in § 570.208(a)(1)(v). Under this provision, job creation or retention activities undertaken in an area pursuant to a HUD-approved economic revitalization strategy developed in accordance with the authority of § 91.215(e) of the Consolidated Plan final rule may be presumed to meet the low- and moderate-income area benefit criteria. It should be noted that in order to reduce the potential for abuse of this provision, HUD is limiting this form of area benefit presumption to areas that are primarily residential and contain a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to § 570.208(a)(1)(ii) but in no event less than 51 percent. This means that the required low- and moderate-income percentage for the area may be significantly higher than that which the community generally uses for its area benefit activities. For those communities that generally use the ''exception criteria,'' the required low- and moderate-income percentage for this area benefit presumption is 51 percent. For a community that generally is required to meet 51 percent for regular area benefit activities, the required low- and moderate-income percentage for this area benefit presumption is that percentage level of low- and moderate-income persons in the last census block group in the community's highest quartile of block groups ranked in order of proportion of low- and moderate-income persons, as computed by HUD pursuant to § 570.208(a)(1)(ii).

The Department will develop guidelines for determining when grantees should be authorized to take advantage of the benefits of this economic revitalization strategy area approach. These guidelines will be distributed to both grantees and HUD Field Office staff.

In developing this approach for the Entitlement program, the Department became aware of significant issues concerning how the economic revitalization strategy provision might be applied to the State program. Therefore, the Department is not implementing comparable regulation language for the State program at this time. In order to gain public comment, the economic revitalization strategy area concept for states will be the subject of a future proposed rule. In the meantime, the Department welcomes any comments or suggestions on how the economic revitalization strategy area approach might be applied to the State CDBG program.

Two commenters expressed concern about the requirement in § 570.208(a)(1)(i) that limits the use of the low- and moderate-income area benefit provision in general to only those activities that serve areas that are ''primarily residential.'' It should be noted this requirement is a long-standing provision of the CDBG regulations and has served the program well. Thus, HUD has decided not to make any changes to that requirement in this final rule. One of the commenters, a HUD Field staff person, recommended that a specific exception to the ''primarily residential'' requirement be made for projects qualifying under § 570.204 of the Entitlement regulations [Section 105(a)(15) of the HCD Act] because the types of projects made eligible under that section, including ''neighborhood revitalization'' and ''community economic development,'' appear to lend themselves to an area-wide benefit test. Such a change has not been incorporated into this final rule. The activities most often carried out under § 570.204 [Section 105(a)(15)] involve the provision of housing, and Section 105(c)(3) of the HCD Act specifically precludes the use of a low- and moderate-income area benefit national objective claim for such activities. However, in recognition of the merit of the recommendation, HUD has made certain changes in this final rule to ease grantees' burden in tracking low- and moderate-income national objective compliance for housing activities in certain areas. These changes are more fully discussed later in this preamble.

One commenter, a national association, expressed support for a supposed ''revision to permit area benefit . . . without requiring that the area be defined in terms of census tracts or other official boundaries.'' The commenter appears to misunderstand current requirements. While the CDBG regulations do require entitlement grantees to use, to the greatest extent feasible, the most recently available decennial census data to support the low- and moderate-income character of the area (and § 570.208(a)(1)(iv) has been modified to incorporate a reference to the new § 570.208(a)(1)(v) in this regard), there is no current requirement that the service area be defined along census tract or other official boundaries. The language included in this regard in § 570.208(a)(1)(i) (for Entitlements) and § 570.483(b)(1) (for States) in the proposed rule is unchanged from current requirements.

National Objective Compliance by Microenterprise Assistance Activities

Issue. A total of 15 commenters addressed the proposed new § 570.208(a)(2)(iii) to be added to the Entitlement regulations and the proposed new § 570.483(b)(2)(iv) to be added to the State regulations to specifically provide the limited clientele national objective option for activities qualifying under the new microenterprise assistance eligibility category. Many of these commenters specifically supported the provision, and a few specifically opposed it. Various commenters requested revisions to or clarification of certain aspects of the provision, most of which related to the manner in which jobs created by such activities would be considered (2 local government agencies, 3 state agencies, 4 national associations, 4 development organizations, 1 private citizen, and 1 HUD Field staff person).

Response. As discussed in the preamble to the proposed rule, activities carried out under the new microenterprise eligibility category are not statutorily subject to the same low- and moderate income national objective limitations as are generally applicable to special economic development activities carried out under § 570.203 [and Sections 105(a)(14) & (17) of the HCD Act]. Thus, the low- and moderate-income limited clientele method of meeting a national objective becomes an option for activities carried out under the new microenterprise eligibility category. While many commenters specifically supported the subject proposed provision, a few commenters specifically opposed it, particularly the fact that only 51 percent of the owners of microenterprises and persons developing them would be required to be low- and moderate-income persons. Thus, there would be the potential to permit sizable numbers of non-low- and moderate-income persons to receive financial assistance to develop a for-profit business. HUD has found these arguments to be compelling. Thus, the Department has revised the subject limited clientele provision in this final rule to restrict its use to qualify only those assisted owners of microenterprises and persons developing microenterprises who are low- and moderate-income persons. This change should not be a significant issue for many of the microenterprise activities assisted under the CDBG program. Many such programs are designed to provide a means to help disadvantaged persons become more economically self-sufficient and are thus often targeted to persons who meet income qualification criteria at least as restrictive as the CDBG definition of low and moderate income. Also, to allow for some continuity of service to a low- or moderate-income person initially assisted under a microenterprise activity who later may no longer meet the income guidelines after the microenterprise actually becomes operational, the Department has retained the option that permits, for purposes of meeting this national objective requirement, any person determined to be of low or moderate income to be presumed to continue to qualify as such for up to a three-year period before that person would have to requalify. The language in this final rule also clarifies that under this new limited clientele provision, it is only owners of microenterprises and persons developing microenterprises that are considered for national objective purposes and not employees of such businesses who are not part-owners.

While the new limited clientele provision has been restricted to only low- and moderate-income persons, activities qualifying under the new microenterprise eligibility category that may serve non-low- and moderate-income entrepreneurs may still be assisted under the criteria for creation and/or retention of jobs principally for low- and moderate-income persons. Under that national objective claim, all employees of a microenterprise, including the owner(s), are considered, and a grantee can use the new presumptions added by Section 806(e) of the 1992 Act for determining a person's status as a low- or moderate-income person, as implemented in this final rule at § 570.208(a)(4) of the Entitlement regulations and § 570.483(b)(4) of the State regulations. These presumptions cannot be used under the new limited clientele provision because the 1992 Act added them as a new Section 105(c)(4) of the HCD Act which refers only to activities qualifying under the national objective of job creation or retention for low- and moderate-income persons.

One commenter asked that HUD specifically name examples of low- and moderate-income clientele. Certain such examples that apply to all activities benefiting low- and moderate-income persons are included in § 570.506(b) of the Entitlement regulations.

Two commenters requested clarification as to whether HUD's proposing the limited clientele provision for microenterprise assistance activities means that ''cost per job'' created will not be a primary consideration in the evaluation of a CDBG-funded microenterprise program. ''Cost per job'' is not a primary HUD consideration for any microenterprise assistance activities carried out under the new separate microenterprise eligibility category. Such a calculation only comes into play in the public benefit standards (established elsewhere in this final rule), which are not statutorily applicable to activities carried out under the new microenterprise eligibility category. As with any CDBG activity, however, grantees have the flexibility to add additional local criteria for activity evaluation. Also, given the general requirement that all costs charged to the CDBG program must be necessary and reasonable for the proper and efficient administration of the program, HUD expects grantees to consider cost in relation to results for all activities and to take steps to curb unusually high costs.

National Objective Compliance for Employment Support Activities

As delineated earlier in this preamble under the discussion of the new § 570.203(c) economic development services provision in the Entitlement regulations, HUD is aware of various proposals under which certain entities have indicated a willingness to train low- and moderate-income persons for jobs and/or provide such persons with other employment opportunities, but these entities cannot agree that 51 percent of all assisted persons will be low- or moderate-income. HUD believes that such proposals can often provide valuable opportunities for employment of low- and moderate-income persons and that a way should be found to permit CDBG funds to assist such efforts. Thus, HUD is amending the low- and moderate-income limited clientele national objective requirements in this final rule [with a new § 570.208(a)(2)(iv) in the Entitlement regulations and a new § 570.483(b)(2)(v) in the State regulations] to authorize the use of CDBG funds for such activities that provide training and/or other employment support services in limited circumstances. In order to qualify under this provision, CDBG assistance for the project must be limited to the provision of such training and/or supportive services; the percentage of the total project cost borne by CDBG may not exceed the percentage of all persons assisted who are low or moderate income. HUD has included this provision under the limited clientele category rather than the job creation or retention national objective category because while such use of CDBG funds solely for job training and/or supportive services can often be considered to

''involve employment'' of low- and moderate-income persons (reference Section 105(c)(1) of the Act), they cannot generally be considered to directly ''create'' or ''retain'' jobs as those terms are used in the CDBG regulations.

National Objective Standards for Low- and Moderate-Income Housing Activities

As noted under the low- and moderate-income area benefit discussion earlier in this preamble, HUD has added in this final rule new paragraphs § 570.208(d)(5) and (6) in the Entitlement regulations and § 570.483(e)(4) in the State regulations. These paragraphs lay out various national objective options for activities undertaken in certain lower-income areas either by a CDFI or (in Entitlement communities) pursuant to a HUD-approved economic revitalization strategy. Paragraph (ii) of each of these new sections refers to housing activities carried out under these circumstances, and they are cross referenced in § 570.208(a)(3) in the Entitlement regulations and § 570.483(b)(3) in the State regulations in this final rule. As noted earlier, Section 105(c)(3) of the Act limits the manner in which housing activities may be considered to benefit low- and moderate-income persons, and it precludes the use of an area benefit claim for such activities. As an alternative, the new provisions in this final rule permit all housing activities carried out under the delineated limited circumstances to be grouped together and considered as a single structure for purposes of complying with the low- and moderate-income housing national objective requirements. (For example, a grantee providing rehabilitation assistance to 10 single-family housing units in such an area could classify all 10 units as meeting the low- and moderate-income benefit national objective if at least six of the units were occupied by low- and moderate-income persons.) For the calculation of the overall low- and moderate-income benefit level of a grantee's CDBG program, such housing is still subject to the limitation on benefit to low- and moderate-income persons relative to activity costs, pursuant to § 570.200(a)(3)(iv) of the Entitlement regulations and § 570.484(b)(4) of the State regulations.

National Objective Standards for Benefiting Low- and Moderate-Income Persons Through the Creation or Retention of Jobs

Presumptions Added by 1992 Act

Issue. A total of 19 commenters addressed the general manner in which HUD proposed to implement the presumptions for determining an employee's status as a low- and moderate-income person that were added to the HCD Act as a new Section 105(c)(4) by Section 806(e) of the 1992 Act for job creation and retention activities. Of the total number of commenters, 11 clearly indicated their support for the proposed change, and five stated their opposition. Most of the support comments were based on the reduced burden and ''less intrusive'' means for determining the low- and moderate-income status of employees. Most of the comments opposing the proposed change referenced the fact that the proposed rule used only the minimum test for Empowerment Zone and Enterprise Community census tract. Concern was particularly expressed that there was no reference to the ''pervasive poverty, unemployment, and general distress'' requirement for Empowerment Zone and Enterprise Communities. (6 local government agencies, 6 national associations, 1 state agency, 3 development organizations, 2 private citizens, and 1 HUD Field staff person)

Response. After a thorough review of all of the above comments and the applicable statutory references at Title XIII, Chapter I, Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993 regarding the eligibility criteria for Empowerment Zones and Enterprise Communities, HUD has determined that the presumptions added by the 1992 Act should be implemented in a more stringent manner than was set forth in the proposed rule. The Department particularly agrees with those commenters who noted that the ''pervasive poverty, unemployment, and general distress'' eligibility requirement for Empowerment Zone and Enterprise Communities should be reflected in the implementation of the subject low- and moderate-income presumptions for job creation and retention activities under the CDBG program. Thus, a new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations have been added to define the requirements a census tract (or block numbering area) must meet in order to qualify for the presumptions added by the 1992 Act. Under these provisions, a census tract must, in part, demonstrate pervasive poverty and general distress by meeting at least one of three delineated standards. Two of these standards relate to the poverty levels in the various block groups comprising the census tract. The third standard provides a grantee with the option of requesting a determination from HUD that a census tract meets the ''pervasive'' test based on other objectively determinable signs of general distress. The Department intends to have the subject determinations made at the HUD Field Office level.

A conforming change to the new § 570.506(b)(7) of the Entitlement regulations regarding records that need to be maintained for the subject presumptions is also included in the final rule.

Issue. A total of 10 commenters responded to HUD's specific request for comment as to whether tighter presumption standards should be established for census tracts that comprise or include any part of a community's central business district (CBD), as discussed in the Empowerment Zone and Enterprise Community legislation. Six of the commenters wanted no special standards for CBDs. Four of the commenters argued that there must be tighter standards for such areas given the statutory eligibility criteria for Empowerment Zones and Enterprise Communities (4 local government agencies, 3 national associations, 1 development organization, and 2 private citizens).

Response. After a thorough review of all of the above comments and the applicable statutory references, HUD has determined that tighter presumption standards must be established for CBDs. The statutory arguments are compelling. Thus, in the new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations added by this final rule, HUD has included language similar to that which appears in the Empowerment Zone and Enterprise Community regulations regarding this issue, establishing a 30 percent poverty standard for any census tract that includes any portion of a CBD (as that term is used in the most recent Census of Retail Trade).

Issue. Two commenters recommended that HUD revise the proposed rule language to include census tracts that qualify for Empowerment Zone or Enterprise Community eligibility under that program's special rules relating to the determination of poverty rates for census tracts with small populations, particularly those tracts that are more

than 75 percent zoned for commercial or industrial use (1 local government agency and 1 development organization).

Response. HUD has determined that it is not appropriate to revise the regulations implementing the CDBG presumptions to include such tracts in general. While the Empowerment Zone/Enterprise Community legislation does permit these tracts to be considered as passing the minimum poverty tests, this is done mainly in the context of qualifying the tract as part of an overall area to be designated. Because the CDBG presumptions apply only on an individual census tract basis, the Department has determined that including such tracts without limitation would unduly broaden the scope of the subject presumptions. However, it is recognized that many federally designated Empowerment Zones and Enterprise Communities could include such census tracts. Thus, the new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations added in this final rule to implement the CDBG presumptions permit any census tract that is part of a *federally designated* Empowerment Zone or Enterprise Community to qualify for the CDBG presumption regardless of whether it meets the other general criteria delineated in the regulation.

Issue. Several commenters raised other concerns that relate to the statutory bases for the subject presumptions of a person's low- and moderate-income status for CDBG activities carried out under the national objective of job creation or retention. Issues raised included: concerns regarding the use of census tract data instead of block group or ''neighborhood'' data; a recommendation to permit communities to use data obtained through a survey; questions as to why one of the presumptions only applied to the residence of the employee while the other applied to either the employee's residence or the location of the assisted business; and concerns about the interpretation of the terms ''assisted business'' and ''job under consideration'' as used in the proposed rule, as opposed to the term ''assisted activity'' as used in the Act (4 national associations and 1 private citizen).

Response. Section 105(c)(4) of the Act, as added by Section 806(e) of the 1992 Act, which expressly authorizes the subject low- and moderate-income presumptions for job creation and retention activities, specifically refers to ''census tracts.'' Thus, overall tract data must be used in determining these presumptions. In regard to the presumption that is determined by the tract meeting what Section 105(c)(4) calls ''Federal enterprise zone eligibility criteria,'' it is noted that the Empowerment Zone/Enterprise Community legislation requires poverty rates to be determined using the most recent decennial census data available. Thus, this requirement is carried over into a new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations added in this final rule to implement the related CDBG presumption. The other CDBG presumption, which is based on the low- and moderate-income character of the census tract in which an employee resides, does not carry with it the specific requirement that the most recent decennial census data available must be used. Thus, while HUD expects grantees to follow the general CDBG rule of using such census data to the fullest extent feasible, it would be possible for a grantee to conduct a survey to support a census tract's qualification for that presumption. However, given the statutory ''census tract'' language noted above, the area for which such a survey would be undertaken must coincide with the census tract boundary. It is further noted that this latter presumption only applies to a census tract in which an employee resides and not to the location of the assisted economic development project because of the statutory language in Section 105(c)(4).

In expressing concern over the possible interpretation of the terms ''assisted business'' and ''job under consideration,'' as used in the regulations implementing the broader presumption, one commenter gave two examples. First, the commenter states that assistance to a ''branch office'' located in a qualified tract should be able to use the presumption resulting from ''Federal enterprise zone eligibility criteria'' even if the business' principal office is located elsewhere. This is entirely consistent with the language included in the new paragraph § 570.208(a)(4)(iv) of the Entitlement regulations and the new paragraph § 570.483(b)(4)(iv) of the State regulations. In using the term ''assisted business'' in those portions of the rule, HUD does not intend to imply that the business' main office or corporate headquarters must be located in a qualified tract in order to use the presumption. The regulatory language is designed to provide sufficient restrictions to prohibit businesses from establishing only a ''shell'' office to make use of the location presumption while the actual activity being assisted is in fact being carried out elsewhere. Assistance to legitimate ''branch offices'' is not restricted under the regulatory language. As a second example, the commenter states that a ''job training center or small business assistance office'' should be able to use the presumption even though such a facility ''helps people who do not yet have businesses nor specific 'jobs under consideration'.'' It is not clear how this second example would be able to use the presumption given the statutory language at Section 105(c)(4). Based on that provision, the new presumptions can only be used for activities qualifying under the national objective of job creation or retention for low- and moderate-income persons. Job training centers or business assistance offices such as those which appear to be described in the commenter's second example generally would not qualify under that national objective and would thus not be able to use the presumption.

Issue. Two commenters raised questions about how the subject presumptions would be implemented. The first question relates to whether the presumptions based on an employee's residence could be used together with the traditional way of documenting an employee as a low- or moderate-income person in order to meet the overall 51 percent low- and moderate-income requirement for jobs created or retained by a particular assisted business. One of the commenters also asked what documentation HUD will require to verify that jobs are created when the presumption on the basis of the location of the business is used. (1 state agency and 1 private citizen)

Response. In regard to the first question, it is entirely permissible for a grantee, in a single activity, to combine counting employees presumed to be low- and moderate-income persons on the basis of their residence with those employees documented as being such persons under more traditional means. Any concerns that this could possibly lead to the company and/or the grantee being accused of ''singling out certain individuals'' for requests for income information (as one of the commenters states), is as unfounded as the ''privacy'' concerns certain persons have raised for several years in discussions of this section of the CDBG regulations. In regard to the second question, a grantee qualifying a business based on its location must still obtain sufficient documentation to demonstrate that jobs are actually created or retained by the activity. This documentation would be

similar to that which the grantee currently receives for such activities, with the exception that any employee income information would be omitted.

Issue. Two commenters recommended that the final rule contain language which would make it easy for low- and moderate-income people to challenge an ''unwarranted presumption.'' They recommend that HUD reiterate the regulatory ''substantial evidence to the contrary'' language in this section of the regulations and add wording that would encourage residents to submit challenges and direct HUD to quickly respond to such challenges. (1 national association and 1 development organization)

Response. HUD cannot accommodate this recommendation. The subject presumptions of a person's low- and moderate-income status for job creation or retention activities is specifically authorized by statute. It does not matter if the presumption appears ''unwarranted'' in a specific case; if the activity meets the requirements delineated in Section 105(c)(4) of the Act, it is entitled to use the presumption. There is a distinct difference between these presumptions and those that are HUD has otherwise established only on a regulatory basis under the limited clientele standards.

Job Creation or Retention by Public Infrastructure Improvements

The Department proposed another amendment to § 570.208(a)(4) of the CDBG Entitlement regulations and § 570.483(b)(4) of the State regulations concerning the requirements for demonstrating national objective compliance by CDBG-assisted infrastructure improvements. Eight entities commented on this proposed change: 4 states, 2 national associations, one HUD staff person and one citizen. Nearly all commenters supported HUD's efforts to provide more flexibility in this area. Several comments suggested specific revisions to HUD's proposal.

Issue. Communities often over-design public facilities to accommodate future growth; this frequently makes sense for the community. However, CDBG funds should only be used to pay costs associated with the capacity needed by presently-identified businesses, or else the grantee should track future job creation for three years.

Response. The Department has chosen not to accept this suggestion. As noted in the preamble to the proposed rule, the Department proposed shortening the three-year tracking period to one year because it has received numerous comments from states that the existing State CDBG regulations are unduly burdensome. The Department believes it would be cumbersome for HUD staff to attempt to identify and prorate construction costs associated with current vs. future capacity needs; this could place HUD staff in the role of second-guessing grantees' engineering reports.

Issue. Two commenters requested that projected, rather than actual, job creation/retention be compared to the $10,000 CDBG cost-per-job threshold. Because grantees cannot be completely certain how many jobs will actually be created, there may be instances where the projected cost per job is less than $10,000, but the actual cost per job is over $10,000.

Response. The Department concurs with these comments. The Department is concerned that grantees might intentionally overstate the projected number of jobs so as to take advantage of the less stringent requirements for projects whose per-job cost is less than $10,000. However, it is impossible for job creation or retention estimates to be 100% accurate. As the proposed regulations are worded, a grantee could be retroactively held responsible for tracking a wider universe of businesses for job creation/retention if the actual cost per job was over $10,000, even though the projected cost per job was under $10,000. In the final regulations, references to actual vs. projected job creation/retention have been eliminated. Instead, the regulations refer to jobs ''to be created or retained.''

In the regulations on public benefit documentation, the Department indicates that, where a grantee shows a pattern of substantial variation between projected and actual benefits received, a grantee will be expected to take actions to improve the accuracy of its projections. The Department has not included comparable language in this section. If, for purposes of this section, a grantee's projections show a pattern of substantial variation from actual job creation/retention, the Department will expect grantees to take steps to improve the accuracy of their projections.

Issue. One commenter recommended that, rather than requiring grantees to conduct an assessment of businesses in the service area of the public facility or improvement, the rule should require an ''appropriate'' review for public improvement projects undertaken to create or retain jobs.

Response. The Department does not accept this comment, for two reasons. This suggestion confuses requirements for meeting a national objective with requirements for demonstrating the eligibility of an activity. Equally significant is that the new statutory requirements regarding evaluating and selecting economic development projects effectively replace the ''appropriate'' determinations previously required. The Guidelines for Evaluating Project Costs and Financial Requirements are not applicable to public improvement projects; a grantee may choose to develop guidelines for evaluating public improvement projects if it wishes. The Department has chosen to apply the public Benefit standards only to those public improvement projects (undertaken to create or retain jobs) for which the projected cost per job is $10,000 or more.

Issue. HUD should restrict the use of CDBG funds in situations where economic development infrastructure activities cross privately-owned property. This would be construed as a potential windfall to the private property owner or company.

Response. The Department has chosen not to accept this recommendation. HUD is unaware of any evidence that this is a significant problem in the CDBG program. As the commenter acknowledges, states and localities have legal mechanisms to govern hookup access to public utilities.

Issue. One commenter noted that the proposed Entitlement and State regulation language differs regarding businesses with which agreements must be signed; the commenter prefers the language in the proposed State CDBG regulation.

Response. The Department has revised the relevant sections [which are now § 570.483(b)(4)(vi)(F) and § 570.208(a)(4)(vi)(F) to provide greater consistency between the two paragraphs. In revamping this section of the regulations, the Department has eliminated references to agreements with businesses.

