

# Federal Register

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  3. The important elements of typical Federal Register documents.
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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

- WHEN:** April 20 at 9:00 am  
**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

### SALT LAKE CITY, UT

- WHEN:** May 9 at 9:00 am  
**WHERE:** State Office Building Auditorium 450 North Main Street Salt Lake City, UT 84114
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**Title 3—****Proclamation 6782 of April 6, 1995****The President****National Former Prisoner of War Recognition Day, 1995****By the President of the United States of America****A Proclamation**

In the centuries since our Nation was founded, our citizens have been called on time and again to defend the blessings of American democracy. Although the enemies of freedom have often risen from distant shores, the valiant men and women who wear our Nation's uniform have made freedom's fight their own. From Europe to the Pacific, Korea to the Persian Gulf, these Americans and their families have suffered through the darkest hours of humanity so that the cause of human dignity might endure.

It is in gratitude that we pause each year to recall the courage and to honor the service of the sons and daughters of America who have been held as prisoners of war. Few words can express the depth of their sacrifice or the worthiness of their mission. Often subjected to extreme brutality in violation of international codes and customs governing their treatment, many of our people have come home with disabling wounds and injuries. Too many of our people have not come home at all.

Today, the lives of these extraordinary Americans and the stories of their indomitable spirits are at the core of our national character. The citizens of the United States will always remember the proud individuals who traded their liberty to preserve our own. We will build on the triumphs of democracy that they have helped to ensure. And in speaking of their bravery, we will tell our children and grandchildren that though bodies may be imprisoned, hearts can remain ever free.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 1995, as "National Former Prisoner of War Recognition Day." I urge State and local officials, private organizations, and U.S. citizens everywhere to join in honoring the members of the United States Armed Forces who have been held as prisoners of war. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



# Rules and Regulations

Federal Register

Vol. 60, No. 68

Monday, April 10, 1995

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Docket No. FV94-927-1FR; Amendment]

#### Increase in Expenses for the 1994-95 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Department of Agriculture (Department) is amending the final rule that authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1994-95 fiscal year. This final rule authorizes an increased level of expenses for the 1994-95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

**EFFECTIVE DATE:** July 1, 1994, through June 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, room 369, Portland, Oregon, telephone: (503) 326-2724.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under

the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate will be applicable to all assessable pears handled during the 1994-95 fiscal year, which began July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 3, 1994, and unanimously recommended total expenses of \$6,835,926 for the 1994-95 fiscal year. In comparison, the 1993-94 fiscal year expense amount was \$6,933,615, which is \$97,689 more than the amount recommended for the 1994-95 fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.43 per standard box, or equivalent for winter pears. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year. In comparison, the 1993-94 winter

pear assessment rate was \$0.45 per standard box, or equivalent and \$0.04 for the supplemental assessment rate on Anjou variety pears. This represents a \$0.02 decrease in the assessment rate recommended for this fiscal year.

This rate, when applied to anticipated winter pear shipments of 13,817,000 boxes or equivalent, will yield a total of \$5,941,310 in assessment income. Assessment income, along with \$401,324 from other income sources, and \$493,292 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The \$493,292 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1994-95 fiscal period.

Major expense categories for the 1994-95 fiscal year include \$5,572,500 for advertising; \$276,340 for SOPP data research, \$276,340 for winter pear improvement, \$142,310 for salaries and benefits, and \$612,442 for unshared contingency.

The expenses and assessment rate were authorized in the finalization of the interim final rule issued on November 1, 1994, and published in the **Federal Register** [59 FR 55333, November 7, 1994]. The interim final rule provided a 30-day comment period for interested persons. No comments were received.

The Committee conducted a mail vote during January 1995, and unanimously recommended to increase 1994-95 expenses from \$6,835,926 to \$7,460,160, an increase of \$624,234 from the previously authorized amount. The increase is necessary because the winter pear crop, which was previously estimated at 13,817,000 boxes or equivalent, is now estimated at 15,500,000 boxes.

This under-estimation of over one million boxes, caused the Committee to calculate less assessment income. The Committee is increasing funds for promotion and advertisement for what has become the largest crop of winter pears in the industry's history.

With the approved assessment rate of \$0.43, when applied to winter pear shipments of 15,500,000 boxes or equivalent, will yield a total of \$6,665,000 in assessment income. Assessment income, along with \$368,086 from other income sources, and \$427,074 from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Major expense categories for the 1994-95 fiscal year are to be revised as follows: \$5,812,500 for advertising, \$538,322 for unshared contingency, \$310,000 for SOPP data research, and

\$310,000 for winter pear improvement (\$5,572,500, \$612,442, \$276,340, and \$276,340, respectively, are the amounts from the previously approved budget).

This action will not impose additional costs on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect or to engage in further public procedure and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year for the Committee began July 1, 1994, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) handlers are aware of this action which was unanimously recommended by the Committee by mail vote; and (3) no increase in the assessment rate is being recommended so no additional funds will need to be collected from handlers.

#### List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

#### PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

**Note:** This section will not appear in the annual Code of Federal Regulations.

#### § 927.234 [Amended]

2. § 927.234 is amended by removing "\$6,835,926" and adding in its place "\$7,460,160".

Dated: March 31, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-8424 Filed 4-7-95; 8:45 am]

BILLING CODE 3410-02-P

#### Commodity Credit Corporation

#### 7 CFR Parts 1413 and 1427

RIN 0560-AD42

#### 1995 Extra Long Staple Cotton Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** On November 7, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule (58 FR 55378) with respect to the 1995 Production Adjustment Program for Extra Long Staple (ELS) Cotton, which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (1949 Act). The 1995 ELS Cotton Acreage Reduction Program (ARP) percentage has been determined to be 10 percent. This final rule amends the regulations to set forth the ARP percentage, the established (target) price, and the price support rate. No paid land diversion (PLD) program will be implemented for the 1995 crop of ELS cotton.

**EFFECTIVE DATE:** April 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kathryn A. Broussard, Consolidated Farm Service Agency, United States Department of Agriculture, room 3758-S, P.O. Box 2415, Washington, DC 20013-2415 or call 202-720-9222.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final 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 the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**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: Cotton Production Stabilization—10.052.

**Executive Order 12778**

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

**Executive Order 12372**

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

**Paperwork Reduction Act**

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

**Background**

This final rule amends 7 CFR part 1413 to set forth determinations on the 1995 ARP and the PLD Program and 7 CFR part 1427 to set forth the determinations on the 1995 price support level. General descriptions of the statutory basis for the 1995 ELS ARP percentage determination in this final rule were set forth in the proposed rule at 59 FR 55378 (November 7, 1994).

Three comments were received during the comment period. Two respondents recommended that an ARP level not higher than 10-percent would be sufficient to maintain a stable level of supplies. One respondent recommended a 15-percent ARP, but recognized that a 10-percent ARP would be acceptable.

In accordance with statutory requirements, the Secretary of Agriculture (Secretary) announced: a 10-percent ARP; a price support level of 79.65 cents per pound; and a target price of 95.6 cents per pound, for the 1995 ELS cotton program on December 1, 1994. The Secretary determined that a 10-percent ARP would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages. A 10-percent ARP reflects the current supply situation while signaling to domestic and foreign customers that the U.S. will be a reliable supplier.

**Acreage Reduction**

In accordance with section 103(h)(5) of the 1949 Act, an ARP has been established for the 1995 crop of ELS cotton at 10 percent. Accordingly, producers will be required to reduce their 1995 acreage of ELS cotton for harvest from the crop acreage base established for ELS cotton by at least this established percentage in order to be eligible for price support loans, purchase, and payments.

**Paid Land Diversion**

In accordance with section 103(h)(5)(B) of the 1949 Act, a PLD Program will not be implemented for the 1995 crop of ELS cotton.

**Price Support Rate**

In accordance with section 103(h)(2) of the 1949 Act, the price support rate has been established with respect to the 1995 crop of ELS cotton at 79.65 cents per pound.

**Established (Target) Price**

In accordance with section 103(h)(3)(B) of the 1949 Act, the established (target) price has been established with respect to the 1995 crop of ELS cotton at 95.6 cents per pound.

**List of Subjects****7 CFR Part 1413**

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

**7 CFR Part 1427**

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

**PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS**

1. The authority citation for 7 CFR part 1413 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308a, 1309, 1441-2, 1444-2, 1444f, 1445b-3a, 1461-1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended as follows by:

- A. Revising paragraphs (a)(5)(iii) and (a)(5)(iv), and
- B. Adding paragraphs (a)(5)(v),
- C. Adding paragraph (d)(5):

**§ 1413.54 Acreage reduction program provisions.**

- (a) \* \* \*
- (5) \* \* \*
- (iii) 1993 ELS cotton, 20 percent;
- (iv) 1994 ELS cotton, 15 percent; and
- (v) 1995 ELS cotton, 10 percent.

\* \* \* \* \*

- (d) \* \* \*

- (5) For the 1995 crop:
  - (i)-(iii) [Reserved]
  - (iv) Shall not be made available to producers of ELS cotton.

\* \* \* \* \*

3. Section 1413.103 is amended by adding paragraph (a)(8)(v) and revising paragraph (b) to read as follows:

**§ 1413.103 Established (target) prices.**

- (a) \* \* \*
- (8) \* \* \*
- (v) 1995 ELS cotton—\$.95.6/lb.
- (b) ELS cotton target price for the 1996 crop will be established as 120 percent of the loan rate for ELS cotton.

**PART 1427—COTTON**

4. The authority citation for 7 CFR part 1427 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1425, and 1444-2; 15 U.S.C. 7114b and 714c.

5. Section 1427.8 is amended as follows by:

- A. Revising paragraphs (a)(2)(iii) and (a)(2)(iv), and
- B. Adding paragraph (a)(2)(v):

**§ 1427.8 Amount of loan.**

- (a) \* \* \*
- (2) \* \* \*
- (iii) 1993 ELS cotton, 88.12 cents per pound;
- (iv) 1994 ELS cotton, 85.03 cents per pound; and
- (v) 1995 ELS cotton, 79.65 cents per pound.

\* \* \* \* \*

Signed at Washington, DC on March 31, 1995.

**Grant Buntrock,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 95-8743 Filed 4-7-95; 8:45 am]

BILLING CODE 3410-05-P

**DEPARTMENT OF ENERGY****10 CFR Part 600****Deviations for the Technology Reinvestment Project**

**AGENCY:** Department of Energy.

**ACTION:** Rules; class deviations.

**SUMMARY:** The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby

announces two deviations from its Financial Assistance Rules for the Technology Reinvestment Project (TRP). The approval of these deviations ensures that the program goals and objectives are achieved and that public funds are conserved.

The TRP is a joint agency effort which implements the provisions of Defense Conversion, Reinvestment, and Transition Act of 1992. The Advanced Research Projects Agency, Department of Energy, National Aeronautics and Space Administration, Department of Commerce through the National Institutes of Standards and Technology, the Department of Transportation and the National Science Foundation are the six agencies collaborating in the TRP. The mission of TRP is to stimulate the transition to a growing, integrated, national industrial capability which provides the most advanced, affordable, military systems and the most competitive commercial production. The TRP seeks to harness the best talents available to focus on technology innovation, extension, infrastructure, and education and training for product and process technologies of critical importance to both national security and the national economy.

The two deviations have been approved because they are required to achieve program objectives. The first deviation will permit budget periods in excess of 12 months consistent with the solicitation and the second deviation permits DOE to withhold payments with 30 days verbal advance notification.

**EFFECTIVE DATE:** April 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Yee, Office of Clearance and Support, [HR-522.2], U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1140.

**SUPPLEMENTARY INFORMATION:** In this notice, the DOE announces that, pursuant to 10 CFR Part 600, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for two deviations to the DOE Financial Assistance Rules. The determination document, dated March 13, 1995 provides for deviations for TRP recipients as explained below [i.e., a "class deviation"].

Deviation Number 1 deviates from the 12-month budget period limitation contained in 600.31(b). This deviation is necessary to permit projects with budget periods in excess of 12 months to be awarded. The solicitation allows for budgets with a base term of 12 to 24 months with options for additional 12 to 24 months. Therefore, deviation is required to execute those financial assistance

agreements for projects with performance periods greater than 12 months.

Deviation Number 2 permits the withholding of payment for failure to meet established milestone schedules with 30 days verbal notice of failure to make progress, thereby providing adequate advance notice of non-compliance. This is a deviation to 600.122(h) and 600.28 and furthers the program objective of reducing the administrative burden.

Issued in Washington, DC, March 13, 1995.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

[FR Doc. 95-8630 Filed 4-7-95; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 3

[Docket No. 95-07]

RIN 1557-AB14

#### Risk-Based Capital Requirements—Low Level Recourse

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994. This final rule modifies the risk-based capital treatment of recourse obligations to ensure that the amount of capital that a bank must hold against a recourse obligation does not exceed the bank's maximum contractual exposure. This corrects an anomaly in the existing risk-based capital standards under which the capital requirement could exceed a bank's maximum exposure.

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874-5210), Stephen Jackson, National Bank Examiner, (202) 874-5070, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (the "CDRI Act"). Under the OCC's current

risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios. Where a bank holds a low level of recourse, the amount of capital required could exceed the bank's maximum contractual liability under the recourse agreement. This can occur in transactions in which a bank contractually limits its recourse exposure to less than the full effective risk-based capital requirement for the assets transferred—generally, 4 percent for mortgage assets and 8 percent for other assets.

The OCC and the other Federal banking agencies (the Office of Thrift Supervision, Federal Reserve Board, and Federal Deposit Insurance Corporation) have long recognized this anomaly in the risk-based capital standards. On May 25, 1994, the Federal banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), issued a notice of proposed rulemaking and advance notice of proposed rulemaking (59 FR 27116) covering the capital treatment of recourse obligations and direct credit substitutes. The notice proposed, among other things, to amend the agencies' risk-based capital guidelines to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. For these types of transactions the proposal would effectively result in a dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

Of the 38 commenters that sent comments to the OCC in response to the May 25 proposal, 13 commenters specifically addressed limiting the capital requirement for low level recourse transactions to a bank's maximum contractual exposure. All 13 supported the limit, although many advocated additional changes to the OCC's capital standards for recourse obligations.

On September 23, 1994, the CDRI Act was signed into law. The OCC is issuing this final rule now in order to implement section 350. Consequently, this final rule covers only the limitation of the capital requirement to a bank's maximum contractual exposure and does not address any of the other issues raised in the May 25, 1994, proposal. The OCC and the other Federal banking agencies will continue to consider those other issues.

The OCC, in consultation with the other banking agencies, will issue further guidance specifying how the modified capital standard will be implemented for reporting purposes. Following issuance of this additional guidance, the OCC intends to amend the rule to include a specific description of the reporting treatment.

### Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will increase somewhat the measured risk-based capital ratios of banks of all sizes that sell assets with low levels of recourse and will have a beneficial, but not material, effect on those banks.

### Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

### List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

### PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

#### Appendix A to Part 3—Risk-Based Capital Guidelines

\* \* \* \* \*

*Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items*

\* \* \* \* \*

(c) *Recourse Obligations.* Where the amount of recourse liability retained by a bank is less than the capital requirement for credit-risk exposure, the bank shall maintain capital for the recourse liability equal to the amount of credit-risk exposure retained. Any recourse liability that is subject to this section 3(c) is not subject to any additional capital treatment under sections 3(a) or 3(b) of this appendix A.

\* \* \* \* \*

Dated: March 17, 1995.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

[FR Doc. 95-8719 Filed 4-7-95; 8:45 am]

BILLING CODE 4810-33-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-NM-170-AD; Amendment 39-9191; AD 95-08-02]

#### Airworthiness Directives; Jetstream Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires installation of new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar area of the engine/nacelle. This amendment is prompted by reports of fatigue failure of the case drain line in the hydraulics system. The actions specified by the proposed AD are intended to prevent the loss of main system hydraulics as a result of lack of support against vibration and subsequent fatigue failure of the case drain line for the hydraulics system.

**DATES:** Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sam Grober, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Jetstream Model 4101 airplanes series airplanes was published in the **Federal Register** on December 16, 1994 (59 FR 64875). That action proposed to require installation of new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar area of the engine/nacelle. –

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. –

The commenter supports the proposed rule. –

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. –

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$5,400, or \$600 per airplane. –

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. –

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. –

For the reasons discussed above, I certify that this action (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**95–08–02 Jetstream Aircraft Limited:**

Amendment 39–9191. Docket 94–NM–170–AD.

**Applicability:** Model 4101 airplanes; constructors numbers 41005 through 41015

inclusive, 41019 through 41024 inclusive, 41028, and 41029; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent the loss of the main system hydraulics, accomplish the following:

(a) Within 4 months after the effective date of this AD, install new case drain pipes and an additional fairlead support for the hydraulics case drain line in the rear spar

area of the engine/nacelle in accordance with Jetstream Service Bulletin J41–29–005, Revision 1, dated August 12, 1994; or Revision 2, dated August 30, 1994.

(b) 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, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with the following Jetstream service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date–	Page No.	Revision level shown on page	Date shown on page
J41–29–005– Revision 2 August 30, 1994	1, 4–	2	Aug. 30, 1994.
J41–29–005– Revision 1 August 12, 1994	2, 3, 5–12– 1–12–	1 1–	Aug. 12, 1994. Aug. 12, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 31, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95–8445 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

[Docket No. 94–NM–169–AD; Amendment 39–9190; AD 95–08–01]

**Airworthiness Directives; Jetstream Model 4101 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires modification of the spoiler system. This amendment is prompted by reports of fatigue failures of the tee fittings of the spoiler bleed nipples. The actions specified by this AD are intended to ensure that the tee fittings do not fail, and subsequently lead to loss of the main system hydraulics.

**DATES:** Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on December 16, 1994 (59 FR 64873). That action proposed to require modification of the spoiler system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$5,880, or \$420 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**95-08-01 Jetstream Aircraft Limited:**  
Amendment 39-9190. Docket 94-NM-169-AD.

**Applicability:** Model 4101 airplanes on which Jetstream Modification JM41290B (reference Jetstream Service Bulletin J41-29-001) has not been installed, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the tee fittings and subsequent loss of the main system hydraulics, accomplish the following:

(a) Within 4 months after the effective date of this AD, modify the spoiler system in accordance with Jetstream Service Bulletin J41-29-001, dated August 12, 1994, or Revision 1, dated August 30, 1994.

(b) 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, Standardization Branch, FAA, Transport Airplane Directorate, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the following Jetstream service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
J41-29-001 Original Issue, August 12, 1994 .....	1-12	Original .....	Aug. 12, 1994.
J41-29-001 Revision 1, August 30, 1994 .....	1, 3	1 .....	Aug. 30, 1994.
	2, 4-12	Original .....	Aug. 12, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 31, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 95-8446 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 39

[Docket No. 94-NM-192-AD; Amendment 39-9187; AD 95-07-05]

#### Airworthiness Directives; Airbus Model A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300-600 series airplanes, that requires repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This amendment is prompted by the discovery of fatigue cracks that emanated from the bolt holes inboard and outboard of rib 9 in the bottom booms of the front and rear wing spars. The actions specified by this AD are intended to prevent reduced structural integrity of a wing spar as a result of fatigue cracks in the bolt holes.

**DATES:** Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300-600 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64626). That action proposed to require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is

estimated to be \$23,100, or \$660 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**95-07-05 Airbus Industrie:** Amendment 39-9187. Docket 94-NM-192-AD.

*Applicability:* Model A300-600 series airplanes on which Airbus Modification

10161 has not been installed, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of a wing spar, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with Airbus Service Bulletin A300-57-6037, dated August 1, 1994, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Modification 8842 (reference Airbus Service Bulletin A300-57-6039) has not been installed: Prior to the accumulation of 17,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(2) For airplanes on which Airbus Modification 8842 has been installed: Prior to the accumulation of 17,000 total landings after accomplishment of Airbus Modification 8842, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(b) If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A300-57-6037, dated August 1, 1994. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

(c) 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, Standardization Branch, FAA, Transport Airplane Directorate, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and repair shall be done in accordance with Airbus Service Bulletin A300-57-6037, dated August 1, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. -

(f) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 29, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95-8173 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 39

[Docket No. 94-NM-165-AD; Amendment 39-9188; AD 95-07-06]

#### Airworthiness Directives; British Aerospace Model BAC 1-11-200 and -400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes, that requires inspections of the bearings of the aileron control system, and correction of discrepancies. This amendment is prompted by a report indicating that an operator experienced difficulties wherein considerable pressure was required to manually input roll control due to seized bearings in the aileron control system. The actions specified by this AD are intended to prevent such seizure of bearings, which could reduce the pilot's ability to initiate roll control during critical phases of flight.

**DATES:** Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64631). That action proposed to require repetitive detailed visual and physical inspections of the bearings of the aileron control system, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this

AD, that it will take approximately 1 work hour per airplane, per inspection to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,860, or \$60 per airplane, per inspection.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

**95-07-06 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group):** Amendment 39-9188. Docket 94-NM-165-AD.

**Applicability:** All Model BAC 1-11-200 and -400 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To ensure the pilot's ability to initiate roll control during critical phases of the flight, accomplish the following:

(a) Within 5 years from the date of installation of the aileron control bearings or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual and physical inspection to detect missing or damaged sealing rings, corrosion, or restricted movement of the bearings of the aileron control system, in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 27-A-PM6023, Issue No. 2, dated November 23, 1992.

(1) If no discrepancies are found, repeat the inspection requirements thereafter at intervals not to exceed 14 months.

(2) If any discrepancy is found, prior to further flight, replace the bearing with a new bearing in accordance with the service bulletin. Repeat the inspection required by this paragraph within 5 years after replacement of the bearings, and thereafter at intervals not to exceed 14 months.

(b) 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, Standardization Branch, FAA, Transport Airplane Directorate, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 27-A-PM6023, Issue No. 2, dated November 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 10, 1995.

Issued in Renton, Washington, on March 29, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95-8172 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-13-U

#### CONSUMER PRODUCT SAFETY COMMISSION

#### 16 CFR Part 1700

#### Requirements for Child-Resistant Packaging; Requirements for Products Containing Lidocaine or Dibucaine

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Under the Poison Prevention Packaging Act of 1970, the Commission issues a rule requiring child-resistant packaging for products containing more than 5.0 milligrams (mg) of lidocaine in a single package or more than 0.5 mg of dibucaine in a single package. These requirements are issued because the Commission has determined that child-resistant packaging is required to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting such substances. Lidocaine and dibucaine are used in prescription drugs and over-the-counter drug products that are applied to the skin or mucous membranes to provide an anesthetic effect.

**DATE:** The rule shall be effective on April 10, 1996 and shall apply to subject products that are packaged on or after that date.<sup>1</sup>

<sup>1</sup> The Commission approved unanimously (3-0) the motion of Chairman Ann Brown to require

**FOR FURTHER INFORMATION CONTACT:**

Michael Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0621 ext. 1368.

**SUPPLEMENTARY INFORMATION:****A. Background**

Relevant statutes and regulations. The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.

Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating its effectiveness (§ 1700.20). Regulations were issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section E of this

special packaging for all products containing more than .5 mg of dibucaine in a single package. The Commission voted 2-1 to require special packaging for all products containing more than 5 mg of lidocaine in a single package (Chairman Brown and Commissioner Jacqueline Jones-Smith voting for and Commissioner Mary Sheila Gall voting against).

The Commission then voted unanimously (1) that the regulation on lidocaine and dibucaine not be considered a final regulation until it is published in the **Federal Register**; (2) that the final regulation be published in the **Federal Register** on April 8, 1995, or as soon thereafter as practicable; and (3) to approve the most recent draft **Federal Register** notice that had been forwarded to the Commission.

Each Commissioner filed a separate statement concerning this matter. Copies of the Commissioners' statements can be obtained from the Commission's Office of the Secretary.

notice. For the purposes of the PPPA, the amount of a substance "in a single package" that requires the product to be in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). Drugs that are applied topically (for example, ointments, creams, sprays, suppositories, mouthwash, etc.) are not covered by the oral prescription drug standard. Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package a single size of the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

Previous Commission activities. [9]<sup>2</sup> In 1985, the Commission's staff

<sup>2</sup>Numbers in brackets indicate the number of a relevant document as listed in Appendix 1 to this notice. When a reference document that is cited in a document listed in Appendix 1 is referred to, both the number of the Appendix 1 document and the designation of the reference document as given in

reviewed ingestion data for topical prescription drugs to assess the need for CR packaging. Lidocaine, a local anesthetic, was identified as a topical drug that presented a potential ingestion hazard to young children. Local anesthetics are used to produce temporary loss of feeling to a limited area of the body by decreasing the transmission of nerve impulses in that area.

In 1985, many manufacturers of 2-percent viscous prescription lidocaine drugs were voluntarily using CR packaging on products intended to be dispensed directly to the consumer. The Commission directed the staff to pursue voluntary action to address the ingestion hazard presented by lidocaine-containing drugs and to continue to monitor data on topical prescription drugs. In 1986, the staff sent letters to the known manufacturers of 2-percent viscous prescription lidocaine products requesting that the manufacturers (1) use CR packaging on all consumer-ready packages of 2-percent viscous lidocaine products, and (2) label 2-percent viscous lidocaine products intended to be repackaged by the pharmacist to advise the pharmacist to dispense the drug in CR packaging.

In 1990, the staff updated its review of the toxicity of lidocaine. The scope of the review was expanded to include other topical local anesthetics marketed for consumer use, and to include OTC products as well as prescription products. The review showed that two local anesthetics, lidocaine and dibucaine, have caused serious adverse effects, including death, following accidental ingestion by young children.

After considering the available information, the Commission, on August 4, 1992, proposed a CR packaging requirement for products containing (1) more than 5.0 milligrams (mg) of lidocaine in a single package or (2) more than 0.5 mg dibucaine in a single package. 57 Fed. Reg. 34274.

**B. Lidocaine**

Product forms, dosage and packaging. Lidocaine is an ingredient in a wide variety of preparations used as anesthetics, general antiseptics, and burn remedies, and for skin care. It is used also in preparations meeting the provisions of the Food and Drug Administration's (FDA's) OTC monograph for male genital desensitizing products (57 Fed. Reg. 27654; June 19, 1992; 21 CFR 348).

Lidocaine preparations are available as creams, ointments, gels, jellies, viscous

the Appendix 1 document are given, e.g., [1, Ref. A].

solutions, liquids, sprays, aerosols, and injectables. Tube packaging, used for creams, ointments, and some gels, protects its contents from contamination and moisture and enables the administration of a controlled volume of medication to smaller areas. Aerosol, spray, and squeeze bottles permit liquids to be applied to cover larger areas.

OTC liquid lidocaine preparations contain 1.5 to 2.5 percent lidocaine hydrochloride. The liquid preparations typically are packaged in squeeze or pump bottles or aerosol sprays and are labeled for external use only. Creams and ointments contain 0.5 to 2.5 percent lidocaine and typically are packaged in tubes. These products are recommended for children 2 years of age and older.

Approximately 12.1 million units of lidocaine-containing products were sold to consumer outlets in 1992. More than half (6.2 million) of these products were cream and ointment formulations available in tubes. In addition, the Commission's staff estimates that less than 0.4 million bottles of consumer-ready prescription viscous lidocaine were sold in 1992.

Prescription preparations intended for consumer use include a 2-percent viscous solution and at least two combination lidocaine creams. The prescription 2-percent lidocaine viscous liquids, in 100 ml bottles (3½ fluid oz), are available from 15 suppliers at estimated wholesale costs to pharmacies ranging from \$2.28 to \$4.40. One supplier also markets a 450 ml bottle of 2-percent viscous lidocaine that, according to a company spokesperson, is for pharmacy repackaging into smaller containers and dispensing as prescribed by physicians.

One combination cream, a lidocaine/hydrocortisone formulation, is marketed in a 1-oz tube; its estimated wholesale cost to pharmacies is \$32.33. The other combination is a lidocaine/prilocaine-based cream, marketed in unit dose and 30-gm (slightly over 1 oz) tubes (cost unknown). The unit-dose, when used by the consumer, is intended to have its entire contents applied at home about 1 hour before a medical procedure that will be performed in a professional setting. The preparation is used also in professional settings.

The prescription 2-percent viscous solution of lidocaine is used for anesthesia of irritated or inflamed mucous membranes of the mouth and throat. Care must be taken following the oral use of viscous lidocaine because swallowing may be impaired. It is recommended that food not be ingested for 1 hour following oral use because of the potential for aspiration. For adults,

it is recommended for mouth pain that one 15 ml tablespoon be swished around the mouth and spit out; for throat pain, the same amount can be gargled and either spit out or swallowed. The maximum recommended single adult dose is 4.5 milligrams/kilogram (mg/kg), not to exceed 300 mg. (A kilogram equals approximately 2.2 lb.) Although this form of lidocaine is applied to the mouth, or even swallowed, it is not considered to be a "drug for human use that is in a dosage form intended for oral administration" that already is required to be in CR packaging by 16 CFR 1700.14(a)(10). This is because its action is caused by topical application to the affected area and not by systemic action following ingestion.

For children under 3 years of age, it is recommended that ¼ teaspoonful be applied to the affected area with a cotton-tipped applicator. For children 3 years old and older, the dose is prescribed based on the weight and age of the child. The dose interval for children should be at least 3 hours, so as not to exceed 4 doses in a 12-hour period.

Previously, the Commission was aware of 7 marketers of trade name OTC pharmaceuticals containing lidocaine; 16 marketers are now known. Some marketers represent recently introduced preparations. Also, some preparations have been recently withdrawn from the market. Creams, ointments and some gel preparations are available in small (½- and/or 1-oz) tubes at estimated wholesale costs of \$2.02 to \$5.74. One supplier markets a preparation in a 35-gm tube (1.25 oz) at an estimated wholesale cost of \$10.19. Liquid (and some gel) lidocaine preparations are available in aerosol, spray pump, and spray and squeeze bottle containers. Estimated wholesale costs for ¼-16 oz liquids and gels range from \$1.74 to \$5.46. One new marketer supplies a preparation for burn injuries in a foil packet containing ⅛ oz of gel. The preparation is currently promoted for use in the workplace rather than in the home; the company plans to introduce this product into the consumer market in the future.

Some lidocaine preparations, although dispensed through pharmacies, are intended for use in a professional setting such as a doctor's or dentist's office. According to pharmaceutical company spokespersons, these preparations include prescription lidocaine fluids such as 2 percent, 4 percent, and 5 percent liquid solutions; 2 percent jellies; 5 percent ointments; 4 percent viscous liquids; 10 percent oral sprays;

5 percent ophthalmologic solutions and drops; and prefilled syringes containing lidocaine solutions. Products that are not customarily consumed, used, or stored by individuals in or about the household are not required to comply with PPPA regulations.

Table 1 shows estimated 1992 total market sales of prescription and OTC consumer-use preparations containing lidocaine for each of five therapeutic categories in which lidocaine products are sold. Total sales of lidocaine preparations in 1992 are estimated at \$36.6 million, about 12 percent of sales of all preparations in the five categories reviewed.

Based on IMS America data, the Commission's staff estimates 1992 unit sales of consumer-ready prescription 2-percent viscous lidocaine bottles at under 0.4 million bottles, a decrease of about 50 percent from the 1989 estimate of 0.8 million bottles. About 98 percent of prescription 2-percent viscous lidocaine preparations were marketed in consumer-ready 100 ml bottles in 1989 and in 1992. Many marketers and pharmacists are voluntarily providing CR packaging for these preparations.