Issue. Two states urged the Department to delete portions of the proposed regulations: the requirement for conducting an assessment of businesses in the service area of the public facility or improvement; the requirement that job creation should be tracked for each business until the business' job creation/retention obligation is fulfilled; and, where the cost per job is $10,000 or more, applying the time period for tracking businesses to just the business(es) with signed agreements for which the improvement is undertaken.

Response. Based on relevant statutory language in the Housing and Community Development Act, the Department disagrees with the implication that documentation regarding national objectives should cease once the originally-projected

number of jobs has been created. Furthermore, these recommendations would eliminate the distinction in requirements between activities in which the cost per job is $10,000 or more and those in which the cost per job is under $10,000. Based on the data from the State CDBG program, the $10,000 per job created/retained threshold appears to be significantly above the median costs for public facility/improvement projects of this sort; few projects should thus be subject to the stricter requirements. The Department believes that stricter requirements are appropriate for projects costing $10,000 per job or more, because less public benefit is being obtained per CDBG dollar expended.

However, the Department has taken seriously the underlying desire for simplicity, and as a result has worked to streamline this section of the regulations. Eliminated in the final regulations is the requirement that the recipient undertake an assessment of all businesses in the service area of the public facility/improvement to determine which businesses may create/retain jobs as a result of the public facility/improvement. Grantees are cautioned, however, that should the CDBG per-job cost of the project be $10,000 or more, the recipient must still aggregate jobs created/retained by all businesses which locate or expand in the service area of the public improvement/facility. Grantees will thus need some mechanism for identifying such businesses.

Issue. One state requested that the proposed public improvement-job creation requirements for the State program be made retroactively applicable to projects funded by states after December 9, 1992. That was the effective date of the current State CDBG regulations, in which the existing requirements concerning public improvement-job creation activities were first effected.

Response. A recent U.S. Supreme Court decision casts uncertainty on the constitutionality of retroactive rulemaking. The Department feels an attempt to provide some retroactive flexibility through the rule-making process could be legally problematic. States may, as always, request a waiver of the existing regulations for individual cases.

Other Job Creation/Retention Issues

Issue. One commenter raised a concern regarding the provision at the new § 570.208(a)(4)(vi)(B) of the Entitlement regulations which permits the aggregation of jobs for loan funds administered by a subrecipient where CDBG pays only for the staff and overhead and loans are made exclusively from non-CDBG funds. The commenter recommended that HUD change the phrase ''. . . jobs created by all the businesses receiving loans during each program year'' to ''. . . jobs projected by all the businesses receiving . . .'' This recommendation is based on the claim that during the early years of a program's operation, ''few jobs may actually have been created, even though many loans have been 'committed.' '' (1 private citizen)

Response. The commenter appears to misunderstand the subject provision. The regulation does not measure the number of jobs actually created in each program year. Instead, it measures all the jobs created as a result of the CDBG assistance by all the businesses that *receive loans* in each program year, regardless of when the jobs are actually created.

In developing this final rule, HUD has pursued additional job aggregation options in consideration of the many comments received in support of less burdensome job tracking. Also, in considering the comments on the public benefit standards, HUD has determined that it is appropriate to offer certain flexibility for activities that serve important national interests. Thus, in this final rule, HUD is delineating three additional instances under which jobs created or retained may be aggregated for purposes of determining compliance with national objective requirements. Aggregation of jobs is now also permitted for (1) activities providing technical assistance to for-profit businesses; (2) activities meeting the criteria in the public benefit standards at § 570.209(b)(2)(v) of the Entitlement regulations and § 570.482(f)(3)(v) of the State regulations; and (3) for activities carried out by a CDFI. To reflect this, § 570.208(a)(4)(vi) of the Entitlement regulations and § 570.483(b)(4)(vi) of the State regulations have been amended. In this regard, it should also be noted new paragraphs § 570.208(d)(7) and § 570.483(e)(5), added to the Entitlement and State regulations respectively, require that for an activity that may meet the standards for more than one of these options, the grantee may elect only one option under which to qualify the activity. No ''double counting'' is permitted.

Issue. One commenter raised a concern regarding the requirement regarding the criteria now at § 570.208(a)(4)(iii) and § 570.483(b)(4) making jobs ''available to'' low- and moderate-income persons, particularly the ''no special skills'' requirement unless the business agrees to hire unqualified people and then provide training. The commenters argues that HUD should not ''presume'' that low- and moderate-income persons have no education because many such persons may have a community college or vocational technical education and still be underemployed or poorly paid because of various factors. The commenter also notes that in certain cases, the jobs to be created by an assisted activity will not actually be created for a year or more, which would provide time for necessary training before the business completes its hiring process. (1 national association)

Response. The reference requirement is important to ensure that no special skill or education requirements form a barrier to low- and moderate-income persons being considered for the jobs under the ''available to'' option under § 570.208(a)(4). If a community knows that there is a pool of more skilled low- and moderate-income persons available, it can always choose to demonstrate compliance with the national objective requirement under the ''held by'' option where skill level is not considered. The new low- and moderate-income presumptions should also make it easier for grantees to use the ''held by'' option. In regard to the issue of the timing of the training versus hiring, the Department wants to ensure that any training claimed under the new ''economic development services'' provision at § 570.203(c) of the Entitlement regulations and § 570.482(d) of the State regulations is limited to persons whom the respective business has actually agreed to employ and not to include training just to provide a general ''pool'' of persons from which a business may possibly hire. This is important in distinguishing ''economic development services'' that qualify as part of the ''delivery costs'' of a related economic development project from more generic public service activities that qualify under § 570.201(e) of the Entitlement regulations. It is noted that under this final rule, activities qualifying under either of these eligibility categories can also take advantage of the new low- and moderate-income limited clientele option at § 570.208(a)(2)(iv) of the Entitlement regulations and § 570.483(b)(2)(v) of the State regulations in certain circumstances.

Request for Comment on Certain Other Job Creation/Retention Issues Not Contained in the Proposed Rule

In addition to a discussion of specific regulatory revisions, the preamble to the May 31, 1994, proposed rule also contained a specific request for public comment on certain other issues which HUD is examining in an attempt to

determine whether further changes should be proposed regarding the national objective standards for benefiting low- and moderate-income persons through the creation or retention of jobs. These issues included: (1) whether any further low- and moderate-income presumptions should be made for job creation or retention activities; (2) whether any modification should be made to the CDBG job retention requirement to document that jobs claimed as being retained would actually be lost without the CDBG assistance; and (3) whether any modification should be made to the requirement in job retention activities that, except for some allowance for jobs that may become available through turnover, the low- and moderate-income standards are applied at the time the assistance is provided, which is while the employees still have the income from the jobs that they are subject to lose. (Please refer to the preamble to the proposed rule published in the **Federal Register** on May 31, 1994, for a more complete discussion of these issues.)

A sizable amount of public comment in response to these issues was received. Many of the comments offered interesting suggestions, and HUD will be publishing an additional proposed rule in response to some of the recommendations provided. Such items must go through the proposed rulemaking process in order to provide the general public with an opportunity to comment on them before they would be published for effect. The public comments received on these issues based on the request contained in the preamble to the May 31, 1994, proposed rule will be discussed fully in the preamble to the new proposed rule.

National Objective Standards for Addressing Slums or Blight on an Area Basis

The proposed rule included a revision to § 570.208(b)(1)(ii) of the Entitlement regulations and § 570.483(c)(1)(ii) of the State regulations. This proposal would allow designated slum/blighted areas to qualify under the slum/blight national objective if the area exhibited pervasive economic disinvestment in the form of high turnover or vacancy rates in previously occupied commercial or industrial buildings.

In addition, the Department sought comment on whether instances of environmental contamination should be considered as evidence of blighting conditions. No specific regulatory language was proposed in that area, however.

The Department received valuable input on both topics relating to the slum/blight national objective. As a result, the Department has decided to propose additions to the slum/blight criteria to accommodate environmental contamination, and to revise its initially proposed criteria regarding pervasive economic disinvestment. The existing regulations would be significantly restructured to accommodate these changes.

The Department has decided to publish a new set of proposed regulations dealing with the slum/blight national objectives. The comments received by the Department on slum/blight issues will be discussed in the preamble to those new proposed regulations.

Guidelines for Evaluating and Selecting Economic Development Activities for CDBG Assistance

The proposed rule contained language implementing section 806(a) of the 1992 Act at a proposed new § 570.209 in the Entitlement regulations and additions to § 570.482 in the State regulations. The proposed regulations described guidelines for evaluating certain economic development activities assisted with CDBG funds. These guidelines consist of two parts: guidelines and objectives for evaluating project costs and financial requirements, the use of which are not mandatory, and public benefit standards, which are mandatory.

Numerous comments were received on various aspects of this section of the proposed regulations. The comments can be categorized into groups of issues, and will be discussed by category of issue.

Underwriting Guidelines—General

The proposed rule described HUD's Guidelines and Objectives for Evaluating Project Costs and Financial Requirements (the ''underwriting guidelines''); the proposed guidelines themselves were published as a separate **Federal Register** notice on the same day. Sixteen commenters commented on HUD's proposed Guidelines and Objectives for Evaluating Project Costs and Financial Requirements: 5 local governments, 4 national associations, 2 States, 3 HUD Field Office staffs, one citizen and one business development entity. Four commenters expressed overall support for the approach proposed to be taken by the Department in implementing the requirements of the 1992 Act.

Issue. Three commenters stated that the underwriting guidelines themselves should be included in the text of the regulations, rather than in a separate **Federal Register** notice. By not being part of the regulations themselves, commenters felt that the guidelines would be more easily overlooked or forgotten about in future years.

Response. These issues were carefully considered by the Department in developing the proposed rule. The rule stated that the use of the underwriting guidelines proposed at § 570.209(a) and § 570.482(e) is not mandatory. To further demonstrate this point, the specific elements of the underwriting guidelines were not included within the text of the proposed rule itself. Instead, they were proposed to be published in a concurrent but separate **Federal Register** notice. Outweighing the conmmenters' concerns is the fact that, while Congress directed that the guidelines be published by regulation, the use of the underwriting guidelines is not mandatory. To publish non-binding guidance within a set of otherwise binding regulations would be contradictory and confusing. In disseminating information on the final regulations, the Department will take steps to include the guidelines along with the final regulations, to help ensure that the **Federal Register** notice does not get overlooked.

Issue. Three widely divergent comments were received regarding the applicability of the underwriting guidelines to microenterprise and small business assistance programs. One commenter argued that ''appropriate determinations'' should not be required on a loan-by-loan basis for microenterprise activities, but could be addressed by overall program design. Another argued that the underwriting guidelines should apply to microenterprise assistance activities, so that communities will have a stronger regulatory framework upon which to develop their own guidelines for evaluating microenterprise loans. A third commenter stated that small businesses which do not qualify as microenterprises should be given some relief from the underwriting criteria and financial documentation requirements.

Response. The 1992 Act specifies that HUD is to develop guidelines for evaluating and selecting economic development activities funded under sections 105(a) (14), (15) and (17) of the Act. Microenterprise assistance activities were made separately eligible under the new § 105(a)(23) of the 1992 Act, and thus were not subjected to the underwriting guidelines by Congress. The Department feels it is inappropriate to extend coverage of the underwriting guidelines to programs which provide assistance exclusively to microenterprises and which are eligible under § 105(a)(23). Grantees may

develop their own underwriting guidelines for the evaluation of microenterprise assistance programs. However, if a grantee designs a program to provide assistance to both microenterprises and other small businesses, the public benefit standards and underwriting guidelines apply to the entire program, and grantees will be expected to evaluate each instance of assistance individually. Regarding the third comment, both the proposed and the final regulations state that different levels of review and financial documentation are appropriate for different sizes of projects and businesses; grantees are encouraged to develop guidelines which take into consideration the size of the business being assisted.

From the first of these comments, as well as from several comments addressed elsewhere in this preamble, it is clear that the relationship between the financial guidelines, the public benefit standards and the ''appropriate determination'' requirements (which the Department has heretofore relied on) is not understood. In the 1987 ''Stokvis Memo'' and in the 1992 ''Kondratas Memo'', the Department outlined its policy for implementing the statutory requirement that assistance to private for-profit entities must be ''appropriate to carry out an economic development project''. The Department believes that the new underwriting guidelines and public benefit standards, taken together, effectively comprise a methodology for determining that such assistance is appropriate, and supplant the previously-required ''appropriate determinations''.

It is important to note that the financial and public benefit standards cover a wider range of activities than did the ''appropriate determinations'', including all economic development activities funded under sections 105(a)(14) and (15) of the Act. Grantees are encouraged to develop guidelines to cover the evaluation and selection of other types of economic development activities, beyond those statutorily required. However, HUD will not evaluate or enforce locally-developed guidelines covering economic development activities other than those described in the regulations.

Issue. Three commenters expressed apprehension about a statement contained in the preamble to the proposed regulations. The Department noted that, in cases where an activity receiving CDBG financial assistance fails to meet other applicable program requirements, such as the public benefit standards or the national objective requirements, HUD will consider the extent to which the recipient conducted prudent underwriting in determining appropriate sanctions to be imposed on the recipient for such noncompliance. Commenters questioned the consistency of this statement with statutory language, felt this represented a ''gotcha'' mentality by HUD, and opened the door to HUD ''second-guessing'' grantees' underwriting decisions.

Response. Commenters are correct in noting that the Department is prohibited from basing a determination of project ineligibility on the failure of a project to meet the objectives of the underwriting guidelines. The Department will not monitor grantees' projects for compliance with HUD's underwriting guidelines. The proposed underwriting guidelines also state, however, that the Department expects that grantees will engage in some form of underwriting of projects, regardless of whether or not a grantee adopts HUD's guidelines. The intent of the preamble statement was not to suggest that HUD would ''second-guess'' local underwriting guidelines or decisions about specific projects pursuant to them. When the Department discovers cases of noncompliance with other program requirements (such as national objectives or eligibility), it has flexibility to determine the appropriate action to resolve the noncompliance. In cases of noncompliance with other program requirements, the Department reserves the right to examine whether the grantee conducted any underwriting on the activity in question. If a grantee performed no underwriting whatsoever (or purely perfunctory underwriting) on a project that fails, the Department may look to see whether even rudimentary underwriting would have disclosed to the grantee that the project was likely to fall into noncompliance. Similarly, the Department will also consider whether a grantee's underwriting disclosed that a project was likely to fail, but the grantee chose to fund the project anyway for reasons unrelated to underwriting decisions.

Issue. One HUD staff person inquired about the relationship between the public benefit standards and the underwriting guidelines. The commenter asked what HUD would do in a case where a grantee followed established underwriting guidelines, yet knowingly chose to fund a project which exceeded the public benefit standards (particularly the individual activity standards).

Response. Having complied with a grantee's underwriting standards would not recuse this project from failure to meet the regulatory requirements for public benefit. In such a situation, the Department may still consider the extent to which underwriting was performed in assessing what corrective action is appropriate to resolve the noncompliance.

Issue. One correspondent requested clarification or examples of what is meant by the statement that guidelines also apply to ''activities carried out under the authority of § 570.204 that would otherwise be eligible under § 570.203.''

Response. The Department's position is, and has been, that all activities involving assistance to a for-profit business are subject to the same requirements (including the underwriting guidelines, the public benefit standards, and the previously-required ''appropriate determinations''). Provision of CDBG assistance to a for-profit business through a non-profit subrecipient does not exempt such an activity from the underwriting guidelines or public benefit standards. In the final regulations, this principle is clarified and illustrated with an example.

Issue. Three commenters raised questions about the treatment of non-financial or indirect assistance to businesses in the underwriting guidelines. Two commenters felt that by not specifically addressing the level of underwriting documentation needed for technical assistance activities, the proposed regulations imply that the same degree of analysis is required for technical assistance to a business as for direct financial assistance. Two commenters also urged the department to accept yearly aggregation of technical assistance activities for demonstrating compliance with national objectives.

Response. The Department concurs with the comments regarding technical assistance activities. The underwriting guidelines published today specifically mention that different levels of underwriting documentation may be appropriate for technical assistance activities, given the nature and dollar value of assistance being provided to businesses. The Department has also added a provision to the national objectives requirements for low- and moderate-income benefit, to allow job creation/retention to be aggregated for technical assistance activities.

Certain indirect forms of assistance to business, such as land acquisition or certain public improvement projects, are not statutorily subject to the underwriting guidelines. The Department believes that, while not mandatory, grantees should evaluate all forms of assistance to businesses, to ensure that the project represents an appropriate use of the grantee's funds. Grantees are encouraged to develop

underwriting guidelines which include other economic development activities beyond those subject to the regulations.

Issue. Several comments were received on the wording of several of the objectives in the guidelines. These comments generally spring from the commenters' professional opinions on the desirable design features or outcomes of individual programs.

Response. Because the underwriting guidelines are not mandatory, the Department has chosen not to adopt most of these suggestions. Commenters are encouraged to incorporate their ideas into their local guidelines.

Public Benefit Standards

HUD heard from 20 different commenters on the public benefit standards (and how they would be applied) in the proposed regulations: 3 local governments, 2 states, 8 national associations, 2 development organizations, one citizen and 4 HUD staff. Comments on public benefit fell into four categories of concern: the overall approach and terminology used; the individual activity standards; activities providing insufficient public benefit; and the aggregate standards. While numerous questions and concerns were raised, individual commenters also expressed general support for various aspects of the proposed approach to public benefit: the concept of aggregating public benefit; the flexibility provided by multiple approaches to measuring public benefit; and the concept of allowing certain categories of activities to be excluded from the aggregate dollar standards.

It was also very clear that many commenters did not understand the relationship among the different public benefit standards. Confusion was also expressed about the meaning of various terms used in the proposed regulations, which apparently added to confusion over the relationships among the standards. To overcome this confusion, the Department has substantially rewritten and reorganized the final regulations sections on public benefit.

Overall Approach and Terminology

Issue. Three different commenters asked for clarification of various terms such as ''tests'', ''criteria'', ''portfolio'' and ''obligated''. One asked what constituted an ''activity'' for purposes of aggregation: an individual loan? All activity in one particular loan program run by a grantee? Would a grantee with 10 different programs subject to the public benefit standards develop 10 aggregate numbers, or one? Another asked for confirmation that the public benefit measurement period differs from the time period in which job creation/retention is measured for national objectives documentation.

Response. In the final regulation, the Department has attempted to use more precise wording. The term ''obligated'' here has the same meaning as it does elsewhere in the CDBG program—a formal commitment of funds to fund a specific activity, such as a signed contract with a business, or written notification of loan approval. The term ''test'' has been replaced with ''standard''; each numerical measure by which activities are judged (individually or in aggregate) is a standard. Use of the term ''portfolio'' has been avoided in discussing the aggregate standards. Use of the term ''criteria'' is limited to describing the ''important national interests'' activities which may be excluded from the aggregate standards.

The comment regarding the measurement period for public benefit vs. national objectives is correct. For most covered activities designed to create/retain jobs, each provision of assistance to a business is judged separately for whether it meets a national objective; each business is discretely tracked for job creation/retention until the business has fulfilled its jobs commitment. In contrast, public benefit for any given business is judged at the time assistance is first obligated to the business; the levels of public benefit determined at the time funds are obligated are then aggregated for all instances of assistance provided by a grantee through all covered activities. (The period of time over which activities are aggregated varies among the Entitlement, State, Insular and HUD-Administered CDBG programs.) Thus, for any given business, job creation/retention is primarily measured prospectively for public benefit and retrospectively for national objectives purposes. (However, this explanation does not apply universally; as the regulations note, certain types of activities may be aggregated differently. In addition, grantees are to keep comparative documentation on the projected vs. actual public benefit from projects.)

Issue. A number of commenters voiced various objections to the overall approach to public benefit: the proposed standards are arbitrary and simplistic, and invite ''second-guessing'' of projects by HUD; more study is needed in this area before specific standards are proposed; the standards focus too much on the cost per job and assume that more jobs per CDBG dollar is a more important outcome than job quality; the standards ignore present or future values of assistance provided; the standards focus too much on individual activities, ignoring overall program outcomes; the standards focus too much on aggregate benefits, ignoring individual activities.

Response. As discussed in the preamble to the proposed regulations, the Department considered all of these issues in developing the proposed public benefit standards. More sophisticated measurement systems involve greater complexity, and may increase the documentation burden on grantees and/or reduce flexibility. The Department strives to effect a system which is flexible enough to encompass the great variety of individual programs and individual activities which exist across the CDBG program, and yet ensures at least some modicum of public benefit will be obtained from any given activity. The Department has made revisions to the public benefit standards in response to comments, but has chosen not to radically change the overall approach.

Issue. Two commenters (including one state) suggested that each community (or the state) be allowed to establish its own public benefit standards; HUD could then monitor communities or states for compliance with their standards.

Response. The Department believes these suggestions are inconsistent with the statute. The 1992 Act specified that HUD is to develop, by regulation, guidelines to ensure that public benefit is appropriate relative to the amount of CDBG assistance provided. The commenters' approach could increase, not decrease, grantee complaints about HUD ''second guessing'' local decisions.

Individual Activity Standards

Issue. Five commenters opined that the proposed $100,000-per-job individual activity standard is much too high to ensure reasonable public benefit for any given activity; various figures between $12,000 and $50,000 were suggested as replacements. On the other hand, one commenter expressed concern that the $100,000 standard could preclude use of CDBG funds for massive real estate redevelopment projects or capital-intensive industrial projects; other public benefits from such projects may well justify the expenditure of CDBG funds even when the cost per job is high.

Response. After weighing these arguments, the Department has decided to lower the individual activity per-job standard to $50,000. This should still provide flexibility to undertake vitally important projects with high capital costs per job created or retained;

grantees may request a waiver of regulations for projects which would exceed this level. The ''CDBG cost per job'' and the ''CDBG cost per low- and moderate-income person served'' standards are designed to establish absolute upper limits for what HUD would consider to be reasonable on an individual project basis. Grantees are free to set lower per-job maximums for their own projects, if they wish.

Another example of high-cost projects which the Department has become aware of is the removal of environmental contaminants as part of a redevelopment project. The use of CDBG funds for such ''brownfields remediation'' activities is of growing interest among grantees. Projects of this nature can present high costs relative to the amount of public benefit as defined in these regulations. However, grantees may have additional flexibility in structuring the use of CDBG funds to treat environmental conditions. For example, publicly-owned land may be cleaned up before title is transferred to a private owner. In this way, the environmental remediation activity would not be subject to the public benefit standards.

Issue. Two commenters opined that the proposed $1,000 per area-resident standard is similarly too high to ensure reasonable public benefit; one recommended $50 instead.

Response. The Department has decided to leave the per-area-resident standard as proposed. A lower figure could hinder economic development activities in small communities or sparsely-populated rural areas. Grantees are free to set lower per-area-resident maximums for their own projects, if they wish.

''Insufficient Public Benefit'' Activities

The proposed regulations contained a list of activities for which HUD believes insufficient public benefit is derived; these activities would therefore not be eligible for CDBG assistance. Six comments were received on this list of activities (one each from a citizen, a local government, a national association and a HUD staff person, and two from states). Three commenters suggested additional activities to be added to the list of activities, two commenters objected to the inclusion of one activity on the list, and two commenters requested clarification of language.

Issue. Use of grant funds for projects that will directly compete with existing businesses should be prohibited.

Response. The Department believes this proposal would severely restrict grantees' use of CDBG funds for economic development and would handcuff the Department's efforts to make CDBG a more flexible funding resource. There is nothing which would prevent individual grantees from adopting such a policy, if they wish.

Issue. Gaming facilities (whether on or off Indian Reservations) should also be made ineligible.

Response. The Department has considered this issue in the past and has decided not to pursue it.