Market shares of lidocaine-containing preparations (Table 2) show slight increases since 1989 in three categories: OTC Topical Anesthetics (up 1 percent); General Antiseptics (up 3 percent); and Burn Remedies (up 2 percent). The 9 percent increase in the market share of lidocaine preparations in the Topical Anti-infectives category is most likely due to new product introductions of combination antibiotic/anesthetic ointments and creams. The 1992 market share of prescription cortisone/lidocaine preparations remains unchanged from 1989.

TABLE 1.—ESTIMATED SALES: TOTAL MARKET<sup>1</sup> LIDOCAINE PREPARATIONS—TOPICAL DOSAGE FORMS

	1992	
	All preps Sales (\$ millions)	Lidocaine preps Sales (\$ millions)
Topical Anesthetics: (OTC) .....	97.7	2.0
(Prescription) <sup>2</sup> .....	3.3	3.3
General Antiseptics (OTC Only) .....	33.0	8.9
Burn Remedies (OTC Only) .....	25.1	9.2
Topical Anti-infectives (OTC Only) .....	135.4	13.1
Hydrocortisone Combinations (Prescription Only) .....	7.2	.1

TABLE 1.—ESTIMATED SALES: TOTAL MARKET<sup>1</sup> LIDOCAINE PREPARATIONS—TOPICAL DOSAGE FORMS—Continued

	1992	
	All preps Sales (\$ millions)	Lidocaine preps Sales (\$ millions)
Total .....	301.7	36.6

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis.

<sup>1</sup> Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets. Includes data provided by pharmaceutical company spokespersons.

<sup>2</sup> Includes only prescription 2-percent Viscous Lidocaine; all other prescription preparations in the category are for professional use.

TABLE 2.—ESTIMATED MARKET SHARES BY CATEGORY; LIDOCAINE PREPARATIONS 1992 AND 1989

	1992 (% Share)	1989 (% Share)
Topical Anesthetics (OTC)	2	1
General Antiseptics (OTC Only) .....	27	24
Burn Remedies (OTC Only) .....	37	35
Topical Anti-infectives (OTC Only) .....	10	1
Hydrocortisone Combinations (prescription Only)	2	2

Source: IMS America and CPSC Directorate for Economic Analysis.

**Toxicity.** [1] The toxicity of lidocaine has been demonstrated in animals and humans. Adverse effects have been observed in humans following both therapeutic usage and accidental overdosage. Lidocaine is readily absorbed through mucous membranes and abraded skin. The OTC preparations warn against using large quantities over raw or blistered areas or puncture wounds. The first-aid spray preparations warn against use near the mouth, eyes, ears, or other sensitive areas.

Absorption of lidocaine results in systemic side effects occurring most commonly in the cardiovascular and central nervous systems. Adverse effects range from minor effects, such as disorientation, dizziness, numbness, and drowsiness, to major effects, including convulsions, coma, and respiratory arrest. The blood level of lidocaine that is associated with toxic effects is a concentration of over 6 micrograms/milliliter (µg/ml). Major

adverse effects occur with blood levels over 10 µg/ml.

Animal toxicity studies have been carried out with lidocaine using several different species and routes of exposure. Oral LD<sub>50</sub> values for the rat and mouse are 317 mg/kg and 220 mg/kg, respectively. [1, Ref. Y] The median convulsive dose was calculated to be 75 percent of the lethal dose in one study. Id. The intravenous LD<sub>50</sub> values were calculated to be 20–34 mg/kg in various mice studies and 25 mg/kg in the rat. Id. Although these animal data clearly demonstrate the high toxicity associated with lidocaine, the human experience data described below are more relevant for extrapolation to toxicity in children.

The staff is aware of nine deaths attributed to the accidental or intentional overdose of lidocaine: The CPSC Death Certificate file contains a report of a three-year-old child who died in 1980 after the accidental ingestion of lidocaine. [4a] The causes of death were listed as cardiac arrhythmia and degenerative brain effects.

A second death certificate reports the 1981 death of a 2-year-old child after accidental overdose of a combination of two drugs, lidocaine and meperidine (a narcotic analgesic). Additional information is not available on this case. [4a]

The CPSC Reported Incident File contains the report of the death of an 11-month-old child, in 1984, from accidental ingestion of lidocaine. In this case, the child removed the CR closure from the product. [4b]

The FDA Adverse Reaction Reporting System reports an accidental death, in 1979, of a 13-month-old girl who ingested a Canadian viscous lidocaine product. The blood lidocaine concentration was 20 µg/ml. [4c]

A case reported in the literature describes the death, in 1986, of a 13-month-old boy. The boy had blood lidocaine levels of 19.5 µg/ml, remained unconscious, and was mechanically ventilated for 54 days. The child had suffered respiratory arrest at home prior to hospitalization. [1, Ref. Z]

A case investigated by CPSC staff involved the death in 1990 of a 14-month-old girl who ingested an unknown amount of 2-percent viscous lidocaine. Prior to the ingestion, the lidocaine had been applied to a diaper rash. The child's mother had placed the bottle in the crib while changing the child's diaper. The bottle had a CR closure, but it may not have been properly resecured. The mother did not believe the drug was hazardous, because she had been told by the pediatrician to rub lidocaine on the child's gums to

ease teething pain. The toxicology report revealed high levels of lidocaine in the blood (12 µg/ml) and liver. [16, Ref. 1]

Another death in 1990 involved a 15-year-old girl who drank up to 480 ml of an OTC first-aid liquid containing 2.5 percent lidocaine. The cause of death was aspiration of gastric contents secondary to lidocaine intoxication. The serum lidocaine level was 18 µg/ml. [16, Ref. 2]

Two adult deaths due to intentional overdose of lidocaine are also reported in the literature. In these two cases, the blood lidocaine levels were 40 µg/ml and 53 µg/ml, respectively. [1, Ref. S]

The following cases reported in the literature describe non-fatal adverse effects observed in young children following therapeutic administration or accidental ingestion of lidocaine:

A 22-month-old child, weighing 10 kg, ingested 20 to 25 ml (approximately 50 mg/kg) of 2-percent viscous lidocaine. The child arrived at the hospital convulsing and not breathing. The child was successfully resuscitated, and the seizures were controlled. The child was discharged after 2 days with no long-term effects. [1, Ref. AA]

A 3½-year-old child was given one tablespoon of 2-percent viscous lidocaine (approximately 21 mg/kg) for a sore throat. The dose was repeated 4 hours later. The child developed seizures and had a lidocaine blood level of 10.6 µg/ml. The child was transferred to Pediatric Intensive Care in respiratory distress. The child was alert approximately 10 hours following the initial seizure and was discharged the following day. [1, Ref. BB]

A 15-month-old boy developed seizures following the prescribed use of lidocaine. The child's lidocaine blood level was 4.9 µg/ml. [1, Ref. BB]

A mother used a finger to apply 2-percent viscous lidocaine to an 11-month-old child's gums for teething pain, five or six times a day for a week. The child developed seizures and had a blood lidocaine level of 10 µg/ml. The child was treated in the intensive care unit and recovered after 4 days. [1, Ref. CC] Many articles in the medical literature warn physicians about the hazards of prescribing lidocaine for teething pain and related symptoms in young children.

A 5-month-old boy weighing 6.5 kg suffered seizures and required 48 hours of hospitalization after 1 day of treatment with oral viscous lidocaine. [24, p. 3 & n. 2] The 3.8 µg/ml serum lidocaine level, measured 4 hours after arrival at the emergency room, was in the high therapeutic range. The infant

required intubation to maintain respiration.

In another case, a 2-year-old drank from a bottle of viscous lidocaine, choked, and began convulsing within 10 to 15 seconds. [24, p. 3 & n. 3] Aspiration of lidocaine resulted in its rapid absorption. Serum lidocaine levels were 0.5 µg/ml 4 hours after the ingestion. The child remained hospitalized for 14 days with intubation and respiratory support.

FDA's Adverse Reaction Reporting System contains reports of two children (5 months old and 1 year old) who developed seizures after being administered viscous lidocaine. [5]

For the period 1978 through April 1990, the CPSC's Children and Poisoning ("CAP") data base shows four ingestions of prescription viscous lidocaine and three ingestions of OTC lidocaine products by children under age 5. [6] All seven children were treated in National Electronic Injury Surveillance System ("NEISS") hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered by the children is not available.

Data collected by the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 [7] show 176 accidental ingestions of OTC lidocaine products, 18 of which exhibited toxic symptoms. These data also include 28 ingestions of prescription viscous lidocaine products, with 10 showing toxic symptoms. Details of the amount of product ingested or specific toxic symptoms are not available. This data base was discontinued after 1984.

For the years 1989 through 1991, the American Association of Poison Control Centers ("AAPCC") reported 2,422 ingestions of lidocaine-containing products, 341 of which are known to have produced symptoms related to the exposure. Children under age 6 were involved in 1,898 of these ingestions. [23]

In addition to the cases noted above, several cases of accidental lidocaine poisoning in adults are reported in the literature. The reported cases demonstrate extreme variability in the development of toxicity of lidocaine, with children appearing to be more sensitive to the central nervous system side effects of the drug.

**Level for Regulation.** The maximum level of lidocaine that does not produce serious side effects in children is not known. The recommended maximum single total dose of lidocaine for children is 5.0 mg/kg, which is approximately 50 mg in a 10 kilogram (kg) child. However, as noted above,

toxic effects were reported at therapeutic dose levels. The staff lacks sufficient information to establish that the reported cases involving toxic effects at therapeutic doses involved oral exposures (the route of administration most relevant to accidental ingestion) or that the proper therapeutic dose was not exceeded. It is possible, however, that a child who accidentally ingests a lidocaine preparation will already have received an intentional therapeutic dose of the preparation. In addition, the systemic toxicity of the drug is not the only hazard it presents; there is the risk of serious injury or illness caused by aspiration of substances that are swallowed while the mouth and throat are anesthetized by the drug. These considerations make it difficult to establish a package size that would not cause serious toxic effects if the contents are ingested by a small child.

Therefore, the Commissions staff recommended that the recommended maximum dose of lidocaine for a 10-kg child be reduced by a factor of 10 (referred to as an "uncertainty factor") in order to arrive at a level that would not cause serious injury or illness in young children. [1, 9, 24] After considering the comments on the proposal and other available information, the Commission accepted this recommendation. Therefore, products containing more than 5.0 mg of lidocaine in a single package will be subject to CR packaging standards.

**C. Dibucaine**

**Product form, dosage and packaging.** Dibucaine is used for temporary relief of painful sunburn, minor burns, scrapes, scratches, nonpoisonous insect bites, and external hemorrhoidal pain. OTC dibucaine preparations are marketed in 30-gm (slightly over 1 oz), 1-oz, 1.5-oz, and 2-oz tubes. It is used also in a few prescription preparations. It is also marketed in a 16-oz jar whose contents, according to the supplier, are used as the basis for a pharmacist-compounded and repackaged preparation. It is estimated that approximately 0.9 million tubes of dibucaine were sold to consumer outlets in 1992.

In 1994, the 13 suppliers of OTC dibucaine distributed 16 products, each in tubes of 25 grams (nearly 1 oz) or more. This reflects a decrease of over 50 percent in the estimated number of suppliers of generic OTC dibucaine since 1989, when there were 28 such suppliers. The 3 suppliers of prescription dibucaine preparations listed by Redbook in 1989 were not listed in 1992 or 1994.

Table 3 shows CPSC staff estimates of 1992 total market sales for OTC dibucaine preparations in the two categories in which dibucaine preparations are sold: OTC anti-hemorrhoidal and topical anesthetics. The market share of dibucaine-containing preparations reported in the topical anesthetics category remains at less than 1 percent, similar to the 1989 estimate. In the anti-hemorrhoidal category, dibucaine-containing preparations have an estimated 3 percent market share, down from 5 percent in 1989. Overall sales of dibucaine-containing preparations were an estimated \$4.4 million.

TABLE 3.—ESTIMATED SALES: TOTAL MARKET;<sup>1</sup> DIBUCAINE PREPARATIONS—TOPICAL DOSAGE FORMS

	1992	
	All preps Sales (\$ millions)	Dibucaine preps Sales (\$ millions)
Topical Anesthetics (OTC)	97.7	.1
Anti-hemorrhoidal (OTC) ..	161.3	4.3

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis

<sup>1</sup> Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets. Includes data provided by a pharmaceutical company spokesperson.

The recommended dose for adults is to not exceed 1 ounce (equivalent to no more than 300 mg of dibucaine) in 24 hours. The recommended dose for a child, 2 years of age or older, is not to exceed ¼ ounce (equivalent to no more than 80 mg of dibucaine) in 24 hours.

**Toxicity.** Dibucaine is one of the most potent and toxic local anesthetics. Dibucaine produces serious systemic effects on both the central nervous system and the cardiovascular system. Adverse effects can include convulsions, depression of heart muscle contractility, and death. Dibucaine is readily absorbed through the mucous membranes and should not be used around the eyes or mouth. Systemic absorption may occur following the application of large amounts of dibucaine to large areas of abraded or damaged skin, or following rectal administration. The FDA disapproved the use of dibucaine in sore-throat and mouth medicines because of the possibility of systemic toxicity from dibucaine absorbed through the mucous membranes of the mouth and throat. [1, Ref. K]

The toxicity of dibucaine has been demonstrated in animals and humans. Animal studies indicate that dibucaine is lethal at three mg/kg in dogs, and one mg/kg in monkeys. [1, Ref. J] The toxic dose of dibucaine in humans is not known. However, the suggested maximum adult dose is 25 mg of dibucaine. [1, Refs. H, P]

The staff is aware of eight deaths of young children resulting from ingestion of dibucaine local anesthetics and of one death resulting from the rectal use of a dibucaine ointment:

During the 23-year period of 1951 through 1973, one manufacturer received reports of 11 cases of acute intoxications of young children from dibucaine topical preparations. [1, Refs. J, L] Ten of the cases involved accidental ingestion; one case involved the rectal use of dibucaine ointment in a 2-month-old infant. Four of the children who ingested the products died, as did the 2-month-old infant. Additional details of the incidents were not provided.

The CPSC Death Certificate File contains the report of a 2-year-old child who died in 1987 after accidentally ingesting a dibucaine cream used primarily for treating hemorrhoids. The child was found staggering by his mother, was lethargic, had seizures, and could not be resuscitated from respiratory arrest. The child had a dibucaine blood level of 1.3 µg/ml. [4d]

A second death certificate reports the death in 1988 of a 21-month-old child who accidentally ingested 22.5 grams of a dibucaine hemorrhoid ointment. Cardiorespiratory arrest and convulsions developed. The child could not be resuscitated after suffering cardiac arrest. [1, Ref. N; 4e]

CPSC has obtained a medical examiner's death report of an 18-month-old who died on July 10, 1994, after ingestion of a 1-percent dibucaine ointment. The victim may have ingested up to ½ oz of the product. The victim's father found the child suffering seizures in the family's kitchen. The victim was taken to a medical center and then transferred to a major children's hospital. The child was pronounced dead approximately 7 hours after the ingestion. [25]

Because of deaths reported from oral ingestion of dibucaine products, a warning was added to the labels of dibucaine products, stating:

"Should not be swallowed. Swallowing can be hazardous, particularly to children. In the event of accidental ingestion, consult a physician or poison control center immediately."

For the period of 1978 through February 1990, the CPSC CAP data base shows two ingestions of dibucaine products by children under age 5. [6] Both children were treated in NEISS hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered is not available.

Data from the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 show 113 ingestions of dibucaine products. Six of those individuals exhibited toxic symptoms. [7] This data base was discontinued after 1984.

The AAPCC National Data Collection System supplied to CPSC reports general data on the ingestion of topical local anesthetics, but does not contain specific information on the identity of the individual compounds involved. Lidocaine and dibucaine creams and ointments comprise only about 5 percent of the topical local anesthetics market. For the 5-year period 1984 through 1988, 10,330 cases of accidental ingestion of topical local anesthetics by children under age 5 were reported through that data system. [8] Of these cases, 883 exhibited minor-to-moderate symptoms and 10 were life-threatening or resulted in disability. The two cases that resulted in death were attributed to dibucaine, and are described above. Specific information on dibucaine ingestions was available for the years 1989 through 1991. The AAPCC received a total of 495 poison exposure cases involving dibucaine, 433 of which involved children under age 6. [23]

A review of the literature revealed one case in which a 12-month-old infant ingested a combination of three gm of boric acid and 300 mg of dibucaine. The child developed seizures, and also vomited due to the effects of the boric acid. The child was hospitalized and recovered fully after aggressive and intensive treatment. [1, Ref. M]

Level for Regulation. The high potency and toxicity of dibucaine are well known; however, an absolute level of safety for this drug is difficult to determine. Most cases of reported deaths contain little information about the concentration of the drug or the amount consumed. Ingestion of dibucaine, however, results in the same types of toxicity as does ingestion of lidocaine. The differences between the two compounds are in the potency and duration of action. Dibucaine is approximately 10 times more potent than lidocaine. Therefore, a correction factor of 10 was applied to the level for regulation derived for lidocaine to arrive at 0.5 mg as the level for regulation. [24]

This level of regulation for dibucaine is also supported by a case reported in the medical literature in which a 3-year-old child ingested 8 lozenges containing 1 mg of dibucaine each. The child died 8 hours later. The total dosage was approximately 0.5–0.8 mg/kg. [22] The author states that the child may have been sensitive to dibucaine.

#### D. Other Economic Considerations

[27] The total combined market for lidocaine and dibucaine (including OTC products and prescription viscous lidocaine) in 1992 totaled an estimated 13.4 million packages available to the consumer. This market declined 18 percent from the estimated 16.3 million packages reported in 1989. Decreases were reported in all formulations, most notably an estimated decline of 50 percent in the number of packages of consumer-ready viscous lidocaine.

Most lidocaine and dibucaine preparations are OTC products sold in packages that are not CR. The prescription creams/ointments in tubes are also in non-CR packaging.

Table 4 shows 1992 estimated total consumer-use units and market share by packaging type for the six categories in which IMS reports sales of lidocaine or dibucaine. Within the six categories, lidocaine or dibucaine preparations may not be marketed in specific package types. For example, there are no dibucaine preparations in spray packages. Additionally, there are no suppositories, pads, or wipes containing lidocaine or dibucaine. Units of prescription bottles used for 2-percent viscous lidocaine, discussed earlier, are excluded from this table. Lidocaine-containing preparations in all package forms amount to about 9 percent of topical anesthetic units. Nevertheless, lidocaine in spray packages dominates the market for spray topical anesthetic preparations (83 percent), and lidocaine in aerosol packages represents more than half (56 percent) of the topical anesthetics aerosol market. Lidocaine formulations packaged in tubes (creams, ointments, and gels) and bottles (liquids and gels) comprise 7 and 8 percent of units in their respective topical anesthetic package categories. Dibucaine-containing preparations, packaged only in tubes, represent about 1 percent of all tubes.

TABLE 4.—ESTIMATED 1992 UNITS;<sup>1</sup> CONSUMER-USE TOPICAL ANESTHETICS CONTAINING LIDOCAINE, DIBUCAINE, OTHER BY PACKAGE TYPE

Package type	1992	
	Units (mil-lions)	Market share (per-cent)
Spray/Lidocaine .....	2.5	83
Spray/Dibucaine .....	.....	.....
Spray/Other .....	.5	17
Aerosol/Lidocaine .....	1.9	56
Aerosol/Dibucaine .....	.....	.....
Aerosol/Other .....	1.5	44
Tube/Lidocaine .....	6.2	7
Tube/Dibucaine .....	.9	1
Tube/Other .....	82.9	92
Bottle/Lidocaine .....	1.5	8
Bottle/Dibucaine .....	.....	.....
Bottle/Other .....	16.9	92
Suppository/Lidocaine .....	.....	.....
Suppository/Dibucaine .....	.....	.....
Suppository/Other .....	18.4	100
Pad or Wipe/Lidocaine .....	.....	.....
Pad or Wipe/Dibucaine .....	.....	.....
Pad or Wipe/Other .....	.8	100
Unknown/Other .....	2.3	.....
Total Lidocaine .....	12.1	9
Total Dibucaine .....	.9	1
Total Other .....	123.3	90

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis

<sup>1</sup> Extrapolated from IMS America, Ltd. data to estimate total sales to drug stores, food stores, and mass merchandise outlets for the six IMS categories in which lidocaine and dibucaine preparations are reported. Includes data provided by pharmaceutical company spokespersons.

TABLE 5.—ESTIMATED UNITS BY PACKAGE TYPE;<sup>1</sup> LIDOCAINE/DIBUCAINE PREPARATIONS 1992 AND 1989

Package type	1992 Units (mil-lions)	1989 Units (mil-lions)
Tubes .....	7.1	7.6
Prescription bottles .....	.4	.8
Aerosols .....	1.9	3.2
Spray/Bottles .....	4.0	4.7
Total .....	13.4	16.3

Source: IMS America, Ltd. and CPSC Directorate for Economic Analysis.

<sup>1</sup> Extrapolated from IMS America, Ltd. data to estimate total unit sales to drug stores, food stores, and mass merchandise outlets.

The following discussion of the economic impact of this rule is organized by the type of packaging. As noted above, lidocaine creams, ointments, gels, viscous solutions, and liquids are packaged in tubes, bottles and various spray containers. Dibucaine formulations are available only in creams and ointments and are packaged only in tubes.

Prescription viscous lidocaine packaged in prescription bottles. Most, if not all, suppliers of prescription 2-percent viscous lidocaine formulations dispensed in bottles are voluntarily using CR packaging in response to the Commission's 1986 request. CR packages for prescription bottles are readily available at low incremental cost. Therefore, the rule is not expected to have an adverse economic impact on businesses of any size that market viscous lidocaine in prescription bottles.

Lidocaine or dibucaine creams, ointments, and gels packaged in tubes. In 1992, an estimated 51 percent of lidocaine preparations (6.2 million units) and 100 percent of dibucaine preparations (0.9 million units) were packaged in tubes containing 2 oz or less. There are currently no commercially available CR packages to substitute for the small pharmaceutical tubes used to package creams, ointments, and some gels. Therefore, the PPPA requirement for topical anesthetics containing lidocaine or dibucaine will affect all marketers of the preparations packaged in tubes.

The Commission's staff identified nine marketers of OTC lidocaine preparations packaged in tubes. Four marketers that are considered "small businesses" account for about 11 percent of the lidocaine/tube preparation market. Dibucaine, available only in tubes, is marketed by 16 suppliers. Fifteen of these suppliers market generic and/or private-label products as part of extensive product lines. Specific sales data for the individual small marketers were not reported. However, a pharmaceutical company spokesperson reports the aggregate market share of small marketers is quite small. [27]

Under this rule, each marketer of lidocaine/dibucaine preparations packaged in tubes will have to consider one of three possible marketing options: development of acceptable CR packaging; reformulation to eliminate lidocaine or dibucaine as an ingredient; or withdrawal from the tube segment of the topical anesthetic market. Each marketer will probably choose the least costly alternative. These options are discussed below.

Reformulation: Marketers can reformulate to non-lidocaine/ dibucaine preparations and supply them in tube sizes comparable to those they are now using. Since many marketers have tube filling operations, this would enable the use of existing filling equipment. However, reformulation may result in the loss of a market "niche" held by a specific preparation. There also are

potential costs associated with reformulation. For example, there may be research and development costs, costs to obtain FDA approval (if required), and additional marketing costs to regain market share. With this option, consumers would forego the use of the original preparations.

Develop CR packaging: Marketers can work with package manufacturers to develop CR multi-dose tubes compatible with specific lidocaine or dibucaine formulations. The Commission concludes that the development of CR packaging for these tubes is technically feasible, practicable and appropriate based on existing technology. [26] A pharmaceutical trade association contacted several major developers and suppliers of CR closures and provided the Commission with cost and time estimates to develop a CR tube package. The information supplied by the trade association stated that the development cost estimates ranged from \$145,000 to \$585,000 and that development would take 27-36 months. Additional time would be needed for stability testing of the preparation in the new package. Increased costs of up to \$4.40 per tube are estimated if development is done on an individual company basis. Since marketers sell most lidocaine and dibucaine creams and ointments to pharmacies at prices ranging from less than \$1.00 to about \$6.00, the potential incremental cost of the tube might outweigh the cost of certain preparations provided by small marketers. [24]

Discontinue marketing: Some marketers may be unable to absorb the costs associated with the development of CR packaging for tubes while maintaining a competitive price for their products. The alternative option, reformulation, may lead to the loss of a market "niche." As a result, some firms may decide to withdraw the lidocaine/ dibucaine tubes from the market. Based on 1992 estimated total sales of all lidocaine and dibucaine preparations (\$41 million), with tubes accounting for about 53 percent of units sold, the potential loss of sales may be about \$22 million if all such products were withdrawn. For small firms that have extensive product lines, abandoning lidocaine or dibucaine preparations may not be very disruptive, particularly if unit sales are low. For a few small companies with limited product lines or a niche preparation, withdrawal could result in disruption and financial loss. One small firm estimated lidocaine preparations represent 30 percent of sales, of which one-third is attributed to a preparation packaged in a tube. The other two small firms marketing

lidocaine in tubes would have less than 1 percent and less than 3 percent of their respective markets affected if these products are withdrawn. Thus lidocaine in tubes represents between less than 1 percent to 10 percent of these companies' total sales. As in the reformulation option, consumers would experience a loss of utility if manufacturers adopt this option. However, preparations with similar therapeutic qualities to any preparations withdrawn are available in the marketplace.

OTC Lidocaine liquids and gels packaged in bottles, pump sprays, metered sprays, and aerosol sprays. OTC lidocaine preparations in bottles and spray packages represented about 45 percent (5.9 million units) of lidocaine shipments in 1992. Ten marketers of these preparations have been identified. The preliminary economic assessment discussed the availability and incremental costs of CR packaging for these preparations. The lack of comments regarding the economic effects of the proposal for bottle and spray packages confirms the Commission's initial finding that costs to provide special packaging are comparatively low and likely not to have a substantial effect on marketers.

#### E. Comments on the Proposal

Ten comments were received on the proposal. The comments focused on several areas, including the level of drug for regulation, contentions that there is a lack of information to include all products with lidocaine and dibucaine, and the lack of a CR tube for creams and ointments. One commenter supported the rule. The Commission's responses to the comments are explained below.

##### *Scope of the proposed regulation.*

*Comment:* Several commenters indicated that the Commission had insufficient information to require CR packaging of all products containing lidocaine and dibucaine. The Nonprescription Drug Manufacturers Association (NDMA) stated that the Commission had not demonstrated that a significant number of children have been harmed by the accidental ingestion of OTC lidocaine and dibucaine. The NDMA contracted with Pegus Research to analyze poison exposures to OTC products containing topical anesthetics. The study examined poisoning incidents associated with OTC products containing lidocaine, dibucaine, and benzocaine.

*Response:* The staff's review of the toxicity of lidocaine and dibucaine was included in the February 27, 1992, briefing package for the proposed rule and updated in a supplemental package

dated May 27, 1992. The documents described nine deaths attributed to the accidental or intentional overdose of lidocaine and several medical case reports of adverse effects following therapeutic administration or accidental ingestion of lidocaine. Six of these deaths were children under 5 years of age. The majority of the cases where the formulation is known involved 2-percent viscous lidocaine (a prescription drug). One death followed an intentional ingestion by a 15-year-old of an OTC product containing 2.5 percent lidocaine. The staff toxicity review described the deaths of six children (two known to be under 5 years of age) following the ingestion of dibucaine. An additional death of an 18-month-old girl following the ingestion of dibucaine ointment was reported recently.

While the data do not indicate whether any of the accidental deaths of children associated with lidocaine involved OTC formulations, these products contain amounts of lidocaine similar to the prescription viscous formulation. Young children are being exposed to OTC topical anesthetic products containing lidocaine or dibucaine. This is verified by the NDMA-sponsored study. The CPSC staff's analysis indicates that the proportion of children under 6 exposed to lidocaine or dibucaine is significantly larger than the proportion of children in this age group exposed to other substances.

The Commission concurs with the conclusion of the NDMA-sponsored analysis that the lidocaine and dibucaine poisonings generally do not have severe outcomes. However, four deaths from these compounds were documented from 1987 to the present, attesting to the toxicity of these substances.

Cream and ointment products are included in the rule because details from the three most recent deaths following ingestion of dibucaine (1987, 1988, 1994) specified that dibucaine was in a cream or ointment formulation. These deaths demonstrate the toxicity of dibucaine and the potential for toxicity from cream and ointment formulations in general.

*Comment:* A manufacturer of a male genital desensitizing agent containing lidocaine indicated that the Commission had not considered this product class and therefore it should not be covered in the rule.

*Response:* At the time of the proposal, the staff was unaware of the FDA's monograph for male genital desensitizing agents. Because the ingestion cases do not specify the

formulation of the OTC lidocaine products, the staff cannot determine if any poisoning exposures are attributed to this class of products. However, the rule should not exempt these products, since the potential for injury and death from these lidocaine-containing products is equivalent to other OTC lidocaine spray products. The amount of lidocaine in one metered spray of this product exceeds the 5 mg regulated amount. Tests of a similar metered-spray package have shown that 48 of the 50 children in the test for child resistance actuated the spray and that, on average, each of the 48 actuated the spray over 90 times each during the 10-minute test. [30]

Inhalation and aspiration of aerosol and spray products can result in absorption from the lungs. The local anesthetic drugs are also readily absorbed through mucous membranes of the mouth and throat, therefore, an "ingestion" does not have to occur to result in toxicity. Aerosol and spray product formulations are included in the proposed rule because a child can access a potentially harmful dose. There is a documented case of a child spraying himself with another topical anesthetic (benzocaine 20 percent). The child experienced cardiac arrest resulting in death.

*Comment:* One commenter indicated that the rule should be clarified to exempt formulations of lidocaine intended for administration by injection. The commenter contended that lidocaine for injection purposes does not fit the definition of a household substance as described in the PPPA regulations.

*Response:* The Commission disagrees with the commenter's contention that the PPPA does not apply to injectable prescription pharmaceutical products. The definition of "household substance" in section 2(2) of the PPPA includes drugs and other hazardous substances that are "customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household." 15 U.S.C. 1471(2). However, the PPPA does not extend to products used exclusively in hospitals, in nursing homes, or by medical professionals, because such items are not customarily consumed, used, or stored by individuals in or about the household. If the injectable lidocaine preparations truly are for professional use only and are not available to the consumer for use or storage at home, it is not necessary to separately state an exemption of these products.

However, if lidocaine injectable formulations were customarily available

for home consumer use (as is the case with insulin), the products would not be exempted. Injectable lidocaine is a liquid formulation that could be accessed by children if available in the home. The commenter provided no rationale for excluding these products in that case.

The staff is aware of other lidocaine-containing prescription products that may be used exclusively by physicians, dentists, and in hospital settings. A company supplied the staff with information about the usage of these products during a meeting on October 15, 1992. The products include creams, jellies, and liquids. The liquids are available in prefilled syringes, ampules, sprays, and bottles. As discussed above, if these products are for professional use only and are not obtained by consumers for use or storage at home, the requirements of the PPPA do not apply.

*Regulated levels of lidocaine and dibucaine.* *Comment:* Several comments were received regarding the proposed amount (level) of the two drug products that should be regulated. One commenter questioned the use of a 10-fold uncertainty factor for lidocaine. Another commenter questioned the use of an additional 10-fold factor for dibucaine.

*Response:* The level for regulation of lidocaine- and dibucaine-containing products is based on the maximum recommended single therapeutic dose of lidocaine (5 mg/kg or 50 mg for a 10 kg child). A 10-fold uncertainty factor was used to arrive at the 5 mg level of lidocaine.

It is true that a 10-fold uncertainty factor applied to a recommended therapeutic dose provides a more stringent level for regulation than that normally used by CPSC staff. Applying the uncertainty factor to the therapeutic dose is justified for lidocaine and dibucaine, however, for the following reasons: (1) Toxicity can occur at therapeutic doses of lidocaine and dibucaine; (2) children are particularly susceptible to the toxic effects of repeated therapeutic doses of these drugs; (3) since these drugs are used on children as well as adults, an accidental exposure could occur following a previous therapeutic dose of the drugs; (4) the metabolites of lidocaine and dibucaine are potentially toxic, especially to young children; and (5) risks of aspirating food or liquids are associated with oral exposure to these drugs, even at nonlethal and therapeutic doses. These reasons support the level chosen for regulating lidocaine.

The level for regulation of dibucaine was derived from the level for lidocaine, based on the relative difference in

potency of the two drugs. Dibucaine is approximately 10 times more potent than lidocaine; therefore, the staff applied an additional 10-fold factor to the 5 mg level for lidocaine to arrive at a 0.5 mg level for dibucaine. While the commenter questioned the use of the additional 10-fold correction factor for dibucaine, the commenter agreed that dibucaine is approximately 10 times more potent than lidocaine.

The commenter suggested an alternative level derived from ingestion cases reported to the company. The commenter considers the cases to be confidential information, so they are not discussed here in detail. However, in addition to the cases discussed by the commenter, there was a death of a 3-year-old child following the ingestion of 8 lozenges, containing 1 mg of dibucaine each, that was reported in the medical literature in 1955. The child died 8 hours later from respiratory failure. The total dosage was approximately 0.5–0.8 mg/kg. The authors speculated that the child may have been sensitive to this drug product; however, dibucaine is very potent and readily absorbed from mucous membranes. The FDA later disapproved the use of dibucaine as an active ingredient in oral health-care products. The level of regulation being adopted for dibucaine (0.5 mg) is supported by this reported literature case. The Commission believes that these are appropriate levels for regulating lidocaine and dibucaine.

*Comment:* One commenter indicated that a 10-fold correction factor was not necessary for metered spray products because a child cannot spray enough to obtain a toxic blood level. The commenter indicated that the male genital desensitizing agent packages "already are child resistant in that the drug product is dispensed in a metered spray." The commenter estimates that only 1/3 of each spray would be absorbed by a child. The commenter states that any risk of aspiration is unsupported.

*Response:* Metered sprays are tested for child-resistance as described in 16 CFR 1700.20 for unit packaging. The commenter provided no test results describing how many sprays a child can access during the test period. It should be noted that each spray of the commenter's product contains 7.68 mg of lidocaine per spray, an amount greater than the recommended level for regulation. This product contains 150 sprays per container. The FDA monograph for these preparations restricts the dosage to 10 mg of lidocaine per spray. Thus each spray of a male genital desensitizing agent can contain two times the proposed level for

regulation for lidocaine. The commenter did not supply data to support its estimate of the access and absorption of the product.

The commenter also contended that the 10-fold uncertainty factor for lidocaine was established because of the Commission's concern for the aspiration hazard for sprays. This is not the case. Aspiration following oral usage of local anesthetics is documented in the medical literature and in CPSC injury records and is not limited to aerosol products. [24, Refs. 3, 7]

*Comment:* Commenters stated that the 5-mg level for lidocaine and the 0.5 mg level for dibucaine were below the therapeutic concentrations recommended by the FDA for cream and ointment preparations.

*Response:* The level for regulation does not affect or restrict the concentration of the product. The Commission's rule simply requires that products containing more than the regulated level must have CR packaging. The comment about the regulated levels being below the therapeutic concentrations can be interpreted as a complaint that the level is too restrictive and that all lidocaine- and dibucaine-containing products would require CR packaging. However, this is not the case, since the PPPA allows a manufacturer or packager to package an OTC product in one size of non-CR packaging if the manufacturer also supplies the products in CR packages and the non-CR package is labeled properly. The amount of product in the noncomplying package is not restricted.

*Effectiveness of Requiring CR Packaging.* *Comment:* One commenter supported the rule but stated that CR packaging would have prevented only a few of the deaths. This commenter stressed the need for enhanced educational activity. In addition, several commenters indicated that the viscous lidocaine responsible for two of the deaths was already in CR packaging. Other commenters indicated that the rule would have a limited effect, since no deaths have occurred in the past several years.

*Response:* Several of the deaths described in the toxicity review were accidental or intentional overdose cases. The purpose of discussing these cases is to illustrate the toxicity of the products. The results of the study of ingestion cases indicate that children are accessing products containing lidocaine and dibucaine. There were 676 ingestions of lidocaine-containing products and 110 ingestions of dibucaine-containing products by children under 5 years of age reported to poison control centers in 1992. [29]

While most of these children did not experience major effects, each of the ingestions had the potential to result in serious injury or death. For example, with dibucaine, a company reported four deaths of children who accidentally ingested dibucaine products from 1951 to 1973. Two more deaths were reported in 1987 and 1988, more than 10 years after the last reported death. The death reported in 1994 demonstrates that the risk of injury from dibucaine continues to exist. CR packaging requirements may prevent future deaths from products containing these ingredients.

No information is available as to whether the "CR" packaging, used voluntarily by several companies, actually meets the criteria of the PPPA regulations. A requirement for CR packaging of these products, instead of voluntary usage, would permit CPSC to enforce the PPPA requirements for these products.

CR packaging has saved many lives, but CR packaging is not child proof. The Commission agrees that education is an important part of poison prevention. The Commission acts as the secretariat for the Poison Prevention Week Council, which promotes the poison prevention message.

Development of CR Tubes. Closures that can be put on the small tubes that are in current production to make them child resistant are not currently commercially available. The following discussion addresses some general comments related to packaging for the cream and ointment products.

*Comment:* One manufacturer supplied limited test results of a 1-inch diameter plastic squeeze tube with a European 18-mm ASTM type IA closure. The company reported that the package was closed at 7 inch-torque-pounds (ITP). Twenty children were tested, and eleven children were able to open the package during the test period. None of the children used teeth to open the package. The commenter contended that these test data show that CR tubes are not technically feasible.

*Response:* The staff indicated in the proposed rule that special packaging for tubes could be achieved by using commercially available 22-mm closure bottle threads on a suitable laminated plastic tube. This would allow the use of a "senior friendly" ASTM type IA continuous threaded closure to be used to obtain child-resistance. The staff is unaware of any data from protocol tests conducted on a tube with the 22-mm ASTM type IA closure.

The child-resistance function of the European closure used by this commenter is unknown. This closure has never been tested by the

Commission on any package. It is difficult to know whether the failures in the test were associated with the closure itself or a problem with the combination of the closure and tube. The package tested had a small diameter closure, and 7 ITP is a very low closing force. Both of these factors make the package more accessible to children. The larger closure size (22 mm) proposed by the CPSC's staff is harder for children to remove and easier to put on at higher forces. These data do not change the Commission's view that a plastic tube can be made CR using a 22-mm ASTM type IA closure and existing technology. See also Section E.2, below.

*Comment:* Commenters indicated that unit packaging is not appropriate for products containing lidocaine and dibucaine because the FDA does not define a dose for lidocaine- and dibucaine-containing creams and ointments. Commenters indicated that people use varying amounts of these products depending on the indication for use and the potential for partial use exists. In addition, the NDMA stated that one of their members attempted to package in a foil pouch and could not achieve stability of the product.

*Response:* The Commission is aware of the lack of a defined dose for lidocaine and dibucaine. The Commission agrees that nonreclosable packaging for many of the creams and ointments may not be possible due to this variation in the definition of single use and the potential for residual product in the package. It is difficult to package a unit amount for these products that will not result in potential harm to children if it is not completely used. A package cannot be marketed containing less than the regulated amount, because this level is below the therapeutic level required by the FDA.

The technical finding of appropriateness includes shelf life and stability. Neither the NDMA, its member companies, nor other commenters supplied data to document the lack of stability in pouches. The staff is aware of a lidocaine-containing product packaged in foil pouches. This product is currently used in industrial settings, although the company advertises the potential for home use. The Commission recognizes that not all formulations are equivalent; different ingredients have different stability properties. However, the Commission believes that suitable pouch materials can be found for any lidocaine- or dibucaine-containing product. Because of the problem of hazardous residual amounts, however, the amount packaged would have to be extremely small. Therefore, pouches or other unit-dose packages may not be a

practical way to market these products to comply with the regulation.

*Comment:* Bottles and jars are unsuitable for cream and ointment formulations of hemorrhoidal relief use products, and anesthetic first aid products due to preservation and contamination issues.

*Response:* Other creams, such as cosmetic cold creams, are packaged in jars. However, the usage of these products differs substantially from the usages of lidocaine- or dibucaine-containing products. Since lidocaine- and dibucaine-containing products are used in the anal area (hemorrhoidal preparations) or on open wounds (first aid preparations), the Commission agrees that contamination is possible if individuals reenter the container for more product without washing their hands thoroughly. This limits the appropriateness of jars and bottles for these products.

*Comment:* Plastic or laminate tubes are not a viable alternative. One commenter reported that it cannot achieve stability of the lidocaine product in plastic or laminate tubes.

*Response:* Metal tubes currently are used for packaging many lidocaine-containing products and all the dibucaine-containing products. The proposed rule indicated that manufacturers may have to change from a metal tube to a plastic tube to achieve child-resistance. No commenter supplied data to support the claim that stability cannot be attained in plastic or laminate tubes. One manufacturer currently markets a lidocaine-based cream product in a plastic tube. Although the different vehicles in different formulations have different stability properties, development testing will determine which plastics or laminates are compatible with any particular formulation.

*Comment:* Tubes cannot be made CR because children will bite through the tube, thereby gaining access to the tube's contents. The NDMA cited the opinion of Dr. Alexander Perritt, president of Perritt Laboratories, a CR package testing laboratory.

*Response:* One NDMA member supplied limited child test data to the Commission staff. The company tested a plastic tube with a CR closure that allegedly meets the different European child-resistance standards on other types of packaging. While many of the 20 children tested in these tests opened the tube package, none did so with their teeth. There is no reason to conclude that tubes cannot be made sufficiently strong to withstand the teeth of children under age 5.

Additional information on the technical feasibility of plastic tubes is in Section E.2 of this notice.

### E. Statutory Considerations

1. Hazard to children. Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that because of the toxic nature of lidocaine and dibucaine preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting these substances.

2. Technical feasibility, practicability, and appropriateness. [26] In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

A. Technical feasibility. Lidocaine and dibucaine prescription and OTC products are presently packaged in tubes, spray containers, aerosols, and prescription containers. Most of the current packaging appears to be non-CR. The manufacturers of most viscous lidocaine-based non-oral prescription drugs have voluntarily packaged these drugs in consumer-ready CR prescription containers, even though they are not now required to do so under the PPPA regulations. [2, Ref. 3] For those manufacturers using non-CR packaging, various types and designs of non-tube CR packaging can be obtained.

CR packaging for OTC and prescription tubes can be accomplished by using commercially available bottle threads on plastic tubes. [2, Ref. 4] This would allow the use of readily available CR continuous-threaded closures on the tube. The Commission is aware of tubes now on the market that use bottle threads that could be outfitted with existing push-and-turn continuous-threaded CR closures. However, the

Commission does not know that such CR tubes are available in all the sizes currently used or lidocaine and dibucaine products. Therefore, it may be necessary for the manufacturers of these products to develop and test such packaging and incorporate it into their production lines. For those manufacturers using metal tubes, a change to a plastic tube, with appropriate stability testing, may be necessary.<sup>3</sup>

The Commission's determination that plastic tubes for these products are technically feasible has been confirmed by additional information. One cap manufacturer has notified the Commission that it has two cap designs that should be suitable. [37] One of these is currently commercially available in stock sizes as small as 20 mm, including the 22 mm size relied on in the proposal. This cap is child-resistant under the Commission's current regulations and meets the proposed senior-friendly requirements that may be adopted in the future (see Section I of this notice). The other cap is a squeeze-and-turn model that currently is not available in sizes below 28 mm. However, the manufacturer indicated that a development program for smaller sizes would require 3 months to produce prototypes, with full commercial availability in an additional 6 months.

Another manufacturer submitted information showing steps leading to a child-resistant plastic tube with appropriate stability characteristics that could be distributed commercially within a 52-week period. [35]

Technical feasibility for lidocaine prescription drug products and OTC spray containers that are presently in non-CR packaging is demonstrated by:

<sup>3</sup> There are other potential designs for making metal tubes CR. [26] Those designs are not being relied upon to make the technical feasibility finding in this proceeding, however, because they were not discussed in the proposal and, therefore, not made available for public comment.

One alternative CR package design that can be adapted to the existing metal tubes involves modifying a hinged snap cap. A continuous-threaded cap with a hinged snap cap can be permanently attached to the threads of the tube. The snap cap can be modified by providing a slot to allow opening of the package with a tool. This design, if developed, should be both CR and senior friendly. Moreover, it can be adapted to existing metal tubes and be mass produced without degrading the integrity of the product.

In addition, two prototype closures were made for metal tubes in the past. While these were never developed commercially, the prototypes illustrate different approaches that can be used to achieve CR tube packaging.

Furthermore, a company has indicated that metal tubes can be provided with threads that can accommodate existing continuous-threaded closures known to be child resistant on other package types. [31, 33]

(1) Many manufacturers are voluntarily using CR packaging (ASTM type IA closures on bottles) for prescription 2-percent viscous lidocaine consumer-ready preparations. (2) CR packaging for OTC products that are dispensed by spraying is also commercially available. Similar CR packaging designs have passed the proposed protocols for "senior friendly" packaging. (See section I below.)

CR packaging for aerosol and mechanical pump packaging is technically feasible and commercially available. The staff has information that this type of packaging can be made senior friendly. Additional time to develop suitable packaging may be necessary for some products containing lidocaine, due to the small size of the package. For example, male genital desensitizing agents containing lidocaine are available in metered spray packaging containing less than 1/2 oz. An overcap can be made for this product that would require the use of a tool to remove. It is unknown whether this feature would be senior friendly on this small package. If not, it may be necessary to use an alternative type of package, such as a larger diameter aerosol with a CR and senior-friendly overcap. Manufacturers of these products and other products available in small mechanical pumps or aerosols may need more than 1 year to develop senior-friendly CR packaging for these small packages. However, as noted above, larger diameter packages can be used, and such packages could be available within 1 year.

There are numerous continuous-threaded special packaging designs that can replace the non-CR continuous-threaded closures presently being used with viscous lidocaine prescription medication and OTC spray packaging.

CR packaging for aerosols also can be obtained, and a number of commercially available designs could be used. Therefore, the Commission concludes that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the forms of these products.

b. Practicability. Companies that are presently using CR packaging for viscous prescription drug products containing 2-percent lidocaine have implemented assembly line and mass production techniques in their manufacturing processes. This shows that it is practicable to package 2-percent viscous lidocaine-containing products in special packaging. No major problems from the manufacturing standpoint are anticipated in the change from non-CR to CR packaging, except for the multiple-dose tube-type packaging,

which may require the use of a contract packager.

The manufacturers of non-tube CR packaging do not anticipate any problems with supplying CR closures and containers. The major suppliers of CR packaging and materials indicate that they can supply more than the 6.2 million non-tube units estimated to be needed for lidocaine and dibucaine products.

In most cases, manufacturers can incorporate CR packaging into their existing packaging lines. If there were any problems in modifying or obtaining new equipment, i.e., capping, etc., a contract packager could be used in the interim to package lidocaine- and dibucaine-containing products. Many existing designs suitable for use with the products that are the subject of the regulation are currently being used in the packaging of other products, or can be readily developed. Special packaging for this product is therefore practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these products or the manufacturers of CR closure and capping equipment.

c. Appropriateness. Information available to the staff indicates that the CR packaging of lidocaine- and dibucaine-containing products is appropriate. Some companies are presently voluntarily using special packaging for their viscous prescription drug products containing 2-percent lidocaine. Other companies can utilize existing CR packaging designs and materials that are not detrimental to the integrity of the substance and do not interfere with its storage or use. Product shelf-life and integrity would not be expected to change, as it is anticipated that the same packaging materials could be used in contact with the product.

In the case of the multiple-dose CR tube packaging, however, it may be necessary, for example, to change from a metal tube to a plastic tube in order to provide a suitable mating surface for a CR cap. A major product manufacturer contacted by the Commission's staff indicated that it could find an appropriate multilayer plastic tube to replace the metal tube, but that the suitability of the new tube would have to be confirmed by protocol and product stability testing.

The Commission concludes, therefore, that special packaging is appropriate because it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission finds that special packaging is technically feasible, practicable, and appropriate.

3. Reasonableness. In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b). However, the Commission is not required to make a positive finding that the standard is reasonable. S. Rep. No. 91-845, 91st Cong., 2d Sess. 10 (1970).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the proposed rule is not reasonable.

4. Other considerations. Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

- a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;
- b. The manufacturing practices of industries affected by the PPPA; and
- c. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these items in making the various determinations in this notice.

#### F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is final,<sup>4</sup> except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. The Commission concludes that production of CR packaging can be fully implemented within a year from the publication of this rule. Therefore, the final rule will become effective April 10, 1996, as to all products subject to the rule that are packaged on or after that date.

This 1-year effective date may not allow adequate time to modify or replace all multiple-dose tubes, aerosols, and mechanical pumps if unusual difficulties are encountered, if the initial design intended to be CR is found to be unsuitable, or if data on the stability of the package contents need to be approved by the FDA. Where necessary, affected parties using any type of package can apply to the Commission for a temporary exemption

for the minimum period required to market their products in CR packaging. Applications for such exemptions should describe the efforts since the issuance of the final rule to implement complying package designs, explain why such efforts were diligent yet unsuccessful, and explain why additional efforts within a limited period should result in a complying package.

#### G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The initial certification indicated that the incremental costs for CR packaging for lidocaine preparations in aerosols and squeeze and spray bottles were comparatively low and likely to have a minimal effect on small businesses. Since the proposal, the staff has not received any additional information regarding adverse impacts on small business from comments on the proposed rule or from any other source. Therefore, the Commission concludes that the action to require CR packaging for topical anesthetics containing lidocaine packaged in aerosols, squeeze, and spray bottles will not have a significant economic effect on a substantial number of small entities.

The initial certification indicated also that packaging industry spokespersons were unaware of any appropriate types of CR packages for the small pharmaceutical tubes now used to package lidocaine and dibucaine creams and ointments (and some gels). The analysis concluded that if costs associated with the use of alternate packaging were prohibitive to small manufacturers, they may drop the product from their lines. Since the proposal, the staff has received additional information regarding

<sup>4</sup> The Commission voted on September 28, 1994, to issue this rule, and, at that time, the Commission directed that the rule would become final on its date of publication in the *Federal Register*. The Commission also directed that the date of publication would be April 8, 1995, or as soon thereafter as practicable.

adverse impacts of the proposed rule on small businesses.

Industry representatives have confirmed that there are no known CR closures commercially available for the small pharmaceutical tubes currently used to package creams, ointments, and some gels. Although CR unit-dose sachets are available, specific chemical formulations used in various preparations are reported to be incompatible with the materials used for the sachets. Since there is no alternative packaging currently commercially available, some small businesses advise that a PPPA requirement for creams and ointments containing lidocaine or dibucaine will result in the withdrawal of their products from the market. For a few small companies, particularly those with limited product lines or a niche preparation, withdrawal could result in disruption and financial loss, as discussed in Section D of this notice.

The Commission concludes that the action to require CR packaging for topical anesthetics containing lidocaine or dibucaine cream and ointment formulations may have an adverse effect on a few small businesses, but the number of businesses subject to such effects is not likely to be substantial.

For the reasons given above, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed PPPA packaging requirements for topical drug preparations containing lidocaine or dibucaine and presented its findings in the Preliminary Economic Assessment (Revised April 1992). Re-assessment of the possible environmental effects confirms the original determination that the rule will have no significant effects on the environment. There is little likelihood that CR unit dose tubes or sachets will replace the currently used multi-dose tubes. But even if unit dose packaging was available, the amount of additional packaging used would be relatively insignificant. Since there appears to be no alternative packaging for preparations packaged in tubes, the proposal will affect only preparations packaged in bottles and various forms of spray containers. Manufacturers of affected products will have time to use up existing closure inventories and will

not need to dispose of them in bulk. The rule will not significantly increase the number of CR packages in use and, in any event, the manufacture, use, and potential disposal of the CR packages present the same potential environmental effects as do the currently used packages.

Therefore, because this rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

#### I. Possible Changes to the PPPA Test Protocol

For the purpose of determining whether a package is CR, the current regulations provide that a package must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute test and by 80 percent of the panel after an additional 5-minute test. In order to determine that the package can be used by adults, the package must also be able to be opened and, if appropriate, properly closed within 5 minutes by 90 percent of a panel of 100 persons of ages from 18 to 45 years.

On October 5, 1990, the Commission proposed to amend its requirements under the PPPA. 55 FR 40856. In its proposal, the Commission concluded that, if CR packages were easier to use, more people would purchase and properly use CR packaging. Accordingly, the Commission proposed to substitute a panel of 100 older adults, of ages from 60 to 75 years for the panel of 18- to 45-year-olds. The Commission also solicited comment on allowing a 5-minute familiarization period in the adult test, during which the subject must open the package, before the 1-minute test. 56 FR 9181 (March 5, 1991). Other amendments, intended to simplify the current child test procedures, add a procedure for determining whether the package was adequately resecured by the adults, and to ensure that the tests produced more consistent results, were also proposed.

The Commission received a number of comments on the proposed rule, and contracted for additional testing to obtain information to address the comments on the proposed 5-minute/1-minute test. On March 21, 1994, the Commission published a **Federal Register** notice outlining the new information obtained, describing possible changes to the proposed test procedure, and requesting comment on these matters. 59 Fed. Reg. 13264. The possible changes to the test procedure included:

1. Dividing the 60-75-year-olds into 3 age groups and distributing the

participants in the groups to reduce variability.

2. Modifying the sequential testing scheme for older adults to provide more certainty about passing or failing "borderline" packages. This involves testing sequential panels of 100 seniors, up to 400 subjects, until a statistically valid determination is made.

3. Adopting the 5-minute/1-minute older adult test on which comment was sought previously.

The additional data also resulted in other minor changes to the proposal and provided information that the Commission can use to address other comments that did not warrant any changes.

The Commission may vote later this year on whether to issue these revisions to the PPPA protocol. Manufacturers of lidocaine- and dibucaine-containing products are urged to consider changing to CR packaging that not only meets the current PPPA requirements but will meet the new procedures that may be adopted. This would eliminate any need to change packaging twice in a relatively short period of time.

#### List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

#### J. Conclusion

For the reasons given above, the Commission amends 16 CFR 1700 as follows:

#### PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

**Authority:** Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraphs (a)(23) and (a)(24) and the introductory text of paragraph (a) is republished to read as follows:

#### § 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

\* \* \* \* \*

(23) Lidocaine. Products containing more than 5.0 mg of lidocaine in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

(24) Dibucaine. Products containing more than 0.5 mg of dibucaine in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

Dated: April 3, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Memorandum from CPSC's Directorate for Health Sciences, dated June 21, 1990 (toxicity).
2. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989 (technical feasibility, practicability, and appropriateness).
3. Memorandum from CPSC's Directorate for Economic Analysis, dated December 10, 1991 (a. economic information; b. regulatory flexibility analysis; and c. environmental assessment).
4. Death and injury data:
  - a. CPSC Death Certificate File, 1981, lidocaine.
  - b. CPSC Injury or Potential Injury Incident File, 1984, lidocaine.
  - c. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base, 1979, lidocaine.
  - d. CPSC Death Certificate File, 1987, dibucaine.
  - e. CPSC Death Certificate File, 1988, dibucaine.
5. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base.
6. CPSC National Electronic Injury Surveillance System Data Base—1978 through April 1990.
7. National Clearinghouse for Poison Control Centers Data Base 1980–1984.
8. AAPCC National Data Collection System 1984–1988.
9. Briefing package, OS #3309, "Draft Proposed Rules—Special Packaging Standards For Topical Anesthetics," February 27, 1992.
10. Briefing package, "Supplemental Information—Special Packaging Standards For Topical Anesthetics," May 27, 1992.
11. Log of Meeting with Ciba Consumer Pharmaceuticals, April 8, 1992.
12. Memorandum from CPSC's Directorate for Economic Analysis, "Market Sketch: Topical Preparations Containing Lidocaine and Dibucaine," Oct. 2, 1990 (revised April 23, 1992).
13. Memorandum from CPSC's Directorate for Economic Analysis, "Supplemental Information on Lidocaine and Dibucaine," April 23, 1992.
14. Memorandum from CPSC's Directorate for Health Sciences, "The Amount of Lidocaine and Dibucaine in Marketed Products," April 27, 1992.
15. Memorandum from CPSC's Directorate for Economic Analysis, "Amended Economic Data: Proposal to Require Child-Resistant Packaging for Topical Preparations Containing Lidocaine or Dibucaine," dated April 27, 1992 (with revised preliminary economic assessment).
16. Memorandum from CPSC's Directorate for Health Sciences, "Additional Human Experience Data for Lidocaine and Dibucaine," April 27, 1992.
17. Memorandum from CPSC's Directorate for Health Sciences, "Supplemental Information on Lidocaine and Dibucaine," May 28, 1992.
18. Log of Meeting with NDMA Lidocaine/Dibucaine Task Force, October 15, 1992.
19. Comments on proposed rule (10). On file in the Office of the Secretary.
20. Log of meeting with Ciba Consumer Pharmaceuticals, January 11, 1994.
21. Log of Meeting with NDMA Lidocaine/Dibucaine Task Force, May 25, 1994.
22. McClenahan, W., Fatal Poisoning with Dibucaine Hydrochloride (Nuporal) Lozenges, *Journal of American Medical Association*, 158(7), 565, 1955.
23. Memorandum from Terry L. Kissinger, EPHA, "Response to Comments and analysis of Available Data Regarding Child-resistant Packaging for Topical Anesthetics Containing Lidocaine or Dibucaine," April 29, 1994.
24. Memorandum from Susan C. Aitken, Ph.D., HSPS, "Health Sciences Staff Responses to Comments on Proposed Packaging Standards for Lidocaine and Dibucaine," July 19, 1994.
25. Memorandum from Terry L. Kissinger, EPHA, "Recent Death Involving Ingestion of a Dibucaine-Containing Product," July 27, 1994.
26. Memorandum from Charles J. Wilbur, HSPS, "PPPA Final Rule Lidocaine and Dibucaine Technical Feasibility, Practicability, and Appropriateness," July, 1994.
27. Memorandum from Marcia P. Robins, ECSS, "Final Economic Assessments: Proposal to Require Child-resistant Packaging for Topical Anesthetics Containing Lidocaine or Dibucaine," June 15, 1994, (and telephone conversation 10/1/93).
28. Letter from Vincent De Stefano (Ciba Consumer Pharmaceuticals) to Ann Brown, June 10, 1994.
29. Poison Control Centers Toxic Exposure Surveillance System, 1992.
30. Wilbur, Charles J., Laboratory Report, form 221, Non-CR Finger Mechanical Pump Spray with Overcap, 2 fl. oz., S-400-0802, CPSC, August 2, 1994 (Confidential).
31. Memorandum to file, Mike Gidding, CEAL, "Memorandum of visit to Teledyne Corporation," August 4, 1994.
32. Letter from Andrew S. Krulwich and Julie Jacobs, counsel to Combe, Inc., to Eric A. Rubel, General Counsel, in support of exemption for OTC topical lidocaine preparations, September 8, 1994.
33. Memorandum from Suzanne Barone, HS, to the Commission, "Supplemental Information on Lidocaine and Dibucaine," September 9, 1994.
34. Vote sheet from the Office of the General Counsel to the Commission, with revised **Federal Register** notice, September 9, 1994.
35. Log of meeting and attached material submitted by a manufacturer—FOR OFFICIAL USE ONLY.
36. Letter from John B. Dubeck, Keller and Heckman, on behalf of Pound International, Inc., September 12, 1994.
37. Letter from Jeffrey C. Minnette, Sunbeam Plastics, September 16, 1994.
38. Memorandum from Marcia Robins, ECSS, to Suzanne Barone, Ph.D., Project Manager, HS, "Lidocaine/Dibucaine" (about share of revenue for lidocaine in tubes for three small companies), September 19, 1994.
39. Letter from Andrew S. Krulwich and Julie Jacobs, Wiley, Rein & Fielding, on behalf of Combe, Inc., September 20, 1994.
40. Tape recordings of Commission briefing on September 21, 1994 (portion containing discussion of confidential data is for official use only).
41. Letter from John Dubeck, Keller and Heckman, representing Pound International, September 26, 1994 (non-confidential version).
42. Additional data from AAPCC, September 27, 1994.
43. Revised draft **Federal Register** notice, September 27, 1994.
44. Tape recording of Commission meeting on September 28, 1994.
45. Separate statements of the Commissioners.

[FR Doc. 95-8628 Filed 4-7-95; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 290

#### Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Final rule.

**SUMMARY:** This administrative amendment is published to inform potential FOIA requestors of the geographical coverage of Wyoming from the Western region to the Central region as part of its reorganization. This part also authorizes the "DCAA Label 4" (For official use only coversheet).

**EFFECTIVE DATE:** (April 10, 1990).

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Henshall, Attn: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6168, telephone 703-274-4400.

#### List of Subjects in 32 CFR Part 290

Freedom of information.

Accordingly, 32 CFR Part 290 is amended as follows:

**PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM**

1. The authority citation of part 290 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. Appendix B to part 290 is amended as follows:

a. Regional office CALIFORNIA is amended after "Oregon" by adding the word "and", and after "Washington" by removing the words, "and Wyoming."

b. Regional office TEXAS is amended after "Wisconsin" by adding the state "Wyoming".

3. Appendix C to part 290 is amended by adding new paragraph (c)(3) to read as follows:

**Appendix C to Part 290—For Official Use Only**

\* \* \* \* \*

(c) \* \* \*

(3) DCAA Label 4, FOUO Cover Sheet.

This form may be used to further identify FOUO information.

\* \* \* \* \*

Dated: April 3, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-8652 Filed 4-7-95; 8:45 am]

BILLING CODE 5000-04-M

**32 CFR Parts 354, 355, 357, 359, 360, 361, and 374**

**Organizational Charters; Removal of Parts**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense hereby removes obsolete parts concerning organizational charters within the Department of Defense from title 32 of the Code of Federal Regulations. These organizations are specifically identified as Under Secretary of Defense for Policy (DoD Directive 5111.1); Principal Deputy Under Secretary of Defense for Policy (DoD Directive 5111.3); Assistant Secretary of Defense for Nuclear Security and Counterproliferation (DoD Directive 5111.5); Assistant Secretary of Defense for International Security Affairs (DoD Directive 5111.7); Assistant Secretary of Defense for Strategy, Requirements, and Resources (DoD Directive 5111.8); Director of Net Assessment (DoD Directive 5111.9); and Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (DoD Directive 5138.3). These parts have served the purpose for which

they were intended and are no longer valid.

**EFFECTIVE DATE:** March 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301-1155.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Parts 354, 355, 357, 359, 360, 361, and 374**

Organization and functions (Government agencies).