Issue. Job Pirating (the use of CDBG funds to move a business from one community to another, with no net expansion of activity) is a waste of taxpayers' money and should be determined to be an ineligible activity.

Response. The Department has studied the problem of job piracy a number of times in the past, but has not taken action to prohibit this activity. Determining whether a business is relocating principally because of the CDBG assistance, or because of other reasons, is a particularly intractable problem in attempting to define job piracy. Recently, Congress has shown interest in legislating on this issue. The Department has therefore decided to defer action on the issue of job piracy until it is clear what action might be taken in authorizing legislation.

Issue. Three commenters opposed including the acquisition of land for which no specific use has been determined on the list of ''insufficient public benefit'' activities. Commenters argued that this would eliminate future economic development activities, and that forcing grantees to prematurely identify the use of land drives up the development cost. One commenter suggested that HUD require land acquisition to meet a national objective within two years of the expenditure of funds.

Response. The Department does not find the arguments for removing this activity from the list to be convincing. The Department is aware of a number of situations in which land has been purchased using CDBG funds with no specific use in mind, and in which the Department later determined that no national objective was ever met by the acquisition. In the Department's opinion, ''landbanking'' with CDBG funds does not provide any public benefit. It should be noted that the proposed regulation would not prohibit the construction of speculative buildings for which no tenant has been identified; nor does it mean that a specific occupant must be identified before land can be purchased. However, a grantee should at least be able to identify the intended use of the property (such as for a shopping center or office building). That does not mean, however, that grantees could satisfy the regulatory intent simply by identifying just any vaguely described proposed use. The language has been revised slightly in the final regulations to refer to ''acquisition of land for which the specific use has not been identified''.

Issue. One commenter requested specific examples of types of privately-owned recreational facilities serving a predominantly-higher income clientele which might be determined ineligible under the proposed regulations. Concerning another activity on the list, this commenter also noted that the proposed language would not prevent the provision of assistance to a ''corporate shell'' or another corporate entity established by the same owner(s) of a business which is the subject of unresolved findings.

Response. The Department has chosen not to try to develop such a list of recreational facilities, as that list might be misinterpreted as all-encompassing; furthermore, a comparison of the recreational benefits vs. other benefit to low- and moderate-income persons must of necessity be done on a case-by-case basis. The Department concurs with the second comment; the final regulations have been revised to include other businesses owned by the same owner(s). The final rule also makes minor clarifying revisions to several of the other ''insufficient public benefit'' activities.

Aggregate Activity Standards

Issue. Three commenters argued that the aggregate standards are too complex, and so should be eliminated. Some commenters feared that grantees may focus only on the individual activity standards and overlook the aggregate standards; the human tendency will be to fund high-profile, high-cost-per-benefit projects first and ''make it up later'' with smaller projects. Another commenter expressed concern that for low-volume economic development programs, the individual and aggregate standards would effectively be the same; if a grantee does one loan early in a year with a per-job cost over $35,000 and then ends up making no other loans, the grantee automatically fails the aggregate standard.

Response. To reinforce the significance of the aggregate public standards, the regulations concerning public benefit have been re-ordered to discuss the aggregate standards first. It is not the Department's intent to unduly penalize low-volume economic development programs for noncompliance by one or two loans. However, in evaluating projects for possible funding, all grantees are well

advised to consider their historical levels of economic development activity to ensure that the aggregate standards will be met. It should be noted that HUD's decision to lower the individual activity standard for job creation/retention from $100,000 to $50,000 should reduce the possibility that grantees will fail the aggregate standard because they funded very high cost-per-job projects early in the year.

Issue. One commenter argued that the $35,000 per-job aggregate standard is too high to ensure reasonable public benefit; several alternative standards in the range of $5,000–$10,000 per job were recommended instead.

Response. The Department has chosen not to accept this recommendation. This commenter also raised other objections to HUD's proposed method for assessing public benefit; taken together, their comments argue for a much more rigorous approach to economic development funding, which would reduce grantee flexibility.

Issue. One commenter argued in favor of either eliminating the $350 per low- and moderate-income area resident standard, or at least raising it to $500.

Response. The Department has decided to retain the proposed $350 figure.

Issue. One HUD staff person questioned how public benefit would be measured in the aggregate under the HUD-Administered Small Cities CDBG program, given that many grantees have revolving loan funds funded with program income from previous grants.

Response. The Department agrees that the proposed regulations do not adequately address this issue. In the final Entitlement regulations, § 570.209(b)(2) has been revised to address aggregate public benefit in the HUD-Administered Small Cities and Insular Areas CDBG programs.

Issue. Four comments were received on the list of ''important national interest'' activities. Two commenters felt that more than 75% of a grantee's funds should be used for such ''important national interest'' activities in order to meet the alternate aggregate standard. One commenter felt the criteria were so broadly written as to allow virtually all activities to qualify, and particularly objected to four of the proposed criteria [(E), (F), (H), (L)] as inappropriate. Another questioned why microenterprise assistance activities [(G)] were included on the list, when microenterprise assistance activities funded under § 105(a)(23) of the Act are not subject to the public benefit standards. One commenter favored keeping the percentage of funds requirement at 75%.

Response. In developing final regulations, the Department has substantially revised the concept that certain activities can be excluded from the $35,000 per-job or $350 per-area-resident aggregate standards. The 75% provision has been eliminated as an alternate to the aggregate dollar standards. Instead, grantees may, at their option, exclude individual ''important national interest'' activities from the aggregate standards. The list of ''important national interest'' activities which can be excluded from the aggregate standards has also been revised. Proposed criterion (G) has been eliminated, and proposed criteria (A) and (B) have been combined. Two new criteria [(L) and (M)] have been added to the Entitlement program final rule; these criteria provide additional flexibility in support of the new ''economic revitalization strategy area'' approach to demonstrating national objectives compliance. (This approach is discussed under ''Low and Moderate Income Area Benefit Activities'' above; as noted there, the approach is being implemented in the Entitlement program only at this time.) The remaining criteria are now more narrowly defined to better target assistance to certain population groups. One significant effect of these changes to the ''important national interest'' activities is worth noting. All activities which do not meet one of these ''important national interest'' criteria must be subject to the aggregate dollar standards.

Issue. Two commenters expressed concern about the relationship of the aggregate standards to the Section 108 Loan Guarantee Program. Concern is expressed that the $35,000 per-job aggregate standard will hinder grantees' use of the Section 108 Loan Guarantee program; Section 108 projects are often big projects which could overwhelm the aggregate average. If an expenditure of CDBG funds is required several years down the line to cover a default, the grantee's aggregate level of public benefit would suddenly become skewed too late for a grantee to make adjustments.

Response. It is acknowledged that certain large Section 108 projects might have a high cost per job; however, the Department believes Section 108 projects should be treated consistently with other CDBG-funded projects. The Department has revised the requirements applying to the ''important national interests'' activities listed in the final rule; grantees may now, at their option, exclude activities meeting these criteria from the aggregate standards. The Department believes many Section 108 projects could meet one or more of these criteria. Grantees may also request a waiver of the regulations for individual activities which may not meet the public benefit requirements. Concerning an unexpected skewing of aggregate benefit resulting from a default, grantees should consider the possibility of a default when deciding whether to fund proposed projects.

Issue. One commenter suggested that economic development services activities funded under proposed § 570.203(c) of the Entitlement regulations be excluded from the public benefit standards, either categorically or at the grantee's option.

Response. The Department does not believe it possible to exempt this type of economic development activity from the public benefit standards, given the statutory language mandating the development of public benefit standards for activities qualifying under this authority.

The Department has added language to the discussion of public benefit which clarifies how to apply the individual and aggregate standards to activities which provide job training, job placement and other employment support services. Except for microenterprise assistance activities eligible under § 105(a)(23) of the Act, many such activities will be subject to the public benefit standards because they are undertaken pursuant to Sections 105(a)(14), (15) or (17) of the Act. For purposes of the individual and aggregate public benefit standards only, the jobs which such services involve are counted as jobs created or retained. (See also the preamble discussion of national objectives for further information on these activities.)

Public Benefit Standards—Documentation of Benefit

Five commenters (two states and three national associations) offered comments on proposed paragraphs 570.209(d) and 570.482(e)(6). Comments fell into two groups: those concerned about what constitutes a substantial difference in actual versus projected benefits; and those concerned about what sanctions the Department might take where actual benefits were found to be substantially less than projected benefits. One of the comments expressed general support for the approach to allow adjustment to the projection process.

Issue. One commenter felt that if a grantee re-evaluates an amended project, it should be held accountable to its amended projections, not to its initial projections. The commenter recommended that the regulations

should refer to ''initial or amended projections''.

Response. The Department concurs with this point; the final regulations discuss benefits in terms of benefits ''anticipated when the CDBG assistance was obligated.'' This is intended to include situations in which projections are revised because of changes in a project which a grantee agrees to allow.

Issue. One commenter recommended that grantees' records concerning the amount of public benefit derived from projects be made available to the public at no cost. This commenter also recommended that Entitlement grantees' Grantee Performance Reports should contain information on differences between projected and actual public benefits from projects.

Response. Existing requirement concerning the availability of documents to the public (such as the CDBG citizen participation requirements) already cover the commenter's first concern. The Department will take under advisement the suggestion concerning reporting of benefits, at such time in the future that reporting requirements are revised.

Issue. One commenter expressed the opinion that if a grantee shows a pattern of substantial differences between projected and actual benefits, over perhaps a two year period, HUD should impose a two-year moratorium on the offending activity for that grantee.

Response. The Department does not accept this recommendation, as it is inconsistent with existing CDBG regulations concerning sanctions for noncompliance. The Department opposes the concept of developing different, prescribed sanctions for different categories of noncompliance.

Issue. One commenter expressed concern over the proposal that the Department might hold a grantee to more stringent public benefit standards in the future when the Department found a grantee to have failed the public benefit standards. The commenter recommended that the Department not take such action unless a grantee failed the standards for two consecutive years, so as not to punish a grantee which might do only one project in a year and have that one project prove unsuccessful.

Response. While the Department agrees that low-volume economic development programs should not be unduly penalized for the failure of one project, the Department considers it inappropriate to identify a specific time period over which to measure success or failure. The final regulations have been revised to discuss situations in which ''a pattern of substantial variation'' occurs.

Issue. Two states expressed concern about proposed language requiring a state to ''take all actions reasonably within its control'' to improve a unit of local government's public benefit projections, when actual results vary substantially from initial projections. This language was seen as imprecise, and calls into question just what actions are within a state's (versus the local government's) control to rectify the problem. One state expressed concern that HUD might sanction a state even after the state took all actions available to it to correct a problem. The other state, while recognizing HUD's oversight role, felt it inappropriate for HUD to second-guess a state's actions, as only the state can impose on itself those actions necessary to resolve the problem at the local level.

Response. These comments, as well as those discussed previously, clearly indicate concern by grantees over what sanctions the Department might take against a grantee, and over what local-level actions are ''enough'' to address a problem. The Department concurs up to a point with the states' comments. The intended meaning of this paragraph was that if local governments' results disclose a pattern of inaccurately projecting pubic benefits, then the state should take actions to insure that localities improve projection accuracy; if a state were to do little or nothing to correct the problems, then HUD could impose stricter standards upon a state. Similarly, if an Entitlement grantee demonstrates that its projection process is inaccurate, it should take steps to improve the accuracy of its projections; if local efforts to resolve the problem were ineffective or nonexistent, then HUD could impose stricter public benefit standards upon the grantee. HUD does not intend that problems by one state recipient should be cause for sanctions against an entire state's program.

HUD does not consider it useful to attempt to define what actions are ''reasonably within the grantee's control'', as every situation would involve a judgement call as to what could or should be done. The concept of deferring entirely to a state's judgement about what actions could or should be taken (against a state grant recipient) is impractical, given HUD's statutory mandate to determine grantees' compliance.

The paragraphs on documentation have been revised to respond to all the above comments, and to provide greater clarity of meaning. In addition, § 570.482(f)(6) of the final State regulations clarifies HUD's expectations upon states concerning local governments' performance.

Amendments to Projects After Determinations

Four commenters (three local governments and one national association) commented on the paragraphs concerning amendments to projects after a funding decision has been reached.

Issue. Three commenters questioned as imprecise HUD's use of the term ''material change'' in referring to situations in which a grantee should reevaluate a project (after committing funding to it) because of changes in the project. One commenter felt the proposed wording implied that reanalysis would be required for any change, which would in their opinion be overkill. Another commenter suggested use of the term ''substantial change'', which is used in the existing Entitlement regulations to describe situations in which the Final Statement must be amended.

Response. It is not the Department's intent that any change in a project should necessitate its complete reevaluation. Minor changes, such as the shifting of small dollar amounts among budget categories, or a one-month extension to the construction period, probably would not affect the underlying assumptions upon which a grantee decided to assist the project. However, if the project changes to the extent that the revised project would be very different in its scope, public benefit, total cost or CDBG cost (compared to the project as initially approved by the grantee), the Department believes that the project should be reexamined under the public benefit and underwriting guidelines. A grantee should confirm whether it still wishes to participate in the project, whether the costs and benefits of the project are still reasonable, and whether the amount of public benefit is still reasonable given the amount of assistance being provided.

In the final regulations, these paragraphs have been rewritten to state that a project should be reevaluated if the project changes to the extent that ''a significant amendment to the contract (with the business) is appropriate.'' The use of the term ''substantial'' was avoided, as some might attempt to apply the same concept of ''substantial'' as used concerning Final Statement amendments—a borrowing of concepts which the Department feels is not appropriate or relevant. The Department has chosen not to define what constitutes a ''significant amendment'', nor to define the types of changes which

would call for reevaluation. Grantees are strongly encouraged, in developing their guidelines, to define what they will consider to be ''significant changes'', and to identify how they will reevaluate projects.

Issue. One commenter objected to the example provided at the end of the paragraph concerning a situation in which total project costs change. In this example, the Department suggested that if total project costs decreased, it would be appropriate to reduce the amount of CDBG assistance to the project. The commenter felt that this implies that any reduction in total project cost should automatically result in a comparable reduction in the amount of CDBG assistance, which may not be practical. The commenter recommended eliminating the example.

Response. The Department concurs with the basic point that it may not always be appropriate to reduce the amount of CDBG assistance in such cases. The example has been retained in the final rule, but has been modified to state that ''it may be appropriate'' to reduce the amount of CDBG assistance. The final regulation also notes that when a project is amended to receive additional CDBG assistance, the project as amended must still comply with the public benefit standards.

Modification to the Definition of Subrecipient Related to Microenterprise Assistance Activities

Issue. As noted earlier under the CBDO discussion regarding § 570.204 of the Entitlement regulations (Section 105(a)(15) of the Act), five commenters addressed the proposed revision to the definition of the term ''subrecipient'' at § 570.500(c) to expand that provision to include for-profit entities that are now specifically authorized by statute to carry out microenterprise assistance activities under the new eligibility provision implemented in this final rule by a new § 570.201(o) in the Entitlement regulations [Section 105(a)(23) of the Act]. Most of the commenters recommended that HUD not consider any entities carrying out activities under the new microenterprise category as ''subrecipients'' but rather as ''end beneficiaries.'' These commenters also requested a similar change in classification for entities receiving CDBG assistance under § 570.204 of the Entitlement regulations [Section 105(a)(15) of the Act]. Other commenters asked only for a clarification of the proposed revision to § 570.500(c). (1 local government agency, 1 development organization, and 3 HUD Field staff persons)

Response. The new Section 105(a)(23) of the Act authorizes ''the provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development'' by providing various forms of assistance to owners of microenterprises and persons developing microenterprises. The Department interprets this provision to mean that any such entities beyond the grantee itself are to serve as intermediaries in the grant assistance chain rather than being considered beneficiaries in and of themselves. Thus, the Department considers such organizations to be subrecipients under the CDBG program. The existing definition of the term ''subrecipient'' at § 570.500(c) of the CDBG Entitlement regulations is being revised in this final rule only to include a specific reference to the for-profit entities now authorized to carry out microenterprise assistance activities. (Nonprofit entities carrying out such activities are already covered by the existing definition of a ''subrecipient.'') The language in the proposed change to § 570.500(c) has been revised, however, to clarify the Department's intent.

Other Issues Regarding Income Documentation

Issue. One commenter recommended that HUD take this opportunity to clarify what is meant by a ''verifiable certification'' as the term is used in § 570.506(b). The commenter asks whether this term implies that a sample of the certifications should be verified. (1 private citizen)

Response. HUD does not believe that this issue need be further specified in the text of the regulation itself. However, as guidance for grantees, it should be noted that, over time, HUD does expect that some sample of such certifications would be verified by the grantee or subrecipient, as applicable. This verification is important to maintaining program accountability and integrity.

Issue. One commenter raised concerns about the burden of keeping family size and income data for job creation or retention activities. As another option, the commenter recommended that HUD only look at the wages of the individual employee and compare that figure against the income limits for one-person households. (1 development organization)

Response. HUD cannot accept this recommendation. First, the proposal is not consistent with the general statutory definition of a low- and moderate-income person as being a member of a low- and moderate-income family. Secondly, the proposal's use of the wages of a created job as the basis for determining a person's income status runs counter to CDBG program requirements. To be counted toward compliance with low- and moderate-income national objective compliance, a person need only be low- and moderate-income at the time the CDBG assistance is provided, i.e., for a created job, at the time he or she is hired. The CDBG program does not and should not impose any requirement that the person would have to stay low- and moderate-income based on the wages of the created job. Finally, it should be noted that presumptions added by the 1992 Act for determining whether a person is considered low- and moderate-income for job creation or retention activities, as implemented in this final rule, should significantly reduce the burden described by the commenter.

Issue. One commenter stated that, in regard to the State CDBG program, it is good that HUD is consulting and negotiating with States on record keeping issue, but the commenter complained that the number of States being consulted was too small. The commenter argued that HUD should negotiate record keeping requirements with each and every State because since they represent such broad and varied regions. (1 state agency)

Response. It is not logistically possible for HUD to negotiate with each and every State before issuing record keeping regulations for the State CDBG program. HUD is still negotiating with a sample of States and is hoping to devise certain minimum record keeping standards for States that will be accepted on a consensus basis.

Other Issues Not Specifically Addressed in the Proposed Rule

A number of comments were received on issues not specifically addressed in the proposed regulations, but which were seen (by commenters) as having significant bearing on the use of CDBG funds for economic development activity.

Issue. Two commenters (both local governments) requested that the Department address the issue of using CDBG funds for economic development activities on military bases which are being closed.

Response. The Department does not see the reuse or redevelopment of closed military bases as an activity per se, but rather a goal which CDBG funds can be used to address. The Department believes the current regulations concerning eligibility and national objectives, along with these revised

regulations, give communities considerable flexibility to carry out a broad range of economic development activities, including those on former military bases.

Issue. Six commenters (3 national associations, 2 states and one local government) identified other Federal requirements as major inhibitors to the use of CDBG for economic development (particularly for microenterprise assistance), and asked the Department to examine ways to streamline these other requirements. Specifically identified were environmental review procedures, program income requirements, and the Davis-Bacon Wage Rate Act.

Response. HUD acknowledges that these areas are the source of frequent complaints. However, as some commenters noted, the underlying bases for many of the regulatory requirements in these areas are statutory, and thus lie beyond HUD's span of control. HUD is willing to explore ways in which regulations governing these other federal requirements might be made more amenable to the use of CDBG funds for economic development.

In particular, the Department realizes that CDBG regulations governing the use of CDBG program income must be revised to include 1992 changes to the Act. Issues concerning program income will be dealt with more comprehensively in separate future rule-making. In the meantime, and in response to these comments, the Department has identified three incremental changes which can be made regarding program income, and has included them in this final rule.

1. The 1992 State CDBG program regulations included a provision excluding from the definition of program income an amount of up to $10,000 per year per state grant recipient. This provision was consistent with 1992 amendments to the Act, which permitted the Secretary to exclude from program requirements amounts of program income that are determined to be so small that compliance with requirements would place an unreasonable administrative burden on units of local government. During the past two years, a number of states have commented to HUD that many of their grant recipients regularly receive over $10,000 per year in program income; thus, at its present level, this exclusion provision is of little or no benefit to state grant recipients. Since state grant award amounts are typically smaller than the average yearly entitlement grant amount, state grant recipients typically receive less program per year than entitlement grantees. The problem noted by states is likely to be equally or more problematic for entitlement grantees.

The Department has determined that $25,000 is a more appropriate level at which to set the yearly exclusion amount. These final regulations also extend the exclusion provision to the Entitlement program for the first time. In a separate rulemaking, the Department is also adding the exclusion provision to the HUD-Administered Small Cities program regulations.

2. The existing definition of program income includes revenue generated by activities carried out with the proceeds from loans guaranteed under Section 108. Such revenue is now treated as program income even if the guaranteed loan is repaid with non-CDBG funds. Such revenue is treated as program income notwithstanding that it is required to be pledged to the repayment of the Section 108 loan. The final rule excludes from the definition of program income certain amounts generated by activities financed by Section 108 loans, to the extent that non-CDBG funds are used to repay the loan. Activities which can qualify for this exclusion are those meeting the criteria at § 570.209(b)(2)(v) or § 570.482(f)(3)(v) (the ''important national interest'' activities), and those carried out in conjunction with an Economic Development Initiative grant in an area determined by the Department to meet the eligibility requirements for Urban Empowerment Zone designation.

Any revenue generated by activities financed with Section 108 loan guarantees which is not defined as program income would be miscellaneous revenue. In addition, any amounts in debt service accounts that were funded with non-CDBG funds (e.g. Section 108 funds and monies provided by the assisted business) that remain after full and final repayment of the guaranteed loan would also be considered miscellaneous revenue.

3. As discussed earlier under the heading of Community-Based Development Organizations, the Department has substantially revised the requirements governing activities funded under § 105(a)(15) of the Act (and § 570.204 of the Entitlement regulations). As a result of those changes, the department has determined that amounts generated by such activities can also be excluded from the requirements governing the use of program income.

Because § 105(a)(15) of the Act differentiates between the types of eligible entities in entitlement jurisdictions and nonentitled areas, this change has been effected by different means for the Entitlement and State CDBG programs. Section 570.500(c) of the Entitlement regulations, which defines the term ''subrecipient'', has been revised; entities described in § 570.204(c) [which implements § 105(a)(15) of the Act], are no longer defined as subrecipients. As noted previously, the term ''subrecipient'' is not defined in the State CDBG program. Section 570.489(e) of the State rule (which comprises program income requirements) has been revised to exclude from the definition of program income amounts generated by § 105(a)(15) activities. States are expected to ensure that any such activities are indeed carried out by an entity pursuant to § 105(a)(15).

It should be noted that this exclusion does not cover situations in which a grantee provides CDBG assistance to one of these entities in the form of a loan. Any repayments of principal or interest from the entity to the grantee for such a loan would be considered to be CDBG program income, regardless of the source of the funds used for repayment.

Issue. Numerous commenters noted that HUD needs to provide additional training for grantees and HUD Field Office staff to ensure uniform understanding, interpretation and implementation of the revised regulations. HUD should also go beyond formal training to provide other mechanisms (such as national conferences, development of model programs, resource guidebooks and computer bulletin boards) for sharing information on economic development activities. Areas in which certain commenters were particularly interested in seeing greater information-sharing included: related federal initiatives such as welfare reform and Empowerment Zones/Enterprise Communities; sharing of model programs; microenterprise assistance programs; use of ''first source'' agreements for job creation activities; and combining CDBG with other federal economic development resources.

Response. The Department acknowledges the importance of training on new regulations, and is planning to provide training to both grantees and HUD Field Office staff once these regulations are effective. HUD is also developing a CDBG economic development reference manual which will include model programs. The Department's Consolidated Technical Assistance initiative, which is already being implemented, should also result in additional training opportunities on economic development issues.