**PARTS—[REMOVED]**

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR parts 354, 355, 357, 359, 360, 361, and 374 are removed.

Dated: April 3, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-8653 Filed 4-7-95; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD09-95-004]

**Drawbridge Operation Regulations; Chicago River, IL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of revised temporary deviation.

**SUMMARY:** The Commander, Ninth Coast Guard District, has revised the bridge opening schedule for the authorized 90-day deviation from the operation regulations for the draws of City of Chicago-owned bridges over the Chicago River, Illinois. The deviation is being revised based on all available information, including information and comments presented at the public hearing held on Thursday, March 9, 1995. The revised deviation will provide for daylight weekend openings, and weekday daylight and evening openings on Tuesdays and Thursdays during the Spring breakout period.

**DATES:** The deviation will be effective from April 15, 1995, through July 13, 1995, unless sooner terminated by the District Commander. Comments on the impacts of the deviation must be received by June 9, 1995.

**ADDRESSES:** Comments on the deviation may be mailed to Mr. Robert Bloom, Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio. The public docket will

be available for inspection or copying in room 2083D, at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, (216) 522-3993.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Robert Bloom, Chief, Bridge Branch, and Commander James Collin, District Legal Officer, Ninth Coast Guard District.

**Background and Purpose**

Regulations governing the operation of drawbridges are promulgated under the authority of 33 U.S.C. 499. As amended in 1988, the statute provides that any rules and regulations made in pursuance of this section shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges.

Following notice and comment rulemaking, the Coast Guard promulgated a final rule on April 18, 1994, establishing a new rule for drawbridge operations on the Chicago River. On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff, v. Federico Peña, Secretary, United States Department of Transportation, Defendant*, (C.A. No. 94-1152 SSH), rescinding the Final Rule published on April 18, 1994, and reinstating the previous regulations found at 33 CFR 117.391. The regulations reinstated by the District Court provided for on-demand openings of drawbridges except during rush hour periods.

Further, those regulations contained no requirement for advance notice or the use of specified recreational vessel flotilla size. As a result of the Court decision and to gather data for future use, in the Fall of 1994, the District Commander issued a temporary deviation to regulations for the period October 11, 1994 through December 5, 1994, with a comment period through January 15, 1995. The deviation provided openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30

p.m. and 10 p.m. throughout the entire period. In addition, from October 11 through October 23 the draws were opened during the period from 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were opened for vessel passage during the period between 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified.

At the end of the comment period for the temporary deviation to regulations, the Coast Guard received twenty-one comments. One comment letter, from the City of Chicago, expressed opposition to any permanent regulation for the Spring breakout in 1995. In support of its position, the City provided data concerning the number of boat runs during the preceding Spring and Fall seasons, including the number of boats traversing through the drawbridges and the number of times the individual drawbridges were opened and delays that occurred. The City was unable to provide a vehicular traffic count for the Fall, but it stated that it would provide traffic count statistics for the Spring season. In the interim, the City urged a deviation schedule allowing one weekday daylight opening and weekend openings. Thirteen of the other twenty comment letters favored not affecting any change to the regulations that are in place now and expressed opposition to establishing minimums and maximums for recreational vessel flotilla sizes that would be allowed to pass through the bridges. Other commenters indicated that if a change is necessary, there should be daylight openings during the weekdays and openings should not be restricted to strictly nighttime hours from Monday through Friday. These commenters also expressed opposition to establishing a minimum and maximum number of boats that would be required for the bridges to be opened. Representatives from the Chicago River boat yards in their comments stated they did not favor a permanent regulation for the Spring breakout in 1995, but favor the existing regulatory structure.

On February 16, 1995, (60 FR 8941) the District Commander published a Notice of his intent to issue a deviation for the Spring breakout and announced a public hearing to discuss the proposed schedule in the deviation. The proposed deviation would have required the draws to open on demand, except during rush-hour periods for recreational vessels that had provided twenty-four hours notice of their intended passage through the draws.

#### *Public Hearing*

The Commander, Ninth Coast Guard District, held a public hearing to solicit comments relative to this deviation which will govern the operation of City of Chicago-owned drawbridges across the Chicago River System during the Spring breakout.

The hearing provided all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard for evaluation to determine if any revisions ought to be made to the proposed deviation.

A Coast Guard representative presided at the hearing, made a brief opening statement describing the proposed temporary deviation to regulations, and announced the procedures to be followed at the hearing. The meeting was well attended and there were multiple presentations, primarily by three interested groups: the City of Chicago, the boatyards, and some national level organizations. A transcript is being made of the hearing and may be purchased by the public through arrangements with Ms. Katherine Kerns, CSR, 79 West Monroe Street, Suite 627, Chicago, IL 60603. She may also be reached at (312) 357-1617.

#### *Summary of Comments at Public Hearing*

The City representatives stated they have determined weekday daylight openings are not necessary since all outgoing and incoming flotillas can be accommodated on weekends. Weekday openings are too disruptive to emergency services, commercial vehicular traffic during business hours, and pedestrian and mid-day vehicular traffic.

Businesses in Chicago were not in favor of weekday daylight openings due to disruption of deliveries, public transportation, and emergency services.

Representatives of the boatyards stated that the regulations presently in effect should not be modified until data is collected for an entire navigation season to depict seasonal changes of impact.

The boaters stated not all boatowners are available to join flotillas on weekends, but they can join flotillas during the weekday daylight hours. Nighttime navigation, in their opinion, during the week is not conducive to safety.

Based on the comments from the public hearing and all available data the District Commander is revising the authorized deviation for the Spring breakout period to better address the concerns which were expressed by

those participating in the public meeting.

The concerns raised at the public meeting and the data submitted to the Coast Guard at this point are insufficient to provide a basis for a permanent regulatory change. They nonetheless provide a framework for making revisions to the Spring deviation, particularly in light of the 1988 statutory amendment. This deviation period will be preliminary to the permanent rulemaking project to be conducted as a formal Negotiated Rulemaking, announced by separate notice elsewhere in today's issue of the **Federal Register**. The Coast Guard intends to charter a Negotiated Rulemaking Committee to develop a proposed permanent rule based on information and comments gathered during this and previous deviation periods as well as new information to be developed by the Committee during the rulemaking. The Coast Guard is requesting participation by both the City of Chicago and the interested boatyards and is asking them to submit data and impact assessments relating to this and other deviations in order to assist the Committee members in formulating any proposed changes to the current regulations. In particular, the Coast Guard requests the City of Chicago to provide information on unreasonable impacts upon vehicular traffic resulting from bridge openings at inopportune time; inequities or adverse impacts on other modes of transportation resulting from bridge openings at particular times; vehicular traffic counts showing directional flow (in fifteen minute increments over a period of at least fourteen consecutive days); reports of delays experienced by emergency vehicles (fire, ambulance, police) due to bridge openings; bridgetender logs for the 1994 navigation season (1 April 1994 through 5 December 1994); and current costs for operation of the bridges to provide for the passage of recreational vessels both under the provisions of this deviation and under the current permanent regulations. The boatyards and boat operators are requested to provide information concerning the impacts of the deviation on their ability to prepare vessels for the Spring breakout, and the needs of boat operators, including the ability to traverse the Chicago River on weekends or at stated weekday hours, the ability to form flotillas, the practicality of advance notices scheduling drawbridge openings, problems presented by traversing the Chicago River at night, and any other information which will be helpful to the Negotiated Rulemaking

Committee in balancing the operational needs of the boatyards with the needs of the City and other modes of transportation.

The District Commander has authorized the temporary deviation to commence on April 15, 1995, and remain in effect for a period of ninety (90) days. This deviation will require that the City open their bridges for the passage of recreational vessels on Saturdays and Sundays from 7 a.m. to 7 p.m., on Tuesdays and Thursdays from 10:30 a.m. to 1:30 p.m., and on Tuesday and Thursday evenings from 6:30 p.m. to 11:30 p.m. All openings require twenty-four hour advance notice of intended passage be given to the City.

The bridges subject to this deviation need not open for the passage of any vessels from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m., Mondays through Fridays. The Coast Guard anticipates that the boatyard owners and boaters will coordinate the movement of vessels from the boatyards to Lake Michigan and, to the extent practicable, arrange for the vessels to move in flotillas so as to minimize the number of bridge openings required. No requirement for minimum flotilla size will be imposed, however past experience indicates that an upper target of approximately 25 vessels is appropriate and will be enforced. This deviation will facilitate data gathering and scheduling and will support safety while addressing concerns of all parties during the Spring period when most recreational vessels traditionally return to Lake Michigan from winter storage at the Chicago River boat yards. The temporary deviation from the operating requirements at 33 CFR 117.391 governing bridges owned by the City of Chicago over the Chicago River will read as follows:

The bridges affected by this deviation are listed below:

Main branch	South branch	North branch
Lake Shore Drive.	Lake Street ..	Grand Avenue. Ohio Street.
Columbus drive.	Randolph Street.	
Michigan Avenue.	Washington Street.	Chicago Avenue. N Halsted Street.
Wabash Avenue.	Monroe Street.	
State Street ..	Madison Street.	
Dearborn Street.	Adams Street.	
Clark Street ..	Jackson Boulevard.	
LaSalle Street.	Van Buren Street.	
Wells Street .	Eisenhower Expressway.	

Main branch	South branch	North branch
Franklin-Orleans Street.	Harrison Street. Roosevelt Road. 18th Street. Canal Street. South Halsted Street. South Loomis Street. South Ashland Avenue.	

This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, and applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall operate as follows:

(a) The bridges covered by this deviation need not open for the passage of vessels Mondays through Fridays from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m.

(b) On Saturdays and Sundays the draws shall open on signal between the hours of 7 a.m. and 7 p.m.

(c) On Tuesdays and Thursdays the draws shall open on signal between the hours of 10:30 a.m. and 1:30 p.m.

(d) On Tuesdays and Thursdays the draws shall open on signal between the hours of 6:30 p.m. and 11:30 p.m.

(e) Except for emergencies, all openings require that 24 hours advance notice of intended passage be given to the City.

(f) Not more than 25 vessels shall pass through the bridges during one opening.

(g) This period of deviation is effective from April 15, 1995 through July 13, 1995.

Dated: April 5, 1995.

**Rudy K. Peschel,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 95-8758 Filed 4-6-95; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

[CGD01-95-035]

RIN 2115-AA97

**Safety Zone: Transatlantic Reinsurance Co. Fireworks, Upper New York Bay, NY and NJ**

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

a fireworks program located in Federal Anchorage 20C in Upper New York Bay, New York. This safety zone will be in effect on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The safety zone will temporarily close all waters of the Upper New York Bay, within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is effective on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668-7934.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

**Background and Purpose**

On March 17, 1995, Fireworks by Grucci submitted an application to hold a fireworks program in the waters of Upper New York Bay, off of Liberty Island, New York. This regulation establishes a temporary safety zone in all waters of the Upper New York Bay within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41'17"N latitude, 074°02'25"W longitude. The safety zone will be in effect on May 9, 1995 from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

This safety zone precludes all vessels from transiting this portion of the Upper New York Bay and is needed to protect

mariners from the hazards associated with fireworks exploding in the area.

### Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Upper New York Bay to all vessel traffic on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons. Due to the fact that this safety zone will not impact any navigable channel; that the duration of the event is limited; that the event is at a late hour; and that extensive, advance advisories will be made to the maritime community, the impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are no dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

### Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.13, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary section, § 165.T01-035, is added to read as follows:

#### § 165.T01-035 Safety Zone; Transatlantic Reinsurance Co. Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Loction.* All waters of Federal Anchorage 20C, Upper New York Bay, within a 300 yard radius of the fireworks platform anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41'17"N latitude, 074°02'25"W longitude.

(b) *Effective period.* This safety zone is in effect on May 9, 1995, from 8:45 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR Section 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel.

U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated March 31, 1995.

**T. H. Gilmour,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 95-8641-Filed 4-7-95; 8:45 am]

BILLING CODE 4910-14-M

### POSTAL SERVICE

#### 39 CFR Part 20

#### Implementation of WORLDPOST Priority Letter; Correction

**AGENCY:** Postal Service.

**ACTION:** Interim rule; Correction.

**SUMMARY:** This document contains a correction to the interim rules published on March 17, 1995 (60 FR 14370-14371). Those rule relate to the implementation on March 16, 1995, of WORLDPOST Priority Letter, a new international postal service.

**EFFECTIVE DATE:** March 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Mitchell, (202) 268-6095

In the rules beginning on page 14370 in the issue of Friday, March 17, 1995, make the following correction:

On page 14371 in the second column, under section 226.32, Service Areas, the last line of the ZIP Code service area shown in the chart was "20910-20912, 222, 223". This line should read "20910-20912, 220-223".

Dated: April 5, 1995.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 95-8778 Filed 4-7-95; 8:45 am]

BILLING CODE 7710-12-M

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 9

[FRL-5187-7]

#### OMB Approval Numbers Under the Paperwork Reduction Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Technical amendment.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document adds the Office of Management and Budget (OMB) control

numbers issued under the Paperwork Reduction Act (PRA) for Control of Air Pollution; Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines At or Above 37 Kilowatts.

**EFFECTIVE DATE:** This final rule is effective May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Linda Hormes, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313)668-4502.

**SUPPLEMENTARY INFORMATION:**

**A. Legal Authority to Amend Part 9**

EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the final rulemaking which appeared in the **Federal Register** on June 17, 1994 (59 FR 31306). This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

**B. Burden Statement**

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060-0287.

This collection of information has an estimated reporting burden averaging 5,800 hours for a typical engine manufacturer. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St. SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503, marked "Attention: Desk Officer for EPA".

**List of Subjects in 40 CFR Part 9**

Reporting and recordkeeping requirements.

Dated: April 3, 1995.

**Mary D. Nichols,**  
*Assistant Administrator for Air and Radiation.*

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

**PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-76711, 7542, 9601-9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR citation	OMB control No.
* * * * *	*
Control of Emissions From New and In-Use Nonroad Engines	*
* * * * *	*
89.114-96 through 89.120-96 . . . . .	2060-0287
89.122-96 through 89.127-96 . . . . .	2060-0287
89.129-96 . . . . .	2060-0287
89.203-96 through 89.207-96 . . . . .	2060-0287
89.209-96 through 89.211-96 . . . . .	2060-0287
89.304-96 through 89.331-96 . . . . .	2060-0287
89.404-96 through 89.424-96 . . . . .	2060-0287
* * * * *	*

[FR Doc. 95-8741 Filed 4-7-95; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Part 52**

[AZ31-1-6531; FRL-5173-8]

**Approval and Promulgation of Implementation Plans; Arizona-Phoenix Nonattainment Area; PM<sub>10</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the approval of a revision to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on July 28, 1994. The revision was submitted to EPA by Arizona to fulfill the State's obligation to revise its SIP to meet the PM<sub>10</sub> (particulate matter less than or equal to 10 microns in aerodynamic diameter) "moderate" area planning requirements of the Clean Air Act (CAA or Act). This approval action will incorporate this revision into the federally approved SIP. The intended effect of approving this revision is to regulate emissions of PM<sub>10</sub> in the Phoenix Planning Area (PPA). The revised SIP controls PM<sub>10</sub> emissions from sources including, but not limited to, paved roads, construction and demolition activities, unpaved parking areas and roads, nonmetallic mineral mining and processing facilities, open burning activities, uncovered haul trucks and farming operations. Thus, EPA is finalizing the approval of this revision into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**EFFECTIVE DATE:** This action is effective on May 10, 1995.

**ADDRESSES:** Copies of the SIP revision are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revisions are available for inspection at the following locations:

- Plans Development Section (A-2-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
- Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.
- Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

**FOR FURTHER INFORMATION CONTACT:** Robert Pallarino, (415) 744-1212.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. CAA Requirements

On the date of enactment of the 1990 Clean Air Act Amendments, PM<sub>10</sub> areas, including the PPA, meeting the conditions of section 107(d) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM<sub>10</sub> nonattainment areas were initially classified as "moderate" by operation of law. See 40 CFR 81.303 (1993). A moderate area may subsequently be reclassified as "serious" if at any time EPA determines that the area cannot practicably attain the PM<sub>10</sub> NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area is reclassified by operation of law if the area is not in attainment after the applicable attainment date, which is December 31, 1994 for the PPA. EPA is required to make a determination and provide public notice regarding whether the area has attained within six months following the attainment date. See Section 188(b), 42 U.S.C. 7513(a).

The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued guidance in its General Preamble describing EPA's views on how the Agency will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM<sub>10</sub> nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of the EPA's interpretation of the Title I requirements.

States with initial moderate PM<sub>10</sub> nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:<sup>1</sup>

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available

control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;<sup>2</sup> and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors, except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area.

In today's rulemaking action, EPA is taking final action to approve Arizona's moderate PM<sub>10</sub> SIP revision for the PPA, which includes the State's demonstration that attainment of the PM<sub>10</sub> NAAQS by December 31, 1994, is impracticable for the PPA. EPA is also announcing its intention to reclassify the PPA as a serious nonattainment area pursuant to section 188(b)(2). However, EPA is not making a finding as to whether the PPA has attained the PM<sub>10</sub> NAAQS in today's action, but, as discussed elsewhere in this Notice, will be doing so in a separate action in the coming months. See Section III. Once EPA determines the PPA has not attained the PM<sub>10</sub> NAAQS, the area will be reclassified to serious by operation of law.

### B. Proposed SIP Approval

EPA proposed approval of the moderate area PM<sub>10</sub> SIP revision for the PPA on July 28, 1994 (59 FR 38402). EPA's proposed approval was based on a preliminary finding that the State's submittal meets the requirements of the Act, including: (1) an inventory of all sources of PM<sub>10</sub> in the nonattainment area; (2) provisions to implement RACM by December 10, 1993; and (3) a demonstration that attainment of the

PM<sub>10</sub> NAAQS by the moderate area attainment date, December 31, 1994, is impracticable.

EPA proposed simultaneously to approve Maricopa County Rule 310—Open Fugitive Dust Sources, 311—Particulate Matter from Process Industries, 314—Open Outdoor Fires, and 316—Nonmetallic Mineral Mining and Processing, as new rules the State adopted as RACM for the PPA. EPA also proposed to reclassify the PPA as a serious area and invited public comment on whether final action should occur under section 188(b)(1) or 188(b)(2) of the CAA.

## II. Today's Action

In today's document, EPA is taking final action to approve the moderate area PM<sub>10</sub> state implementation plan revision for the PPA. The SIP revision for the PPA was submitted by the State of Arizona on August 11, 1993 and March 3, 1994. Maricopa County Rule 314 was adopted by the State and submitted to EPA on January 4, 1990. The State also submitted a revised version of Maricopa County Rule 310—Open Fugitive Dust Sources on December 19, 1994. The County revised this rule to delete provision 221.9 of the Rule as requested by EPA. See 59 FR 38407, July 28, 1994. Specifically, EPA is approving and incorporating by reference into the SIP the MAG 1991 Particulate Plan for PM<sub>10</sub> for the Maricopa County Area and 1993 Revisions, the Revised Chapter 9 and Maricopa County Rule 311—Particulate Matter from Process Industries and Rule 316—Nonmetallic Mineral Mining and Processing, Maricopa County Rule 314—Open Outdoor Fires and Maricopa County Rule 310—Open Fugitive Dust Sources. EPA is also stating its intention, but is not taking final action at this time, to reclassify the PPA under section 188(b)(2) of the Act. EPA is not taking final action on its proposal to reclassify the PPA under section 188(b)(1) of the Act.

## III. Reclassification

As stated above, EPA is not reclassifying the PPA in this document. However, EPA intends to propose reclassification of the PPA to a serious area pursuant to section 188(b)(2) of the Act.

The Act provides two mechanisms for reclassifying moderate PM<sub>10</sub> nonattainment areas as serious PM<sub>10</sub> nonattainment areas. Section 188(b)(1) gives EPA the discretion to reclassify any area which EPA determines cannot practicably attain the NAAQS by the applicable attainment date at any time before the attainment date. In the case

<sup>1</sup> There are additional submittals associated with moderate PM<sub>10</sub> nonattainment plans, such as a permit program for the construction of new and modified major stationary sources and contingency measures. See sections 189(a) and 172(c)(9). These submittals were required to be submitted in 1992 and 1993, respectively, and are not the subject of today's action which addresses only those plan provisions required to be submitted on November 15, 1991.

<sup>2</sup> As discussed in the Federal Register notice proposing approval of this plan, the PM<sub>10</sub> plan for the PPA does not demonstrate attainment by December 31, 1994, but rather includes the alternative demonstration that attainment by that date is impracticable. Therefore, section 189(c) does not apply. However, as discussed further in this notice, areas demonstrating that attainment is impracticable are required by section 172(c)(2) to demonstrate RFP. See Section IV. of this Notice, "Reasonable Further Progress".

of the PPA, the CAA-mandated attainment date was December 31, 1994. The second mechanism for reclassification, provided by section 188(b)(2), is to make a finding after the attainment date has passed that the area has not attained the NAAQS.

The difference between these two mechanisms involves the timing of submittals of certain plan provisions. Under section 188(b)(1), if EPA were to take final action on its proposal to reclassify the PPA as serious (see 59 FR 38406, July 28, 1994) the State would be required to submit its serious area SIP revision in two parts. Within 18 months of the final action reclassifying the PPA, the State would be required to submit provisions to assure the implementation of best available control measures (BACM) no later than four years after the date of reclassification. The State's demonstration that the plan provides for attainment of the PM<sub>10</sub> NAAQS by the serious area attainment date (December 31, 2001) would have to be submitted within four years of the date of reclassification.

Under section 188(b)(2) of the Act, if EPA makes a determination after the moderate area attainment date has passed that the PPA has not attained the NAAQS, then within 18 months after the date of reclassification, the State is required to submit provisions to assure the implementation of BACM no later than four years after the date of reclassification and a demonstration that the plan will provide for attainment of the PM<sub>10</sub> NAAQS by December 31, 2001. The practical difference in these two approaches is the timing of the submittal of the attainment demonstration and how it affects the BACM determination.

Under section 188(b)(1), the State would initially develop its BACM determination in the absence of an attainment demonstration with the potential result that the chosen measures would not ultimately attain the PM<sub>10</sub> standards by the applicable attainment date. Such a result, however, would not be revealed until several years later, when the air quality modeling analysis is conducted for the attainment demonstration. If, at that point, additional measures were found to be necessary for the area to attain the PM<sub>10</sub> NAAQS, new measures would have to be developed, adopted and submitted to EPA. In contrast, under section 188(b)(2), all the required elements of the serious area plan including the attainment demonstration must be submitted to EPA within 18 months of reclassification. Thus, under section 188(b)(2), EPA believes the

process of attaining the PM<sub>10</sub> standards is expedited.

In its notice of proposed rulemaking, EPA expressed its intent to reclassify the PPA under section 188(b)(2) of the Act. EPA believed that since the State originally concluded that the PPA could not practicably attain the PM<sub>10</sub> NAAQS by December 31, 1994 when it developed its November 1991 plan submission and that, despite procedural delays and plan updates culminating in the 1993 and 1994 SIP submittals, this conclusion has not changed, the State has been on notice for more than three years that reclassification was likely. Under these circumstances, a delay of four years for the submission of a serious area attainment demonstration is unwarranted. Rather, the Agency believed that it is more appropriate to accelerate, to the maximum extent possible, the State's submission of a complete serious area plan to attain the PM<sub>10</sub> NAAQS.

Notwithstanding the reasons above, EPA stated in its proposed rulemaking that there could be valid reasons advanced for reclassifying the PPA under section 188(b)(1). Therefore, EPA proposed to reclassify the PPA using its discretionary authority under section 188(b)(1). EPA stated its intent to finalize the reclassification under section 188(b)(1) only if it received compelling arguments from commenters. EPA received comments on the issue of reclassification from the Arizona Department of Environmental Quality (ADEQ), Maricopa Association of Governments (MAG), Maricopa County Environmental Services Department (MCESD), Arizona Department of Transportation (ADOT), and Arizona Center for Law in the Public Interest (ACLPI). The comments from ADEQ, MAG, MCESD, and ADOT all encouraged EPA to reclassify the PPA immediately under section 188(b)(1). These commenters were concerned that the State's ability to complete the required technical elements of the serious area SIP revision, particularly an improved and updated emission inventory and an accurate air quality analysis including air quality modeling, would require the longer submittal time for a demonstration of attainment afforded under section 188(b)(1) of the Act. Many of the commenters also argued that taking final action to reclassify the PPA before the moderate area attainment date would expedite the air quality benefits which would be provided by the serious area plan since the BACM implementation date would occur sooner.

EPA has not been persuaded by these comments to reclassify the PPA under section 188(b)(1). EPA believes that the State has been aware for a number of years that, even taking into consideration the implementation efforts it has now undertaken in complying with the PM<sub>10</sub> Moderate area planning requirements, that it was impracticable to demonstrate attainment of the PM<sub>10</sub> NAAQS by December 31, 1994. Thus, EPA does not believe the State has provided any valid basis to delay submittal of an attainment demonstration by four years.

Furthermore, the schedule for developing and submitting the technical elements of the serious area SIP revision is no different than the schedule for submitting a complete SIP revision for areas designated nonattainment after the passage of the 1990 CAA amendments. Under section 189(a)(2)(B) these areas are required to submit SIP revisions within 18 months after the date they are redesignated. The requirements for developing the technical elements of a serious area SIP are not substantially different from those for a moderate area.

Regarding the BACM implementation date, the Act simply states that BACM is to be implemented no later than four years after reclassification to serious. Under the overall scheme of the Act, the State is certainly permitted and, in fact, encouraged to implement BACM on as expeditious a schedule as practicable before the four-year deadline.

EPA also notes that ACLPI opposed reclassification of the PPA under 188(b)(1) because it would have the effect of rewarding the State's delay in preparing its PM<sub>10</sub> SIP by giving the State four years instead of 18 months to submit its serious area plan revision. However, EPA is not taking final action to reclassify the PPA under section 188(b)(1). For the reasons stated above, EPA believes that reclassification under section 188(b)(2) is the appropriate action to take in this case. EPA will be reviewing the PM<sub>10</sub> monitoring data for the PPA and will make an official determination of whether the PPA has attained the PM<sub>10</sub> NAAQS by June 30, 1995 or sooner. To demonstrate attainment of the PM<sub>10</sub> NAAQS by the applicable attainment date (December 31, 1994), the PPA would need to show that it has had no violations of the PM<sub>10</sub> standards, 24 hour and annual, in the past three years (1992, 1993, and 1994). 40 CFR part 50, appendix K. The State recorded violations of both standards in 1992 and 1993.

#### IV. Reasonable Further Progress

Section 172(c)(2) of the Act states that nonattainment area plans shall require

reasonable further progress (RFP). RFP is defined by section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date." However, there is a gap in the statute in that the PM<sub>10</sub> specific provisions of the Act do not clearly specify when and in what manner states containing PM<sub>10</sub> nonattainment areas that ultimately demonstrate it is impracticable to attain the NAAQS by the Moderate area deadline, such as the PPA, which is the subject of this document, must demonstrate they have met the RFP requirement. While section 189(c)(1) of the Act requires PM<sub>10</sub> SIP revisions to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which must also demonstrate reasonable further progress, that section, by its explicit terms, only applies to areas with "plan revisions demonstrating attainment." However, while it appears that the Act does not provide specifically for a quantitative milestone reporting requirement showing RFP is met for areas that demonstrate it is impracticable to attain the PM<sub>10</sub> NAAQS by the applicable deadline, EPA nonetheless believes, based on the general nonattainment area provisions regarding RFP as well as the overall purpose and structure of Title I and Part D of the Act, that such areas are not thereby relieved of the obligation to periodically demonstrate that they are meeting the requirement for RFP. Consequently, for purposes of implementing the RFP requirement for such areas, EPA believes that where the language in section 171(1) indicates that the purpose of the RFP reductions is to ensure "attainment of the applicable [NAAQS] by the applicable [attainment] date," the applicable attainment date for areas demonstrating that it is impracticable to attain would be the date set by section 188(c) when the area is reclassified as serious. Similarly, since the Act does not explicitly provide for states with PM<sub>10</sub> nonattainment areas which demonstrate it is impracticable to attain to submit periodic reports demonstrating that RFP is being met, such as is required under section 189(c)(1) for PM<sub>10</sub> areas which demonstrate attainment, EPA believes it may invoke the discretionary authority provided the Agency under section 110(p) of the Act to require the submittal of such reports. That section states that "any State shall submit" such

reports as EPA may require, and on such schedules as EPA may prescribe, providing information on specific data but also including "any other information [EPA] may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this Act." The initial RFP report for such areas is to be included in the SIP submittal containing the area's demonstration of impracticability, and should show that even though the emissions reductions achieved through the implementation of all RACM may not be enough to enable the area to demonstrate attainment by the Moderate area deadline of December 31, 1994, such implementation has resulted in "incremental reductions" in emissions of PM<sub>10</sub> as the RFP definition in section 171(1) specifies. Once the area has been reclassified, subsequent RFP report submittals will be timed to reflect emissions reductions which will be achieved due to the implementation of BACM. In summary then, EPA's policy is that the requirement to submit periodic reports demonstrating that RFP (as defined in section 171(1)) is being met applies equally to PM<sub>10</sub> nonattainment areas that demonstrate attainment by the applicable deadline and to such areas that demonstrate it is impracticable to attain by such date; for the former areas the requirement applies pursuant to sections 189(c)(1) and 172(c)(2), for the latter areas the requirement applies pursuant to sections 172(c)(2) and 110(p). As described in greater detail elsewhere in this document, the Phoenix Planning Area, has provided information along with its impracticability demonstration, which proves to EPA's satisfaction that it has met the requirement to demonstrate RFP. Finally, the discussion in this document regarding the demonstration of RFP in PM<sub>10</sub> nonattainment areas which demonstrate that attainment by the applicable attainment date is impracticable represents EPA's preliminary guidance on this issue, and is intended to clarify the confusion created by omissions in the Act and in prior EPA guidance. EPA also intends, in the very near future, to issue more comprehensive guidance on this issue.

#### **V. Response to Comments on Proposed SIP Approval**

Only ACLPI commented on EPA's proposed approval of the SIP revision; other commenters addressed reclassification. EPA appreciates the comments submitted by ACLPI, which are detailed and thoughtful. Some of the comments raise difficult issues

regarding the State's compliance with complex planning requirements, which often depend on coordination between a number of local governments. ACLPI's most detailed comments concern the State's implementation of RACM, particularly Transportation Control Measures (TCMs). In this document, EPA is providing its general response to ACLPI's comments on the implementation of RACM, and EPA is also providing very detailed responses concerning individual TCMs and other specific measures raised in ACLPI's comments in the Technical Support Document (TSD) accompanying this document.

#### *A. Technical Issues*

##### **1. Monitoring**

*Comment:* The PM<sub>10</sub> SIP revision for the PPA does not provide for the establishment and operation of a PM<sub>10</sub> monitoring network which meets the requirements of EPA guidelines and regulations. According to a 1992 EPA audit, the monitoring network for the Phoenix area "fails to meet many of the minimum CFR requirements".

*Response:* EPA disagrees with the comment. The PM<sub>10</sub> SIP revision provides for establishing and operating a PM<sub>10</sub> monitoring network in the PPA which meets the requirements of EPA guidelines and regulations. 40 CFR part 58; "Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58." The relevant provisions of the PPA's monitoring network are in Appendix B, Exhibit 14 of the SIP revision. Appendix B, Exhibit 14 also discusses proposed modifications to the network and the method by which the Maricopa County Environmental Services Department (MCESD) will address episode occurrences.