The Department plans to develop guidelines by which those communities

demonstrating the best performance in the area of economic development may be identified. These guidelines will be distributed to both grantees and HUD Field Office staff. The Department will also identify administrative mechanisms through which additional relief may be provided to communities with the best economic development performance records.

Relationship to Section 3 Economic Opportunity Requirements

Recipients of CDBG funds must also comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended by Section 915 of the 1992 Act. Section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, employment and other economic opportunities arising in connection with CDBG assistance to any Section 3 covered project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located. For the CDBG program, Section 3 covered projects include housing rehabilitation, housing construction, and other public construction. The Section 3 requirements apply to training, employment and contracting opportunities arising in connection with a covered project, as well as job (or other opportunities) which may be retained or created as a result of the project. An interim rule implementing the 1992 amendments to Section 3 was published by the Department in the **Federal Register** on June 30, 1994, and it became effective August 1, 1994.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies in this rule do not have Federalism implications when implemented and, thus, are not subject to review under the Order. Nothing in the rule implies any preemption of State or local law, nor does any provision of the rule disturb the existing relationship between the Federal Government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the designated Official under Executive Order 12606, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Environmental Finding

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. 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, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary by his approval of publication of this rule hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administration and procedural requirements to comport with recently enacted legislation.

Semiannual Agenda

This rule was listed as item 1848 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57664) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Community Development Block Grant Program is listed in the Catalog of Federal Domestic Assistance under the following numbers: Entitlements—14.218, HUD-administered Small Cities—14.219, Indian—14.223, Insular Areas—14.225, State's Program—14.228.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570, subparts A, C, I, and J, are amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

Subpart A—General Provisions

2. In § 570.3, definitions for ''Community Development Financial Institution'', ''Microenterprise'', and ''Small business'', are added in alphabetical order to read as follows:

§ 570.3 Definitions.

* * * * *

Community Development Financial Institution has the same meaning as used in the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 note).

* * * * *

Microenterprise means a business that has five or fewer employees, one or more of whom owns the enterprise.

* * * * *

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

* * * * *

Subpart C—Eligible Activities

3. In § 570.200, paragraph (e) is revised to read as follows:

§ 570.200 General policies.

* * * * *

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.202(b)(3), 570.204, 570.206(f), and 570.209.

* * * * *

4. In § 570.201, paragraph (o) is added to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(o)(1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment,

stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.

(3) For purposes of this paragraph (o), ''persons developing microenterprises'' means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

5. In § 570.202, paragraph (a)(1) is revised to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) * * *

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

* * * * *

6. Section 570.203 is amended by revising the introductory text and paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

* * * * *

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

7. Section 570.204 is revised to read as follows:

§ 570.204 Special activities by Community-Based Development Organizations (CBDOs).

(a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;

(2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR 91.1(a)(1)(iii);

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 570.207(a);

(2) Carrying out public services that do not meet the requirements of § 570.201(e), except that:

(i) Services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(ii) Services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR 91.215(e) shall not be subject to the limitations in § 570.201(e)(1) or (2), as applicable;

(3) Providing assistance to activities that would otherwise be eligible under § 570.203 that do not meet the requirements of § 570.209; or

(4) Carrying out an activity that would otherwise be eligible under § 570.205 or § 570.206, but that would result in the recipient's exceeding the spending limitation in § 570.200(g).

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing

and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

(3) A CBDO that does not qualify under paragraphs (c) (1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraphs (c) (1) or (2) of this section.

8. Section 570.207 is amended by revising paragraphs (b) introductory text and (b)(3)(iii) to read as follows:

§ 570.207 Ineligible activities.

* * * * *

(b) The following activites may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein or when carried out by a entity under the provisions of § 570.204.

* * * * *

(3) * * *

(iii) When carried out by an entity pursuant to § 570.204(a);

* * * * *

9. Section 570.208 is amended by:

a. Revising the paragraph heading of paragraph (a), revising paragraph (a)(1)(i), the first sentence in paragraph (a)(1)(iv), and adding a new paragraph (a)(1)(v);

b. Revising paragraph (a)(2)(i) introductory text and by adding new paragraphs (a)(2)(iii) and (a)(2)(iv);

c. Revising the introductory text of paragraph (a)(3);

d. Revising paragraph (a)(4); and

e. Adding new paragraphs (d)(5), (d)(6), and (d)(7), to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(a) *Activities benefiting low- and moderate-income persons.*

* * * * *

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

* * * * *

(iv) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraphs (a)(1)(i), (ii), or (v) of this section, the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. * * *

(v) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:

* * * * *

(iii) A microenterprise assistance activity carried out in accordance with the provisions of § 570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(iv) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(A) In such cases where such training or provision of supportive services assists business(es), the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining ''affordable rents'' for this purpose. The following shall also qualify under this criterion:

* * * * *

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(*1*) Meets the requirements of paragraph (a)(4)(v) of this section; or

(*2*) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(*1*) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(*1*) All block groups in the census tract have poverty rates of at least 20 percent;

(*2*) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(*3*) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of a subrecipient making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by

aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(v)(C)*(1)* of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its final statement and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).

* * * * *

(d) * * *

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of § 91.215(e) of this title and HUD has approved the strategy, the grantee may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(v) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(v) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at § 570.209(b)(2)(v) may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(v) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (a)(4)(vi) (D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

10. A new § 570.209 is added to subpart C to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under § 570.203. These guidelines also apply to activities carried out under the authority of § 570.204 that would otherwise be eligible under § 570.203, were it not for the involvement of a Community-Based Development Organization (CBDO). (This would include activities where a CBDO makes loans to for-profit businesses.) These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are *mandatory,* but the guidelines for evaluating projects costs and financial requirements are not.

(a) *Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.* HUD has developed guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. These guidelines, also referred to as the underwriting guidelines, are published as appendix A to this part. The use of the underwriting guidelines published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. The objectives of the underwriting guidelines are to ensure:

(1) That project costs are reasonable;

(2) That all sources of project financing are committed;

(3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) That the project is financially feasible;

(5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) *Standards for Evaluating Public Benefit.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory. Certain public facilities and

improvements eligible under § 570.201(c) of the regulations, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.208(a)(4)(vi)(D)*(2)*.

(1) *Standards for activities in the aggregate.* Activities covered by these guidelines must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(2) *Applying the aggregate standards.* (i) A metropolitan city or an urban county shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. A grantee under the HUD-Administered Small Cities or Insular Areas CDBG programs shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-Administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution that serve an area that is predominantly low- and moderate-income persons;

(I) Provides assistance to a Community-Based Development Organization serving a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by HUD under the provisions of § 91.215(e) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by HUD under the provisions of § 91.215(e) of this title.

(3) *Standards for individual activities.* Any activity subject to these guidelines which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) $50,000 per full-time equivalent, permanent job created or retained; or

(B) $1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(4) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (b)(3)(i) of this section.

(ii) The individual activity standards in paragraph (b)(3)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (b)(3)(i) of this section.

(c) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change

to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (b) of this section.

(d) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If the grantee's actual results show a pattern of substantial variation from anticipated results, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

Subpart I—State Community Development Block Grant Program

11. Section 570.482 is amended by adding paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 570.482 Eligible activities.

* * * * *

(c) *Provision of Assistance for Microenterprise Development.* Microenterprise development activities eligible under Section 105(a)(23) of the Housing and Community Development Act of 1974 (the Act), as amended, (42 U.S.C. 5301 *et seq.*) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(d) *Provision of Public Services.* The following activities shall not be subject to the restrictions on public services under Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended:

(1) Support services provided under Section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, and paragraph (c) of this section; and

(2) Services carried out under the provisions of Section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services.

(e) *Guidelines and Objectives for Evaluating Project Costs and Financial Requirements*—(1) *Applicability.* The following guidelines, also referred to as the underwriting guidelines, are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. The use of the underwriting guidelines published by HUD is not mandatory. However, states electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) *Objectives.* The underwriting guidelines are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. These underwriting guidelines are published as appendix A to this part. The objectives of the underwriting guidelines are to ensure:

(i) That project costs are reasonable;

(ii) That all sources of project financing are committed;

(iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(iv) That the project is financially feasible;

(v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(f) *Standards for Evaluating Public Benefit.* (1) *Purpose and Applicability.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these standards. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. These standards are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Certain public facilities and improvements eligible under Section 105(a)(2) of the Act, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.483(b)(4)(vi)(F)*(2).* Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.

(2) *Standards for activities in the aggregate.* Activities covered by these standards must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(3) *Applying the aggregate standards.* (i) A state shall apply the aggregate

standards under paragraph (e)(2) of this section to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these standards which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (f)(2) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood income that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution (as defined in the Community Development Banking and Financial Institutions Act of 1994, (12 U.S.C. 4701 note)) serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(I) Provides assistance to an organization eligible to carry out activities under section 105(a)(15) of the Act serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches.

(4) *Standards for individual activities.* Any activity subject to these standards which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) $50,000 per full-time equivalent, permanent job created or retained; or

(B) $1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(5) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (f)(4)(i) of this section.

(ii) The individual activity tests in paragraph (f)(4)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (f)(4)(i) of this section.

(6) *Documentation.* The state and its grant recipients must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If a state grant recipient's actual results show a pattern of substantial variation from anticipated results, the state and its recipient are expected to take those actions reasonably within their respective control to improve the accuracy of the projections. If the actual results demonstrate that the state has failed the public benefit standards, HUD may require the state to meet more stringent standards in future years as appropriate.

(g) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms

or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (f) of this section.

12. Section 570.483 is amended by:

a. Revising the section heading;

b. Adding a new paragraph (b)(1)(iv):

c. Revising paragraph (b)(2)(i)(C), and adding new paragraphs (b)(2)(iv) and (b)(2)(v);

d. Revising paragraph (b)(3) introductory text;

e. Redesignating paragraph (b)(4)(iv) as (b)(4)(vi), and by adding new paragraphs (b)(4)(iv) and (v);

f. Revising newly designated paragraph (b)(4)(vi)(B);

g. Redesignating newly designated paragraph (b)(4)(vi)(c) as paragraph (b)(4)(vi)(F) and revising it;

h. Adding new paragraphs (b)(4)(vi)(C), (D) and (E); and

i. Adding new paragraphs (e)(4) and (5), to read as follows:

§ 570.483 Criteria for national objectives.

* * * * *

(b) * * *

(1) * * *

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may also be considered to qualify under this paragraph (b).

(2) * * *

(i) * * *

(C) Activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (b)(2)(v) of this section.

* * * * *

(iv) A microenterprise assistance activity (carried out in accordance with the provisions of Section 105(a)(23) of the Act or § 570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(v) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph (e)(4)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining ''affordable rents'' for this purpose. The following shall also qualify under this criterion:

* * * * *

(4) * * *

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(*1*) Meets the requirements of paragraph (b)(4)(v) of this section; or

(*2*) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (b)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (b)(4)(iv)(A)(*1*) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(*1*) All block groups in the census tract have poverty rates of at least 20 percent;

(*2*) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(*3*) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) * * *

(B) Where CDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.482(f)(3)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(5) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(5) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(*1*) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(*2*) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(iii)(C)(*1*) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.482(e).

* * * * *

(e) * * *

(4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the unit of general local government may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) Where an activity meeting the criteria at § 570.482(f)(3)(v) also meets the requirements at paragraph (e)(4)(i) of this section, the unit of general local government may elect to qualify the activity under either the area benefit criteria at paragraph (b)(1)(iv) of this section or the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi) (D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

* * * * *

13. Section 570.489 is amended by:

a. Revising paragraph (e)(1) introductory text;

b. Redesignating paragraph (e)(2) as paragraph (e)(3); and

c. Adding a new paragraph (e)(2), to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(e) *Program income.* (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

* * * * *

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government and its subrecipients;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(iii) Amounts generated by activities that are financed by a loan guaranteed under Section 108 of the Act and meet one or more of the public benefit criteria specified at § 570.482(f)(3)(v) or are carried out in conjunction with a grant under Section 108(q) of the Act in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under Section 108 of the Act which are not defined as program income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this part. However, such treatment shall not affect the right of the Secretary to require the Section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at § 570.705(b)(1).

* * * * *

Subpart J—Grant Administration

14. Section 570.500 is amended by revising paragraph (a) introductory text; by adding a new paragraph (a)(4); and by revising paragraph (c); to read as follows:

§ 570.500 Definitions.

* * * * *

(a) *Program income* means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of this section.

* * * * *

(4) Program income does not include:

(i) Any income received in a single program year by the recipient and all its subrecipients if the total amount of such income does not exceed $25,000; and

(ii) Amounts generated by activities that are financed by a loan guaranteed under Section 108 of the Act and meet one or more of the public benefit criteria specified at § 570.209(b)(2)(v) or are carried out in conjunction with a grant under Section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG

funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under Section 108 which are not defined as program income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this Part. However, such treatment shall not affect the right of the Secretary to require the Section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at § 570.705(b)(1).

* * * * *

(c) *Subrecipient* means a public or private nonprofit agency, authority or organization, or a for-profit entity authorized under § 570.201(o), receiving CDBG funds from the recipient to undertake activities eligible for such assistance under Subpart C of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of § 570.204. The term includes a public agency designated by a metropolitan city or urban county to receive a loan guarantee under Subpart M of this part, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36 or in Attachment O of OMB Circular A–110, as applicable.

15. Section 570.506 is amended by revising paragraph (b) introductory text; by removing the semicolon at the end of paragraph (b)(2)(iii) and adding a period in its place; by redesignating paragraphs (b)(7) through (b)(11) as paragraphs (b)(8) through (b)(12), respectively; by adding a new paragraph (b)(7); and by revising paragraph (c), to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definitions of ''low and moderate income person'' and ''low and moderate income household'' (as applicable) at § 570.3, such as Job Training Partnership Act (JTPA) and welfare programs; or the recipient may substitute evidence that the assisted person is homeless; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with § 570.3; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

* * * * *

(7) For purposes of documenting, pursuant to paragraphs (b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v) of this section, that the person for whom a job was either filled by or made available to a low- or moderate-income person based upon the census tract where the person resides or in which the business is located, the recipient, in lieu of maintaining records showing the person's family size and income, may substitute records showing either the person's address at the time the determination of income status was made or the address of the business providing the job, as applicable, the census tract in which that address was located, the percent of persons residing in that tract who either are in poverty or who are low- and moderate-income, as applicable, the data source used for determining the percentage, and a description of the pervasive poverty and general distress in the census tract in sufficient detail to demonstrate how the census tract met the criteria in § 570.208(a)(4)(v), as applicable.

* * * * *

(c) Records which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i), 570.202(b)(3), 570.203(b), 570.204(a), 570.206(f), and 570.209.

* * * * *

16. Appendix A is added to part 570 to read as follows:

Appendix A to Part 570—Guidelines and Objectives for Evaluating Project Costs and Financial Requirements

I. *Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.* HUD has developed the following guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. *The use of these underwriting guidelines as published by HUD is not mandatory.* However, grantees electing not to use these underwriting guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. States electing not to use these underwriting guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

II. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes.

III. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. For example, a recipient administering a program providing only technical assistance to small businesses might choose to apply underwriting guidelines to the technical assistance program as a whole, rather than to each instance of assistance to a business. Given the nature and dollar value of such a program, a recipient might choose to limit its evaluation to factors such as the extent of need for this type of assistance by the target group of businesses and the extent to which this type of assistance is already available.

IV. The objectives of the underwriting guidelines are to ensure:

(1) that project costs are reasonable;

(2) that all sources of project financing are committed;

(3) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) that the project is financially feasible;

(5) that to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

i. Project costs are reasonable. i. Reviewing costs for reasonableness is important. It will help the recipient avoid providing either too much or too little CDBG assistance for the proposed project. Therefore, it is suggested that the grantee obtain a breakdown of all project costs and that each cost element making up the project be reviewed for reasonableness. The amount of time and resources the recipient expends evaluating the reasonableness of a cost element should be commensurate with its cost. For example, it would be appropriate for an experienced reviewer looking at a cost element of less than $10,000 to judge the reasonableness of that cost based upon his or her knowledge and common sense. For a cost element in excess of $10,000, it would be more appropriate for the reviewer to compare the cost element with a third-party, fair-market price quotation for that cost element. Third-party price quotations may also be used by a reviewer to help determine the reasonableness of cost elements below $10,000 when the reviewer evaluates projects

infrequently or if the reviewer is less experienced in cost estimations. If a recipient does not use third-party price quotations to verify cost elements, then the recipient would need to conduct its own cost analysis using appropriate cost estimating manuals or services.

ii. The recipient should pay particular attention to any cost element of the project that will be carried out through a non-arms-length transaction. A non-arms-length transaction occurs when the entity implementing the CDBG assisted activity procures goods or services from itself or from another party with whom there is a financial interest or family relationship. If abused, non-arms-length transactions misrepresent the true cost of the project.

2. *Commitment of all project sources of financing.* The recipient should review all projected sources of financing necessary to carry out the economic development project. This is to ensure that time and effort is not wasted on assessing a proposal that is not able to proceed. To the extent practicable, prior to the commitment of CDBG funds to the project, the recipient should verify that: sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

3. *Avoid substitution of CDBG funds for non-Federal financial support.* i. The recipient should review the economic development project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. This will help the recipient to make the most efficient use of its CDBG funds for economic development. To reach this determination, the recipient's reviewer would conduct a financial underwriting analysis of the project, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards for similar projects, taking into account the unique factors of the project such as risk and location.

ii. Because of the high cost of underwriting and processing loans, many private financial lenders do not finance commercial projects that are less than $100,000. A recipient should familiarize itself with the lending practices of the financial institutions in its community. If the project's total cost is one that would normally fall within the range that financial institutions participate, then the recipient should normally determine the following:

A. *Private debt financing*—whether or not the participating private, for-profit business (or other entity having an equity interest) has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project; and

B. *Equity participation*—whether or not the degree of equity participation is reasonable given general industry standards for rates of return on equity for similar projects with similar risks and given the financial capacity of the entrepreneur(s) to make additional financial investments.

iii. If the recipient is assisting a microenterprise owned by a low- or moderate-income person(s), in conducting its review under this paragraph, the recipient might only need to determine that non-Federal sources of financing are not available (at terms appropriate for such financing) in the community to serve the low- or moderate-income entrepreneur.

4. *Financial feasibility of the project.* i. The public benefit a grantee expects to derive from the CDBG assisted project (the subject of separate regulatory standards) will not materialize if the project is not financially feasible. To determine if there is a reasonable chance for the project's success, the recipient should evaluate the financial viability of the project. A project would be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (including repayment of the CDBG assistance if appropriate) were determined to be realistic and met the project's break-even point (which is generally the point at which all revenues are equal to all expenses). Generally speaking, an economic development project that does not reach this break-even point over time is not financially feasible. The following should be noted in this regard:

A. some projects make provisions for a negative cash flow in the early years of the project while space is being leased up or sales volume built up, but the project's projections should take these factors into account and provide sources of financing for such negative cash flow; and

B. it is expected that a financially viable project will also project sufficient revenues to provide a reasonable return on equity investment. The recipient should carefully examine any project that is not economically able to provide a reasonable return on equity investment. Under such circumstances, a business may be overstating its real equity investment (actual costs of the project may be overstated as well), or it may be overstating some of the project's operating expenses in the expectation that the difference will be taken out as profits, or the business may be overly pessimistic in its market share and revenue projections and has downplayed its profits.

ii. In addition to the financial underwriting reviews carried out earlier, the recipient should evaluate the experience and capacity of the assisted business owners to manage an assisted business to achieve the projections. Based upon its analysis of these factors, the recipient should identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

5. *Return on equity investment.* To the extent practicable, the CDBG assisted activity should provide not more than a reasonable return on investment to the owner of the assisted activity. This will help ensure that the grantee is able to maximize the use of its CDBG funds for its economic development objectives. However, care should also be taken to avoid the situation where the owner is likely to receive too small a return on his/her investment, so that his/her motivation remains high to pursue the business with vigor. The amount, type and terms of the CDBG assistance should be adjusted to allow the owner a reasonable return on his/her investment given industry rates of return for that investment, local conditions and the risk of the project.

6. *Disbursement of CDBG funds on a pro rata basis.* To the extent practicable, CDBG funds used to finance economic development activities should be disbursed on a pro rata basis with other funding sources. Recipients should be guided by the principle of not placing CDBG funds at significantly greater risk than non-CDBG funds. This will help avoid the situation where it is learned that a problem has developed that will block the completion of the project, even though all or most of the CDBG funds going in to the project have already been expended. When this happens, a recipient may be put in a position of having to provide additional financing to complete the project or watch the potential loss of its funds if the project is not able to be completed. When the recipient determines that it is not practicable to disburse CDBG funds on a pro rata basis, the recipient should consider taking other steps to safeguard CDBG funds in the event of a default, such as insisting on securitizing assets of the project.

Dated: December 22, 1994.

Mark C. Gordon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 94–32151 Filed 12–29–94; 4:33 pm]

BILLING CODE 4210–29–P

Federal Register

Thursday
January 5, 1995

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 151
Land Acquisitions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD11

Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Petition.

SUMMARY: The Department of the Interior requests comments on a petition for rulemaking concerning Alaska Native land acquisitions. This petition recommends amending regulations to bring federally recognized Alaska Native Tribes within the scope of federal regulations authorizing the acquisition of land in trust status.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Written comments should be mailed or hand carried to the Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4522–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the petition may be obtained by contacting Alice A. Harwood, Chief, Branch of Technical Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240; Telephone number (202) 208–3604; or by mail at the address listed above.

SUPPLEMENTRY INFORMATION: Petitioners include three federally recognized tribes in Alaska: Chilkoot Indian Association (Haines), the Native Village of Larsen Bay, and the Kenaitze Indian Tribe. They request the Secretary to amend the existing regulation which excludes the acquisition of land in trust status in the State of Alaska for Alaska Natives and tribes, except for the Metlakatla Indian Community of the Annette Island Reserve and its members. Specifically, the petitioners request the Secretary to: (1) remove the portion of the existing regulation that prohibits the acquisition of land in trust status in the State of Alaska for Alaska Native villages other than Metlakatla and (2) include in the definition of ''tribe'' those Alaska Native villages listed on the Department of the Interior's list of federally recognized tribes.

Dated: November 29, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–71 Filed 1–4–95; 8:45 am]

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Federal Register

Thursday
January 5, 1995

Part IX

Department of Transportation

Coast Guard

33 CFR Part 156

Designation of Lightering Zones; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 93–081]

RIN 2115–AE90

Designation of Lightering Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to designate three lightering zones in the Gulf of Mexico, more than 60 miles from the baseline from which the territorial sea of the United States is measured. By using these lightering zones, all single hull tank vessels would be permitted to off-load oil within the U.S. Exclusive Economic Zone (EEZ) until January 1, 2015. This proposal is in response to industry requests, and would establish the first lightering zones designated by the Coast Guard. It would also establish three areas in which all lightering would be prohibited.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–081), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket. Comments and other materials related to this rulemaking are available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room B–718, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–A), (202) 267–6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–081) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans to hold a public hearing on this proposed rulemaking in New Orleans, Louisiana. The date and time will be announced by a later notice in the **Federal Register**. Persons may request additional public hearings by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, and C. G. Green, Project Counsel, Regulations and Administrative Law Division (G–LRA).

Background and Purpose

Section 3703a of title 46 of the United States Code establishes the requirements for tank vessels eventually to be equipped with double hulls and includes a phaseout schedule for single hull tank vessels. This section also provides exemptions from the double hull requirement. Until January 1, 2015, a tank vessel need not comply with the double hull requirement when it is off-loading oil at a deepwater port licensed under the Deepwater Port Act of 1974 as amended (33 U.S.C. 1501, *et seq.*) or within a lightering zone established under 46 U.S.C. 3715(b)(5) more than 60 miles from the baseline from which the U.S. territorial sea is measured (46 U.S.C. 3703a(b)(3)). Currently, only the Louisiana Offshore Oil Port (LOOP) has been authorized under the Deepwater Port Act of 1974. No lightering zones have yet been established under 46 U.S.C. 3715(b)(5). By using designated lightering zones more than 60 miles from the baseline from which the territorial sea is measured, single hull tank vessels contracted for after June 30, 1990 and older single hull tank vessels phased out by OPA 90, would be able to lighter in the EEZ until January 1, 2015.

Lightering of imported crude oil in the Gulf of Mexico is of national significance. The Regulatory Assessment prepared for this rulemaking estimates that in 1992 approximately 6.1 million barrels of crude oil per day were imported into the United States. Approximately 1.6 million barrels per day (26 percent of imported crude oil) were lightered offshore in the Gulf of Mexico.

Section 3715 of title 46 of the United States Code authorizes the Secretary of the Department in which the Coast Guard is operating to prescribe regulations on lightering operations involving oil or hazardous material in waters subject to the jurisdiction of the United States, including provisions on the establishment of lightering zones (46 U.S.C. 3715(b)(5)). This authority was delegated to Coast Guard District Commanders under 33 CFR 156.225 where necessary for safety or environmental protection.

Currently, 33 CFR part 156 provides that the Coast Guard will consider various factors in designating lightering zones: traditional use of the area for lightering; weather and sea conditions; water depth; proximity to shipping lanes, vessel traffic schemes, anchorages, fixed structures, designated marine sanctuaries, fishing areas, and designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System; and other relevant safety, environmental, or economic data (33 CFR 156.230).

This rulemaking proposes to designate three lightering zones in the Gulf of Mexico in which single-hull tankers may conduct lightering operations as authorized by OPA 90. This rulemaking requires extensive environmental and economic analysis and documentation and it has been determined to be a significant regulatory action under the Department of Transportation (DOT) and the Office of

Management and Budget (OMB) criteria. For these reasons, this rulemaking is being prepared by the Commandant of the Coast Guard. However, this proposed rulemaking by the Commandant will not affect the District Commander's authority under 33 CFR 156.225 to administer and modify these zones as appropriate or to designate subsequent lightering zones.

Related Rulemakings

On September 15, 1993, the Coast Guard published a final rule (CGD 90–052) revising 33 CFR part 156, subpart B to clarify that regulations issued under section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321 *et seq.*) apply to offshore lightering operations when conducted in the U.S. marine environment (58 FR 48436). Under that rulemaking, a Declaration of Inspection (as required by 33 CFR 156.150) and a vessel response plan (if required under part 155) serve as acceptable evidence of compliance with section 311(j) of the FWPCA. The vessel to be lightered and the service vessel, as defined in 33 CFR 156.205, must both have such evidence of compliance on board at the time of a transfer. The rule also amended 156.215, pre-arrival notice requirements, to include the number of transfers expected and the amount of cargo expected to be transferred during each lightering operation.

Publication History

In November 1993, the Coast Guard received several requests to establish lightering zones in the Gulf of Mexico. On December 2, 1993, the Coast Guard published in the **Federal Register** a notice of these petitions for rulemaking and request for comment (58 FR 63544).

The requests received by the Coast Guard for the designation of lightering zones varied in their specifics. One requested that all U.S. waters of the Gulf of Mexico more than 60 miles beyond the baseline from which the territorial sea is measured be designated as a lightering zone. Another sought a large lightering zone off the coast of Texas and a smaller one off the coast of Louisiana. The third request was for a lightering zone off the coast of Mississippi.

On December 16, 1993, the Coast Guard published in the **Federal Register** a notice of public meeting to solicit opinions on whether lightering zones should be established and, if so, where they should be located and what operating conditions should be mandated (58 FR 65683). A public meeting was held in Houston, Texas, on January 18, 1994. Ninety-six people attended this meeting, representing industry, environmental advocates, and government agencies. The views expressed at the meeting and written comments received are discussed below and were considered by the Coast Guard in formulating this proposed rulemaking.

Discussion of Comments

Tanker owners and operators supported the designation of lightering zones in the Gulf of Mexico, commenting that the need for lightering was increasing. They also noted that approximately 40 new tankers possessing single hulls but otherwise state of the art, are prohibited from lightering in U.S. waters until and unless lightering zones are established. In the meantime, most oil is being imported in older, presumably less safe, single hull tankers.

A representative from LOOP expressed support for the designation of lightering zones. He pointed out that all lighterers, not merely new single hull tank vessels, could use the zones. Additionally, LOOP argued that this project was important enough to warrant careful analysis.

A representative of the State of Louisiana requested that all lightering be moved to 60 miles offshore, that the State of Louisiana be permitted to review any proposal to designate lightering zones, and that a public meeting be held in Louisiana. In addition, this speaker suggested several issues for consideration: input from natural resource trustees, consistency with area contingency plans, and response capability for spills in any established zones.

One attendee requested that any designation of lightering zones contain provisions to minimize interference with artificial reefs. Another attendee requested measures to ensure that offshore structures (oil and gas platforms) and pipelines be avoided. No representative of a nongovernmental environmental advocacy group spoke during the public meeting.

The Coast Guard received 45 written comments, ranging from support to criticism and raising the same issues as noted above. Also, a letter signed by 20 Members of Congress was received which voiced concerns about the possible environmental impacts of designating lightering zones. Two Congressmen wrote separate letters supporting the designation and discussing the economic impact of the failure to establish the zones which had been authorized by law. Finally, a letter from the State of Louisiana expressed concern over consistency between this project and the State's coastal zone management plan. This issue is discussed in the environmental section of the preamble.

A letter from the Department of Interior's Mineral Management Service (MMS) expressed concern that establishing lightering zones may affect its offshore lease sales. Establishment of the proposed zones should not affect the leasability of offshore mineral rights. Furthermore, the proposed rule incorporates requirements for vessels underway to cease lightering operations when within 3 nautical miles (nm) of an offshore structure and vessels at anchor may not conduct lightering when within a 1 nm radius.

The Coast Guard has determined that designating all U.S. waters of the Gulf of Mexico more than 60 miles beyond the baseline from which the territorial sea is measured as one large lightering zone is unwarranted. The Coast Guard does, however, propose to establish three lightering zones in the Gulf of Mexico off the coasts of Texas, Louisiana, and Mississippi generally conforming to the specific areas requested by the petitioners. Because of their location, the Coast Guard proposes to name these zones ''Southtex,'' ''Gulfmex No. 2,'' and ''Offshore Pascagoula No. 2,'' respectively. The coordinates of the proposed zones are listed in the proposed subpart C of 33 CFR part 156.

Analysis of the areas covered by the requests revealed a series of seamounts, also called pinnacle trends or live bottoms, cutting through the northern portion of the requested zone off Texas and proceeding along the northern edge of the requested central zone off Louisiana. These seamounts consist of coral reefs and other bottom-living organisms which attract other marine life.

Among these seamounts is the Flower Garden Banks National Marine Sanctuary (the Sanctuary). The Sanctuary is administered by the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. Certain activities in the Sanctuary are either prohibited or regulated by NOAA under authority of 16 U.S.C. 1431. Those regulations are published in 15 CFR part 943. While anchoring within the Sanctuary is prohibited, the issue of lightering is not addressed in the NOAA regulations. Although lightering is not currently conducted near the Sanctuary, nothing prohibits such activity from occurring.

While the Sanctuary may be the most ecologically sensitive of the various seamounts in the vicinity of the

requested lightering zones, the Coast Guard has determined that all the seamounts in this vicinity should be protected and lightering in their vicinity would constitute an interference with their passive use. Therefore, included within this proposed rulemaking is a provision which prohibits all lightering operations in the vicinity of the seamounts. For convenience, the seamounts have been grouped in this proposed rulemaking into three prohibited areas, the specific coordinates of which are listed in proposed subpart C of 33 CFR part 156. The environmental aspects of this proposed rulemaking are more fully discussed in the Environmental Analysis which has been placed in the docket.

Establishment of the prohibited areas as proposed would result in the division of the requested western zone off Texas into a small northern zone and a larger southern zone. While the southern zone provides ample room for tank vessels engaged in lightering, it appears that the smaller northern zone may be unnecessary. Thus, the Coast Guard proposes to designate only the southern portion of the requested area as a lightering zone. Figure 1 is a pictorial representation of the proposed zones and prohibited areas. The Coast Guard requests comments on the practicality of also designating the smaller northern area as an additional lightering zone. The boundaries of this northern area, which would be called ''South Sabine Point,'' would consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
28°30′00″,	92°38′00″, thence to
28°44′00″,	93°24′00″, thence to
28°33′00″,	94°00′00″, thence to
28°18′00″,	94°00′00″, thence to
28°18′00″,	92°38′00″,

and thence to the point of beginning.

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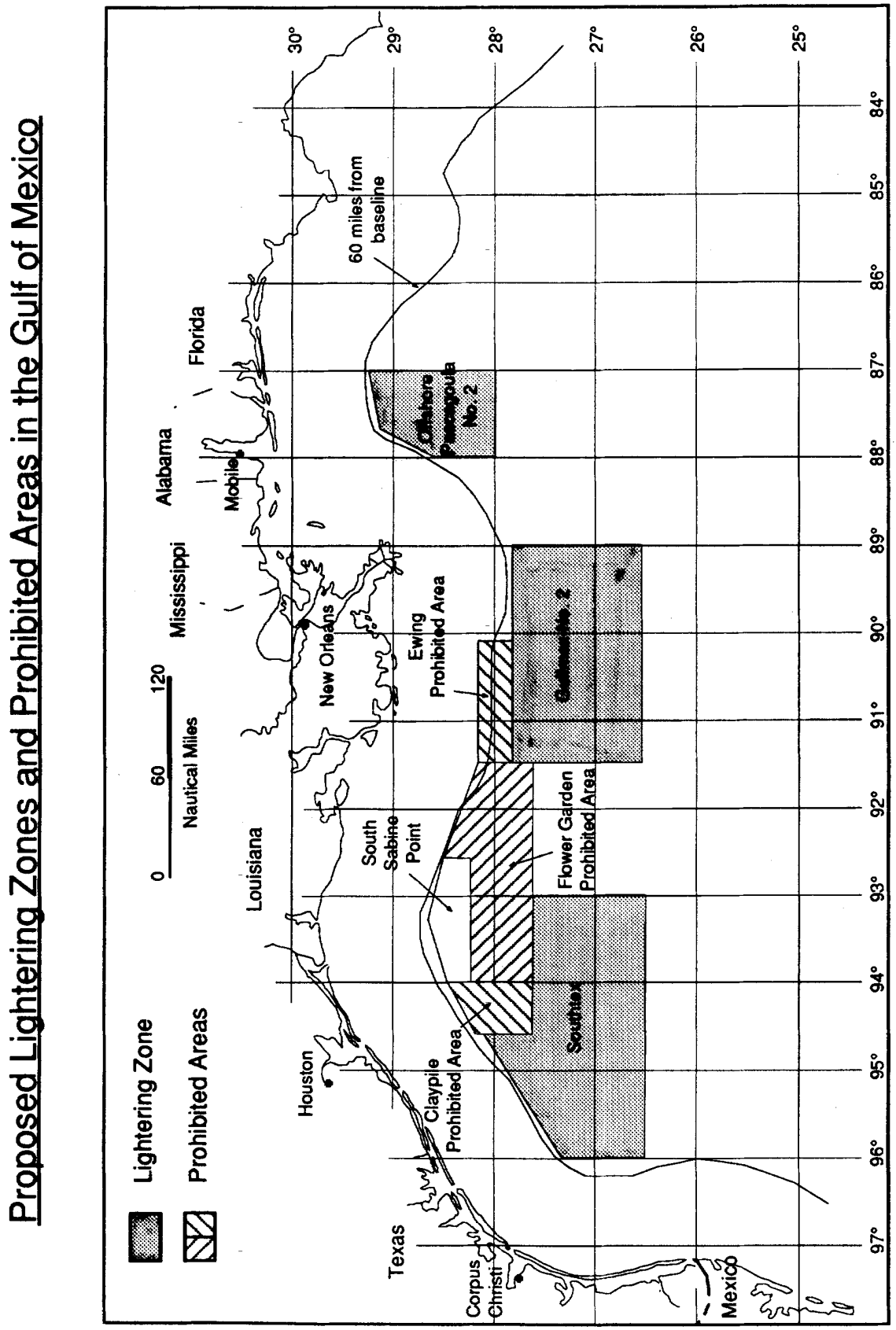

Figure 1

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Offshore lightering is a traditional maritime activity in the Gulf of Mexico and has taken place for many years. The Coast Guard's 1993 Deepwater Ports Study contains a summary of data on U.S. crude oil spills from 1986 to 1990. The casualty analysis in the Study considered only non-catastrophic oil spills and grouped them into three basic categories:

(1) *Transit casualties*: Navigation-related accidents, such as groundings or collisions, that occurred when the vessel was inbound and loaded with cargo oil.

(2) *Transfer casualties*: Accidents which occur during cargo transfer operations when lightering, or discharging in-port, or at LOOP. These include human error and equipment failure such as hose ruptures, leaking valves, tank overflows, and improper connections.

(3) *Intrinsic casualties*: Accidents associated with the operation of the ship itself rather than the activity (mode) in which it is engaged. These accidents would include leaks from hull cracks, sea chests or rudder/propeller seals, accidental discharge of dirty bilges, and fuel/lube oil spills. Fires and explosions not associated with transfer operations or navigation are also intrinsic casualties which may result in oil spills. These accidents are equally probable for any vessel in any mode. Consequently, spills resulting from such intrinsic casualties are grouped separately from those resulting from navigation or transfer operations.

The data revealed that for transit casualties in the Gulf of Mexico, none occurred more than 20 miles offshore.

For transfer casualties in the Gulf of Mexico, the Study lists 15 minor spills attributed to offshore lightering operations, with a total discharge of 45 barrels. The rate for these offshore transfer casualties was 3 to 4 times per 1,000 transfers with an average spill size of 3 barrels.

Not included in the transfer casualty data analyzed by the Study was the catastrophic spill from the MEGA BORG incident in 1990. A pump room explosion occurred while the MEGA BORG was engaged in lightering 57 miles off the coast of Texas. As a result of the explosion, a fire started in the pump room and spread to the engine room. An estimated 92,857 barrels of crude oil were burned or released into the water from the MEGA BORG.

For intrinsic casualties, the data shows 18 casualties on vessels associated in some manner to offshore lightering activities in the Gulf.

Rendezvous in the Gulf of Mexico between vessels to be lightered and service vessels generally occurs in the vicinity of one of nine locations. These locations are listed in the New Worldwide Tanker Nominal Freight Scale 1993 (Worldscale) published by the Worldscale Association of London and New York. Worldscale lists these points as Offshore Transshipment Areas (Offshore TSAs). The coordinates of these locations are as follows:

	Latitude N.	Longitude W.
Offshore Corpus Christi No. 1.	27°28′	96°49′
Offshore Corpus Christi No. 2.	27°48′	95°31′
Offshore Freeport	28°45′	95°03′
Offshore Galveston No. 1.	28°27′	94°30′
Offshore Galveston No. 2.	28°40′	94°08′
South Sabine Point ..	28°30′	93°40′
South West Point	28°27′	90°42′
Gulfmex	28°00′	89°30′
Offshore Pascagoula	29°27′	88°13′

Following rendezvous, the two ships maneuver and berth alongside one another. Lightering operations are then conducted in the general area near these transshipment points. Typically, it takes between four and six lighter voyages to empty a very large crude carrier (VLCC). Each discharge to a service vessel normally takes about 18 hours, although this may be accomplished in as few as 12 hours to specially equipped lighters. Under ideal conditions, a VLCC can be turned around in about 4 days, provided lighters are available for continuous, back-to-back operations. However, conditions rarely remain ideal for that length of time. More typically it takes a week for a VLCC to be completely offloaded. It may take longer if bad weather interrupts operations; if fewer lighters are used; or if the capacity of the receiving storage facility, pipeline, or refinery does not permit it to take delivery at the optimum rate. Bunkering (refueling) occurs before or after lightering; it is not undertaken during lightering operations.

This proposed rulemaking does not affect lightering operations in the traditional lightering areas. Double hull tankers and single hull tankers allowed to operate under OPA 90 could continue to use the traditional areas. Only those vessels not otherwise permitted to operate within the EEZ would be limited to lightering in the zones proposed in this rulemaking. The Coast Guard seeks comments on whether it should consider a rulemaking to change those traditional lightering areas into formal lightering zones, and whether any of the concepts developed in this rulemaking should be used in such a subsequent rulemaking.

Lighterers generally utilize the ''Ship to Ship Transfer Guide'' published by the Oil Companies International Marine Forum (OCIMF) and the ''Guide to Helicopter/Ship Operations'' published by the International Chamber of Shipping (ICS) as the voluntary standard for industry practice during lightering. This rulemaking proposes to incorporate these guides and require consistent use of the practices contained therein.

General operational limitations have been voluntarily adopted by the lightering industry in the Gulf of Mexico in addition to those contained in the OCIMF and ICS guides. This rulemaking proposes to make those limitations mandatory in the designated zones. For example, the service vessel would be prohibited from mooring alongside the vessel to be lightered when the wind velocity is 30 knots or more, the wave height is 10 feet or more, or when the eye of a hurricane is predicted to pass within 160 miles in the next 36 hours. When lightering at anchor, operations could not occur within 1 nm of offshore structures. When lightering underway, operations could not be conducted when the vessels come within 3 nm of an offshore structure. Vessels engaged in lightering would not be permitted to anchor over pipelines, charted artificial reefs or historical resources. The prohibited areas would include live topographical features found beyond the 60 mile boundary.

During normal lightering operations, the vessel to be lightered remains in one general area and several (between four and six) service vessels rendezvous with it to take its cargo. Often these service vessels rapidly follow each other alongside the vessel to be lightered. Some crews of service vessels may be afforded opportunities to rest between cargo transfer operations, and some may not, depending upon the cargo's final delivery point. Service vessels transiting congested shipping lanes and pilotage waters typically require additional watch standers. Some crew members of the vessel to be lightered could become overly tired because their lightering operations continue for uninterrupted periods. Tired crew members tend to be less attentive to detail. Such inattention increases the risk of a casualty. To reduce the likelihood of a casualty caused by fatigue, the Coast Guard proposes that work hour limitations be established for crew members of the vessels to be lightered, and associated service vessels. These proposed work hour limitations are the same as those

currently imposed by 46 U.S.C. 8104(n) on the crew members of U.S. flag tankers. Those limitations, which constitute minimum safe operating conditions, are that no member of the crew may be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. The term ''work'' includes any administrative duties associated with the vessel, whether performed on board or ashore.

Under 46 U.S.C. 3711, no foreign flag tank vessel can operate in U.S. waters unless it has had a tank vessel examination within the past year. Sometimes delivering tank vessels arrive in the vicinity of U.S. waters without a current Tank Vessel Examination (TVE) letter and then request a Coast Guard examination at the time of the 24-hour advance notice of arrival. Getting a Coast Guard official out to the proposed lightering zones, which are further offshore than the traditional lightering areas, will require additional time for planning and logistics. Therefore, the Coast Guard proposes that vessels to be lightered in the zones proposed under this rulemaking be required to notify the appropriate Coast Guard COTP a minimum of 72 hours before a TVE is desired. The regulations requiring TVEs of vessels involved with lightering are located at 33 CFR 156.210.

While certain single hull tankers desiring to engage in lightering will have no choice but to use a designated lightering zone, other tank vessels may use these proposed zones at their option. Any tank vessel conducting lightering within these zones must, under this proposal, comply with all the regulations applying to the zone. In addition, both the delivering vessel to be lightered and the service vessel must comply with the relevant provisions of 33 CFR parts 151, 153, 155, 156, and 157, including the requirements in these parts regarding financial responsibility and response planning.

Under 33 CFR 156.225, when a lightering zone has been established, all lightering operations within a given geographic area must occur within the designated lightering zone. As proposed in this rulemaking, the geographic areas for each of the zones will be coterminous with the zones themselves. Therefore, with the exception of the proposed ban on all lightering operations in the prohibited zones, lightering outside the proposed zones by vessels otherwise allowed under OPA 90 to operate within the EEZ will not be subject to these proposed regulations. Due to the greater distance offshore of these proposed zones as compared with most of the traditional lightering areas, it is expected that few tank vessels will operate in the vicinity of, but outside, the proposed zones.

A vessel operator may propose alternative procedures, methods, or equipment standards to be used in lieu of the requirements in subpart C. A proposal would be submitted to the cognizant Captain of the Port (COTP) under the procedures in 33 CFR 156.107. Operators seeking an exemption or partial exemption under 33 CFR 156.110 from subpart C requirements may also submit a request to the cognizant COTP. The Commander, Eighth Coast Guard District, would have authority to issue exemptions under section 156.110 to the operating requirements and conditions in subpart C of part 156.

While the Coast Guard is not required to engage in a formal consultation process with the natural resource trustees as defined in Executive Order 12777, the Coast Guard welcomes comments from the various trustees, particularly regarding the potential impact this proposed rulemaking may have upon national contingency planning for the Gulf of Mexico.

Under current regulations, tank vessel operations must be consistent with the appropriate Area Contingency Plans and private resources capable of responding to the worst case discharge must be provided for by contract or other approved means. Therefore, no additional requirements for response planning are included in this proposed rule.

Incorporation by Reference

Under this proposed rulemaking, the following material would be incorporated by reference in § 156.111: Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988 and International Chamber of Shipping Guide to Helicopter/Ship Operations, Third Edition, 1989. Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are also available from the sources listed in the proposed text of § 156.111.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the **Federal Register** for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Assessment is summarized as follows.

The Assessment for establishing lightering zones contains detailed information on crude oil imports to the U.S., cargo movements and trends, lightering industry practices and economics and the costs of alternative methods of delivery of crude oil to the United States. It contains an analysis of the effects of OPA 90 and Regulation 13G of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) on vessel replacement requirements, taking into account the age and composition of the existing tanker fleet, future demand for tanker tonnage, shipbuilding capacity, and current and prospective rates of new tanker construction.

The Assessment shows that crude oil imports by water are heavily concentrated in a limited number of port areas where major refining complexes are located. The largest refining centers are situated at or near ports on the Gulf of Mexico. Major Gulf Coast refineries are clustered along the lower Mississippi River and at Lake Charles in Louisiana, in the vicinities of Houston, Port Arthur/Beaumont, Freeport, and Corpus Christi in Texas, and at Pascagoula, Mississippi. In 1992, the Gulf Coast region accounted for nearly half of U.S. refinery output and close to three-quarters of crude oil imports. Because Gulf Coast ports do not have sufficient water depths to accommodate large vessels which are used to transport oil efficiently over long distances, the practice of lightering has evolved to deliver the oil to port.

Unless lightering zones are established in the Gulf of Mexico, newly built single hull tankers which were contracted for after June 30, 1990, will continue to be excluded from operating in waters under U.S. jurisdiction, except to discharge their cargoes at LOOP. In order to lighter newly built single hull vessels, it would be necessary to perform the lightering outside the EEZ, more than 200 miles offshore. Some older single hull vessels not yet affected by the OPA 90 phaseout schedule could continue unrestricted lightering at close-in locations. Therefore, if lightering zones are not established, it can be anticipated that older single hull tankers would be substituted for newly built

and generally superior single hull tankers that would be used if the lightering zones are established.