Since a 1992 Re-Evaluation of the Maricopa County Air Pollution Control Program that was conducted by EPA, the MCESD has made and documented progress to meet the requirements in 40 CFR parts 50 and 58. The MCESD was required by the Agency to develop a Corrective Action Plan (CAP) to address deficiencies documented in the 1992 Re-Evaluation. The progress on the CAP is being monitored by EPA, Region IX Air Quality Section and Compliance and Oversight Section, through review and verification of progress reports by MCESD and visits with the MCESD Air Monitoring Program personnel. EPA has also withheld federal grant money to encourage the MCESD to address CAP commitments and regulatory requirements in a timely manner. There have been improvements by MCESD,

including revising the Quality Assurance Program Manual (conditionally approved by Region IX pending minor additions), revamping its entire PM<sub>10</sub> network with new equipment including four continuous PM<sub>10</sub> samplers, quality assurance training for air monitoring staff, and others.

*Comment:* A 1992 audit by Dames and Moore (DM) found that the monitoring network did not have adequate numbers of neighborhood scale and middle scale monitors, as directed by EPA guidance. Several homogenous subregions in the area have no monitoring station or one station. In addition, little or no monitoring is conducted within 500 meters from several major sources. DM also found that the total number of monitoring stations is far below that required by EPA guidance. Under EPA spatial siting guidelines, there should be approximately 94 monitoring stations in the nonattainment area. Yet the SIP shows only 9 permanent PM<sub>10</sub> stations. DM also found that the monitoring program was inadequately staffed.

*Response:* EPA does not agree with the DM audit's comments on network adequacy, particularly concerning the necessary number of air monitoring sites recommended by DM. EPA criteria, in 40 CFR part 58, requires the Maricopa County network to consist of six (6) to ten (10) National Air Monitoring Stations (NAMS). The district is also required to operate State and Local Air Monitoring Stations (SLAMS). Part 58 does not contain a numerical requirement for SLAMS. Maricopa County's network consists of six (6) NAMS, two (2) SLAMS, and five (5) Special Purpose Monitoring Stations (SPMS), for a total of thirteen (13) SLAMS (NAMS are defined as a subset of SLAMS). The network's only deficiency is that it lacks a category (a) NAMS site with a high concentration monitoring objective. But this deficiency is being corrected and a special purpose monitor has been set up at the proposed location for a Category (a) site. An EPA protocol provides that this sampler will be run for at least one year. The data will then be evaluated to determine if the site meets the objectives and should be proposed as a NAMS. However, even without a category (a) site, the MCESD air monitoring network is measuring PM<sub>10</sub> values above the 24 hour standard.

Part 58 requirements for ambient air monitoring networks intend the SLAMS networks to be representative of the four basic monitoring objectives stipulated in part 58 over the air basin. See 40 CFR part 58, appendix D. Annual network reviews are requested of the districts

and evaluated by the EPA to insure it is representative of the monitoring stations and to insure optimum use of resources. EPA, therefore, disagrees that 94 monitoring stations should be required in the nonattainment area.

*Comment:* In a May 15, 1992 letter to the State EPA stated that the SIP must include provisions for follow-up monitoring and annual network reviews. The State was to insure that the monitoring network in place as of January 1, 1994, would be appropriate to evaluate attainment. EPA also stated that the SIP revision should include a plan for establishing PM<sub>10</sub> episode monitoring stations. None of these requirements have been met in the form of enforceable, funded commitments by the State or local governments.

*Response:* The State has addressed these requirements in the PM<sub>10</sub> SIP revision for the PPA which is enforceable now on the State level, and which will be enforceable federally once this final notice becomes effective. Appendix B, Exhibit 14 contains additional information on the County's air quality surveillance system. Appendix B, Exhibit 15 contains the County's Rule 5<sub>10</sub>—Air Quality Standards—which provides for the establishment of pollutant monitoring in accordance with EPA guidance and Federal regulations. Appendix B, Exhibit 16 contains the County's Rule 600 which addresses emergency episodes. Appendix B, Exhibit 17 contains further information on the State's procedures for the prevention of emergency episodes.

*Comment:* The technical support document accompanying EPA's proposed rulemaking asserts that the SIP provides for correction of the monitoring deficiencies by January 1, 1994. We ask EPA to identify precisely where the SIP shows a legally enforceable commitment to this effect, and where the SIP shows a commitment of financial resources to complete the job. Moreover, because the January 1, 1994 date has long since passed, the correction of deficiencies should now be complete. We ask EPA to indicate where the State has documented actual correction of the deficiencies, if this has in fact occurred.

*Response:* As discussed in the preceding response, Maricopa County has made documented progress in meeting all of the Federal air quality monitoring requirements. The appendices to the PM<sub>10</sub> plan, cited above, provide specific information on the County's progress in correcting deficiencies with the monitoring network.

## 2. Emission Inventory

*Comment:* The State's emission inventory is not accurate or current as required by the CAA.

*Response:* EPA disagrees with this comment and believes that the emissions inventory is accurate to within an acceptable degree of uncertainty. The State followed EPA-recommended emissions inventory procedures in use at the time of inventory preparation. A degree of uncertainty is particularly associated with PM<sub>10</sub> inventories because PM<sub>10</sub> emissions are especially time- and place-specific. Emission factors from a study in one area may differ for another area. PM<sub>10</sub> emissions also vary with activity levels and there are many activities, such as residential wood burning, for which there has been little accurate quantification. EPA recognizes that there are some differences between the emissions inventory fractions estimated from usual inventory methods and the source proportions determined from Chemical Mass Balance (CMB) modeling. However, EPA does not consider these differences to invalidate the inventory. The monitored results used in the CMB analysis reflect differences in distance, dispersion, and deposition of the emissions from various PM<sub>10</sub> sources. A source's contribution at a particular monitor is not expected to be in the same proportion as its contribution to the area's total emissions. This explains the inventory/CMB discrepancies.

Furthermore, accuracy of the emissions inventory is not critical to demonstrating impracticability of attainment. This is because a demonstration of impracticability may be based on the CMB apportionment results and not specifically on the emissions inventory. The inventory total is used only as a normalization scaling factor. EPA may have reached a different conclusion if, for example, the State sought to rely on a dispersion model, which requires a more accurate emissions inventory, instead of the CMB receptor model. However, based on the selected modeling, EPA believes that the inventory is sufficiently accurate to comply with the requirements of the Act and, more specifically, to serve as the basis for the demonstration of impracticability.

## 3. Modeling

*Comment:* The SIP does not meet the requirements of the Act and EPA guidance for an adequate modeling analysis.

*Response:* EPA disagrees with this comment. The State's modeling

complies with EPA guidelines, which allow for a receptor model such as CMB even though a dispersion model is recommended when possible. See Memorandum from John Calcagni, "PM<sub>10</sub> SIP Demonstrations Policy for Initial Moderate Areas" (March 4, 1991).

EPA recognizes that the State attempted to validate a dispersion model but was unsuccessful, in large part because of the degree of spatial and temporal accuracy required in the emissions inventory for use as input to a dispersion model. EPA believes that the State provided a reasonable level of effort to develop its dispersion model. Because it failed, however, the State is justified (and provided its justification in the SIP revision) in using a CMB receptor model. EPA has determined that the State's modeling complies with EPA guidelines.

EPA also anticipates the PPA will be reclassified as a serious area. Reclassification will provide additional time for the State to improve its modeling. When the State ultimately seeks to make an attainment demonstration, EPA will apply more stringent criteria for the spatial and temporal accuracy of the emissions inventory, corroborating models, and treatment of secondary particulates. Nevertheless, EPA believes that the modeling submitted by the State in this PM<sub>10</sub> SIP revision complies with the requirements and guidance established by EPA for a moderate area SIP revision and demonstration of impracticability.

*Comment:* EPA's proposed finding that PM<sub>10</sub> precursors do not contribute significantly to PM<sub>10</sub> levels that exceed the NAAQS in the PPA was made without any objective standard against which to measure significance. EPA's proposed action on this issue is arbitrary and capricious.

*Response:* EPA disagrees with this comment. EPA recognizes that on individual sampling days there were detectable contributions of one PM<sub>10</sub> precursor, secondary ammonium nitrate. Yet the average overall contribution of secondary ammonium nitrate was less than five percent of the total annual inventory. See 1989-1990 Phoenix PM<sub>10</sub> Study, Volume II: Source Apportionment, DRI, April 12, 1991, p. S-2. This magnitude of contribution is not significant for purposes of this action, although EPA acknowledges that such a contribution might warrant further attention if the State were attempting to submit an attainment demonstration for the 24-hour NAAQS. EPA believes that a contribution of less than five percent secondary ammonium nitrate is within the degree of

uncertainty and is near the "noise" level for CMB results.

In general, because of the complexity of the chemistry involved, there is no EPA-recommended method and no scientific consensus for dealing with secondary particulates. A number of PM<sub>10</sub> areas have dealt with this problem by assuming that secondary particulates are roughly proportional (or scale) to emissions of primary particulates. EPA believes that in the absence of better scientific or technical information, including better EPA guidance, this approach is reasonable. Consistent with this approach, the PPA scaled down their total PM<sub>10</sub> emissions inventory to exclude the contributions from PM<sub>10</sub> precursors. Indeed, if the PPA had included the contributions from PM<sub>10</sub> precursors, this would have resulted in the recording of proportionately higher concentrations of PM<sub>10</sub> in excess of the NAAQS. Therefore, if the PPA had explicitly accounted for the contribution of PM<sub>10</sub> precursors, the State's conclusion that attainment is impracticable would be strengthened, not weakened.

#### 4. Mobile Source Budget

*Comment:* ACLPI states that in order to determine conformity of transportation plans, projects, and programs with this SIP, a mobile source emission budget must be identified.

*Response:* EPA does not agree that the State was required to identify a mobile source emission budget. The moderate area SIP revision for the PPA demonstrates that attainment of the PM<sub>10</sub> NAAQS is impracticable by December 31, 1994. Mobile source emission budgets are only required to be identified in SIP revisions which demonstrate attainment. The preamble to EPA's transportation conformity rule states:

Some moderate PM<sub>10</sub> nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM<sub>10</sub> standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity.

58 FR 62196, November 24, 1993.

Thus, EPA's transportation conformity rule explicitly contemplated and determined that PM<sub>10</sub> areas demonstrating impracticability, like the PPA, would not have provided for and would not be required to identify a mobile source emission budget until an approvable attainment demonstration is submitted.

#### B. Demonstration of Impracticability

*Comment:* The State's demonstration of the impracticability of 1994 attainment is contrary to both the language and purpose of the Act. The plain thrust of sections 188 and 189, in combination with section 172, is that states should make every effort to attain by 1994. Rather than searching for combinations of control measures that would produce timely attainment, the state merely lists 13 control measures, asserts that they are insufficient to attain by 1994, and then "finds" that impracticability has been demonstrated.

*Response:* EPA disagrees. As discussed throughout this document, including in relevant responses to comments, EPA has determined that Arizona has implemented all RACM, and that the correct number of implemented measures is 67. EPA has also determined that the PPA has complied with the requirement of section 172(c)(2) that it demonstrate it is meeting RFP, by showing a measurable increment of PM<sub>10</sub> reductions between the baseline and the emissions reductions achieved through implementation of all RACM. EPA believes, therefore, that Arizona's SIP submittal does not contain mere assertions, but appropriate and acceptable demonstrations that are consistent, not only with the criteria contained in EPA's guidance, but with the Act's language and purpose as well. Again, as discussed further elsewhere in this Notice, EPA also believes that Congress recognized that many areas initially designated Moderate for PM<sub>10</sub> would not be capable of developing SIP revisions which demonstrated attainment by the applicable attainment date. This is evident by the fact that, for PM<sub>10</sub>, the Act also allows States to demonstrate earlier than the applicable attainment deadline that implementation of RACM will not provide for attainment and, thus, that attainment by the Moderate area deadline is impracticable. Since this provision is unique to PM<sub>10</sub> (the Act generally provides fixed attainment dates for other pollutants which, if the area fails to meet, subjects it to a mandatory "bump-up"), it seems clear that the language and intent of the Act are to first provide PM<sub>10</sub> areas with an opportunity to attain the NAAQS through the implementation of reasonable, but not necessarily exhaustive, efforts (i.e. RACM), and then to provide those areas that cannot achieve the NAAQS by the applicable attainment date with an alternative—to demonstrate that attainment is impracticable. However, such areas

must then go through a second planning effort which will require the implementation of more stringent measures, i.e. BACM.

*Comment:* ACLPI commented that the State's demonstration of impracticability is deficient because it fails to address the 24 hour standard.

*Response:* EPA disagrees that the impracticability of meeting both standards must be demonstrated. The PPA cannot be redesignated to attainment for PM<sub>10</sub> until the State can demonstrate that the SIP provides for attainment of both the annual and the 24-hour NAAQS. Conversely, if the SIP demonstrates that even with the implementation of RACM it cannot attain any one of the standards (annual or 24-hour) by December 31, 1994, then it has demonstrated that PM<sub>10</sub> attainment is impracticable. As an additional matter, it should be noted that the PPA is proportionately farther above the 24-hour NAAQS than it is above the annual NAAQS. Thus, given that the impracticability of attaining the annual NAAQS has been demonstrated, EPA agrees with the State's conclusion that attaining the more difficult 24-hour NAAQS would likely be shown to be similarly impracticable.

*Comment:* ACLPI commented that EPA should not evaluate practicability from the present point in time: i.e., whether attainment by December 31, 1994 is now practicable. The issue is whether timely attainment would have been practicable had the state implemented all RACM as expeditiously as practicable, and no later than December 10, 1993. ACLPI also states that, based on the decision in *Delaney v. EPA*, 898 F. 2d 687 (1990), the state would be obligated to provide for attainment as soon as possible if achievable via implementation of RACM as expeditiously as practicable.

*Response:* EPA is concluding in this action that Arizona has met the Act's requirement to implement all RACM by December 10, 1993. EPA is also concluding that the State has demonstrated that attainment of the PM<sub>10</sub> NAAQS by December 31, 1994, is impracticable even with timely implementation of all RACM. EPA therefore believes that the detailed explanations in this notice, including those contained in other relevant responses to comments, and in the accompanying technical support document should adequately address the issue raised by this comment. EPA further believes that the requirements that are relevant to consider are those contained in the CAA, as amended in 1990, and not statements taken from the *Delaney* opinion, which was construing

requirements under the CAA as amended in 1977. As stated previously in this document, sections 172(c) and 189(a)(1)(C) when read together require the implementation of all RACM as expeditiously as practicable but no later than December 10, 1993. Additionally, section 189(a)(1)(B) requires either a demonstration that the plan provides for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable. Since EPA believes both that the RACM implementation requirement has been met and that an acceptable demonstration of impracticability has been provided by the State, no further response is required.

### C. RACM

*Comment:* ACLPI commented generally that the SIP, EPA Guidance and public comments identified 161 potential measures as RACM, but that the revised PM<sub>10</sub> SIP rejected all but 13 of the measures without providing adequate justification. Similarly, the state adopted only one new transportation control measure, while failing to adopt, without explanation, every other potentially available TCM.

*Response:* The general and detailed comments by ACLPI concerning RACM raise difficult issues concerning the State planning requirements, and EPA appreciates the time and thought that ACLPI has contributed to this process. However, ACLPI has misunderstood the number of measures that the State implemented or rejected as RACM. The revised PM<sub>10</sub> SIP did not reject all but 13 measures from the list of possible RACM. As discussed below and in substantial detail in the accompanying TSD, the State has implemented all possible RACM (in some cases, by demonstrating that partial implementation of a measure is all that was reasonable to implement by December 10, 1993) and has provided EPA with a reasoned justification for the rejection of the remaining measures as not constituting RACM.

EPA disagrees with ACLPI regarding its RACM interpretation as it relates to transportation control measures (TCMs). In its comments regarding whether the State should have considered various proposed TCMs to be reasonably available, ACLPI asserts that the Court of Appeals for the Ninth Circuit held in *Delaney v. EPA*, "that TCMs listed in section 108 of the Act are presumed to be reasonably available." ACLPI goes on to argue that "Congress adopted and endorsed this decision in the 1990 Clean Air Act amendments," and cites S16971 (daily ed. Oct. 27, 1990). In

reliance on these claims, ACLPI concludes that Arizona "has failed to rebut the [presumption regarding the] availability of the section 108 measures in the instant SIP, and therefore the SIP must be rejected." EPA disagrees with both assertions and with the conclusion ACLPI derives from them as well. In the General Preamble (57 FR 13560-13561) EPA presents a detailed discussion of its interpretation of the RACM requirement, including implementation of TCMs. EPA continues to stand by that interpretation and the General Preamble discussion is explicitly referenced herein as forming part of the justification for the action being taken in this document.

The portion of that discussion that relates to TCMs acknowledges that in pre-amended Act guidance EPA created a presumption that all of the TCMs listed in section 108(f) were RACM for all areas, and required areas to specifically justify a determination that any measure was not RACM based on local circumstances. However, EPA then explicitly repudiated that earlier guidance, explaining that, based on its experience in implementing TCMs in subsequent years, local circumstances varied to such a degree that it was inappropriate to presume that all of the measures listed in section 108(f) were per se reasonably available for all nonattainment areas. See 44 FR 20372-20375 (April 4, 1979). Under EPA's revised guidance, all states are required, at a minimum, to address the section 108(f) measures, and where such a measure is determined to be reasonably available to implement it in accordance with section 172(c)(1).

With respect to *Delaney*, the General Preamble states EPA's belief that the court did not hold, as ACLPI claims, that the statute required the Agency to interpret the RACM requirement to create a presumption that all TCMs are reasonably available. Instead, the court held that EPA itself had created such a presumption and, therefore, was bound to apply its own then-applicable 1979 RACM guidance. An administrative agency is permitted to revise or alter prior guidance so long as that guidance continues to represent a reasonable interpretation of the statutory requirement. Nothing in the court's decision precluded EPA from revising its own guidance based on later experience in implementing TCMs. EPA also believes that the Senate managers' statement endorsing the Agency's 1979 RACM guidance as construed by the *Delaney* court reflected the view of several legislators who had wanted the Senate Committee bill to require that all section 108(f) measures be implemented

in severe nonattainment areas. However, the final version of the Senate bill did not adopt this position. Consequently, any subsequent statements by any legislators that appear to consider the interpretation relating to TCMs in EPA's 1979 RACM guidance as still being applicable post-1990 could not be said to reflect the views of the Congress as a whole, and thus should not be accorded weight.

Sections 172(c) and 189(a)(1)(C), along with relevant EPA guidance, require the State to implement all RACM provisions in its moderate area plan to reduce PM<sub>10</sub> emissions. EPA's proposed approval of the revised PM<sub>10</sub> SIP concluded that there was an initial list of 161 potential RACM. See 59 FR 38404. EPA has determined that the State implemented 67 of those measures as RACM. Of the remaining 94 potential RACM, 62 measures were duplicates of other measures. Finally, EPA believes that the State acted in accordance with Agency guidance in determining that the remaining 32 measures were not in fact, reasonably available because either: (1) The source made a de minimis contribution of PM<sub>10</sub> or (2) the measure was rejected on the basis of economic or technological infeasibility. Thus, EPA has determined that the State has satisfied its moderate area RACM requirements under sections 172(c) and 189(a)(1)(C).

In some cases, RACM has been met through partial implementation of a measure, such as doubling rather than tripling bus service or implementing measures only in populous municipalities. The State provided more detailed justification explaining why partial implementation of many measures constitutes RACM in "Summary of Local Government Commitments to Implement Measures and Reasoned Justification for Non-Implementation for the MAG 1991 Particulate Plan for PM<sub>10</sub> and Select Measures from the Clean Air Act Section 108(f)" ("MAG Supplementary Document"). The Mag Supplementary Document was submitted at EPA's request after EPA proposed to approve the revised PM<sub>10</sub> SIP in an effort to respond to comments received by EPA claiming that the SIP submittal did not contain sufficient detail regarding the State's justification for rejecting potential RACM. The MAG Supplementary Document has been included in the Administrative Record for this rulemaking and, to the extent that it provides additional detail and elaborates on the State's reasoning regarding its RACM determination, forms, in part, a complementary basis for EPA's final approval of the State's

revised PM<sub>10</sub> SIP, including EPA's finding that the State complied with its obligation under Sections 172(c) and 189(a)(1)(C) to implement all RACM.

The list of 67 RACM the State has implemented includes 41 measures that were adopted in the State's 1993 Carbon Monoxide and Ozone Plans ("1993 CO Plan"). EPA believes that adoption and inclusion of the measures in the 1993 CO Plan is a sufficiently meaningful and legally binding action by the State which, moreover, constitutes compliance with the Act's requirement to submit a plan which includes provisions to assure that RACM is implemented no later than December 10, 1993. ACLPI's comments on individual measures addressed in the accompanying TSD state that certain measures have not been adopted "in committed form." For the measures in the 1993 CO Plan, EPA believes that the State has provided adequate evidence that the plan is being implemented and is enforceable. The State's 1993 CO plan builds upon the control strategy developed and adopted for the MAG 1987 CO plan. Many of the measures in the 1993 CO plan continue implementation of transportation control measures included in the 1987 CO plan. The 1993 CO plan also contains new control measures that were not in the 1987 CO plan. EPA is aware that, for the most part, the State is not claiming PM<sub>10</sub> emission reduction credits for the measures developed for their CO and ozone plans. The PM<sub>10</sub> SIP does take emission reduction credit for Maricopa County's Trip Reduction Ordinance and the operation of two alternative fueled buses. The State explained instead that reductions from RACM in the 1987 CO Plan were calculated in the 1989 baseline PM<sub>10</sub> emission inventory. These CO measures may qualify as RACM regardless of whether emissions reduction credit can be assigned, as noted by EPA's proposed approval, stating: "These CO measures are included in the PM<sub>10</sub> SIP revision because they could also reduce particulate matter emissions." 59 FR 38404. EPA has not received direct adverse comment on the proposal to include the CO measures in the State's revised PM<sub>10</sub> SIP as RACM, and is therefore taking final action on that proposal. The 41 measures from the CO and Ozone Plans that are treated as RACM in the revised PM<sub>10</sub> SIP are listed in the TSD, Attachment #2, for this NFRM.

In addition to RACM from the 1993 CO Plan, the State is implementing measures required by national rulemakings. These measures are also RACM for the moderate area PM<sub>10</sub> SIP.

For example, the State must ensure that cleaner commercial aircraft land in the PPA based on the federal Airport Noise Control Act, 49 U.S.C. App. 2151 (1990) (ANCA). Municipalities in the PPA are required to comply with ANCA. Thus, even though the clean aircraft requirement is established by ANCA, it also satisfies the State's obligation to assure implementation of RACM. EPA believes the State may satisfy the RACM obligation pursuant to compliance with ANCA rather than through adoption in the revised PM<sub>10</sub> SIP of measure No. 45, "Replacement of High Emitting Aircraft," offered in the public comments. The accompanying TSD lists RACM which are based on national rulemakings or emissions standards.

For diesel fuel controls, EPA believes that the State has adequately demonstrated that partial implementation of this measure through compliance with national diesel fuel standards is RACM, and that the State has also justified rejecting implementing the California diesel fuel standards as RACM. Likewise, the State's partial implementation of a measure requiring conversion of its diesel fleet to clean fuels constitutes RACM. The State has also partially implemented measures regulating nonroad utility heavy duty engines and utility engines through compliance with national standards. EPA believes that partial implementation of this measure is all that was reasonable for the state to implement by December 10, 1993. The implementation of controls associated with diesel fuels and engines is discussed more fully in the accompanying TSD. The TSD also discusses the State's justification for rejecting as RACM an inspection and maintenance testing program for diesel vehicles.

Comprehensive rules are another source of RACM. The State submitted several comprehensive rules, such as Rules 310, 311, 314 and 316, that encompass RACM that are separate from the initial list of 161 possible measures. For example, Rule 310 addresses 13 of the 15 measures that EPA considered to be reasonably available for the control of fugitive dust. See 59 FR 38404. The accompanying TSD provides a more detailed discussion of RACM for fugitive dust based on implementation of Rule 310. To control residential wood combustion, Maricopa County has adopted a new rule, Residential Woodburning Restriction Ordinance (RWRO), and the State has included a provision in HB 2001 that provides a personal income tax deduction for people that purchase EPA-certified wood heaters. The County also has a

public education and awareness program in place to inform residents of the impacts of residential wood combustion on air quality and public health and the requirements of the County's woodburning restriction ordinance. These measures cover all of the four RACM listed by EPA in its General Preamble to address particulate matter emissions from residential wood combustion. The State's adoption of the County's RWRO satisfies the obligation to adopt measures to reduce emissions from residential wood combustion. As with measures in the 1993 CO Plan, EPA believes that the State has adopted the RWRO in sufficiently meaningful legal form to ensure that RACM is being implemented in compliance with the Act. The TSD also discusses this measure.

From the initial list of 161 possible RACM, EPA determined that 62 measures are duplicates of others and consequently did not require any further consideration. These duplicate measures are also listed in the TSD, Attachment #1.

Finally, EPA has determined that the State was justified in rejecting 32 of the remaining measures from the list of 161 possible RACM. These measures, which are listed in the TSD, Attachment #3, were discussed in EPA's proposed approval, 59 FR 38404, and are not reasonably available because they are either de minimis or economically or technologically infeasible. Certain measures are not reasonably available because the contribution from the source is de minimis in the PPA, such as Public Comment No. 37 which provides for reducing emissions from ship berthing. There are no ship berthing facilities in the PPA. Alternatively, the State has provided reasoned justifications to reject certain measures as RACM based on economic or technological infeasibility, such as railroad electrification. Those measures rejected from the initial list of 161 possible RACM, and the justifications for such rejections, are provided in the accompanying TSD.

For the reasons stated above, EPA has determined that the State has satisfied its obligation under the Act to submit a plan containing provisions to assure that RACM has been implemented by December 10, 1993, and, consistent with Agency guidance, has provided a reasoned justification for rejecting other potential measures on grounds that they are not RACM. The accompanying TSD provides a detailed response to each specific measure or type of measure that was raised in ACLPI's comments on the RACM portion of EPA's proposed approval of the State's revised PM<sub>10</sub> SIP.

Many other measures were duplicates of measures that were either adopted or rejected. For the remaining measures which the State rejected, EPA has given careful consideration to ACLPI's thorough comments. On balance, however, the State has complied with its obligation to provide EPA with a reasoned justification for the rejection of the remaining potential RACM.

#### D. RFP

*Comment:* The SIP fails to show RFP as required by section 172(c)(2) of the Act. According to the SIP, emissions of PM<sub>10</sub> increase in 1994 compared to the base year.

*Response:* EPA disagrees with the commenter's assertion that the SIP does not demonstrate reasonable further progress in reducing PM<sub>10</sub> emissions. While the State's demonstration showed a small reduction in PM<sub>10</sub> emissions from the implementation of Maricopa County's Rule 310—Fugitive Dust, EPA believes that the emission reduction that the State associated with this rule was overly conservative. When the State calculated the emission reduction potential for Rule 310, they only applied the control effectiveness to the urban portions of the PPA. EPA believes the control effectiveness should have been applied to the entire nonattainment area since the rule applies throughout Maricopa County which includes the entire nonattainment area. When EPA recalculated the emission reduction benefits of the SIP's control strategy the reduction potential equals 8,677 tons per year. The 1989 base year inventory is 40,975 tons per year and was projected to grow to 45,981 tons per year in 1994. Therefore, the total 1994 projected inventory after application of RACM would equal 37,304 tons per year which shows, consistent with EPA's guidance on demonstrating RFP, which is described in greater detail earlier in this notice, that the area has indeed made progress in reducing emissions from the base year total, and thus has demonstrated it has met the requirements of section 172(c)(2) for the period 1990–1994.

#### E. Rules

*Comment:* Rule 310 is not approvable because the rule does not meet the Act's or EPA's criteria for enforceability. The rule must make clear to whom it applies and be sufficiently specific that a source is fairly on notice as to the standard it must meet. No threshold level of dust generation is specified, leaving sources to guess as to when the ordinance will be triggered.

*Response:* Rule 310 does specify the sources that are subject to control. Rule

310 applies to any activity, equipment, operation and/or man-made or man-caused condition or practice capable of generating fugitive dust. Section 300 of the Rule further specifies the types of activities and sources of fugitive dust that are subject to the rule's requirements (e.g., vehicle use in open areas and vacant parcels; unpaved parking areas/staging areas; unpaved haul/access roads; disturbed surface areas; vacant areas; material handling operations; material transport; haul trucks; roadways, streets and alleys; and cattle feedlots and livestock areas). Further, as discussed in more detail in response to the next comment, the requirements of Rule 310 are triggered if a source of fugitive dust violates either the 20% opacity standard in Section 301 or the requirement to implement RACM in Sections 301 through 314. Thus, any activity that causes visible emissions in excess of 20 percent opacity or any activity that is carried out contrary to the implementation of RACM is a violation of Rule 310. For new sources of fugitive dust, Rule 310 requires compliance with an approved dust control plan as implementation of RACM, subject to approval by the control officer; existing sources of fugitive dust are required to comply with the RACM defined in the Rule.

*Comment:* The standards of performance [in Rule 310] are equally vague. The rule merely states that reasonably available control measures must be applied. That term is in turn defined merely by listing examples of vaguely described control steps without requiring use of any specific measure or a specific level of effort in any specific context. Thus, any specific level of control that the County seeks to impose will be subject to challenge.

*Response:* ACLPI's comments tend to oversimplify the requirements of Rule 310. Because of the very many different circumstances under which fugitive dust can be generated, it would be nearly impossible for the County to predict every situation and prescribe a specific control measure for it. As noted above, Rule 310 contains two standards to enforce. One standard with which all sources are required to comply is the 20% opacity limit. The second standard is the RACM requirement. New sources of fugitive dust are required to comply with approved dust control plans, which become enforceable as permit conditions. For existing sources of fugitive dust, Rule 310 addresses the variability of sources and activities by either prescribing RACM (see, e.g., Section 311.2) or listing potential reasonably available fugitive dust control measures (see, e.g., Sections 306

& 221). Yet Rule 310 allows a source to tailor its own control strategy to fit its particular situation and EPA believes that such flexibility is necessary. When the activity or situation does not involve a high degree of variability, the measures that apply to that source are typically more prescriptive. For example, Section 311.2, which applies to all haul trucks operating in the PPA, sets forth specific requirements as RACM. If haul trucks fail to implement these measures, there is a violation of Rule 310. Even if the haul trucks comply with Section 311.2, but still violate the 20% opacity standard, there is a violation of Rule 310. Other sections of the rule are equally enforceable through permit conditions. Section 303 of Rule 310 requires that a permit application for any new source subject to Section 302 of Rule 310 shall include a Control Plan to prevent or minimize fugitive dust, and the Control Plan must be approved by the County Control Officer. If the County determines through a violation of the separate 20% opacity standard that a Control Plan is not sufficient to control fugitive dust, the responsible party is required to revise the control plan accordingly. Thus, the County will be able to enforce the provisions of this Rule 310 through two standards: the 20% opacity standard and the requirement to implement RACM through a Control Plan or as defined in the Rule.

The original version of Rule 310 that was submitted to EPA contained a provision that EPA believed threatened the enforceability of the rule. The original rule contained a provision (221.9) that allowed the Control Officer to approve the use of alternative control methods not listed in the rule. This provision has since been deleted from Rule 310.