By the end of this decade, however, a large proportion of the existing single hull tanker fleet will be affected by the phaseout schedule of OPA 90. If lightering zones are not established, these single hull tankers could be compelled to conduct any lightering operations more than 200 miles offshore. Lightering under these conditions, if it proved to be feasible or practicable at all, would be more expensive and less safe than lightering closer to shore in a designated lightering zone. Weather and sea state conditions not only are more unfavorable in deep-sea areas, but also are more unpredictable and subject to rapid change. Serious logistical problems would be encountered in providing essential support services, such as workboats, bunkering and provisioning. Because operations would have to be conducted beyond the range of most helicopters and remote from the bases of response vessels, capabilities to respond to emergencies would be impaired. Operations could not be monitored or regulated because they would take place outside U.S. jurisdiction. The Coast Guard does not consider lightering under these circumstances to be either practicable or desirable.

Some of the cargo that is now lightered could be handled by resorting to transshipment arrangements at terminals or lightering areas in the Caribbean or Bahamas, but suitable transshipment terminal capacity in the region is limited. These alternatives to lightering in the Gulf of Mexico, at best, are costly and inefficient expedients. To the extent that these activities were carried out abroad, they would entail adverse small entity impacts on the array of domestic small businesses that depend on the revenue of current shipping activities, including steamship agents, bunkering and provisioning companies, helicopter operators, and the lightering companies. The loss of this business also would have adverse balance of payments impacts.

Single hull vessels, old or new, could continue to off-load at LOOP until 2015; but LOOP has capacity to handle only a portion of the total amount of oil that is now lightered. Furthermore, LOOP cannot deliver by pipeline to many of the refineries which depend upon lighters for their supplies. Adoption of a no action alternative would impact refineries and the communities whose economies depend upon them at locations that cannot be supplied physically or economically by LOOP.

The analysis indicates that there will be sufficient numbers of newly built double hull tankers and relatively young single hull tankers unaffected as yet by the OPA 90 phaseout schedule to meet the crude oil import requirements of the United States, provided most of these qualified ships are dedicated to supplying the U.S. market. It seems likely, however, that the United States will have to pay premium rates above world market levels to draw these newer ships from the world pool of tanker tonnage.

The analysis also shows that there is a high probability of a worldwide shortfall of vessel capacity as this decade comes to a close as a result of the impact of MARPOL 13G. Although there is sufficient worldwide shipbuilding capacity to avert such a shortfall, a very high sustained level of construction would have to occur, beginning immediately and continuing for most of the rest of this decade. The current state of orders for new ships indicates a significant fall-off of new tanker construction from 1994 through 1996; and current tanker market conditions may not provide the basis for financing a high sustained level of construction. An acute worldwide shortage of crude oil shipping capacity could occur lasting for several years, and resulting in significantly increased costs for tank vessel transportation for its duration. The adverse economic consequences for the United States would be oil transportation costs substantially higher than world levels unless lightering zones are established to enable the United States to draw from the general world supply of tanker capacity.

This rulemaking would establish well-defined lightering zones strategically sited in the Gulf of Mexico to avoid environmentally sensitive areas and to meet the transportation needs of the region's refineries. Lightering activities in the zones could be effectively monitored by the Coast Guard. Oil pollution response plans could be readily implemented for the zones. Helicopter, workboat, provisioning, bunkering, pollution response, and other essential support services would not be impaired. Costs would not be materially affected and adverse small entity impacts would not occur. Substantial benefits to the economy would accrue from avoidance of the negative economic impacts that would occur if lightering zones were not established.

Establishing lightering zones will not encourage further single hull construction. Since July 6, 1993, single hull tankship construction has been deterred as a result of the general impact of MARPOL Regulation 13F for new single hull tankers in excess of 20,000 deadweight tons.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Assessment indicates that adverse small entity impacts could occur as a result of the Coast Guard's taking no action to establish lightering zones. Some vessels which would be lightered in designated lightering zones could be diverted to transshipment terminals in the Bahamas or Caribbean. To the extent that these activities were carried out abroad, they would entail losses of business to the lightering companies and other small businesses, such as steamship agents, bunkering and provisioning companies, and helicopter operators.

Because adoption of this proposal will avert these adverse impacts and preserve the current revenues derived by small entities from tanker shipping in the Gulf of Mexico, and because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no new collection-of-information requirements or additions to currently approved information collections under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The sections in this proposal that contain collection-of-information requirements are §§ 156.110 and 156.215 which are approved under OMB Control Numbers 2115–0096 and 2115–0539 respectively.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying as indicated under **ADDRESSES**.

The Environmental Assessment considered, among other things, the factors set out in 33 CFR 156.230: traditional use of the area for lightering; weather and sea conditions; water depth; proximity to shipping lanes, vessel traffic schemes, anchorages, fixed structures, designated marine sanctuaries, fishing areas, and designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System; other relevant safety, environmental, or economic data. The Coast Guard specifically looked at wildlife and marine habitats and topographic features in the proposed lightering zones.

The Endangered Species Act of 1973 (16 U.S.C. 1531–1543), as amended, seeks to protect endangered and threatened species and the ecosystems on which they depend. The Act is administered by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). Several protected marine species (e.g., Right whales, Kemp's Ridley sea turtles, and hawksbill turtles) are located throughout the Gulf region.

The Coast Guard consulted with the regional NMFS office in St. Petersburg, Florida, and the FWS regional offices in Albuquerque, New Mexico, and Atlanta, Georgia, regarding the effect of the proposed regulation on endangered and threatened species as well as sensitive environmental areas such as wildlife refuges. Each have issued a written concurrence with the Coast Guard's finding that this proposal will not have an adverse effect on endangered and threatened species.

The Coast Guard also considered topographic features of the Gulf. These include areas on the offshore banks where reef-building activity occurs. These reefs support diverse communities of marine plant and animal species in large numbers. The following areas are of particular concern: the East and West Flower Gardens, 32 Fathom Bank, Coffee Lump, Claypile Bank, Stetson Bank, Hospital Bank, North Hospital Bank, Sackett Bank, Diaphus Bank, Fishnet Bank, and Sweet Bank. These areas are charted and are ecosystems on which many endangered or threatened species are dependent. These areas are particularly vulnerable to damage from anchoring and, to a lesser extent, from oil spills. While oil spills are not expected to have a significant effect on the biota of concern in these areas, the Coast Guard proposes to establish three ''prohibited areas'' where lightering will not be permitted. Establishment of ''prohibited areas'' over these features will further ensure protection of these vital ecosystems. Proposed operational restrictions for designated lightering zones would also reduce the likelihood of spillage from the tank vessels utilizing these zones.

''Historic property'' or ''historic resources'' are defined under The National Historic Preservation Act (16 U.S.C. 470w) as prehistoric or historic sites, buildings, structures, or objects. This definition includes shipwrecks registered with the National Register of Historic Places. There are no known historical properties or resources in the proposed lightering zones.

Military warning areas also exist throughout the Gulf and are clearly demarcated. The Department of Defense commands responsible for these warning areas have expressed no opposition to the establishment of these lightering zones. The Coast Guard does not expect military warning areas to be significantly impacted by this proposed rulemaking.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to the proposed action. Under this Act, the Coast Guard must determine whether the proposed activities are consistent with activities covered by a federally approved coastal zone management plan for each state which may be affected by the action. The States of Louisiana, Mississippi, Florida, and Alabama have federally approved coastal zone management plans. The State of Texas has a draft plan which has not yet been federally approved.

The Coast Guard has determined that the designation of lightering zones, as provided in this proposed rulemaking, will have no effect on the coastal zones of Mississippi, Alabama, or Florida. Designation of the proposed lightering zones has the potential of an indirect effect on the coastal zones of Louisiana and Texas. Although designation of offshore lightering zones is not a listed activity for which consistency determinations are required under either the Louisiana coastal zone plan or the current Texas draft coastal zone plan, the Coast Guard has initiated informal discussions with officials in these two states concerning coastal zone management issues.

In a telephone consultation, the Administrator of Louisiana's Department of Natural Resources Coastal Management Division raised a question as to whether designation of the proposed offshore lightering zones would result in increased shore-based facilities to support lightering which might affect coastal wetlands, such as the establishment of additional airports to support helicopter operations. As noted in the Regulatory Assessment, the shift of some current lightering activity from the traditional lightering areas to the proposed lightering zones is not expected to result in a need for additional support facilities. Only a substantial increase in the total amount of lightering occurring off the coast of the United States would trigger a need for additional shore-based support facilities. The proposed designation of lightering zones would not result in such a change in the amount of oil lightered into the United States.

The draft plan for Texas does not list the establishment of offshore lightering zones as a federal activity subject to review for consistency. The Coast Guard's research and review of environmental effects indicate a low probability that the proposed regulations would affect the coastal zone of Texas.

The Coast Guard will further consult with the States of Louisiana and Texas after they have had an opportunity to review this proposed rulemaking.

Volatile organic compound (VOC) air emissions result from the operation of ship engines and from oil transfers, such as the lightering of oil from one vessel to another. Nitrogen oxides (NOX) are also produced by engine exhaust. Both VOC and NOX are precursors of the National Ambient Air Quality Standards (NAAQS) pollutant ozone. However, lightering is a traditional, well-established activity, and the proposed rulemaking is not expected to materially effect the frequency or volume of oil transferred in the Gulf of Mexico. Thus the proposed Lightering Zones will not lead to a net increase in emissions.

National Ambient Air Quality Standards, promulgated by the Environmental Protection Agency (EPA), pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*) provide benchmarks against which air quality is guaged. Those areas which do not attain the NAAQS (nonattainment areas) are subject to controls aimed at improving

the air quality. The proposed rulemaking is expected to have no significant effect on any state's attainment of air quality standards.

The EPA under the authority of the CAA has promulgated the ''conformity rule'', which requires that federal agencies taking actions in nonattainment or maintenance areas which would result in air emissions to make determinations of conformity with the local State Implementation Plan (SIP) for the NAAQS before acting. The lightering zones which would be created by this rule are well outside the boundaries of the coastal states (more than 60 miles from the baseline for the territorial sea) and therefore, outside any nonattainment or maintenance areas. By the terms of 40 CFR Part 51, the conformity rule is not applicable to this rulemaking.

List of Subjects in 33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 156 as follows:

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

1. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); 46 U.S.C. 3703a. Subparts B and C are also issued under 46 U.S.C. 3715.

2. In section 156.110, the introductory text of paragraph (a) is revised to read as follows:

§ 156.110 Exemptions.

(a) The Chief, Office of Marine Safety, Security and Environmental Protection, acting for the Commandant, grants an exemption or partial exemption from compliance with any requirement in this part, and the District Commander grants an exemption or partial exemption from compliance with any operating condition or requirement in subpart C of this part, if:

* * * * *

3. Section 156.111 is added to read as follows:

§ 156.111 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SW1E 5BH England.

Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988—156.330

International Chamber of Shipping

30/32 St. Mary Axe, London EC3A 8ET, England.

Guide to Helicopter/Ship Operations, Third Edition, 1989—156.330

4. In § 156.205, the definition of ''work'' is added in alphabetical order to read as follows:

§ 156.205 Definitions.

* * * * *

Work includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

5. In § 156.210, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 156.210 General.

* * * * *

(c) On tank vessels to be lightered in a designated lightering zone, and on service vessels transporting cargo to or from vessels in a designated lightering zone, a licensed individual or seaman may not work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill.

* * * * *

6. In § 156.215, paragraph (d) is added to read as follows:

§ 156.215 Pre-arrival notices.

* * * * *

(d) The master, owner, or agent of each vessel to be lightered in a designated lightering zone, requiring a Tank Vessel Examination (TVE) or other special Coast Guard inspection, must request such TVE or other inspection from the cognizant Captain of the Port at least 72 hours prior to commencement of scheduled lightering operations.

7. In part 156, a new subpart C is added to read as follows:

Subpart C—Lightering Zones and Operational Requirements for the Gulf of Mexico

Sec.

§ 156.300 Designated lightering zones.

The following lightering zones are designated in the Gulf of Mexico and are more than 60 miles from the baseline from which the territorial sea is measured:

(a) *Southtex—lightering zone.* This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
27°40′00″,	93°00′00′, thence to
27°40′00″,	94°35′00″, thence to
28°06′30″,	94°35′00″, thence to
27°21′00″,	96°00′00″, thence to
26°30′00″,	96°00′00″, thence to
26°30′00″,	93°00′00″

and thence to the point of beginning.

(b) *Gulfmex No. 2—lightering zone.* This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
27°53′00″,	89°00′00″, thence to
27°53′00″,	91°30′00″, thence to
26°30′00″,	91°30′00″, thence to
26°30′00″,	89°00′00″

and thence to the point of beginning.

(c) *Offshore Pascagoula No. 2—lightering zone.* This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
29°20′00″,	87°00′00″, thence to
29°12′00″,	87°45′00″, thence to
28°39′00″,	88°00′00″, thence to
28°00′00″,	88°00′00″, thence to
28°00′00″,	87°00′00″

and thence to the point of beginning.

§ 156.310 Prohibited areas.

Lightering operations are prohibited within the following areas in the Gulf of Mexico:

(a) *Claypile—prohibited area.* This prohibited area consists of the waters

bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
28°15′00″,	94°35′00″, thence to
27°40′00″,	94°35′00″, thence to
27°40′00″,	94°00′00″, thence to
28°33′00″,	94°00′00″

and thence to the point of beginning.

(b) *Flower Garden—prohibited area.* This prohibited area consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
27°40′00″,	94°00′00″, thence to
28°18′00″,	94°00′00″, thence to
28°18′00″,	92°38′00″, thence to
28°30′00″,	92°38′00″, thence to
28°15′00″,	91°30′00″, thence to
27°40′00″,	91°30′00″

and thence to the point of beginning.

(c) *Ewing—prohibited area.* This prohibited area consists of the waters bounded by a line connecting the following points beginning at:

Latitude N.	*Longitude W.*
27°53′00″,	91°30′00″, thence to
28°15′00″,	91°30′00″, thence to
28°15′00″,	90°10′00″, thence to
27°53′00″,	90°10′00″

and thence to the point of beginning.

§ 156.320 Minimum operating conditions.

Unless otherwise specified, the minimum operating conditions in this section apply to tank vessels operating within the lightering zones designated in this subpart.

(a) A tank vessel shall not moor or remain moored alongside another vessel when any of the following conditions exist:

(1) When wind, waves, and swell are from the same direction and—

(i) The wind velocity is 56 km/hr (30 knots) or more;

(ii) The wave height is 3 meters (10 feet) or more; or

(iii) The swell height is 3 meters (10 feet) or more.

(2) When wind and waves differ in direction by 30 degrees or more to swell and—

(i) The wind velocity is 46.3 km/hr (25 knots) or more;

(ii) The wave height is 1.8 meters (6 feet) or more; or

(iii) The swell height is 1.5 meters (5 feet) or more.

(b) Service vessels and vessels to be lightered shall not conduct lightering operations and shall not remain moored alongside when the National Weather Service predicts that the center of a hurricane will pass within 296 km (160 nautical miles) of current or expected location of lightering operations within the next 36 hours.

§ 156.330 Operational restrictions.

Unless otherwise specified in this subpart or when otherwise authorized by the cognizant COTP or District Commander, the master of a vessel lightering in the zones designated in this subpart shall ensure that the following operational restrictions are complied with:

(a) Lightering operations shall be conducted in accordance with OCIMF Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988.

(b) Helicopter operations shall be conducted in accordance with International Chamber of Shipping's Guide to Helicopter/Ship Operations, Third Edition, 1989.

(c) The master of the vessel to be lightered shall ensure a voice warning is made prior to the commencement of lightering activities via channel 13 VHF and 2182 Khz.

(d) In the event of a communications failure between the lightering vessels or the respective persons-in-charge of the transfer, or an equipment failure affecting the vessel's cargo handling capability or ship's maneuverability, the master of the affected vessel shall suspend lightering activities and shall sound at least five short, rapid blasts on the vessel's whistle. Lightering activities shall remain suspended until corrective action has been completed.

(e) No vessel involved in a lightering operation may open its cargo system until the vessel to be lightered is securely moored alongside the servicing vessel.

(f) If any vessel not involved in the lightering operation or support activities approaches within 300 feet of vessels engaged in lightering activities, the vessel engaged in lightering shall warn the approaching vessel by sounding a loud hailer, ship's whistle, or any other appropriate means.

(g) No vessels, other than the lightering tender, supply boat, or crew boat which are equipped with spark arrestors on their exhaust(s), may moor alongside a vessel engaged in lightering operations.

(h) When lightering at anchor, lightering operations shall not be conducted within 1 nautical mile of offshore structures or mobile offshore drilling units (MODUs).

(i) When lightering underway, lightering operations shall not be conducted within 3 nautical miles of offshore structures or MODUs.

(j) No vessel engaged in lightering activities may anchor over pipelines, charted artificial reefs or historical resources.

(k) All vessels engaged in lightering activities shall be capable of immediate maneuver at all times while inside a designated lightering zone. The main propulsion system must not be disabled at any time.

Dated: December 28, 1994.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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federal register

Thursday
January 5, 1995

Part X

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Fiscal Year 1995 Competitive Discretionary Grant Programs for Title IV Missing and Exploited Children's Program and Application Kit; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) No. 1039]

RIN 1121–ZA06

Notice of the Fiscal Year 1995 Competitive Discretionary Grant Programs for Title IV Missing and Exploited Children's Program and Application Kit

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of the Fiscal Year 1995 Competitive Discretionary Grant Programs for Title IV Missing and Exploited Children's Program and announcement of the availability of the OJJDP Application Kit for discretionary assistance awards under Title IV, the Missing Children's Assistance Act (42 U.S.C. 5771–5780).

SUMMARY: The Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the Missing Children's Assistance Act (42 U.S.C. 5771–5780, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, is required through grants or contracts, to: establish and operate a 24-hour toll-free telephone line; establish and operate a national resource center and clearinghouse; periodically conduct national incidence studies on missing children; and provide information on the use of record information to identify and locate missing children. In addition, the Administrator is authorized to support research, demonstration, or service programs to educate parents, provide information, aid communities, increase knowledge, collect data, address the needs of missing children and their families, and establish or operate statewide clearinghouses to assist in locating and recovering missing children.

There were no comments received in response to OJJDP's proposed Title IV competitive programs for Fiscal Year 1995. Therefore, the proposed programs, as set forth in the **Federal Register** of October 12, 1994 and announced in this Notice, will be included in OJJDP's final Title IV program plan. The OJJDP Application Kit for the three programs that follow, containing a copy of application form 424, standard and special conditions, the OJJDP Peer Review Guidelines, OJJDP's Competition and Peer Review Procedures, and General Application and Administrative Requirements, can be obtained by calling the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, at (800) 638–8736.

The program announcements contain specific instructions on competitive program requirements, including eligibility requirements and selection criteria. All applications will be evaluated and rated by a peer review panel according to the announced selection criteria. Peer review will be conducted in accordance with the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B.

DATES: Applications under each of the three programs must be received by 5 p.m. e.s.t., February 21, 1995. Applications received after the deadline date will not be considered.

ADDRESSES: Applications must be received by mail or hand-delivered to: Ron Laney, Director, Missing and Exploited Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., 4th Floor, Washington, DC 20531. Hand-delivered applications will be received between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays, and Federal holidays.

APPLICATION REQUIREMENTS: See Application Kit and Requests for Proposals that follow.

ELIGIBILITY REQUIREMENTS: Applicants must be public agencies or nonprofit private organizations or combinations thereof to be eligible for funding under the Missing Children's Assistance Act. No proposals, concept papers, or other application materials not relevant to this announcement should be submitted.

FOR FURTHER INFORMATION CONTACT: Ron Laney, Director, Missing and Exploited Children's Program, at the above address. Telephone (202) 514–7774. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION:

Grant Program: National Resource Center and Clearinghouse

Purpose

The purpose of this solicitation is to continue the maintenance and management of activities, program development and fiscal support necessary to sustain those services required of a national resource center and clearinghouse under Title IV, the Missing Children's Assistance Act.

The award will be made for a project period of three years. One cooperative agreement will be awarded with an initial budget period of 12 months. Up to $3,050,000 will be allocated for the initial 12 month award. Subsequent funding support will be determined by the performance of the grantee and program development needs as determined by OJJDP.

Background

OJJDP awarded a discretionary grant to the National Center for Missing and Exploited Children (NCMEC) in April of 1984. Title IV of the JJDP Act was subsequently enacted by Congress on October 12, 1984. The original award was to establish a national resource center and clearinghouse designed: to provide technical assistance to State and local governments, individuals, parents, and other agencies in locating and recovering missing children; to coordinate programs that focus on reuniting missing children with their lawful custodians; to develop, publish, and disseminate instructive materials about programs, techniques and services responsive to missing children issues; and to provide technical assistance and training to law enforcement agencies, State and local government agencies, individuals, and other agencies addressing missing children issues relative to prevention, investigation, reunification, and treatment in missing and exploited children cases.

Since the establishment of the Missing and Exploited Children's Program in 1984, OJJDP has funded a comprehensive program of research. Major studies have been completed that define and document the complex issues of cases of missing children. The National Incidence Studies for Missing, Abducted, Runaway and Thrownaway Children in America (NISMART), published in 1990, was the first national study to provide reliable data about the numbers and types of missing child cases and to clarify the types of cases and situations that make up the ''missing children'' population. Since then, other research projects have been completed that provide critical information about the dynamics of missing child cases, the psychological impact of abduction on children and families, and what happens after a missing child returns home.

It has become clear that there is not a single ''missing child'' problem. Children are abducted by strangers and acquaintances as well as by parents or other family members. The research has shown that family abduction is a far greater problem than previously realized, and that the effects on children can be disastrous and long-lasting. Recovering children abducted by family members can be extremely difficult and costly. Many children who run away return home quickly, but a significant number run many times and live on the streets, constantly exposed to danger

and exploitation. Some of the children previously thought of as runaways have in actuality been thrownaway or abandoned. Every year many children are harmed after they become lost or wander away. Thousands of children are abducted for short periods of time and molested. It is estimated that there are more than 114,000 attempted abductions of children each year.

Missing and exploited children are often already known to community agencies as victims. Runaway and abducted children may experience physical and sexual assault while away from home. Runaways often leave home to escape abuse, and children may become involved in sexual exploitation as a direct or indirect result of earlier victimization. Many family abduction cases involve families with histories of domestic violence. Most parental-abducted children have suffered from being the focus of bitter conflict prior to being taken. Recovery of abducted children seldom means the end of the conflict or the traumatic effects of an abduction, yet these children only occasionally receive the mental health services that could help them cope. Recent studies indicate that children who come from households characterized by violence, abuse or neglect may also be more vulnerable to abuse and exploitation by persons outside their home.

The issues surrounding missing and exploited children are varied, complex, and tragic. The missing and exploited children problem is not a minor dilemma that can be resolved with a single approach or by any single agency. Law enforcement officers and other professionals who become involved in these cases face difficult challenges. Agencies must work in collaboration with others who share that responsibility.

The first ten years of the Missing and Exploited Children's Program have seen a great deal of progress in our understanding of the issues of these child victims. They also have identified areas of need and provided recommendations for future direction and activities. Building upon the work of the last decade, the goal of the Missing and Exploited Children's Program is to ensure that critical information gleaned from research and demonstration programs is successfully incorporated into existing and new projects funded by OJJDP. As the national clearinghouse and resource center, the successful applicant must play a pivotal role in advancing the national response to missing and exploited children.