*Comment:* The State and County have not committed the necessary resources and personnel to ensure enforcement of rules 310, 311, 314, and 316, as required under section 110(a)(2)(E) and EPA guidance. Nor does the SIP contain a program to provide for enforcement of any of the SIP control strategies, as required by section 110(a)(2)(C) of the Act.

*Response:* The County has committed the necessary resources and personnel to implement rules 310, 311, 314, and 316. Details on the level of personnel and funding, as required by section 110(a)(2)(E) of the Act, as well as enforcement strategies as required by section 110(a)(2)(C) of the Act are provided in the document "MAG 1991 Particulate Plan for PM<sub>10</sub> for the Maricopa County Area and 1993 Revisions, Commitments for

Implementation, Volume Three", section entitled "Maricopa County".

#### F. Other

##### 1. Public Comment

*Comment:* In the process of developing and submitting the PM<sub>10</sub> SIP revision for Phoenix, MAG and the State have on several occasions failed in their responsibility to seriously consider public comment prior to adopting plans.

*Response:* The State has provided a section in all of its PM<sub>10</sub> SIP submittals which includes all public comments received and the State's responses to those comments.

##### 2. State Assurances

*Comment:* The PM<sub>10</sub> SIP does not contain, as required by section 110(a)(2)(E)(iii) of the CAA, the necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision." While the State contends that this requirement is met by A.R.S. § 49-406.J, the process laid out by this State statute does not meet the plain requirements of section 110(a)(2)(E)(iii) and is completely inconsistent with the Act's requirements for SIP enforceability, timely implementation of control measures, and expeditious attainment.

*Response:* EPA has historically adopted a rule of reasonableness in construing the language of section 110(a)(2)(E)(iii) of the Act with respect to the extent to which the State must show that its plan evinces a showing of responsibility sufficient to ensure adequate implementation of the plan's provisions by local or regional governments. EPA, for example, does not require the State to adopt into its own plan the local government's implementing provisions, but has considered it sufficient for the State to describe and reference those provisions and the accompanying descriptions of the local municipalities intended implementation actions. The State has included in its plan submission a copy of the Arizona Laws Relating to Environmental Quality, § 49-406. J. of which contains the assurances required by section 110(a)(2)(E). If any person fails to implement an emission limitation or control measure, the relevant State official is required to issue a written finding to that effect, which may also necessitate the holding of a conference regarding the failure with the offending person. If a determination is made that the failure

has not been corrected, the attorney general, at the responsible official's request, must file an action, seeking either "a preliminary injunction, a permanent injunction, or any other relief provided by law." Section 49-407 of the Arizona Revised Statutes provides that citizens may sue the director to perform his or her duty. While some opportunity is provided to rectify problems short of taking legal action, EPA does not believe this is unreasonable, nor that the affected State officials ultimately have discretion to ignore the law's requirements. The comment engages in some speculation, describing several possible scenarios under which implementation by the local authorities may not occur. Despite these concerns—which are admittedly speculative—EPA believes, based on its experience in administering this provision of the Act, that the relevant sections of the State's law provides an adequate degree of assurance that the control measures in the plan are enforceable and will be fully implemented.

#### VI. Executive Order 12866

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

#### VII. Regulatory Flexibility

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 economic 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 28, 1995.

**Felicia Marcus,**

*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 D—Arizona**

2. Section 52.120 is amended by adding paragraphs (c) (67)(i)(B), (73), (74), and (77) and by adding and reserving paragraphs (c) (72), (75), and (76) to read as follows:

**§ 52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(67) \* \* \*  
(i) \* \* \*

(B) Amended Maricopa County Division of Air Pollution Control Rule 314, adopted July 13, 1988.

\* \* \* \* \*

(72) [Reserved]

(73) Plan revisions were submitted on August 11, 1993 by the Governor's designee.

(i) Incorporation by reference.

(A) The Maricopa Association of Governments 1991 Particulate Plan for PM<sub>10</sub> for the Maricopa County Area and 1993 Revisions, Chapters 1, 2, 3, 4, 5, 6, 7, 8, 10 and Appendices A through D, adopted August 11, 1993.

(74) Plan revisions were submitted by the Governor's designee on March 3, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control new Rule 316, adopted July 6, 1993, and revised Rule 311, adopted August 2, 1993.

(B) The Maricopa Association of Governments 1991 Particulate Plan for PM<sub>10</sub> for the Maricopa County Area and 1993 Revisions, Revised Chapter 9 adopted on March 3, 1994.

(75) [Reserved]

(76) [Reserved]

(77) Amended regulations for the Maricopa County Division of Air Pollution Control submitted by the

Governor's designee on December 19, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control Rule 310, adopted on September 20, 1994.

[FR Doc. 95–8215 Filed 4–7–95; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 63**

[AD–FRL–5183–3]

RIN 2060–AC19

**National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** On October 24 and 28, 1994, EPA proposed amendments to certain aspects of the "National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks" 59 FR 19402 (April 22, 1994) and 59 FR 29196 (June 6, 1994) (collectively known as the "hazardous organic NESHAP" or the "HON"). This action announces the EPA's final decisions on those proposed amendments.

The rule is being revised to provide a deferral of HON requirements for source owners or operators who wish to make an area source certification and to establish minimum documentation requirements. This action is being taken because EPA believes that in view of current circumstances the requirements of the rule should not be imposed on sources that are likely to be designated as area sources in the near future. The rule is also being revised to extend the compliance date for certain compressors and for surge control vessels and bottoms receivers to allow the time necessary for installation of controls. The applicability of control requirements for surge control vessels and bottoms receivers is also being revised to reduce confusion over the rule.

**EFFECTIVE DATE:** April 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality

Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Federal Register Actions**

On October 24, 1994 (59 FR 53359) EPA announced that, pursuant to Clean Air Act section 307(d)(7)(B), it was reconsidering certain portions of the HON rule and issuing a 3 month administrative stay. The October 24, 1994 administrative stay applied only to those source owners or operators who make a representation in writing that resolution of the area source definition issues could affect whether the facility is subject to the HON. As part of that action, EPA also proposed amendments to the HON to establish procedures for a source to obtain a deferral of HON requirements for such sources and to establish minimum documentation requirements.

In addition, on October 28, 1994 (59 FR 54131), EPA announced an administrative stay of the effectiveness of the provisions of the HON for compressors and for surge control vessels and bottoms receivers for sources subject to the October 24, 1994 compliance date. As part of that action, EPA also proposed amendments to the HON to revise compliance dates for compressors and for surge control vessels and bottoms receivers to provide sufficient time to make the equipment changes necessary for compliance with the rule. Provisions to document the use of the compliance extensions for compressors were also proposed. Changes were also proposed to the applicability of control requirements for surge control vessels and bottoms receivers.

Along with both notices of partial stay and reconsideration, EPA also proposed to extend the compliance dates beyond the 3 months provided, as necessary to complete reconsideration and revision of the rule in question. On January 27, 1995 (60 FR 5320), EPA amended the HON to extend the compliance dates until April 24, 1995 to allow time to complete the two sets of revisions to the rule.

**B. Public Participation**

Ten comment letters were received on each of the two notices of proposed amendments. All comment letters received were from industry representatives or trade associations. No comments objecting to the EPA's basic approach were received on either the October 24 or the October 28, 1994 proposed amendments. The significant

issues raised and changes to the proposed amendments to the rule are summarized in this preamble. The EPA's responses to all comments can be found in docket A-90-19, subcategory VII-B and A-90-20, subcategory VI-B. The response to comments may also be obtained from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bits per second (bps) modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed contact the systems operator at (919) 541-5384.

## II. Summary of Amendments to Rule

### A. Deferral of Requirements for Sources Making an Area Source Certification

New paragraphs § 63.100(b)(4), § 63.103(f), and § 63.190(b)(7) and (b)(8) are added to the rule to provide procedures to certify and document that a source is operating at emission levels below the thresholds for a major source. These provisions require the owner or operator: (1) To provide certification that the source is operating such that its total actual annual emissions are less than 10 tons of any one hazardous air pollutant (HAP) and less than 25 tons of multiple HAP and will continue to operate at or below this level pending the establishment of federally enforceable limits; (2) to maintain documentation of the emission calculations; and (3) to provide the documentation to EPA upon request. If, in the EPA's judgment, the source does not qualify as an area source, the source would be notified and would become subject to the HON requirements. The provisions specify that if the applicable subpart H compliance date has already passed, the source must comply with subpart H requirements no later than 90 days after the notification. The source would have the same compliance date for subparts F and G (i.e., April 22, 1997) as other sources.

### B. Amendments to Compressor Provisions, § 63.164

Subparts F and I are amended to revise the compliance date for compressor provisions for certain sources and to establish a mechanism for owners or operators to request case-by-case compliance extensions under certain circumstances. Specifically, § 63.100(k)(4) is being added to subpart F and § 63.190(e)(3) is being added to

subpart I to revise the compliance date for compressors at process units subject to the October 24, 1994 and January 23, 1995 compliance dates to May 10, 1995. Section 63.100(k)(5) is being added to subpart F and §§ 63.190(e)(4) is being added to subpart I to provide a mechanism for owners or operators to request case-by-case compliance extensions for delays due to unavailability of parts. Paragraph 63.100(k)(6) is being added to subpart F and § 63.190(e)(5) is being added to subpart I to provide a similar mechanism for cases where a process unit shutdown is necessary to permit modification of the compressor seal system, barrier fluid system, or connection of the compressor to a control device. Provisions have been added to the rule to provide a compliance date of April 22, 1997 for cases where replacement of the compressor or recasting of the distance piece is necessary for compliance with § 63.164. These provisions are provided in § 63.100(k)(6)(ii) and § 63.190(e)(5)(ii).

### C. Amendments to Provisions for Surge Control Vessels and Bottoms Receivers, § 63.170

This section has been revised to specify the same control criteria and requirements as are established in subpart G for storage vessels. Compliance with these requirements is required by April 22, 1997 for all sources subject to the provisions of subparts F and I.

### D. Compliance Extensions for Pollution Prevention Measures

Paragraph 63.100(k)(8) is added to subpart F to provide a compliance extension for processes that plan to eliminate the use or production of HAP.

## III. Impacts

### A. Area Source Deferral

The compliance date extensions for sources with actual emissions less than 10 tons of any single HAP or less than 25 tons of multiple HAP's will not affect the estimated emissions reduction and control cost for the rule. The EPA did not consider such sources in development of the rule.

### B. Surge Control Vessels and Bottoms Receivers

The revisions to the compliance date and the control requirements for surge control vessels and bottoms receivers will not affect the estimated emissions reduction and control cost for the rule. As described in the October 28, 1994 **Federal Register** (59 FR 54157), EPA considered these items of process

equipment to be either process vents or storage vessels. Thus, the estimated emission reductions and control costs always reflected application of the control criteria and requirements in tables 2 and 3 to subpart H to these vessels.

### C. Compressors

The revisions to the compliance date for compressors provisions are estimated to have a negligible effect on the emissions reduction from the equipment leak control requirements. Emissions from compressors contribute only a small portion of the estimated emissions from equipment leaks because there are very few compressors located in synthetic organic chemical manufacturing industry (SOCMI) process units. It is expected that only a small number of those compressors would need to use these compliance extensions. Moreover, lower overall emissions are expected in cases where a process unit shutdown is necessary to install the replacement seal system or barrier fluid system or to permit connecting the compressor to a control device. These revisions to subpart H are not expected to affect the estimated cost of compliance with the rule.

## IV. Summary of Major Comments, Responses, and Changes to the Proposal

### A. Area Source Deferral

The major area of comment on the October 24, 1994 proposal concerned the proposed documentation requirements and the request for comment on whether more extensive monitoring and recordkeeping would be appropriate. Several commenters recommended that EPA not impose excessive documentation and recordkeeping requirements for sources with actual emissions below the major source threshold. The commenters reasoned that the nature of the operations that would qualify for this deferral and existing non-Federal rules should provide adequate assurance of maintenance of the emission levels. No comments were received that supported requiring recordkeeping and reporting beyond that specified in the proposed amendments to the rule. One commenter also questioned EPA's position that toxic release inventory (TRI) data would not sufficiently document the basis for the emission calculations. The commenter noted that the TRI estimates are subject to audit and every calculation and assumption used must be documented. This commenter also stated that many facilities are using the same data base

for TRI reporting as they are using for the Title V permit program.

Since no comments were received indicating a need for additional monitoring and documentation of these sources, the EPA concluded that additional documentation of the emissions from these sources is not warranted considering the nature and length of this deferral. The EPA also reexamined the question of whether TRI data would be acceptable for documenting the basis for the emission estimates. The EPA concluded that TRI data would provide adequate documentation for this interim deferral since the TRI data would be of sufficient precision and accuracy in light of the nature and length of the deferral. In light of this conclusion, EPA also concluded that allowing use of the TRI documentation would avoid imposing an unproductive and unnecessary additional recordkeeping requirement since it is likely that companies will establish one system for emission estimates for TRI compliance as well as for other air programs. This would have the additional benefit of promoting use of one emissions recordkeeping system for a facility; thus, benefiting both the owner or operator of the facility as well as permitting authority. Therefore, § 63.100(b)(4)(i)(B) and § 63.190(b)(7)(i)(B) have been revised to specifically state that data reported under Superfund Amendments and Reauthorization Act (SARA) 313 may be used to satisfy the documentation requirements. These paragraphs have also been edited to clarify that use of "accepted engineering practices" to determine annual HAP emissions from each emission point at the plant site, is an acceptable alternative to the calculation procedures in § 63.150 of subpart G, or the early reduction demonstration procedures. The wording of the proposed amendment would only have allowed use of "accepted engineering practices" where the other procedures were unavailable. Because those other procedures also involve some use of engineering judgment there is no reason to limit use of accepted engineering practices to cases where the other procedures are unavailable.

#### B. Compressors

One commenter recommended that provisions for compliance extensions also include situations where modification of a compressor is necessary to allow connecting the compressor to a control device. The commenter noted that this kind of equipment modification requires the same degree of planning and evaluation as the situations described in the

October 28, 1994 proposal. This commenter also requested that EPA allow up to April 22, 1997 for cases where replacement of a compressor is necessary. The commenter explained that this additional time is necessary since in some States construction permits must be obtained for these modifications. The EPA agrees that these additional situations are similar to the situations described in the October 28, 1994 **Federal Register** and, therefore, allowing additional time for these cases is appropriate. These cases were not included in the proposal due to uncertainty regarding the need to provide for these cases. The final provisions allow owners or operators to request case-by-case compliance extensions for these additional cases as well as for replacement of the seal system or the barrier fluid system where additional time is necessary due to the unavailability of parts or until the next process unit shutdown.

#### C. Surge Control Vessels and Bottoms Receivers

There were no adverse comments on the proposed revisions to the definition of surge control vessel or the revisions to include the same control criteria as applied to storage vessels in subpart G. Several commenters requested clarification of certain aspects of the proposed provisions. The more substantive of these comments was a request for clarification of whether the same controls that are acceptable for storage vessels would be acceptable for compliance with § 63.170. The commenter noted that it appeared that EPA intended this, but the rule seemed to not allow the use of floating roof controls for surge control vessels. The EPA agrees that it was intended that the same controls be allowed for this equipment as for storage vessels. Section 63.170 was revised to specifically provide that use of floating roof controls that meet the specifications of § 63.119 (b) or (c) are acceptable means of compliance.

#### D. Compliance Extensions for Pollution Prevention Measures

The only comments received on this proposed provision was support for correcting the original drafting oversight. Thus, there were no changes to the proposed provisions.

#### V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit

within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

#### VI. Administrative

##### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460 or by calling (202) 260-2740.

Today's changes to the NESHAP would have a minor impact on the information collection burden estimates made previously. The added provisions provide a mechanism to request compliance extensions and are not required reports. Therefore, the ICR has not been revised.

##### B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments proposed today would revise compliance dates to provide the time necessary for installation of controls and do not add any additional control requirements. The EPA believes that these proposed amendments would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis. For the reasons discussed in section III, the impacts on emissions reduction are also believed to be negligible.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows.

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. Section 63.100 is amended by revising paragraph (b) introductory text, by adding paragraph (b)(4), by revising paragraph (k) introductory text, by revising the first sentence of paragraph (k)(3), and by adding paragraphs (k)(4) through (k)(8) to read as follows:

**§ 63.100 Applicability and designation of source.**

\* \* \* \* \*

(b) Except as provided in paragraphs (b)(4) and (c) of this section, the provisions of subparts F, G, and H of this part apply to chemical manufacturing process units that meet all the criteria specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section:

\* \* \* \* \*

(4) The owner or operator of a chemical manufacturing processing unit is exempt from all requirements of subparts F, G, and H until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 10, 1995 that the plant site at which the chemical manufacturing processing unit is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual HAP, and less than 25 tons per year of any combination of HAP.

(i) If such a determination is based on limitations and conditions that are not federally enforceable (as defined in subpart A of this part), the owner or operator shall document the basis for the determination as specified in paragraphs (b)(4)(i)(A) through (b)(4)(i)(C) and comply with the recordkeeping requirement in 63.103(f).

(A) The owner or operator shall identify all HAP emission points at the

plant site, including those emission points subject to and emission points not subject to subparts F, G, and H;

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum operating conditions at the plant site. Examples of estimating procedures that are considered acceptable include the calculation procedures in § 63.150 of subpart G, the early reduction demonstration procedures specified in §§ 63.74 (c)(2), (c)(3), (d)(2), (d)(3), and (g), or accepted engineering practices. If the total annual HAP emissions for the plant site are annually reported under Emergency Planning and Community Right-to-Know Act (EPCRA) section 313, then such reported annual emissions may be used to satisfy the requirements of § 63.100(b)(4)(i)(B).

(C) The owner or operator shall sum the amount of annual HAP emissions from all emission points on the plant site. If the total emissions of any one HAP are less than 10 tons per year and the total emissions of any combination of HAP are less than 25 tons per year, the plant site qualifies for the exemption described in paragraph (b)(4) of this section, provided that emissions are kept below these thresholds.

(ii) If such a determination is based on limitations and conditions that are federally enforceable (as defined in subpart A of this part), the owner or operator is not subject to the provisions of paragraph (b)(4) of this section.

\* \* \* \* \*

(k) Except as provided in paragraphs (l) and (m) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

\* \* \* \* \*

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided in paragraphs (k)(4) through (k)(8) of this section. \* \* \*

(4) Existing chemical manufacturing process units in Groups I and II as identified in table 1 of this subpart shall be in compliance with the requirements of § 63.164 of subpart H no later than May 10, 1995 for any compressor meeting one or more of the criteria in paragraphs (k)(4)(i) through (k)(4)(iv) of this section, if the work can be accomplished without a process unit

shutdown, as defined in § 63.161 in subpart H.

(i) The seal system will be replaced;  
(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor must be modified to permit connecting the compressor to a closed vent system.

(5) Existing chemical manufacturing process units shall be in compliance with the requirements of § 63.164 in subpart H no later than 1 year after the applicable compliance date specified in paragraph (k)(3) of this section, for any compressor meeting the criteria in paragraphs (k)(5)(i) through (k)(5)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (k)(4) (i) through (iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161 of subpart H;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits a request to the appropriate EPA Regional Office at the addresses listed in § 63.13 of subpart A of this part no later than 45 days before the applicable compliance date in paragraph (k)(3) of this section, but in no event earlier than May 10, 1995. The request shall include the information specified in paragraphs (k)(5)(iv)(A) through (k)(5)(iv)(E) of this section. Unless the EPA Regional Office objects to the request within 30 days after receipt, the request shall be deemed approved.

(A) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(B) The name, address, and telephone number of a contact person for further information;

(C) An identification of the chemical manufacturing process unit, and of the specific equipment for which additional compliance time is required;

(D) The reason compliance can not reasonably be achieved by the applicable date specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section; and

(E) The date by which the owner or operator expects to achieve compliance.

(6)(i) If compliance with the compressor provisions of § 63.164 of subpart H of this part can not reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than April

22, 1996, except as provided for in paragraph (k)(6)(ii) of this section. The owner or operator who elects to use this provision shall comply with the requirements of § 63.103(g) of this subpart.

(ii) If compliance with the compressor provisions of § 63.164 of subpart H of this part can not be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than April 22, 1997. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.103(g) of this subpart.

(7) Existing sources shall be in compliance with the provisions of § 63.170 of subpart H no later than April 22, 1997.

(8) If an owner or operator of a chemical manufacturing process unit subject to the provisions of subparts F, G, and H of part 63 plans to implement pollution prevention measures to eliminate the use or production of HAP listed in table 2 of this subpart by October 23, 1995, the provisions of subpart H do not apply regardless of the compliance dates specified in paragraph (k)(3) of this section. The owner or operator who elects to use this provision shall comply with the requirements of § 63.103(h) of this subpart.

\* \* \* \* \*

3. Section 63.101 is amended by revising the definition of "surge control vessel" in paragraph (b) to read as follows:

**§ 63.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

\* \* \* \* \*

4. Section 63.103 is amended by adding paragraphs (f), (g), and (h) to read as follows:

**§ 63.103 General compliance, reporting and recordkeeping requirements.**

\* \* \* \* \*

(f) To qualify for the exemption specified in § 63.100(b)(4) of this subpart, the owner or operator shall maintain the documentation of the information required pursuant to § 63.100(b)(4)(i), and documentation of any update of this information requested by the EPA Regional Office, and shall provide the documentation to the EPA Regional Office upon request.

The EPA Regional Office will notify the owner or operator, after reviewing such documentation, if the source does not qualify for the exemption specified in § 63.100(b)(4) of this section. In such cases, compliance with subpart H shall be required no later than 90 days after expiration of the applicable compliance date in § 63.100(k)(3), but in no event earlier than 90 days after the date of such notification by the EPA Regional Office. Compliance with subparts F and G shall be no later than April 22, 1997, unless an extension has been granted by the EPA Regional Office or operating permit authority as provided in § 63.6(i) of subpart A of this part.

(g) An owner or operator who elects to use the compliance extension provisions of § 63.100(k)(6)(i) or (ii) shall submit a compliance extension request to the appropriate EPA Regional Office no later than 45 days before the applicable compliance date in § 63.100(k)(3), but in no event is submittal required earlier than May 10, 1995. The request shall contain the information specified in § 63.100(k)(5)(iv) and the reason compliance can not reasonably be achieved without a process unit shutdown, as defined in 40 CFR 63.161 or without replacement of the compressor or recasting of the distance piece.

(h) An owner or operator who elects to use the compliance extension provisions of § 63.100(k)(8) shall submit to the appropriate EPA Regional Office a brief description of the process change, identify the HAP eliminated, and the expected date of cessation of use or production of HAP. The description shall be submitted no later than May 10, 1995 or with the Notice of Compliance Status as required in § 63.182(c) of subpart H, whichever is later.

\* \* \* \* \*

**Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater**

5. Section 63.111 is amended by adding the definition of "surge control vessel" to read as follows:

**§ 63.111 Definitions.**

\* \* \* \* \*

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or

volumes is needed to assist in production of a product.

\* \* \* \* \*

**Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks**

6. Section 63.161 is amended by revising the definition of "compliance date" and the definition of "surge control vessel" to read as follows:

**§ 63.161 Definitions.**

\* \* \* \* \*

*Compliance date* means the dates specified in § 63.100(k) or § 63.100(l)(3) of subpart F of this part for process units subject to subpart F of this part; the dates specified in § 63.190(e) of subpart I of this part for process units subject to subpart I of this part. For sources subject to other subparts in 40 CFR part 63 that reference this subpart, compliance date will be defined in those subparts. However, the compliance date for § 63.170 shall be no later than 3 years after the effective date of those subparts unless otherwise specified in such other subparts.

\* \* \* \* \*

*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this subpart) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

\* \* \* \* \*

7. Section 63.170 is revised to read as follows:

**§ 63.170 Standards: Surge control vessels and bottoms receivers.**

Each surge control vessel or bottoms receiver that is not routed back to the process and that meets the conditions specified in table 2 or table 3 of this subpart shall be equipped with a closed-vent system that routes the organic vapors vented from the surge control vessel or bottoms receiver back to the process or to a control device that complies with the requirements in § 63.172 of this subpart, except as provided in § 63.162(b) of this subpart, or comply with the requirements of § 63.119(b) or (c) of subpart G of this part.

8. Subpart H is amended by adding tables 2 and 3 to read as follows:

\* \* \* \* \*

TABLE 2 TO SUBPART H.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor pressure <sup>1</sup> (kilopascals)
75 ≤ capacity < 151 .....	≥ 13.1
151 ≤ capacity .....	≥ 5.2 <sup>a</sup>

<sup>1</sup> Maximum true vapor pressure of total organic HAP at operating temperature as defined in subpart G of this part.

TABLE 3 TO SUBPART H.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor pressure <sup>1</sup> (kilopascals)
38 ≤ capacity < 151 .....	≥ 13.1
151 ≤ capacity .....	≥ 0.7

<sup>1</sup> Maximum true vapor pressure of total organic HAP at operating temperature as defined in subpart G of this part.

**Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks**

9. Section 63.190 is amended by revising paragraph (b) introductory text, by adding paragraph (b)(7), by revising paragraph (e)(2), and by adding paragraphs (e)(3) through (e)(6) to read as follows:

**§ 63.190 Applicability and designation of source.**

\* \* \* \* \*

(b) Except as provided in paragraph (b)(7) of this section, the provisions of subparts I and H of this part apply to emissions of the designated organic HAP from the processes specified in paragraphs (b)(1) through (b)(6) of this section that are located at a plant site that is a major source as defined in section 112(a) of the Act. The specified processes are further defined in § 63.191.

\* \* \* \* \*

(7) The owner or operator of a plant site at which a process specified in paragraphs (b)(1) through (b)(6) of this section is located is exempt from all requirements of subpart I until not later than April 22, 1997, if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 10, 1995 that the plant site at which the process is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual HAP, and less

than 25 tons per year of any combination of HAP.

(i) If such a determination is based on limitations and conditions that are not federally enforceable (as defined in subpart A of this part), the owner or operator shall document the basis for the determination as specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C).

(A) The owner or operator shall identify all HAP emission points at the plant site, including those emission points subject to and emission points not subject to subparts F, G, and H of this part;

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum operating conditions at the plant site. Examples of estimating procedures that are considered acceptable include the calculation procedures in § 63.150 of subpart G, the early reduction demonstration procedures specified in §§ 63.74(c)(2), (c)(3), (d)(2), (d)(3), and (g), or accepted engineering practices. If the total annual HAP emissions for the plant site are annually reported under EPCRA section 313, then such reported annual emissions may be used to satisfy the requirements of this paragraph.

(C) The owner or operator shall sum the amount of annual HAP emissions from all emission points on the plant site. If the total emissions of any one HAP are less than 10 tons per year and the total emissions of any combination of HAP are less than 25 tons per year, the plant site qualifies for the exemption described in paragraph (b)(7) of this section, provided that emissions are kept below these thresholds.

(ii) If such a determination is based on limitations and conditions that are federally enforceable, and the plant site is not a major source (as defined in subpart A of this part), the owner or operator is not subject to the provisions of paragraph (b)(7) of this section.

\* \* \* \* \*

(e) \* \* \*

(2) Existing sources shall comply no later than October 24, 1994, except as provided in paragraphs (e)(3) through (e)(6) of this section or unless an extension has been granted by the EPA Regional Office or operating permit authority, as provided in § 63.6(i) of subpart A of this part.

(3) Existing process units shall be in compliance with the requirements of § 63.164 of subpart H no later than May 10, 1995 for any compressor meeting one or more of the criteria in paragraphs

(e)(3)(i) through (e)(3)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161.

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor must be modified to permit connecting the compressor to a closed vent system.

(4) Existing process units shall be in compliance with the requirements of § 63.164 of subpart H no later than January 23, 1996, for any compressor meeting the criteria in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (e)(3) (i) through (iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits a request to the appropriate EPA Regional Office at the addresses listed in § 63.13 of subpart A of this part no later than May 10, 1995. The request shall include the information specified in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(E) of this section. Unless the EPA Regional Office objects to the request within 30 days after receipt, the request shall be deemed approved.

(A) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(B) The name, address, and telephone number of a contact person for further information;

(C) An identification of the process unit, and of the specific equipment for which additional compliance time is required;

(D) The reason compliance cannot reasonably be achieved by May 10, 1995; and

(E) The date by which the owner or operator expects to achieve compliance.

(5)(i) If compliance with the compressor provisions of § 63.164 of subpart H of this part cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than April 22, 1996, except as provided in paragraph (e)(5)(ii) of this section. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(g) of this subpart.

(ii) If compliance with the compressor provisions of § 63.164 of subpart H of this part cannot be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than April 22, 1997. The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(g) of this subpart.

(6) Existing sources shall be in compliance with the provisions of § 63.170 of subpart H no later than April 22, 1997.

\* \* \* \* \*

10. Section 63.191 is amended by revising the definition of "surge control vessel" in paragraph (b) to read as follows:

**§ 63.191 Definitions.**

\* \* \* \* \*

*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

\* \* \* \* \*

11. Section 63.192 is amended by adding paragraphs (l) and (m) to read as follows:

**§ 63.192 Standard.**

\* \* \* \* \*

(l) To qualify for the exemption specified in § 63.190(b)(7) of this subpart, the owner or operator shall maintain the documentation of the information required pursuant to § 63.190(b)(7)(i), and documentation of any update of this information requested by the EPA Regional Office, and shall provide the documentation to the EPA Regional Office upon request. The EPA Regional Office will notify the owner or operator, after reviewing such documentation, whether, in the EPA Regional Office's judgement, the source does not qualify for the exemption specified in § 63.190(b)(7) of this subpart. In such cases, compliance with this subpart shall be required no later than 90 days after the date of such notification by the EPA Regional Office.

(m) An owner or operator who elects to use the compliance extension provisions of § 63.190(e)(5) (i) or (ii) shall submit a compliance extension request to the appropriate EPA Regional Office no later than May 10, 1995. The request shall contain the information specified in § 63.190(e)(4)(iv) and the reason compliance cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H or replacement of the

compressor or recasting of the distance piece.

\* \* \* \* \*

[FR Doc. 95-8199 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 63**

[AD-FRL-5182-7]

RIN 2060-AC19

**National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This action corrects errors and clarifies regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON.

**EFFECTIVE DATE:** The direct final rule will be effective May 22, 1995, unless significant, adverse comments are received by May 10, 1995. If significant, adverse comments are timely received on any provision of the direct final rule, that provision of the direct final rule will be withdrawn and only those provisions on which no such adverse comments are received will become effective on May 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254.

**SUPPLEMENTARY INFORMATION:** If significant adverse comments are timely received on any provision of this direct final rule, all such comments will be addressed in a subsequent final rule based on those provisions of the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. Such provisions will be withdrawn from the Direct Final Rule.

Provisions of the Direct Final Rule that do not receive timely significant adverse comment will become final 40 days from today's **Federal Register** Notice. If no significant adverse comments are timely filed on any provision of this direct final rule then the entire direct final rule will become effective 40 days from today's **Federal Register** notice and no further action is contemplated on the parallel proposal published today.

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON.

This document corrects several oversights in the drafting of subparts F, H, and I of the final regulation. Also, several definitions are being added to subparts H and I to clarify the intent of certain provisions in these subparts. These changes do not significantly modify the requirements of the regulation.