Objectives

1. To continue the operation of a 24-hour national toll-free telephone line by which individuals may report information regarding the location of any missing child, or other children 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite the child with the child's legal custodian.

2. To continue the operation of a national resource center and clearinghouse designed:

a. To provide information to State and local governments, public and private nonprofit agencies, and individuals regarding:

(1) Free or low cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;

(2) The existence and nature of programs being carried out by Federal Agencies to assist missing children and their families; and

(3) The lawful use of school records and birth certificates to identify and locate missing children.

b. To provide, and coordinate with OJJDP's Title IV Training Program, technical assistance and training to State and local governments, including law enforcement and other appropriate agencies in:

(1) Investigating, reporting, locating, recovering, and facilitating the reuniting of missing children with their families and/or lawful custodians;

(2) Family abduction cases;

(3) National and/or regional missing children poster distribution;

(4) Developing and distributing information and training publications relevant to missing, abducted, and exploited children's issues; and

(5) Providing case management assistance, sighting and lead information analysis assistance for missing children cases.

c. To disseminate nationally information about innovative and model missing children programs, services, and legislation at the State and local level.

d. To provide technical assistance to appropriate agencies and custodial parents in cases of national and international noncustodial family abduction and coordinate efforts with the U.S. Department of State, U.S. Department of Criminal Justice, and INTERPOL.

e. To provide case analysis (based on leads and sightings) for ongoing missing child case investigative assistance that has been undertaken in over 6,500 missing child cases. Some of the tasks involved in this case assistance are as follows: technical assistance contacts with parents, law enforcement, state missing children clearinghouses, private attorneys, prosecutors, F.B.I., INTERPOL, State Department and support groups; and case follow-up activities by monitoring NLETS, verifying full NCIC entries, review of recent sightings and providing relevant sighting pattern analysis and leads to appropriate cognizant agencies in a timely manner.

f. To coordinate public and private programs that locate, recover or reunite missing children with their legal custodians.

g. To monitor and provide case analysis for ongoing missing child case investigative assistance that has been undertaken in more than 6,500 ongoing missing child cases plus more than 3,000 new case/lead assignments each quarter. Some of the tasks involved in this case investigative assistance are as follows: technical assistance contacts with parents, law enforcement, state clearinghouses, private attorneys, prosecutors, F.B.I., INTERPOL, U.S. State Department and support groups; and case follow-up activities by monitoring NLETS and verifying full NCIC entries, review of recent sightings and providing relevant sighting pattern analysis and leads to appropriate cognizant agencies in a timely manner.

h. To provide, when requested on cases of nonfamily abduction, on-site assistance by and coordination of the trained volunteers who are retired law enforcement personnel through Project ALERT and close coordination and liaison with the Federal Morgan Hardiman Task Force.

i. To provide, when appropriate, state-of-the-art image enhancement and aging procedures for follow-up on long-term missing children cases.

j. To provide and maintain a computer information network connection with State missing children agencies to facilitate the exchange of appropriate missing children case information, and technical assistance and training information developed by or through the National Clearinghouse.

k. To develop a documented process for determining the publications development targeted at meeting the Title IV mandates based on the needs of the field and the numbers and types of cases being identified.

l. To develop a formalized process for working with the state bar associations for providing parents and/or legal guardians with a referral process for obtaining pro bono or sliding scale legal

services in civil matters concerning abducted children.

Program Strategy

This solicitation and resulting cooperative agreement will ensure the effective continuance by OJJDP of a national resource center and clearinghouse function for the training and technical assistance program to law enforcement agencies; State and local governments; entities of the criminal justice system, public and private nonprofit agencies; and individuals in the prevention, investigation, prosecution, and treatment of abducted, missing, and exploited children and in assisting, locating, and reuniting the missing children with their families or legal custodians.

The applicant must demonstrate the experience and capability to provide timely, relevant professional program continuity for the national resource center and clearinghouse program. The successful applicant must demonstrate, in detail, the ability to enlist, train and manage the technical and professional personnel who will provide knowledgeable, credible program continuation and professional program technology transfer to parents, criminal justice system professionals, and nonprofit and community agencies.

The operation of a national resource center and clearinghouse requires the applicant to provide and arrange for all necessary operational, training publications, analytical and technical assistance personnel, facilities, equipment, materials, and services required for the successful continuation of the existing program activities. These include the following activities:

1. The provision to State and local governments, public and private nonprofit agencies, and individuals information regarding free or low-cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;

2. The development of a public education/awareness campaign utilizing the media and other sources specifically focused on the area of family abductions and the true impact this type of abduction has on the children, families involved, and society in general;

3. To coordinate publications, media activities and all special events with and through the Office of Juvenile Justice and Delinquency Prevention;

4. The provision to State and local governments, public and private nonprofit agencies, and individuals information regarding the existence and nature of programs being carried out by Federal agencies to assist missing/exploited children and their families;

5. To provide and coordinate with OJJDP's Title IV Training Program technical assistance and training to criminal justice agencies, State and local governments, elements of the criminal justice and youth service system, public and private nonprofit agencies, organized missing/exploited children community organizations, and individuals in locating, recovering, and reuniting missing children with their family or legal custodian;

6. The provision of a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child and request information pertaining to the necessary procedures to reunite such child with the child's legal custodian(s);

7. The provision of information derived from the national 24-hour toll-free telephone line to appropriate cognizant entities in a timely manner;

8. The coordination of the operation of the 24-hour toll-free telephone line with the operation of the national communications system established to serve runaways (under section 313 of the Runaway and Homeless Youth Act, 42 U.S.C. 5712a);

9. The coordination of public and private programs that seek to locate, recover, or reunite missing children with their legal custodians;

10. The dissemination of information about, and the provision of technical assistance and training publications regarding comprehensive, innovative, community, multi-agency missing children programs, services, and legislation;

11. The provision of information to State and local governments, public and private nonprofit agencies and individuals to facilitate the lawful use of school records and birth certificates to identify and locate missing children; and

12. The provision and maintenance of a national on-line computer for the dissemination of information and technical assistance to and communication between the State Clearinghouses, law enforcement agencies, and appropriate nonprofit organizations established to assist in locating, recovering, and reuniting of missing children with their legal guardian(s) including the Royal Canadian Mounted Police in Canada and New Scotland Yard in the United Kingdom.

13. The applicant will include in its application a detailed plan for the establishment of a grant advisory board independent of any existing organizational advisory board. The advisory board will be made up of at least ten (10) individuals representing, at a minimum, the following agencies: law enforcement, nonfamily abduction victim parent, family abduction victim parent, nonprofit missing children organization, social services, mental health, courts, prosecution. This board membership will be submitted to OJJDP for approval.

14. The applicant will include in its application a detailed plan to justify a proposed resource allocation (staff and funds) based on the actual number of missing/abducted child cases by category and the amount and type of technical assistance needed to meet the mandates of the national resource center and clearinghouse.

15. The applicant will include in its application a detailed plan for coordination with the American Bar Association's Center on Children and the Law, in the development of a formalized process for working with the state bar associations and other appropriate organizations for providing parents and legal guardians with a referral service for obtaining pro bono or sliding scale legal services in civil matters concerning their abducted children.

Eligibility Requirements

Applicants are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such.

The applicant and co-applicants must demonstrate fully the required experience to deliver continuation support services as required in section VI. Applicants must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experienced capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applicants must include a project summary, a budget narrative, and a program narrative. All not-for-

profit organizations who have not recently received Office of Justice Programs funding must submit a completed Accounting System and Financial Capability Questionnaire (OJP 712011).

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of page only. The program narrative may not exceed 60 pages. The program narrative must include all items indicated in the *Selection Criteria* section of this solicitation. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, resumes, and supporting charts or graphs).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include noncompetitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification for not offering for competition the portion of work proposed to be contracted.

The following information must be included in the application Program Narrative (part IV of SF 424):

1. Organizational Capability: The applicant must demonstrate that it is eligible to compete for this cooperative agreement and have substantial organizational experience and resources that can be directly applied to provide programmatic support that will assure OJJDP the effective continuance of a national resource center and clearinghouse function for: The 24 hour national toll free telephone line; the information analysis of sighting and leads; case management assistance experience, procedures and data base information technology support to handle case processing procedures effectively and responsively for more than 6,500 ongoing missing children cases plus more than 3,000 new case/lead assignments each quarter; and the provision of the training publications and technical assistance programs to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of the missing and exploited children cases and in assisting in the locating and reuniting of the missing children with families or legal custodians.

The criteria used for evaluating applicants is based upon the responsiveness of the applicant to the program information and descriptions found in this solicitation. Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this notice.

2. Organizational Experience: a. The applicant must demonstrate the requisite knowledge of and experience with the missing and exploited children issue necessary to provide capable, responsible management of a national resource center and clearinghouse, including having direct access to NCIC and NLETS.

b. The applicant must demonstrate experience and expertise in providing technical assistance and training to a diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation.

c. The applicant must demonstrate the ability to develop as well as provide missing and exploited children specialized issue-related training and service oriented training materials to the recipient jurisdictional, professional, citizens, community needs, and other OJJDP training programs.

d. The applicant must demonstrate the ability to provide for national missing children sighting analysis and case management practices that can collate national sightings, lead and case information in a relevant, and timely manner to assist, facilitate and coordinate multi-jurisdictional, national and international missing children investigations.

e. The applicant must demonstrate extensive state-of-the-art information technology experience to manage, facilitate and service high volume electronic assisted response for technical assistance information needs and exchanges that require fast, accurate responses.

f. The applicant must demonstrate the ability to provide continuity of comprehensive missing and exploited children issue services in response to the program objectives and strategies described in this solicitation.

3. Program Goals and Objectives: A succinct statement demonstrating the applicant's understanding of the objectives and tasks associated with the program must be included. The application must also include a problem statement and a discussion of the past and potential future contributions of the applicant's program to the missing and exploited children issues required to be performed by a national missing and exploited children's clearinghouse and resource center. The applicant must describe the proposed approach for achieving the objectives of the program and the requirements of the program strategy as detailed in this announcement.

4. Program Implementation Plan: The applicant must describe its proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, the program management must be included. A clear time-task workplan identifying major milestones, tasks, and products should be part of the application.

The applicant should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components that will be responsible for supporting and implementation of the program. The applicant should provide detailed position descriptions, qualification, and criteria selection for the positions. Part-time and practitioner professionals should also be included, with a statement of their qualifications and experience that would directly relate to the service needs of this program. The applicant should denote which staff members are considered key project personnel and emphasize their position experience.

5. Program Budget: The applicant must provide a three year budget to be prepared by year. Any co-applicant associated costs must be detailed separately and accounted for in as much detail as the principal applicant. The applicant must provide a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the basis for these costs must be well documented in a separate budget narrative.

6. Products: A concise description of the products to be produced should be included. The applicant must describe existing and future program activities and products that have and will be developed or utilized to continue to service the program; and should describe how and who will be served by these products.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present, and potential ability to continue the development and provide the requisite services of a national resource center and clearinghouse for servicing missing and exploited children issues, as they are defined under title IV, The Missing Children's Assistance Act. The experience and knowledge involved for delivery of these services in a capable, efficient, and professional manner is a vital criterion for selection.

All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

1. Organizational and programmatic capability must be demonstrated. The project management structure must be adequate for the successful conduct of the project. The applicant must have demonstrated clearinghouse and resource center program management and information technology capabilities and experience and capabilities in the areas described and defined throughout this solicitation; experience working with the various missing children issue groups and agencies at the national, state, municipal, community, individual levels, and international levels; providing technical assistance, training and information products related to missing and exploited children; providing missing child case assistance, analysis and coordination; promoting the development of professional approaches to missing children issues; providing assistance in organizational development processes for improved multi-agency delivery of services relating to missing children issues; and the relevant experience of applicant's staff in the missing children issues and their capabilities to address the perceived program needs. Fiscal integrity and organizational stability must be demonstrated over time. (35 points)

2. The applicant must demonstrate an understanding of an approach to implementing the program objective of organizing, providing and maintaining the high level service delivery demands of a national resource center and clearinghouse for missing children. (30 points)

3. The qualifications of staff members identified to manage and implement the program, including consultants, must be adequate for the successful implementation of the objectives. (25 points)

4. The applicant must provide a sound and fully-justified budget that is cost effective to the service provided. The proposed costs must be complete, appropriate, and reasonable to the activities of the project. All costs should be fully justified in a budget narrative or with other supporting documentation. (10 points)

Award Period

The project period for the cooperative agreement supporting the missing and exploited children national resource center and clearinghouse is three (3) years. One cooperative agreement will be awarded with an initial budget period of 12 months.

Award Amount

Up to $3,050,000 has been allocated for the initial budget period. Commensurate financial support for the remaining two project budget periods will be determined by the performance of the grantee, program development needs as determined by OJJDP, and the availability of funds.

Submission of Application

Applicants must submit the original, signed application (Standard Form 424) and two unbound copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Grant Program: Title IV Training and Technical Assistance

Purpose

The purpose of this solicitation is to establish a mechanism for the maintenance, management, and standardization of activities; program design, development, and implementation; and fiscal support necessary to sustain those services required for the development of a coordinated and comprehensive Training and Technical Assistance Program under Title IV, the Missing Children's Assistance Act.

The award will be made for a project period of three years. One cooperative agreement will be awarded with an initial budget period of 12 months. Up to $750,000 will be allocated for the initial 12 month award. Subsequent funding support will be determined by the performance of the grantee and program development needs as determined by OJJDP.

Background

Since the beginning of the Missing and Exploited Children's Program, OJJDP has funded an aggressive program of research and program development. The first major program was the establishment of a National Resource Center and Clearinghouse on Missing Children that was established under the National Center for Missing and Exploited Children in April 1984. Since that time, OJJDP has funded numerous other programs and projects for the design, development, and implementation of model projects and approaches. Currently, OJJDP funds over fifty (50) programs and projects in this area, many of which have an emphasis on designing and developing training and technical assistance materials for practitioners on the local, state, and federal level.

Additionally, major studies funded by OJJDP have been completed that define and document the complex issues of missing children cases. The National Incidence Studies for Missing, Abducted, Runaway and Thrownaway Children in America (NISMART) was the first national study done that provides reliable data about the numbers and types of missing child cases and to clarify the types of cases and situations that make up the ''missing children'' population. Since the last Request for Proposals (RFP), other research projects have been completed that provide critical information about the dynamics of missing child cases, the psychological impact of abduction on children and families, and what happens after a missing child comes home.

It has become clear that there is not a single ''missing child'' problem. Children are abducted by strangers and acquaintances as well as by parents or other family members. The research has shown that family abduction is a far greater problem than previously realized, and the effects on children can be disastrous and long-lasting.

Recovering children abducted by family members often is extremely difficult and costly. Many children who run away return home quickly, but a significant number run many times and live on the streets constantly exposed to danger, exploitation, and becoming involved in criminal activity. Some of the children previously thought of as runaways have in actuality been thrownaway or abandoned. Every year many children are harmed after they become lost or wander away. Thousands of children are abducted for short periods of time and molested. It is estimated that there are more than 114,000 attempted nonfamily abductions of children each year.

Missing and exploited children are often already known to community agencies as victims. Runaway and abducted children may experience physical and sexual assault as part of their missing episode. Runaways often leave home to escape abuse, and children may become involved in sexual exploitation as a direct or indirect result of earlier victimization. Many family abduction cases involve families with histories of domestic violence. Most parentally-abducted children have suffered from being the focus of bitter conflict prior to being taken. Recovery of abducted children seldom means the end of the conflict or the traumatic effects of an abduction, yet these children seldom receive the mental health services that could help them cope. Recent studies indicate that children who come from households characterized by violence, abuse or neglect may be more vulnerable to abuse and exploitation by persons outside their home as well. The issues surrounding missing and exploited children are varied, complex, and tragic. The missing and exploited children problem is not a minor dilemma that can be resolved with a single approach or by any single agency. Law enforcement officers and other professionals who become involved in these cases face difficult challenges. Agencies must work in collaboration with others who share that responsibility.

The general consensus of all of the Title IV research projects, demonstration programs, and professionals on the local, state, and federal levels is that there is an overwhelming need for training of and technical assistance to agencies and personnel working with these types of cases. These sources also indicate that this training and technical assistance must be provided through a central source providing coordination and standardization of the materials and information offered.

This same idea of coordination and standardization was supported by the professionals associated with the development of OJJDP's Title IV Long Range Plan is the overwhelming need for coordinated and comprehensive training and technical assistance to enhance the skills of the professionals charged with the responsibility of handling these very complex and complicated cases.

Under the current process for the design, development, and delivery of training and technical assistance, each grantee is faced with the responsibility of developing their own stand alone mechanism for the accomplishment of this task. This system not only creates additional expense but it also does nothing to address the issue of standardization and duplication of effort.

The first ten years of the Missing and Exploited Children's Program have seen significant progress in our understanding of the issues of these child victims. They also have identified areas of need and provided recommendations for future direction and activities. Building upon the work of the last decade, the goal of the Missing and Exploited Children's Program is to ensure that critical information gleaned from research and demonstration programs is successfully incorporated into existing and new projects funded by OJJDP.

Objectives

1. Develop an efficient and effective mechanism for the systematic management and delivery of state-of-the-art Title IV training and technical assistance on the national-level that will:

a. utilize the existing information and work products from Title IV grantees and programs, and

b. ensure the incorporation of new information and work products developed through future efforts.

2. Through this mechanism, coordinate and standardize the information, training, technical assistance on missing and exploited children disseminated on the local, state, and federal level.

3. Ensure that the following areas are the principle focus of the training and technical assistance delivered.

a. Effective community and child education, prevention, and awareness programs.

b. Effective community-based approaches for coordination and collaboration among the primary service provider agencies.

c. Effective multi-agency team approaches.

d. Effective multi-jurisdictional coordination approaches.

e. Available resource education, awareness, and access.

f. State-of-the-art investigative skills and techniques for location and recovery of missing children.

g. Selected approaches for the reunification of missing and abducted children with their legal guardians.

4. Establish a database for tracking and documentation of communities, agencies, and personnel that receive the Title IV training and technical assistance.

5. Develop a mechanism for providing support to OJJDP for incorporation of input from all Title IV Grantees in the development of concept papers, reports, and related materials in furtherance of OJJDP's Title IV Long Range Plan and meeting the mandates of the Title IV Legislation.

6. Enhance and improve missing and abducted child serving agencies and organizations capability and ability to respond to the issues related to cases of missing and exploited children.

7. Create a stronger link between the front-line personnel working these cases and the policy-makers at the local, state, and federal levels.

8. Incorporate the Title IV information and work products into training and technical assistance products for both front-line personnel and policy-makers.

9. Maintain state-of-the-art curricula and materials through systematic review, assessment, and revision of curricula, in concert with OJJDP.

Program Strategy

This solicitation and resulting cooperative agreement is to establish a mechanism for the maintenance, management, and standardization of activities; program design, development, and implementation; and fiscal support necessary to sustain those services required for the development of a coordinated and comprehensive Training and Technical Assistance Program under Title IV, the Missing Children's Assistance Act.

The applicant must demonstrate a proven national experience and capability to provide timely, relevant professional program continuity for the design, development, delivery, and maintenance of an efficient and effective Title IV Training and Technical Assistance Program.

The applicant must list and provide letters of agreement to participate from the primary consultants and trainers that will be utilized in the design, development, and delivery of the Title

IV training and technical assistance programs.

The applicant must demonstrate, in detail, the ability to enlist, train and manage the technical and professional personnel that will provide knowledgeable, credible program continuation and professional program technology transfer to all agencies and personnel involved in the prevention, identification, location, recovery, and reunification of missing, exploited, and abducted children with their legal guardians.

The applicant will include in its application a detailed task plan to:

1. Justify their resource allocation (staff and funds) based on the actual number of existing Title IV training programs and proposed new training and technical assistance program development,

2. Develop an efficient and effective mechanism for the systematic management and delivery of state-of-the-art Title IV training and technical assistance on the national-level that will:

a. utilize the existing information and work products from Title IV grantees and programs, and

b. ensure the incorporation of new information and work products developed through future efforts.

3. Establish a database for tracking and documentation of communities, agencies, and personnel that receive the Title IV training and technical assistance,

4. Enhance and improve missing and abducted child serving agencies and organizations capability and ability to respond to the issues related to cases of missing and exploited children,

5. Create a stronger link between the front-line personnel working these cases and the policy-makers at the local, state, and federal levels,

6. Incorporate the Title IV information and work products into training and technical assistance products for both front-line personnel and policy-makers,

7. Maintain state-of-the-art curricula and materials through systematic review, assessment, and revision of curricula, in concert with OJJDP.

The applicant will include in their application a detailed plan for the establishment of a grant advisory board independent of any existing organizational advisory board. The advisory board will be made up of at least ten (10) individuals representing the following agencies: law enforcement, nonfamily abduction victim parent, family abduction victim parent, nonprofit organization, social services, mental health, courts, prosecution, and medical. All appointees to this advisory board will be subject to approval by OJJDP.

Eligibility Requirements

Applications are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such. The applicant and co-applicants must demonstrate fully the required experience to deliver continuation support services as required in section VI. Applicants must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experienced capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All not-for-profit organizations who have not recently received Office of Justice Programs funding must submit a completed Accounting System and Financial Capability Questionnaire (OJP 712011).

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of a page only. The program narrative may not exceed 60 pages. The program narrative must include all items indicated in the Selection Criteria section of this solicitation. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, resumes, and supporting charts or graphs).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification for not competing the portion of work proposed to be contracted.

The following information must be included in the application Program Narrative (part IV of SF 424):

1. Organizational Capability: The applicant must demonstrate that it is eligible to compete for this cooperative agreement and have substantial organizational experience and resources that can be directly applied to provide programmatic support that will assure OJJDP the effective establishment of a Title IV Training and Technical Assistance program to law enforcement agencies, State and local governments, other elements of the criminal justice system, public and private nonprofit agencies, and individual disciplines in the prevention, investigation, prosecution, and treatment of the missing and exploited children cases and in assisting in the locating and reuniting of the missing children with families or legal custodians.

The criteria used in evaluating applicants is based upon the responsiveness of the applicant to the program information and descriptions found in this solicitation. Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this notice.

2. Organizational Experience: a. The applicant must demonstrate the requisite knowledge of and experience

with the missing and exploited children issue necessary to provide capable, responsible management of a Title IV Training and Technical Assistance Program.

b. The applicant must demonstrate experience and expertise in providing technical assistance and training to a diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation.

c. The applicant must demonstrate the ability to assist in the development of missing and exploited children specialized issue-related training and service-oriented training materials to the recipient jurisdiction, professional, citizen, community needs, and other OJJDP training and technical assistance programs.

d. The applicant must demonstrate the ability to provide continuity of comprehensive missing and exploited children issue services in response to the program objectives and strategies described in this solicitation.

3. Program Goals and Objectives: A succinct statement demonstrating the applicant's understanding of the objectives and tasks associated with the program must be included. The application must also include a problem statement and a discussion of the past and potential future contributions of the applicant's program to the missing and exploited children issues required to be performed by an organization assuming the responsibility for the Title IV Training and Technical Assistance. The applicant must describe the proposed approach for achieving the objectives of the program and the requirements of the program strategy as detailed in this announcement.

4. Program Implementation Plan: The applicant must describe its proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, the program management must be included. A clear time-task workplan identifying major milestones, tasks, and products should be a part of the application.

The applicant should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components that will be responsible for supporting and implementation of the program. The applicant should provide detailed position descriptions, qualifications, and criteria for selection for the positions. Part-time and practitioner professionals should also be included, with a statement of their qualifications and experience that would directly relate to the service needs of this program. The applicant should denote which staff members are considered key project personnel and emphasize their position experience.