**I. Description of Changes**

*A. Compliance Dates for Emission Points at Existing Sources Affected by Operational Changes*

Subparts F and G established administrative procedures to address operational changes that were believed likely to occur at SOCMI facilities. These procedures specify the notification and approval requirements for each type of change as well as the compliance date for equipment affected by the change. When these provisions (§ 63.100(l)) were drafted the need to include surge control vessels and bottoms receivers in the list of potential changes was not recognized. Because the nature of the equipment changes required for control of surge control vessels and bottoms receivers is similar to that required for compliance with subpart G, similar compliance times need to be provided for surge control vessels and bottoms receivers. Therefore, the provisions in paragraphs (l)(4) and (l)(4)(ii) in § 63.100 are being revised to include surge control vessels and bottoms receivers.

### B. Startup/Shutdown/Malfunction Plan

The EPA has received numerous inquiries regarding the applicability of the startup/shutdown/malfunction plan required by § 63.6(e) of subpart A to equipment subject to the provisions of subpart H. Questions raised include whether the plan only applies to control devices used to comply with the requirements of subpart H or if the plan must also address equipment such as valves and pumps, and if so, how would such equipment be included in the plan.

The EPA intended the startup/shutdown/malfunction plan to apply only to control devices used to comply with subpart H. However, EPA also thought that some owners or operators might choose to use the startup/shutdown/malfunction plan to specify various conditions that would justify delay of repair for equipment such as pumps or valves. To clarify this point, table 3 of subpart F is being amended to include a comment on how the provisions concerning startup/shutdown/malfunction plans apply to equipment subject to subpart H. This same comment is being added to subpart I as a new paragraph § 63.192(b)(6)(ii).

### C. Applicability of Subpart H Limited to Process Lines

A new paragraph is being added to the applicability section of subpart H (§ 63.160) to clarify that only lines and equipment containing process fluid are subject to this subpart. The new paragraph merely incorporates into the rule the intent expressed in the preamble to the proposed rule. This provision had not previously been included in subpart H because it had been considered unnecessary. This provision is being added now due to a number of concerns regarding clarity of applicability of section 112(g) case-by-case review requirements to this equipment.

### D. Definitions

Two definitions are being added to subpart H and the definition for "duct work" in subparts G and H is being revised. A definition for "closed-purge system" is being added to clarify terminology in the rule and to better express the Regulatory Negotiation Committee's (Committee) intent regarding the requirements for sampling connection systems. In Committee discussions on the provisions for sampling connection systems, the Committee recognized the need to provide compliance options that would be appropriate for a wide range of operating conditions and processes. The

Committee used the terminology "closed-purge system" to refer to systems where the liquid sample purge was captured in a container and then returned to the process. This kind of system was envisioned as being the compliance option for processes handling heavy liquids particularly polymer processes, for low pressure lines, and where closed-loop sampling presented safety concerns. The terminology "closed-loop sampling system" was used to refer to a system where the purged fluid is returned to the process at a point of lower pressure. A throttle valve or other device is commonly used to induce the pressure drop across the sample loop. These systems can be used in higher pressure lines and with light liquids and materials that do not polymerize upon exiting the process equipment.

The Committee included a definition for "closed-loop system" in the rule to distinguish it from "closed-purge system". A definition for "closed purge system" was not included because it was thought that the meaning would be understood from the terminology alone and the definition of "closed-loop system". Due to numerous questions regarding the meaning of this term and how it differs from "closed-loop system", EPA believes that it is necessary to add a definition to clarify intent.

A definition for "pressure relief device or valve" is being added because EPA has received inquiries from industry as well as from State agencies regarding the applicability of the provisions of § 63.165 to atmospheric storage vessels. Pressure/vacuum vents on atmospheric storage vessels are typically actuated when the vessel is filled or emptied and due to pressure changes resulting from diurnal temperature changes. The provisions of § 63.165 were never intended to apply to these cases and are not appropriate for these vessels. The provisions of § 63.165 were designed to ensure that pressure relief devices on process lines properly reseal after relieving a system overpressure. Pressure relief devices are safety devices commonly used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. These pressure relief devices do not open under vacuum. The added definition for "pressure relief device or valve" is based on the type of equipment that EPA intended to regulate and considered in the development of the equipment leak standards (e.g., subparts VV, GGG, and KKK of 40 CFR part 60) as well as industry practice. The definition also

explicitly excludes vacuum actuated devices as well as low pressure actuated relief devices. The 2.5 pounds per square inch gauge (psig) set pressure specified in the definition is based on the American Petroleum Institute (API) pressure rating for atmospheric pressure tanks. Operation at higher pressures or vacuums may cause damage to the tank.

The EPA is revising the definition of "duct work" in order to more specifically designate the intended equipment. The term "duct work" is presently defined in the rule as "a conveyance system that does not meet the definition of hard piping." The EPA recognizes that this definition is too broad and can be misconstrued as applying to tank trucks, rail cars, or anything that conveys that is not hard piping. The term "duct work" was intended to designate systems for conveyance of gases like those commonly used for heating and ventilation systems. These systems are commonly constructed of sheet metal and have sections connected by screws or crimping. The revised definition uses this description to more specifically identify the types of systems EPA considers more likely to develop leaks and thus identify those systems where annual inspection with an instrument that meets the specifications of Method 21 is appropriate.

The definition for "Research and Development Facility" was inadvertently omitted from subpart I when the applicability provisions for the non-SOCMI processes was separated from those for the SOCMI processes. The definition for "Research and Development Facility" in § 63.101 of subpart F is being added to § 63.191 of subpart I to correct this oversight.

### E. Miscellaneous Changes

Paragraph (b) of 63.160 is being revised to clarify that this override of existing equipment leak rules only applies after the source must comply with subpart H. The EPA has recently learned that some people have interpreted the rule to allow suspension of compliance with applicable part 60 or 61 equipment leak rules even though the subpart H compliance date had not occurred yet. The Committee's intent with this provision was to avoid duplication of effort. Owing to the confusion surrounding the present language, EPA is correcting the drafting of this paragraph.

Paragraph (a) of § 63.169 of subpart H is revised to clarify that there must be potential for discharge to the atmosphere before repair is required. It is necessary to clarify this point because there are processes where pressure relief

devices discharge into a lower pressure section of the process and there are no emissions to the atmosphere. The EPA is clarifying the language in § 63.169(a) to avoid unnecessary repair actions and recordkeeping. This clarification does not alter the requirement for documentation of proper reseating of pressure relief devices or valves that vent to the atmosphere.

The EPA is also correcting paragraph (b) of § 63.169 by adding the leak definition for pumps in polymerizing monomer service. Section 63.169(b) presently defines a leak for pumps in heavy liquid service as 2,000 parts per million (ppm) regardless of the material handled. The EPA believes that use of the 2,000 ppm leak definition for all pumps in heavy liquid service was a drafting oversight since it was the Committee's judgment in establishing the standard for pumps in light liquid service that 5,000 ppm represented best performance (§ 63.163(b)(2)(iii)) for pumps handling polymerizing monomers.

The recordkeeping requirement for owners or operators who elect to adjust monitoring frequency by time in use was inadvertently included with the recordkeeping requirements for pressure testing of equipment (§ 63.181(e)(2)). This requirement is only relevant for those batch processes for which the owner or operator elects compliance using the leak detection and repair program in § 63.178(c). Most of the recordkeeping requirements for § 63.178(c) are presented in § 63.181(b)(9). Therefore, paragraph (e)(2) is being redesignated as paragraph (b)(9)(ii). Section 63.181(e)(2) is being reserved to avoid renumbering the rest of paragraph (e).

The EPA has recently received several inquiries regarding the time period to be covered in the first semiannual report. The concern is that § 63.182(d)(1) appears to require the periodic report to include a summary of the monitoring information for the period on the day that the report is due. Thus, the owners and operators of sources subject to subpart H would have no time to compile, analyze, and organize the raw data for the report. The EPA intended to provide owners and operators of sources subject to subpart H 90 days to compile, analyze, and organize data for the periodic reports. The present wording of § 63.182(d)(1) does not clearly communicate that intent. Therefore, § 63.182(d)(1) is being amended by adding two sentences to specify that the first periodic report shall cover the first 6-month period from the compliance date and that each subsequent report

would cover the 6-month period from the last report.

The EPA has also recently determined that a reporting requirement that was intended for screwed connectors subject to § 63.174(c) was inadvertently retained in the final rule. During consideration of public comments on the proposed rule, EPA had decided to remove the requirements for separate recordkeeping and reporting for screwed connectors in order to reduce the burden of the rule. Due to an oversight §§ 63.182(d)(2) (x) and (xii) were not removed as intended. The EPA is, therefore, correcting this oversight by removing §§ 63.182(d)(2) (x) and (xii). These paragraphs are being reserved to avoid renumbering the paragraph.

## II. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## III. Administrative

### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

### B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA believes that these amendments

would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 subparts F, H, and I of the Code of Federal Regulations are corrected as follows:

1. The authority citation for part 63 continues to read as follows:

**Authority:** sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101-549, 104 Stat. 2399).

### Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is corrected by revising the first sentence of paragraph (l)(4) introductory text and by revising paragraph (l)(4)(ii)(B) to read as follows:

#### § 63.100 Applicability and designation of source.

\* \* \* \* \*

(l) \* \* \*

(4) If an additional chemical manufacturing process unit is added to a plant site, or if an emission point is added to an existing chemical manufacturing process unit, or if another deliberate operational process change creating an additional Group 1 emission point(s) is made to an existing chemical manufacturing process unit, or if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, and if the addition or change is not subject to the new source requirements as determined according to paragraphs (l)(1) or (l)(2) of this section, the

requirements in paragraphs (l)(4)(i) through (l)(4)(iii) of this section shall apply. \* \* \*

(ii) \* \* \*  
 (B) If a deliberate operational process change to an existing chemical manufacturing process unit causes a Group 2 emission point to become a Group 1 emission point, if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, the owner or operator shall be in compliance upon

initial start-up or by 3 years after April 22, 1994, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (m)(1) through (m)(3) of this section to establish a compliance date.

\* \* \* \* \*

*Table 3 of Subpart F—[Amended]*

3. In Table 3 of subpart F, is the entry for "63.6(e)" is amended by adding two sentences in the "Comment" column to read as follows:

**Table 3 to Subpart F—General Provisions Applicability to Subpart F, G and H**

\* \* \* \* \*

Reference	Applies to Subparts F, G, and H	Comment
63.6(e) .....	Yes .....	* * * For subpart H, the startup, shutdown, and malfunction plan requirement of § 63.6(e)(3) is limited to control devices subject to the provisions of subpart H and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.

**Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater**

4. Section 63.111 is amended by revising the definition for "duct work" to read as follows:

**§ 63.110 Definitions.**

\* \* \* \* \*

*Duct work* means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

\* \* \* \* \*

**Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.**

5. Section 63.160 is amended by removing paragraph (d), redesignating paragraph (c) as paragraph (d); by revising paragraph (b); by adding and reserving a new paragraph (c), and by adding a new paragraph (e) to read as follows:

**§ 63.160 Applicability and designation of source.**

\* \* \* \* \*

(b) After the compliance date for a process unit, equipment to which this subpart applies that are also subject to the provisions of:

(1) 40 CFR part 60 will be required to comply only with the provisions of this subpart.

(2) 40 CFR part 61 will be required to comply only with the provisions of this subpart.

\* \* \* \* \*

(e) Except as provided in any subpart that references this subpart, lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

\* \* \* \* \*

6. Section 63.161 is amended by adding in alphabetical order definitions for "closed-purge system" and "pressure relief device" and by revising the definition for "duct work" to read as follows:

\* \* \* \* \*

**§ 63.161 Definitions.**

\* \* \* \* \*

*Closed-purge system* means a system or combination of system and portable containers, to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

\* \* \* \* \*

*Duct work* means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has

sections connected by screws or crimping. Hard-piping is not ductwork.

\* \* \* \* \*

*Pressure relief device or valve* means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices.

\* \* \* \* \*

7. Section 63.169 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.**

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.180(b) of this subpart if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method. If such a potential leak is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.180(b) of this subpart.

(b) If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for

pumps handling polymerizing monomers, 2,000 parts per million or greater for pumps in food/medical service or pumps subject to § 63.163(b)(iii)(C), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

\* \* \* \* \*

8. Section 63.181 is amended by redesignating paragraph (b)(9) as paragraph (b)(9)(i), by redesignating paragraph (e)(2) as paragraph (b)(9)(ii), and by reserving paragraph (e)(2).

**§ 63.181 Recordkeeping requirements.**

9. Section 63.182 is amended by adding two sentences to paragraph (d)(1) and by removing and reserving paragraphs (d)(2)(x) and (xii) to read as follows:

**§ 63.182 Reporting requirements.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* The first periodic report shall cover the first 6 months after the compliance date specified in § 63.100(k)(3) of subpart F. Each subsequent periodic report shall cover the 6 month period following the preceding period.

\* \* \* \* \*

**Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.**

10. Section 63.191 is amended by adding in alphabetical order a definition for "research and development facility" to paragraph (b) to read as follows:

**§ 63.191 Definitions.**

(b) \* \* \*

*Research and development facility* means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products except in a de minimis manner.

\* \* \* \* \*

11. Section 63.192 is amended by redesignating paragraph (b)(6) as paragraph (b)(6)(i) and adding paragraph (b)(6)(ii) to read as follows:

**§ 63.192 Standard.**

\* \* \* \* \*

(b) \* \* \*

(6)(i) \* \* \*

(ii) The operational and maintenance requirements of § 63.6(e). The startup,

shutdown, and malfunction plan requirement of § 63.6(e)(3) is limited to control devices subject to the provisions of subpart H of part 63 and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.

\* \* \* \* \*

[FR Doc. 95-8198 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Public Land Order 7131**

[NV-930-1430-01; NV-57922]

**Withdrawal of Public Land to the United States Air Force; Nevada**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 3,972.04 acres of public land from surface entry, mining, and mineral leasing until November 6, 2001, for the United States Air Force to provide a safety and security buffer between public land administered by the Bureau of Land Management and withdrawn land under the jurisdiction of the Nellis Air Force Range.

**EFFECTIVE DATE:** April 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dennis Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, (702) 785-6507.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), and from leasing under the mineral leasing laws, to provide a safety and security buffer for the United States Air Force at Nellis Range:

**Mount Diablo Meridian**

T. 6 S., R. 56 E., unsurveyed

Sec. 25;

Sec. 36.

T. 7 S., R. 56 E., unsurveyed

Sec. 1;

Sec. 13, W<sup>1</sup>/<sub>2</sub>;

Sec. 24, NW<sup>1</sup>/<sub>4</sub>.

T. 6 S., R. 57 E.,

Sec. 30, lots 1 to 4, inclusive, and E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>;

Sec. 31, lots 1 to 4, inclusive, and E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>, E<sup>1</sup>/<sub>2</sub>.

T. 7 S., R. 57 E.,

Sec. 6, lots 1 to 7, inclusive, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, and SE<sup>1</sup>/<sub>4</sub>.

The area described contains 3,972.04 acres in Lincoln County.

2. This withdrawal will expire on November 6, 2001, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

**Bob Armstrong,**

*Assistant Secretary of the Interior*

[FR Doc. 95-8756 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-HC-P

**DEPARTMENT OF ENERGY**

**48 CFR Parts 915, 916 and 970**

RIN 1991-AB19

**Acquisition Regulation: Certified Cost or Pricing Data Threshold and Requirements for a Determination and Findings for Use of Cost-Reimbursement Contracts**

**AGENCY:** Department of Energy.

**ACTION:** Interim rule and request for comment.

**SUMMARY:** The Department of Energy is issuing an interim rule increasing the threshold for certified cost or pricing data from \$100,000 to \$500,000 and deleting the requirement for determinations and findings for use of cost reimbursement contracts. These changes are required by the Federal Acquisition Streamlining Act of 1994 and subsequent changes to the Federal Acquisition Regulation (FAR).

**DATES:** *Effective Date:* April 10, 1995.

*Comment Date:* Written comments must be submitted no later than June 9, 1995.

**ADDRESSES:** Comments should be addressed to: Terrence D. Sheppard, Business and Financial Policy Division (HR-521.2), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard, (202) 586-8174.

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Public Comments

III. Procedural Requirements

A. Review Under Executive Order 12866

B. Review Under Executive Order 12778

C. Review Under the Paperwork Reduction Act

- D. Review Under the National Environmental Policy Act  
E. Review Under Executive Order 12612

## I. Background

Pursuant to section 644 of the Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the Secretary. In accordance with this authority, the Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984).

The Federal Acquisition Streamlining Act of 1994 (the Act) (Pub. L. 103-355) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. This notice announces an interim rule which amends the DEAR based on certain provisions in the Act. In particular, Section 1251 of the Act, which was implemented in the FAR under FAR Case 94-720 (59 FR 62498, December 5, 1994), increases the threshold for obtaining certified cost or pricing data from \$100,000 to \$500,000, and section 1071 of the Act, which was implemented in the FAR under FAR Case 94-700, (59 FR 64784, December 15, 1994), repealed the requirement for a determination and finding regarding use of a cost-type or incentive contract. This interim rule is intended solely to make the changes necessary to implement those limited portions of the Act. More extensive changes to implement other portions of the Act will be made subsequently.

A detailed list of changes follows:

1. The authority for Parts 915 and 916 is restated.
2. Subsection 915.804-70 is amended by deleting the parenthetical "(proposals of \$100,000 or less)." There is no need to specify the new threshold (\$500,000), because it is stated in the FAR and is the same for all federal agencies. In addition, the FAR provides that this threshold will be subject to adjustment effective October 1, 1995 and every five years thereafter.
3. Subsection 916.301-3 is deleted in its entirety as the statutory requirement to prepare a determination and finding has been repealed by Section 1071 of the Act.
4. The authority for Part 970 is amended by deleting the references to 41 U.S.C. 420 and 42 U.S.C. 7256a. The former was repealed by Section 2191 of the Act and the latter is unnecessary in

light of the authority provided by 42 U.S.C. 2201 and 42 U.S.C. 7254.

5. Subsection 970.5204-24 is amended by deleting the specific references to the \$100,000 threshold and replacing it with references to the FAR cost or pricing data threshold established in FAR 15.804-2(a)(1). Affected paragraphs are (a), (a)(2), (c), (d), (f), and NOTE (b).

6. Subsection 970.7104-11 is amended at paragraphs (a)(1)(i) and (ii) by deleting the specific dollar threshold and substituting a reference to the FAR threshold.

## II. Public Comments

The regulatory changes described above are not discretionary with the Department. Accordingly, the Department has not published a general notice of proposed rulemaking. Nevertheless, the Department is providing an opportunity to comment on any relevant matter that may have been overlooked. Interested persons are invited to participate by submitting data, views, or arguments with respect to the interim final Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the "DATES" section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

## III. Procedural Requirements

### A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in Sections 2 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's interim final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

### C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

### E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment

to be used in all decisions involved in promulgating and implementing a policy action. This interim final rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

**List of Subjects in 48 CFR Parts 915, 916, and 970**

Government procurement.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citations for Parts 915 and 916 continue to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

**PART 915—CONTRACTING BY NEGOTIATION**

2. Subsection 915.804-70 is revised to read as set forth below:

**915.804-70 Uncertified cost or pricing data.**

Anytime an offeror or contractor is not required to submit certified cost or pricing data, the contracting officer may require the offeror or contractor to submit uncertified cost or pricing data. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

**PART 916—TYPES OF CONTRACTS**

**916.301-3 [Removed]**

3. Subsection 916.301-3, Limitations, is removed.

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

4. The authority citation for Part 970 is revised to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

5. Subsection 970.5204-24 is amended by revising paragraphs (a), (a)(2), (c), (d), (f), (g), and paragraph (b) following "NOTE" at the end of the clause to read as set forth below:

**970.5204-24 Subcontractor cost or pricing data.**

\* \* \* \* \*

(a) The following clause shall be inserted in all subcontracts where such subcontracts, and any modifications thereto, exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), even though the original amount of the subcontract was below the threshold.

\* \* \* \* \*

(2) Except as provided in (a)(3) of this clause, certified cost or pricing data shall be submitted prior to (i) award of each sub-subcontract, the price of which is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), and (ii) the negotiation of the price of each change or modification to the sub-subcontract under this subcontract for which the price adjustment is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1).

\* \* \* \* \*

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds the cost or pricing data threshold at FAR 15.804-2(a)(1) or the price of any change or other modification to this subcontract is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), the subcontractor agrees to furnish the contractor certified cost or pricing data, using the certificate set forth in paragraph (b) of this clause, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

\* \* \* \* \*

(f) The subcontractor agrees to insert paragraph (c) of this clause, without change, and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) and in each sub-subcontract that is less than the threshold when making a change or other modification thereto in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1).

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sum because the subcontractor or any sub-subcontractor, pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

\* \* \* \* \*

**Note.** \* \* \*

(b) This clause may also be used for subcontracts in which the amount of the subcontract is less than the cost or pricing data threshold at FAR 15.804-2(a)(1), if a certificate of cost or pricing data is obtained; if so used, the amount stated in the clause should be modified appropriately.

\* \* \* \* \*

6. Subsection 970.7104-11 is amended by revising paragraphs (a)(1)(i) and (ii) to read as set forth below:

**970.7104-11 Cost or pricing data.**

(a) \* \* \*

(1) \* \* \*

(i) Award of a negotiated subcontract when the price is expected to exceed the threshold for cost or pricing data at 48 CFR (FAR) 15.804-2(a)(1), or

(ii) Modifications of any subcontract when the price adjustment is expected to exceed the threshold for cost or pricing data at 48 CFR (FAR) 15.804-2(a)(1), unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

\* \* \* \* \*

[FR Doc. 95-8748 Filed 4-7-95; 8:45 am]

BILLING CODE 6450-01-P

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1802, 1850, and 1852**

**Indemnification under Public Law 85-804**

**AGENCY:** Office of Procurement, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the NASA policy and approval process on indemnifying contractors. This revision is part of NASA's efforts to simplify its regulations. The streamlined policy relies more on Federal-wide policies.

**EFFECTIVE DATE:** April 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Harold Nelson, (202) 358-0436.

**SUPPLEMENTARY INFORMATION:**

**Background**

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This final rule 48 CFR parts 1802, 1850, and 1852 for the following reasons.

Section 1802.101 is revised in order to define the acronym "FAR."

Section 1850.202 is revised in order to add a reference to 14 CFR subpart 1209.3 on the Contract Adjustment Board.

Until now, requests for indemnification under Public Law 85-804 have been processed using a two-step approach. Under the first step, the Administrator signed a "Memorandum Decision Under Public Law 85-804" which recognized a class of contracts for which the statutory criteria for approving such requests could be met. Specifically, this document described the existence of the unusually hazardous risk, explained how approval of requests would facilitate the national defense, and set any other conditions for approval of requests to incorporate the indemnification clause in specific NASA prime contracts. Two Memorandum Decisions, one applicable to contracts under the Shuttle Program and the other applicable to contracts for launch services using expendable launch vehicles have been signed.

The second step of the process involved the submission of an approval package for specific contracts, citing the pertinent Memorandum Decision. The Administrator signed a second document, an "Approval Under Public Law 85-804", to grant approval to include the indemnification clause in designated contracts. 48 CFR 1850.402 also envisioned circumstances where a combined Memorandum Decision and Approval Under Public Law 85-804 could be signed by the Administrator in instances where requests were not covered by a current Memorandum Decision.

The above described two-step approach is not required by 48 CFR (FAR) part 50, which prescribes a single document approach. Since one of the above mentioned Decision Memorandums expired in September 1994 and the other is due to expire in July 1995, NASA Headquarters reviewed continuation of the two step approach. Based on this review, it has been decided to abandon the two step approach in favor of following the FAR procedure. Upon issuance of this notice, when NASA contractors request indemnification, the contracting officer will take the actions set forth in 48 CFR (FAR) 50.403. The contracting officer will also submit a "Memorandum of Decision Under Public Law 85-804" for each contract, or group of contracts, for which indemnification is being sought. This Memorandum of Decision will contain all the required information which has been previously distributed between the two documents, the

Memorandum Decision Under Pub. L. 85-804 and the Approval Under Pub. L. 85-804.

The need for separate NASA clauses covering indemnification—48 CFR 1852.250-70, Indemnification Under Public Law 85-804, and 48 CFR 1852.250-72, Space Activity—Unusually Hazardous Risks, was also reviewed. 48 CFR 1852.250-70 was extremely similar to the existing FAR clause (48 CFR 52.250-1, Indemnification Under Public Law 85-804). However, the NASA clause differed in ways that were not consistent with Executive Order 10789, as amended, which implements the statutory authority (50 U.S.C. 1431-1435) authorizing indemnification. Therefore, it was determined that the clause should be deleted and the FAR clause used. Also, practically from the time that 48 CFR 1852.250-72, Space Activity—Unusually Hazardous Risks, was adopted; it was recognized that the contractors could not merely cite the clause to substantiate their requests for the indemnification clause. Contractors are required to describe the nature of the unusually hazardous risk associated with performance of the specific contract in detail. Therefore, it has been determined that the standard clause be deleted and the definition and description of the unusually hazardous risks be addressed on a case by case basis.

#### Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

#### Lists of Subjects in 48 CFR Parts 1802, 1850 and 1852

Government procurement.

**Tom Luedtke,**  
Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1802, 1850 and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1802, 1850 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473 (c)(1).

#### PART 1802—DEFINITIONS OF WORDS AND TERMS

2. Section 1802.101 is amended by adding the following definition in alphabetical order in paragraph (b):

#### 1802.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

FAR means the Federal Acquisition Regulation as codified at 48 CFR chapter 1.

\* \* \* \* \*

#### PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

3. Section 1850.202 is revised to read as follows:

##### 1850.202 Contract adjustment boards.

NMI 1152.5, 14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

4. Section 1850.402 is removed.

5. Section 1850.403-1 is revised to read as follows:

##### 1850.403-1 Indemnification requests.

In addition to the information required by 48 CFR (FAR) 50.403-1(a), the contractor shall provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

6. Section 1850.403-2 is revised to read as follows:

##### 1850.403-2 Action on indemnification requests.

(a) The Administrator will execute a Memorandum of Decision to approve a request to use the indemnification clause in a contract or group of contracts.

(b) For contracts of five years duration or longer, in addition to information required to be submitted by the contracting officer under 48 CFR (FAR) part 50, the submission should include discussion and determination on whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(c) If a contracting officer recommends that a request for indemnification be approved, the required information specified in 48 CFR (FAR) 50.403-2(a) shall be forwarded to the Associate Administrator for Procurement (Code HS) for review and processing to the Administrator. The contracting officer shall also provide a recommended Memorandum of Decision. This document provides the specific approval to include an indemnification clause in a NASA contract, or group of

contracts. In addition to the applicable requirements of 48 CFR (FAR) 50.306, the Memorandum of Decision shall contain the following:

(1) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s).

(2) A complete discussion of the contractor's financial protection program that the Administrator will review in order to approve the request for indemnification.

(3) As appropriate, the extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) Before presentation to the Administrator, Code HS will obtain concurrences from the General Counsel, Comptroller, Associate Administrator for Procurement, Associate Deputy Administrator and Deputy Administrator, as appropriate.

(e) Since indemnification coverage must flow through the prime contractor, subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s),

as applicable. If the prime contractor agrees indemnity should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval. The prime contractor's request shall provide information responsive to 1850.403-1, and 48 CFR (FAR) 50.403-1 and 50.403-2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

(f) If the contracting officer approves indemnification of a subcontractor by the prime, the contracting officer shall document the file with a memorandum for record addressing the items set forth in 48 CFR (FAR) 50.403-2(a). This memorandum shall address the items set forth in 48 CFR (FAR) 50.403-2(a) and contain an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in

relation to the unusually hazardous risk. The contracting officer may rely on the analysis of the prime contractor's financial protection program in relation to the approval of indemnification of the prime contractor, to the extent this analysis is applicable.

(g) Code HS will maintain records of each Memorandum of decision executed by the Administrator.

7. Sections 1850.403-3, 1850.403-370, and 1850.403-70 are removed.

**1850.403-3—[Removed]**

**1850.403-370—[Removed]**

**1850.403-70—[Removed]**

#### **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

8. Sections 1852.250-70 and 1852.250-72 are removed.

**1852.250-72—[Removed]**

**1852.250-72—[Removed]**

[FR Doc. 95-8511 Filed 4-7-95; 8:45 am]

BILLING CODE 7510-01-M

# Proposed Rules

Federal Register

Vol. 60, No. 68

Monday, April 10, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 70

#### Public Meeting on Draft Proposed Revisions to Domestic Licensing of Special Nuclear Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Announcement of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will hold a public meeting to review and solicit views from fuel cycle licensees on NRC's draft proposed revisions to its regulations on Domestic Licensing of Special Nuclear Material. This document is necessary to inform the public that the meeting is open to the public as observers.

**DATES:** The meeting will be held on May 2, 1995, from 9:00 am to 5:00 pm. Submit comments on the draft proposed rule by May 2, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** The meeting will be held at the U.S. Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.)

Written comments may be provided at this meeting or submitted prior to the meeting to Joan Higdon (See **FOR FURTHER INFORMATION CONTACT**).

The draft proposed rule is available for review prior to this scheduled meeting. To provide a thorough understanding of the impact of the proposed rule changes, copies of the newly developed draft Standard Review Plan (SRP) and draft Standard Format and Content Guide (SF&CG) are available for review. These copies can be obtained from the NRC's Public Document Room, 2120 L Street NW, Washington, D.C. 20037; Phone: 202-

634-3273; FAX: 301-634-3343. Affected parties are encouraged to review the draft rule and be prepared to provide their comments on revisions of Part 70 to the NRC at this public meeting. The NRC will accept and consider written comments from any interested parties if the comments are received no later than May 2, 1995. Written comments can be provided at this meeting or submitted prior to the meeting to Joan Higdon, Mail Stop T-8-A-33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; FAX: 301-415-5390; INTERNET: JXH1@NRC.GOV.

**FOR FURTHER INFORMATION CONTACT:** Joan Higdon, Mail Stop T-8-A-33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301-415-8082; FAX: 301-415-5390; INTERNET: JZH1@NRC.GOV.

**SUPPLEMENTARY INFORMATION:** The NRC is currently reviewing its regulations on Domestic Licensing of Special Nuclear Material (10 CFR Part 70). This review is the result of the findings and recommendations of the agency's Materials Regulatory Review Task Force and the Regulatory Impact Survey for Fuel Cycle and Materials Licensees. The purpose of the task force and the survey team was to evaluate the agency's licensing and oversight programs for fuel cycle and major materials plants, identify weaknesses, and recommend improvements. The task force's review and findings are contained in NUREG-1324, "Proposed Method for Regulating Major Materials Licensees," dated February 1992.

In conjunction with the task force's findings and the Commission's directive to establish a firm regulatory base for fuel cycle facility licensing and inspection activities and for determining the adequacy of licensee performance, the Division of Fuel Cycle Safety and Safeguards has initiated major revisions to 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." In concert with this rule development activity, staff is also developing a Standard Review Plan (SRP) and a Standard Format and Content Guide (SF&CG). The SRP will provide a standardized approach for staff in reviewing license applications for authorization to possess and process special nuclear material, and it will also assist licensees in understanding staff's approach and bases for reviewing

license applications. The SF&CG will provide guidance to applicants and licensees regarding the type and depth of information in license applications that are necessary for regulatory decisions.

In considering these Part 70 revisions, the Commission has directed the staff to reconsider the current plan to revise 10 CFR Part 70 in its entirety and, among other things, discuss these proposed changes with affected fuel cycle licensees to determine their views towards revisions of Part 70. In addition, the Commission has directed that the staff consider and evaluate alternative approaches from those already included in the draft rule.