5. Program Budget: The applicant must provide a three year budget to be prepared by year. Any co-applicant associated costs must be detailed separately and accounted for in as much detail as the principal applicant. The applicant must provide a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the basis for these costs must be well documented in a separate budget narrative.

6. Products: A concise description of the products to be produced should be included. The applicant must describe existing and future program activities and products that have and will be developed or utilized to continue to service the program; and should describe how and who will be served by these products.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present and potential ability to continue the development and provide the requisite services for a Title IV Training and Technical Assistance Program for servicing missing and exploited children issues, as they are defined under Title IV, The Missing Children's Assistance Act. The experience and knowledge involved for delivery of these services in a capable, efficient and professional manner is, of course, a vital criteria for selection.

All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

1. Organizational and programmatic capability must be demonstrated. The project management structure must be adequate for the successful conduct of the project. The applicant must have demonstrated Title IV experience and program management and information technology capabilities and experience and capabilities in the areas described and defined throughout this solicitation; experience working with the various missing children issue groups and agencies at the national, state, municipal, community, and individual levels; providing technical assistance, training and information products related to missing and exploited children; and promoting the development of professional approaches to missing children issues; providing assistance in organizational development processes for improved multi-agency delivery of services relating to missing children issues; and the relevant experience of applicant's staff in the missing children issues and their capabilities to address the perceived program needs. Fiscal integrity and organizational stability must be demonstrated over time. (25 points)

2. The applicant must have demonstrated understanding of an approach to implementing the program objectives of organizing, providing and maintaining the high level service delivery demands of a Title IV Training and Technical Assistance Program. (25 points)

3. The qualifications of staff members identified to manage and implement the program, including consultants, must be adequate for the successful implementation of the objectives. (40 points)

4. The applicant must provide a sound and fully-justified budget that is cost effective to the services provided. The proposed costs must be complete, appropriate, and reasonable to the activities of the project. All costs should be fully justified in a budget narrative or with other supporting documentation. (10 points)

Award Period

The project period for the cooperative agreement supporting the Title IV Training and Technical Assistance Training Grant is three (3) years. One cooperative agreement will be awarded with an initial budget period of 12 months.

Award Amount

Up to $750,000 has been allocated for the initial budget period. Commensurate financial support for the remaining two project budget periods will be determined by the performance of the grantee program development needs as determined by OJJDP, and the availability of funds.

Submission of Application

Applicants must submit the original, signed application (Standard Form 424) and two unbound copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Grant Program: Effective Community-Based Approaches for Dealing With Missing and Exploited Children

Purpose

The purpose of this solicitation is to identify, research, evaluate, and document effective community-based, organizations from around the country that use multi-disciplinary team approaches to address the complex issues related to missing and exploited children and their families. The solicitation will identify a minimum of five (5) community-based organizations that provide a cross-sectional representation of the demographics of the country. The effective approaches being used in these communities will be developed into a training curriculum that will be used to assist communities in the establishment of an effective, cooperative, and collaborative community-based, multi-disciplinary team approach to missing and exploited children's issues.

The award will be made for a project period of three years. One cooperative agreement will be awarded with an initial budget period of 18 months. Up to $250,000 will be allocated for the initial 18 month award. Subsequent funding support will be determined by the performance of the grantee and program development needs as determined by OJJDP.

Background

The term ''missing children'' has been used to describe many children who become missing or are displaced for various and differing reasons. Children may be missing because they have been abducted by a stranger or acquaintance. A surprisingly large number of children (354,000 per year) are abducted by a parent or family member as part of an ongoing divorce or custody battle. About half a million children run away from home each year. There are many children designated as ''thrownaway'' children because they have been abandoned or told to leave home. Other children wander away from home or become lost or injured for other reasons. While most children eventually are recovered or return home, they may be missing for a few hours, days, weeks, or years. Some children are found dead or are never recovered at all.

Society's understanding of the issues relating to these ''missing and displaced'' children and its response has been slow to develop. Since the passage of most federal and state legislation regarding missing children and the inception of the Missing and Exploited Children's Program in the Department of Justice, an array of ground breaking research has been completed or is still underway. Much more is known about the issues surrounding missing and exploited children, and this information provides important direction for future action to improve the response to these victims.

No single health, social service, law enforcement, or judicial system exists to track and comprehensively assess the number and circumstances of child victimization on a national level, including child deaths. The same is true in most states and local jurisdictions as well. Data on child victimization resides in several different forms, including police crime reports, child protective service reports, and vital statistics. None of these sources contain information on all types of maltreatment of children.

Definitions are inconsistent across agencies and disciplines. The names and definitions given to child victimization, as well as how we address it, differs according to the relationship of the perpetrator to the child victim. If the offender is a family member or caretaker, it is called abuse; if the offender is a stranger or acquaintance, it is called an assault or some other type of ''crime.'' Generally, the criminal justice system handles victimization of children by nonfamily members while social service agencies handle victimization by family members or caretakers.

National crime justice statistics, with the exception of abduction and homicide, do not include crimes against children under the age of twelve. It is usually worse on the local and state levels. Child abuse data is not included in criminal statistics. Some particularly violent abuse cases of children may be contained in police reports but not most of them. Child protective service agencies do not keep data on nonfamily, noncaretaker abuse of children. They usually refer such cases to the police and do not provide services to those children and their families. Most assaults against children are simply never reported to any agency.

Most communities approach the different forms of child maltreatment in a fragmented fashion with social services handling intra-familial cases of abuse and neglect, law enforcement handling nonfamily assault and abduction cases, and many child victims simply going unrecognized and untreated. At best, communities may have a vague picture of who the missing and exploited children are in their jurisdiction. If they look closely, they realize that these invisible children are frequently already known to their criminal justice and social service agencies as victims or perpetrators.

The experiences of many of these children and their families are not unlike that of abused and neglected children. There are many commonalities and linkages. Children often suffer multiple types of victimization and one form of victimization may directly or indirectly lead to others. Often runaway and thrownaway children have left abusive homes and are at increased risk for suicide, assault, exploitation, and murder while on the streets. Children who are neglected or inadequately supervised may be especially vulnerable to a variety of risks. Some children are reported missing by a parent who actually killed the child and is trying to conceal his or her act. The majority of family abduction cases involve families with histories of domestic violence. Most parentally-abducted children have suffered from being the focus of bitter conflict prior to being taken. Recovery of abducted children seldom means the end of the conflict or the traumatic effects of an abduction, yet these children seldom receive the mental health services that could help them cope. Recent studies indicate that children who come from households characterized by violence, abuse or neglect may be more vulnerable to abuse and exploitation by persons outside their home as well. Other studies indicate that the lines between incest and sexual abuse by nonfamily persons may not be as distinct as previously believed, i.e., many incest perpetrators also molest children other than their own.

Objectives

1. Identify five demographics representative community programs that have in place an active and working community-based process for addressing the needs of and issues related to missing, exploited, and abducted children and their families.

2. Research and evaluate the programs in the selected communities to determine their strengths and weaknesses in addressing such issues as: confidentiality; sharing of information; inter-agency agreements; cross-training; statistical information gathering and analysis; identification and resolution of system gaps; case and services management; establishing public-private partnerships; interacting with agencies on the state and federal levels; multi-level prevention education and awareness programs; conducting cooperative investigative practices; resource allocation and sharing; cultural diversity; education and awareness of policy-makers; recovery and reunification of the child victims with their family and community; and other

issues having a direct impact on the ability and capability of a community to respond to the needs of missing, exploited, and abducted children and their families.

3. Prepare and document a comprehensive report of the research and evaluation conducted on the five selected communities. The report will be in journalistic style format. It will illustrate the strengths and weaknesses of the communities studied. This report also will provide information on why these types of community-based approaches succeed as well as fail.

4. Design and develop a multi-level training curriculum that incorporates all of the strengths documented in the five selected communities. The training curriculum will also incorporate information and techniques developed by other OJJDP programs and initiative in this area. The curriculum will enable jurisdictions to strategically plan, implement, and evaluate a community-based multi-disciplinary team process for effectively addressing the issues and needs of their missing, exploited, and abducted children and their families while utilizing existing community resources.

Program Strategies

This solicitation and resulting cooperative agreement will identify, research, evaluate, and document effective community-based organizations from around the country that use multi-disciplinary team approaches to address the complex issues related to missing and exploited children and their families.

The applicant must demonstrate, in detail, the ability to enlist and manage the technical and professional personnel that will provide knowledgeable, credible program development and professional program technology transfer to all community agencies.

The applicant must demonstrate a comprehensive and equitable process to identify a minimum of five (5) community organizations that are representative of the country.

The applicant will include in their applications a detailed plan for the establishment of a grant advisory board. The advisory board will be made up of at least ten (10) individuals representing the following agencies: law enforcement, nonfamily abduction victim parent, family abduction victim parent, nonprofit organization, social services, mental health, courts, prosecution and representative from Association of Missing and Exploited Childrens Organizations (AMECO). This board membership will be submitted to OJJDP for approval.

The applicant will include in their application a detailed plan for coordination with other Title IV grant programs to incorporate state-of-the-art techniques and information into the training curricula.

1. The research and evaluation component of application must demonstrate how the information on the programs in the selected communities will be analyzed to determine their strengths and weaknesses in addressing such issues as:

a. confidentiality
b. sharing of information
c. inter-agency agreements
d. cross-training
[e. statistical information gathering and analysis]
f. identification and resolution of system gaps
g. case and services management
h. establishing public-private partnerships
i. interaction with agencies on the state and federal levels
j. multi-level prevention education and awareness programs
k. conducting cooperative investigative practices
l. resource allocation and sharing
m. cultural diversity
[n. education and awareness of policy-makers]
o. recovery and reunification of the child victims with their family and community
p. other issues having a direct impact on the ability and capability of a community to respond to the needs of missing, exploited, and abducted children and families

Prepare and document a comprehensive written report of the research and evaluation conducted on the five selected communities. The report will be in journalistic style format. It will illustrate the strengths and weaknesses of the communities studied. This report also will provide information on why these types of community-based approaches succeed as well as fail.

The applicant must present in detail the process that will be used for the design and development of a multi-level training curriculum that incorporates all of the strengths documented in the five selected communities. The training curriculum must include:

2. Instructor's Guide:

a. Course agenda
b. Lesson plan cover sheets for each instructional block that include:
(1) terminal objective
(2) instructor tasks
(3) learning objectives
(4) participant handout materials

3. Participants's Guide:

a. Course agenda
b. Participant note taking guide
c. Reference and resource materials

The training curriculum will be designed to provide the participants with the skills and knowledge necessary to strategically plan, implement, establish, and evaluate a community-based multidisciplinary team process for effectively addressing issues and needs of their missing, exploited, and abducted children and their families while utilizing existing community resources.

Eligibility Requirements

Applications are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such. The applicant and co-applicants must demonstrate fully the required experience to deliver continuation support services as required in section VI. Applicants must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experienced capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applicants must include a project summary, a budget narrative, and a program narrative.

All not-for-profit organizations who have not recently received Office of Justice Programs funding must submit a completed Accounting System and Financial Capability Questionnaire (OJP 712011).

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to

write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of page only. The program narrative may not exceed 60 pages. The program narrative must include all items indicated in the Selection Criteria section of this solicitation. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, resumes, and supporting charts or graphs).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include noncompetitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification for not competing the portion of work proposed to be contracted.

The following information must be included in the application Program Narrative (part IV of SF 424):

1. Organizational Capability: The applicant must demonstrate that it is eligible to compete for this cooperative agreement and have substantial organizational experience and resources that can be directly applied to provide programmatic support that will assure OJJDP the effective establishment of a program that will identify, research, evaluate, and document effective community-based organizations around the country that use multi-disciplinary team approaches to address the complex issues related to missing and exploited children and their families. The solicitation will identify a minimum of five (5) community-based organizations that provide a cross-sectional representation of the demographics of the country. The effective approaches being used in these communities will be developed into a training curriculum that will be used to assist communities in the establishment of an effective, cooperative, and collaborative community-based, multi-disciplinary team approach to missing and exploited children's issues. The criteria used in evaluating applicants is based upon the responsiveness of the applicant to the program information and descriptions found in this solicitation. Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this notice.

2. Organizational Experience: a. The applicant must demonstrate the requisite knowledge of and experience with the missing and exploited children issue necessary to provide capable, responsible management of as outlined in solicitation.

b. The applicant must demonstrate experience and expertise in providing research, evaluation of community-based missing and exploited children organizations as described in this solicitation.

c. The applicant must demonstrate the ability to design and develop a multi-level training curriculum for community based organizations.

3. Program Goals and Objectives: A succinct statement demonstrating the applicant's understanding of the objectives and tasks associated with the program must be included. The application must also include a problem statement and a discussion of the past and potential future contributions of the applicant's program to the missing and exploited children issues required to be performed by an organization assuming the responsibility for the program as described in this solicitation. The applicant must describe the proposed approach for achieving the objectives of the program and the requirements of the program strategy as detailed in this announcement.

4. Program Implementation Plan: The applicant must describe its proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, the program management must be included. A clear time-task workplan identifying major milestones, tasks, and products should be part of the application.

The applicant should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components that will be responsible for supporting and implementation of the program. The applicant should provide detailed position descriptions, qualification, and criteria selection for the positions. Part-time and practitioner professionals should also be included, with a statement of their qualifications and experience that would directly relate to the service needs of this program. The applicant should denote which staff members are considered key project personnel and emphasize their position experience.

5. Program Budget: The applicant must provide a three year budget to be prepared for two 18 month periods. Any co-applicant associated costs must be detailed separately and accounted for in as much detail as the principal applicant. The applicant must provide a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the basis for these costs must be well documented in a separate budget narrative.

6. Products: A concise description of the products to be produced should be included. The applicant must describe existing and future program activities and products that have and will be developed or utilized to continue to service the program; and should describe how and who will be served by these products.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present and potential ability to develop document Effective Community-Based Approach For Dealing with Missing and Exploited Children and develop curriculum as described in this solicitation. The experience and knowledge involved for delivery of product is, of course, a vital criteria for selection.

All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

1. Organizational and programmatic capability must be demonstrated. The project management structure must be adequate for the successful conduct of the project. The applicant must have demonstrated Title IV experience and program management and information technology capabilities and experience and capabilities in the areas described and defined throughout this solicitation; experience working with the various missing children issue groups and agencies at the national, state, municipal, community, individual levels, and international levels; providing technical assistance, training and information products related to

missing and exploited children; and promoting the development of professional approaches to missing children issues; and the relevant experience of applicant's staff in the missing children issues and their capabilities to address the perceived program needs. Fiscal integrity and organizational stability must be demonstrated over time. (25 points)

2. The applicant must have demonstrated understanding of an approach to implementing the program objectives of organizing, providing and maintaining the high level service delivery demands of solicitation. (25 points)

3. The qualifications of staff members identified to manage and implement the program, including consultants, must be adequate for the successful implementation of the objectives. (40 points)

4. The applicant must provide a sound and fully-justified budget that is cost effective to the service provided. The proposed costs must be complete, appropriate, and reasonable to the activities of the project. All costs should be fully justified in a budget narrative or with other supporting documentation. (10 points)

Award Period

The project period for the cooperative agreement supporting the Effective Community-Based Approaches for Dealing with Missing and Exploited Children Grant is three (3) years. One cooperative agreement will be awarded with an initial budget period of 18 months.

Award Amount

Up to $250,000 has been allocated for the initial budget period. Commensurate financial support for the remaining project budget period will be determined by the performance of the grantee, program development needs as determined by OJJDP, and the availability of funds.

Submission of Application

Applicants must submit the original, signed application (Standard Form 424) and two unbound copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Bibliography for Grant Programs

National Incidence Studies on Missing, Abducted, Runaway, and Thrownaway Children in America (NISMART), Office of Juvenile Justice and Delinquency Prevention. Report issued in 1990.

Obstacles to the Recovery and Return of Parentally Abducted Children, a study by the ABA Center on Children and the Law, funded by the Office of Juvenile Justice and Delinquency Prevention, 1993.

Families of Missing Children: Psychological Consequences, a study by the Center for the Study of Trauma, University of California at San Francisco, funded by the Office of Juvenile Justice and Delinquency Prevention. Final report to be published.

The Reunification of Missing Children Project, a study by the Center for the Study of Trauma, University of California at San Francisco, funded by the Office of Juvenile Justice and Delinquency Prevention. Final report unpublished.

Law Enforcement Policies and Practices Regarding Missing Children and Homeless Youth, a study by Research Triangle Institute, funded by the Office of Juvenile Justice and Delinquency Prevention, 1993.

Title IV Missing and Exploited Children's Program Long Range Plan and FY 95 Program Priorities; Notice, **Federal Register**, October 12, 1994.

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–249 Filed 1–4–95; 8:45 am]

BILLING CODE 4410–18–P

federal register

Thursday
January 5, 1995

Part XI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of December 1, 1994, of seven deferrals contained in the first special message for FY 1995. This message was transmitted to Congress on October 18, 1994.

Rescissions

As of December 1, 1994, no rescission proposals were pending before the Congress.

Deferrals (Table A and Attachment A)

As of December 1, 1994, $1,670.1 million in budget authority was being deferred from obligation. Attachment A shows the status of each deferral reported during FY 1995.

Information from Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

59 FR 54066, Thursday, October 27, 1994

Alice M. Rivlin,

Director.

TABLE A.—STATUS OF FY 1995 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,525.1
Routine Executive releases through December 1, 1994	−1,855.0
Overturned by the Congress	.....
Currently before the Congress	1,670.1

ATTACHMENT A.—STATUS OF FY 1995 DEFERRALS—AS OF DECEMBER 1, 1994

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(−)		Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12–1–94
		Original Request	Subsequent Change (+)		Cumulative OMB/Agency	Congessionally Required			
Funds Appropriated to the President									
International Security Assistance.									
Economic support fund	D95–1	53,300	.....	10–18–94	.....	.....	.....	.....	53,300
Foreign military financing grants	D95–2	3,139,279	.....	10–18–94	1,800,000	.....	.....	.....	1,339,279
Foreign military financing program account	D95–3	47,917	.....	10–18–94	.....	.....	.....	.....	47,917
Military-to-military contact program	D95–4	2,000	.....	10–18–94	.....	.....	.....	.....	2,000
Agency for International Development.									
International disaster assistance, executive	D95–5	169,998	.....	10–18–94	54,994	.....	.....	.....	115,004
Department of Health and Human Services									
Social Security Administration.									
Limitation on administrative expenses	D95–6	7,319	.....	10–18–94	.....	.....	.....	.....	7,319
Department of State									
Bureau for Refugee Programs.									
United States emergency refugee and migration assistance fund	D95–7	105,300	.....	10–18–94	.....	.....	.....	.....	105,300
Total, deferrals	.....	3,525,113	.....	.....	1,854,994	.....	.....	.....	1,670,118

[FR Doc. 95–195 Filed 1–4–95; 8:45 am]

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federal register

Thursday
January 5, 1995

Part XII

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA62

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule incorporates a statutory change in the definition of ''veteran of the Vietnam era'' as that definition relates to Federal contractors' and subcontractors' affirmative action obligations with respect to such veterans, by eliminating the coverage cut-off date of December 31, 1994. This rule also incorporates a statutory change in the mandatory job listing provision by eliminating the $25,000 per year salary ceiling and otherwise broadening the scope of job openings that must be listed with the state employment service by Federal contractors and subcontractors.

EFFECTIVE DATE: This regulation is effective January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–9430 (voice) and 1–800–326–2577 (TDD). Copies of this final rule are available in the following formats: electronic file on computer disk, large print and audio tape. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION:

A. Veteran of the Vietnam Era

Before it was amended in 1992, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act at 38 U.S.C. 4212 (Section 4212 or VEVRAA) contained a sunset provision in the definition of ''veteran of the Vietnam era'' that stipulated that no veteran could be considered a ''veteran of the Vietnam era'' for the purposes of the law after December 31, 1994. This sunset provision is codified in our current regulatory definition of ''veteran of the Vietnam era'' found at 41 CFR 60–250.2.

Section 502 of the Veterans' Benefits Act of 1992 (Pub. L. 102–568, 106 Stat. 4320, 4340 (1992)), repealed the December 31, 1994, sunset date. The regulation published today amends OFCCP's definition of ''veteran of the Vietnam era'' to make it consistent with the 1992 amendment.

B. Mandatory Listing

Prior to amendments in 1994, Section 4212 required that Federal contractors and subcontractors covered by the Act must list ''all * * * suitable employment openings'' with the appropriate local employment service office. The Act required those offices, in turn, to give priority referrals to veterans for such openings. This obligation to list job openings with the local employment service office is often referred to as the ''mandatory listing'' requirement. Although Section 4212 did not define the term ''all * * * suitable employment openings,'' this term was defined in OFCCP's regulations at 41 CFR 60–250.4(h).

Section 702(a) of the Veterans' Benefits Improvements Act of 1994 (Pub. L. 103–446, 108 Stat. 4645, 4674 (1994)) expanded the scope of employment openings to be listed with the state employment service office by dropping the word ''suitable'' from the statutory phrase ''all * * * suitable employment openings,'' broadly defining the term ''all * * * employment openings,'' and limiting the exceptions to the mandatory listing requirement. The amendment eliminated the salary ceiling of $25,000 per year which was in the OFCCP regulations, and now requires the listing of all employment openings except executive and top management positions, positions that will be filled from within the contractor's organization, and positions lasting three days or less. The regulation published today amends the regulations prescribing the employment openings to be listed with the state employment service to make them consistent with the 1994 amendment.

The statutory amendments to the mandatory listing requirement do not include all of the exceptions to mandatory listing permitted by OFCCP in its current implementing regulations. Today's final rule incorporates only those exceptions to mandatory listing that are contained in the 1994 amendment.

One exception to mandatory listing expressly contained in the current regulations, but not expressly stated in the 1994 amendment, is an exception for openings in an educational institution which are restricted to students of that institution. In OFCCP's view, such openings fall within the exception to mandatory listing for openings for positions that will be filled from within the contractor's organization.

Waiver of Proposed Rulemaking

This rule is a nondiscretionary, ministerial action which merely incorporates, without change, two statutory amendments into pre-existing regulations. Publication in proposed form serves no useful purpose, and therefore is unnecessary within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). We, therefore, find good cause to waive notice of proposed rulemaking.

Effective Date

Pursuant to 5 U.S.C. 553(d) the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that this rule is a nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into preexisting regulations. Accordingly, this regulation will be effective upon publication.

Executive Order 12866

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

Because this rule does not contain information collection requirements, it is not subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Veterans.

Signed at Washington, DC, on this 29th day of December 1994.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary, Office of Federal Contract Compliance Programs.

PART 60–250—[AMENDED]

For the reasons set forth above, 41 CFR part 60–250 is amended as set forth below.

1. The authority citation for part 60–250 is revised to read as follows:

Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974); 3 CFR 1971–1975 Comp. p. 841); Pub. L. 102–568 and P.L. 103–446.

2. Section 60–250.2 is amended by revising the definition of ''Veteran of the Vietnam era'' to read as follows:

§ 60–250.2 Definitions.

* * * * *

Veteran of the Vietnam era means a person who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

* * * * *

3. Section 60–250.4 is amended by revising paragraphs (b) and (h) of the Affirmative Action clause to read as follows:

§ 60–250.4 Affirmative action clause.

* * * * *

(a) * * *

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs.

* * * * *

(h) As used in this clause: (1) ''All employment openings'' includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

(2) ''Appropriate office of the state employment service system'' means the local office of the Federal-state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) ''Positions that will be filled from within the contractor's organization'' means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

* * * * *

[FR Doc. 95–209 Filed 1–4–95; 8:45 am]

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Thursday, January 5, 1995

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