Accordingly, this public meeting will focus on NRC's proposed changes to Part 70 and the views of the fuel cycle licensees on the proposed changes. The agenda for this meeting will begin with NRC staff presentation of the draft rule, which will include the basis for the proposed rule changes and the specific provisions in the draft rule that will affect the fuel cycle licensees. This presentation will be followed by an information exchange with affected licensees regarding their views towards the proposed rule changes and licensees' suggestions for alternative approaches to this major rulemaking activity. At the conclusion of this interchange, if time permits, other participants will have an opportunity to present their views on these agenda items. For efficient conduct of the meeting, participation will be limited to the following affected fuel cycle licensees and license applicant or from their official designated representatives: ABB Combustion Engineering, Nuclear Operations  
American Ecology Corporation  
Babcock & Wilcox, Naval Nuclear Fuel Division and Commercial Nuclear Fuel Plant  
Chem-Nuclear Systems, Inc.  
Department of Army  
Department of Commerce  
Eastman Kodak  
Florida Institute of Technology  
General Atomics  
General Electric Company (Vallecitos Nuclear Center)  
General Electric Company (Wilmington, N.C.)  
Idaho State University  
IRT Corporation  
Louisiana Energy Services (license applicant)

Massachusetts Institute of Technology  
Nuclear Fuel Services, Inc.  
Pennsylvania State University  
Purdue University  
Seattle University  
Siemens Power Corporation  
University of Florida  
University of Texas  
Westinghouse Electric Corporation

Attendees are requested to notify Ms. Joan Higdon at 301-415-8082 of their planned attendance to ensure adequate meeting room space and if any special requirements are needed (e.g., for the hearing-impaired).

Dated at Rockville, Maryland, this 5th day of April, 1995.

For the Nuclear Regulatory Commission.

**Robert F. Burnett,**

*Director, Division of Fuel Cycle Safety and Safeguards.*

[FR Doc. 95-8703 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 792

#### Addition of Specific Exemptions Under the Privacy Act

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is proposing to amend its regulations pertaining to exemptions of the NCUA's Privacy Act Systems of Records. These amendments are necessary to reflect the addition of the (j)(2) and (k)(2) exemptions of the Privacy Act to the NCUA regulations that describe exempt systems of records, and to clearly link the "Office of Inspector General (OIG) Investigative Records—NCUA," system NCUA- 20, to these Privacy Act exemptions.

**DATES:** Comments must be postmarked or posted to the NCUA Electronic Bulletin Board by May 10, 1995. Comments postmarked or posted by Electronic Bulletin Board after this date will be considered if it is practical to do so, but the NCUA is able to assure consideration only for comments that are received on or before this date.

**ADDRESSES:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, or post comments to the NCUA Electronic Bulletin Board at 800 876-1684 or 703 518-6480. Comments received may be examined at the Office of Inspector General, 5th floor, NCUA Building, 1775 Duke Street, Alexandria, VA.

**FOR FURTHER INFORMATION CONTACT:** Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 5th floor, 1775 Duke Street, Alexandria, VA, 22314, Telephone: 703-518-6352.

**SUPPLEMENTARY INFORMATION:** In 1989, in response to the Inspector General Act Amendments, P.L. 100-504, the National Credit Union Administration Board established a statutorily designated Inspector General (IG), to whom the functions of the former NCUA Office of Internal Auditor, were transferred. The functions of NCUA's Office of Inspector General (OIG) include: (1) The detection and prevention of waste, fraud, and abuse and (2) the promotion of economy and efficiency in NCUA programs and operations. As one of its principal functions, the OIG performs investigations into alleged violations of criminal law in connection with NCUA's programs and operations, pursuant to the IG Act of 1978, as amended. In conjunction with these functions, OIG reports suspected violations of criminal and civil law to the U.S. Attorney General.

Section (j)(2) of the Privacy Act (5 U.S.C. 552a (j)(2)) permits the head of an agency to promulgate rules to exempt a system of records from certain requirements if the system is maintained by an agency component or sub component whose principal function pertains to the enforcement of criminal laws and if the system of records is compiled for a criminal law enforcement purpose. Accordingly, to the extent it includes this kind of records, the OIG Investigative Records system of records is exempt from the following sections of 552a of Title 5 U.S.C.: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g), as well as from the corresponding regulatory subsections.

Section (k)(2) (Title 5 USC 552a(k)(2)) permits exemption from certain requirements if the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2); Provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished

information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source should be held in confidence. Accordingly, to the extent that it includes this kind of records, this system of records is also exempt under Section (k)(2) from the following sections of 552a of Title 5 U.S.C.: (c)(3);(d); (e)(1); (e)(4)(G), (H), and (I); and (f), as well as from the corresponding regulatory subsections. This proposed rule, amending 12 CFR 792.34, would make NCUA's regulations consistent with those of the majority of agencies with statutory IG's.

Elsewhere in today's **Federal Register** there is a Notice describing this system of records.

Exemptions from the particular subsections are justified for the following reasons:

Section 552a(c)(3) of title 5 U.S.C. requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. This accounting must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, especially in a joint investigation situation. This could seriously impede or compromise an investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication or destruction or evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

Section 552a(c)(4) of title 5 U.S.C. requires an agency to inform outside parties of amendments to and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is exempted from the amendment provisions of subsection (d) of the Privacy Act by this rule, this section is not properly applicable.

Sections 552a(d) and (f) of title 5 U.S.C. require an agency to provide access to records, make corrections, and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with the access to records of an investigation and the right to contest the contents of those records and force

changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

Section 552a(e)(1) of title 5 U.S.C. requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (e.g., the fraudulent use of Social Security numbers) and that information may not be reasonably segregated. In the interests of effective law enforcement, OIG investigators should retain this information, because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

Section 552a(e)(2) of title 5 U.S.C. requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs.

The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an

investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with evidence or information. Moreover, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term, "to the greatest extent practicable," is a subjective standard, and it is impossible adequately to define the term so that individual OIG investigators can consistently apply it to the many fact patterns encountered in OIG investigations.

Section 552a(e)(3) of title 5 U.S.C. requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purpose for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on any person, if any, of not providing all or any part of the required information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

Sections 552a(e)(4)(G) and (H) of title 5 U.S.C. require an agency to publish in the **Federal Register** notice concerning its procedures for notifying an individual at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to

contest its content. Since this system of records is being exempted from subsection (f) of the Privacy Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that the system of records would be exempt from those subsections.

Section 552a(e)(4)(I) of title 5 U.S.C. requires an agency to publish notice of categories of sources of records in the system of records. To the extent that this provision is constructed to require more detailed disclosure than the broad generic information currently published in the system notice an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and information, and to avoid the disclosure of investigative techniques and procedures.

Section 552a(e)(5) of title 5 U.S.C. requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set forth previously in item (d) (duty to maintain in agency records only "relevant and necessary information" about an individual.) While the OIG makes every effort to maintain records that are accurate, relevant, timely and complete, it is not always possible in an investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination by OIG to refer a matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until a trial (if at all) to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

Section 552a(e)(8) of title 5 U.S.C. requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is

made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal confidential investigative techniques, procedures, or evidence.

Section 552a(g) of title 5 U.S.C. provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act or any rule promulgated thereunder in such a way as to have an adverse effect on an individual. The system would be exempt from many of the Act's requirements; it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 12 CFR are procedural in nature and will aid an NCUA office to perform its criminal law enforcement function.

#### Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

#### Executive Order 12612

This amendment to NCUA's systems of record notice does not affect state regulation of credit unions.

#### List of Subjects in 12 CFR Part 792

Criminal penalties, Freedom of Information, Privacy, Reporting and record keeping requirements, Sunshine Act.

By the National Credit Union Administration Board on March 30, 1995.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set out in the preamble and under the authority of the Federal Credit Union Act of 1934, as amended; and 5 U.S.C. 552, 552a, and 553, the NCUA is proposing to adopt the following amendments to 12 CFR part 792.

## PART 792—[AMENDED]

### Subpart B—The Privacy Act

1. The authority citation for Part 792 is revised to read as follows:

**Authority:** 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

2. In § 792.34, a new paragraph (b)(3) is added to read as follows:

#### § 792.34 Exemptions.

\* \* \* \* \*

(b) \* \* \*

(3) System NCUA-20, entitled, "Office of Inspector General (OIG) Investigative Records," consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

[FR Doc. 95-8337 Filed 4-7-95; 8:45 am]

BILLING CODE 7535-01-U -

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 95-ASO-10]

#### Proposed Amendment to Class E Airspace; Memphis, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Memphis, TN. A VOR RWY 16 Standard Instrument Approach Procedure (SIAP) has been developed for General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

**DATES:** Comments must be received on or before May 23, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No.

95-ASO-10, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO-530, Air Traffic Division, P.O. Box 20636,

Atlanta, Georgia 30320.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Memphis, TN. A VOR RWY 16 SIAP has been developed for General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class E airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.*

\* \* \* \* \*

#### ASO TN E5 Memphis, TN [Revised]

Memphis International Airport, TN  
(Lat. 35°02'45" N, long. 89°58'41" W)

Twinkle Town Airport  
(Lat. 34°56'00" N, long. 90°10'00" W)

Olive Branch Airport  
(Lat. 34°58'44" N, long. 89°47'13" W)

West Memphis Municipal Airport  
(Lat. 35°08'11" N, long. 90°14'04" W)

General DeWitt Spain Airport  
(Lat. 35°12'05" N, long. 90°03'05" W)

Elvis NDB  
(Lat. 34°57'13" N, long. 89°58'26" W)

West Memphis NDB  
(Lat. 35°08'22" N, long. 90°13'57" W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Memphis International Airport, and within 4 miles each side of the 179° bearing from the Elvis NDB extending from the 8-mile radius to 7 miles south of the NDB, and within a 6.5-mile radius of Twinkle Town Airport, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 2.5 miles each side of the 198° and 352° bearings from the West Memphis NDB extending from the 6.5-mile radius to 7.4 miles north and south of the NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN Class E airspace area.

\* \* \* \* \*

Issued in College Park, Georgia, on March 29, 1995.

**Michael J. Powderly,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 95-8764 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-13-M

### DEPARTMENT OF THE TREASURY

#### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 53

[Notice No. 808]

#### Review of ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return (No. REI-259-95)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** General Notice; Notice of request for public comment.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is soliciting public comments on revising ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. ATF has prepared a draft revision of the return. A copy of the draft return, including its instructions, immediately follows this notice.

The objectives of revising the return are to ensure taxpayers calculate the correct amount of taxes, clarify instructions on how to complete the return, and decrease taxpayers' time spent preparing the return.

ATF would like to know if the revised return accomplishes these objectives. Also, ATF is interested in any other comments from the public which may improve this tax return.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** Send written comments to: Chief, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Room 5190, Washington, DC 20026 (Notice No. 808).

**FOR FURTHER INFORMATION CONTACT:** Robert P. Ruhf, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226. (202-927-8220).

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The author of this document Robert P. Ruhf, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

##### Authority and Issuance

This notice is issued under the authority in 5 U.S.C. 301 and 26 U.S.C. 7805.

Signed: March 31, 1995.

**Daniel R. Black,**  
*Acting Director.*

BILLING CODE 4810-31-M

**GENERAL INSTRUCTIONS**

1. **GENERAL.** Liability for the manufacturers excise tax under 26 U.S.C. 4181 (pistols, revolvers, other firearms, and shells and cartridges) is reported using this form. Tax is imposed on the sale or use of firearms or ammunition by the manufacturer or importer.
2. **HOW TO PREPARE.** Follow all the instructions and complete this form in duplicate. Complete each part and schedule of this return. If not applicable, write "0" or "none." Be sure to sign your return. Keep a copy for your records. Use blank sheets if additional space is needed. Mark each sheet with your name, employer identification number, the tax return period and the item number.
3. **HOW OFTEN AND WHEN TO FILE.** If a filing date of a return falls on a Saturday, Sunday or legal holiday, the filing date becomes the next succeeding day which is not a Saturday, Sunday or legal holiday. Also, a taxpayer may apply to extend the filing date on ATF Form 5300.29 because of temporary conditions beyond the taxpayer's control.
  - a. **Quarterly.** You are generally required to file a return for a calendar quarter in which a tax liability is incurred. Calendar quarters are 3-month periods ending March 31, June 30, September 30, and December 31. However, you are not required to file a return for a calendar quarter in which no tax liability has been incurred.  
  
A calendar quarter return is due no later than one month after the end of that quarter (April 30, July 31, October 31, and January 31). When you have made sufficient and timely deposits of tax (see instruction 6) for the return, an additional 10 days may be taken to file the return.
  - b. **Annually.** If you have no tax liability for an entire calendar year and have not filed a final return (see instruction 9), then your annual return is due not later than January 31 of the following year.
  - c. **Monthly or Semimonthly.** File monthly or semimonthly returns when ATF notifies you to do so in writing. A monthly return is due 15 days following the month. A semimonthly return is due 10 days following the semimonthly period.

4. **WHERE AND HOW TO FILE.** Send this return to the address listed below that is appropriate for your principal place of business or of residence. Include your payment of the amount owed on line 22. Please make checks or money orders payable to the Bureau of Alcohol, Tobacco and Firearms and include your employer identification number on all checks or money orders.

State of Your Principal Place of Business OR Residence:	Send To: Bureau of ATF Excise Tax
AL, DC, FL, GA, MS, NC, SC, TN, VA	P.O. Box 360326 Pittsburgh, PA 15259-4326
IL, IN, KY, MI, MN, ND, OH, SD, WI, WV	P.O. Box 440884 Pittsburgh, PA 15251-6804
AR, AZ, CO, IA, KS, LA, MO, NE, NM, OK, TX	P.O. Box 371991 Pittsburgh, PA 15251-7091
CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT	P.O. Box 371965 Pittsburgh, PA 15251-7665
AK, CA, HI, ID, MT, NV, OR, UT, WA, WY	P.O. Box 371909 Pittsburgh, PA 15251-7909
PR or VI	Federal Building, Room 659 Carlos Chardon Street Hato Rey, PR 00918

5. **TIMELY FILING.** A tax return and any accompanying payment will be considered timely filed if it is mailed by the due date. The official postmark of the U.S. Postal Service on the envelope or on the sender's receipt of certified mail is evidence of the date of mailing. Otherwise, the taxpayer has the burden of proving the date of filing.
6. **DEPOSITS OF TAX.** If you are required to file a quarterly return, you may have to make tax deposits before filing your return. Also, if the tax balance due on a quarterly return is more than \$100, deposit the entire balance. Refer to ATF Form 5300.27.
7. **OVERPAYMENTS AND UNDERPAYMENTS.** Do not file amended returns for overpayments and underpayments or for any other reasons. Credits may be claimed as credits in Schedule C by filing a claim for refund on ATF Form 2635 (5620.8). Tax overdeposited for a quarterly return can be refunded on that quarter's return on line 23. ATF Announcement 94-0 contains additional information about credits and refunds. Underpayments can be paid through an entry in Schedule B or according to the instructions of the appropriate ATF office listed in instruction 10.  
  
The law provides for the payment of interest on underpayments and on some overpayments of tax. Compute interest, if applicable, at the rate prescribed by 26 U.S.C. 6621.
8. **RECORDS.** Every taxpayer must keep records to support all entries made on this return. Generally, records must be kept at least 3 years from the date the tax return is filed.
9. **FINAL RETURN.** If you permanently cease operations related to the return, check the box in line 4 and attach a statement of: (a) who (name) will keep the records; (b) the location (address) of the records; (c) whether the business was transferred to another person, and (d) to whom (name and address) the business was transferred. Also, if you are an individual making a one-time importation and are not engaged in any business related to the return, check the box in line 4.
10. **ADDITIONAL INFORMATION.** If you have questions about this tax return or need assistance, please contact the appropriate ATF office listed below.

State of Your Principal Place of Business OR Residence:	Office to contact: BATF Technical Services
AL, DC, FL, GA, MS, NC, SC, TN, VA	2600 Century Parkway, NE Atlanta, GA 30345 404-679-5080
IL, IN, KY, MI, MN, ND, OH, SD, WI, WV	6525 Federal Office Building 550 Main Street Cincinnati, OH 45202-3263 513-684-3334
AR, AZ, CO, IA, KS, LA, MO, NE, NM, OK, TX	1114 Commerce Street 7th Floor Dallas, TX 75242 214-767-2281
CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT	Curtis Center, Suite 875 Independence Square West Philadelphia, PA 19106 215-597-2246
AK, CA, HI, ID, MT, NV, OR, UT, WA, WY	221 Main Street, 11th Floor San Francisco, CA 94105 415-744-7011
Outside the United States	Washington, DC 20226 202-927-8220

## SPECIFIC INSTRUCTIONS

**LINE 5.** Payment of tax by EFT (electronic funds transfer) requires that you notify ATF. Refer to ATF Publication 5000.11.

**PART II.** Entries on the lines in Part II are limited to the sales and uses occurring during the tax period specified in line 6. You can use Schedule C to show tax decreases for sales or uses reported as taxable in this or previous tax returns that are resold for certain tax-free purposes or determined later to qualify as tax-free. Use Schedule B for tax on sales or uses that occurred in a previous tax period but were NOT included in the return for that period.

**LINE 7.** Enter the dollar amount of your total sales of taxable articles, including tax-exempt or tax-free sales during the tax period stated in line 6. Do not include articles of which you are not considered to be the manufacturer or importer for purposes of this excise tax. Except for leases and certain installment sales, you must include all sales even if your customers have not paid.

For most sales and taxpayers, the sale prices are stated on the invoices to their customers. This line should also include the dollar value of things other than money to be given in consideration for the article, such as services, personal property, and articles traded in.

Do not include the sale price of a non-taxable article unless it was sold as a unit with the taxable article. When a taxable article is sold as a unit with a non-taxable article (for example, a pistol and holster) or with extra parts or accessories, then enter the sale price of the unit. If a taxable sale, adjust the unit's sale price on line 10 to exclude the non-taxable article, part or accessory.

**LINE 8.** Enter the sale prices of all articles included in line 7 that you sold tax-free or tax-exempt. Do not include the sale of articles sold taxpaid to customers who later resell or use the articles for a tax-free purpose; however, you may take a credit in Schedule C or file a claim for refund.

You and your customer may need a Certificate of Tax-Free Registry (ATF Form 5300.28). Refer to ATF Industry Circular 93-5 about selling articles tax-exempt or tax-free. Failure to follow requirements or to have a Certificate may result in additional taxes, penalties and interest.

**LINE 10.** Enter on line 10 the net amount of adjustments to the sale prices of taxable sales of line 9 during the tax return period.

Decreasing adjustments are allowed for certain items if included in the sales price to your customer. 27 CFR 53.61(b), and 27 CFR 70.123 describe these exclusions from the sales price. These exclusions include the following items when included in the sales price of the article and not as a separate charge: tax excise tax, certain expenses related to the transportation and delivery of articles to customers, carrying, finance or service charges for credit sales, extra and identical parts, accessories, and handling of articles sold in combination with a taxable article. Also, price adjustments in the same tax period in which the sale occurs may also be taken in this line, as an adjustment to the tax in Schedule C, or used in determining the sales price (line 7).

Do not use line 10 to subtract the sales price, including excise tax, you paid to another manufacturer or importer. If you further manufacture articles on which excise tax was paid by another person, then a credit can be taken in Schedule C or a claim for refund may be filed.

**Increasing adjustments.** You may have to increase the sale price of an article from the amount shown on your invoice. Include any charge which is required to be paid as a condition of your sale of a taxable article and is not specifically excluded. Such charges may include warranty, tool and die, packing or special handling charges and taxes other than this excise tax. Refer to 27 CFR 53.91 for further information.

**Constructive Sale Price.** A decreasing or increasing adjustment to a sale price may be necessary because of the type of sale. Articles sold at retail, on consignment, or in sales not at arm's length (for example, between affiliated companies) and at less than fair market value require constructive sale prices. Usually, the constructive sale price differs from the sales price at which you sold the article; therefore, an adjustment is necessary. Refer to 27 CFR 53.94 - .97.

**LINE 12.** Tax is imposed on your business use of taxable articles that you manufactured or imported. If you regularly sell the articles, compute the tax based on the lowest established wholesale price. Enter the sum of the prices for the articles used. Use, among other acts, includes loans of articles for display, demonstration or familiarization, or for further manufacture of an article not subject to any Federal manufacturers excise tax (26 U.S.C. Chapter 32). Refer to 27 CFR 53.111-115 and ATF Announcement 93-23.

**LINE 19.** The amount shown on line 19 cannot exceed the amount on line 18. Any excess should be carried over as a credit to your next tax return in Schedule C or claimed as a refund.

**LINE 21.** Enter the total amount of deposits made on ATF Form 5300.27 for the tax return period.

**LINE 22.** If the balance due deposit is more than \$100, deposit the entire balance with ATF Form 5300.27.

**SCHEDULE A.** Unless line 18 is \$100 or less, complete this schedule if you report any tax liability on line 9 on a quarterly return. Use semi-monthly periods if you are required to make semi-monthly tax deposits. Otherwise, enter your tax liability by month.

Enter the net tax liability for each period. Determine this amount based on what line 20 of this return would show if the return was completed just for that period (semi-monthly or monthly). Adjustments (Schedules B and C) may not be made earlier than the semi-monthly or monthly period in which they arose.

**SCHEDULES B AND C.** Use these schedules to show underpayments of tax due on past returns or to claim credit for overpayments of tax paid or for authorized reductions of tax. The amount of credit claimed in Schedule C cannot exceed the amount on line 18. Carry over any excess credit to the next tax return or file ATF Form 2635 for a refund.

Fully explain all entries in Schedule B and C. Any claim for credit must be explained sufficiently to determine the legitimacy and circumstances of the credit and must be supported by the evidence prescribed in 27 CFR Part 53 and 27 CFR 70.123.

**LINES 40 - 41.** If the taxpayer is an individual, the individual must sign. If the taxpayer is a corporation, the president, vice-president or other principal officer must sign. If the taxpayer is a partnership or other unincorporated organization, a responsible and authorized member officer having knowledge of its affairs, must sign. If the taxpayer is a trust or estate, the fiduciary must sign. An agent of the taxpayer may sign if an acceptable power of attorney is filed with the appropriate ATF office.

### PAPERWORK REDUCTION ACT NOTICE

This request is in accordance with The Paperwork Reduction Act of 1980. The information collection is mandatory pursuant to 26 U.S.C. 6302. The purpose of this information collection is to correctly identify the taxpayer and to correctly credit the taxpayer's liability.

The estimated average burden associated with this collection of information is 7 hours per respondent. Comments concerning the accuracy of this burden should be directed to the Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C., 20226, and the Office of Management and Budget, Paperwork Reduction Project 1512- ( ), Washington, D.C. 20503.

Form Approved: OMB No. 1512- ( )

**DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
FEDERAL FIREARMS AND AMMUNITION  
EXCISE TAX RETURN**

(Prepare in Duplicate - See Attached Instructions)

FOR ATF USE ONLY	
TAX	\$
PENALTY	\$
INTEREST	\$
TOTAL	\$
EXAMINED BY:	DATE:
OTHER	

**PART I - GENERAL**

- NAME, TRADE OR BUSINESS NAME, AND ADDRESS (mailing and location) OF TAXPAYER (number, street, city, State and ZIP Code)
- TELEPHONE NUMBER (if new taxpayer, or if your phone number changed)
- EMPLOYER IDENTIFICATION NUMBER
- IF FINAL RETURN (see instruction 6), CHECK THIS BOX
- PAYMENT, IF ANY, FOR THIS RETURN MADE BY:  
 CHECK OR MONEY ORDER     EFT     OTHER (Specify) \_\_\_\_\_

**PART II - COMPUTATION OF TAX ON SALES OR USES DURING TAX PERIOD**

6. TAX PERIOD (see instruction 3) STARTS ON \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ AND ENDS ON \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (month, day, year) (month, day, year)

TOTALS DURING TAX PERIOD	PISTOLS AND REVOLVERS	OTHER FIREARMS	SHELLS AND CARTRIDGES
7. ALL ARTICLES SOLD by sale price	\$	\$	\$
8. ARTICLES SOLD TAX-FREE OR TAX EXEMPT by sale price			
9. TAXABLE SALES (line 7 minus line 8)			
10. NET ADJUSTMENTS TO SALE PRICE OF TAXABLE SALES MADE DURING PERIOD (show decrease in parentheses)			
11. ADJUSTED TAXABLE SALES (line 9 plus or minus line 10)			
12. TAXABLE USE OF ARTICLES by taxable sale price			
13. TAXABLE AMOUNT OF SALES AND USES (line 11 plus line 12)			
14. TAX RATE	10%	11%	11%
15. AMOUNT OF TAX (multiply line 13 by line 14)	\$	\$	\$

**PART III - COMPUTATION OF TAX LIABILITY FOR TAX PERIOD**

16. TOTAL OF AMOUNTS FROM LINE 15	\$
17. ADJUSTMENTS INCREASING AMOUNT DUE (line 28, Schedule B)	\$
18. GROSS TAX DUE (line 16 plus line 17)	\$
19. ADJUSTMENTS DECREASING AMOUNT DUE (line 38, Schedule C) (Cannot be more than the amount on line 18)	\$
20. NET TAX LIABILITY (line 18 minus line 19. Should agree with line 28, Schedule A. Cannot be less than zero.)	\$
21. TOTAL DEPOSITS FOR TAX PERIOD	\$

▶ COMPARE LINE 20 TO LINE 21 AND COMPLETE LINE 22 OR 23 AS APPLICABLE ◀

22. BALANCE OF TAX DUE (amount that line 20 exceeds line 21)	\$
23. CHECK WHAT YOU WANT DONE WITH THE AMOUNT THAT LINE 21 EXCEEDS LINE 20. <input type="checkbox"/> REFUND TO ME OR <input type="checkbox"/> APPLY TO MY NEXT TAX RETURN (show in Schedule C of next tax return)	\$

SCHEDULE A - STATEMENT OF NET TAX LIABILITY DURING TAX PERIOD			
SEMIMONTHLY DEPOSITORS		OTHER DEPOSITORS	
DEPOSIT PERIOD (a)	NET TAX LIABILITY (b)	DEPOSIT PERIOD (c)	NET TAX LIABILITY (d)
25. FIRST MONTH: Day 1 through day 15 Day 16 through last day	\$ _____ \$ _____	25. FIRST MONTH: Day 1 through last day	\$ _____
26. SECOND MONTH: Day 1 through day 15 Day 16 through last day	\$ _____ \$ _____	26. SECOND MONTH: Day 1 through last day	\$ _____
27. THIRD MONTH: Day 1 through day 15 Day 16 through last day	\$ _____ \$ _____	27. THIRD MONTH: Day 1 through last day	\$ _____
28. TOTAL OF COLUMN (b)	\$ _____	28. TOTAL OF COLUMN (d)	\$ _____

SCHEDULE B - EXPLANATION OF INCREASING ADJUSTMENTS			
EXPLANATION OF INDIVIDUAL ERRORS OR TRANSACTIONS (a)	AMOUNT OF ADJUSTMENTS		
	(b) TAX	(c) INTEREST	(d) PENALTY
29.	\$ _____	\$ _____	\$ _____
30.			
31.			
32. TOTALS OF COLUMNS (b), (c) and (d)	\$ _____	\$ _____	\$ _____
33. TOTAL ADJUSTMENTS INCREASING AMOUNT DUE (line 32, col. (b) plus cols. (c) and (d)):			\$ _____

SCHEDULE C - EXPLANATION OF DECREASING ADJUSTMENTS		
EXPLANATION OF INDIVIDUAL ERRORS OR TRANSACTIONS (a)	AMOUNT OF ADJUSTMENTS	
	(b) TAX	(c) INTEREST
34.	\$ _____	\$ _____
35.		
36.		
37. TOTALS OF COLUMNS (b) and (c)	\$ _____	\$ _____
38. TOTAL ADJUSTMENTS DECREASING AMOUNT DUE (line 37, col. (b) plus col. (c)):		\$ _____

**CERTIFICATION**

The tax in schedule C for overpayments of tax under 26 U.S.C. Sections 6416(b)(1), (2), (3) and (5), shown on this tax return: (1) has not been included in the price of the article with respect to which it was imposed nor collected from a vendee for which the taxpayer has identified the nature of evidence available to establish this factor or (2) has been repaid to the ultimate purchaser of the article by me.

The tax in schedule C for overpayments under 26 U.S.C. Section 6416 (b)(1) for certain price readjustments, section 6416 (b)(2) for certain taxes, sales or leases of a taxable article or section 6416 (b)(3) on tax-paid articles used for further manufacture: (1) has not been included in the price of the article with respect to which it was imposed nor collected from a vendee for which the taxpayer has identified the nature of evidence available to establish this fact; (2) has been repaid to the ultimate vendor of the article by me; or (3) was included in the price of the article, and I will submit, upon request of the district director, the written consent of the ultimate vendor to the allowance of the credit.

The tax in schedule C for overpayments under 26 U.S.C. Section 6416(b)(5) for return of installment accounts has been repaid or credited to the purchaser upon return of the account to me pursuant to the original sales agreement of the account.

Under penalties of perjury I declare that I have examined this return (including any accompanying explanations, statements, schedules and forms) and to the best of my knowledge and belief it is true, correct, and includes all transactions and tax liabilities required by law or regulations to be reported.

39. DATE	40. SIGNATURE	41. TITLE
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ATF F 5300.26 ( )

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****30 CFR Chapter I****Review of Existing Regulations**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** MSHA is conducting a comprehensive review of its existing safety and health regulations. The Agency invites mine operators, miners, manufacturers, and other interested parties to identify regulations that are unnecessary or need to be updated. MSHA specifically requests help in identifying obsolete requirements and conflicting or duplicate provisions.

**DATES:** Submit written comments on or before May 1, 1995.

**ADDRESSES:** Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Commenters 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, phone 703-235-1910.

**SUPPLEMENTARY INFORMATION:** MSHA is conducting a comprehensive review of all its existing regulations which are in chapter I of title 30 of the Code of Federal Regulations. The primary purpose of this review is to improve the effectiveness of the Agency's existing safety and health regulations, without reducing the protection provided to miners. This review is consistent with the goals of Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Federal Mine Safety and Health Act of 1977. It also is consistent with the President's government-wide regulatory reform efforts to reduce overly burdensome and paperwork intensive requirements where possible.

In reviewing its existing regulations, MSHA is evaluating each standard to determine if it is unnecessary, inaccurate, or outdated. For example, the Agency has identified equipment approval regulations under which no applications have been received in many years. MSHA also is evaluating whether there are standards which duplicate, are inconsistent with, or conflict with other MSHA or Federal requirements. For example, MSHA is considering combining the safety and

health standards for surface and underground metal and nonmetal mines into a single part to eliminate unnecessary repetition.

MSHA considers timely public participation to be an integral part of any process to improve the effectiveness of its safety and health regulations. The Agency, therefore, urges the mining community and other interested parties to submit their suggestions for improving the Agency's existing regulations.

Dated: March 31, 1995.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 95-8656 Filed 4-7-95; 8:45 am]

**BILLING CODE 4510-43-P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 901 and 924****Alabama and Mississippi Regulatory Programs**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in Alabama and Mississippi underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Alabama and Mississippi's regulatory programs (hereinafter referred to as the "Alabama program" and "Mississippi program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations.

After consultation with Alabama and Mississippi and consideration of public comments, OSM will decide whether initial enforcement in Alabama and Mississippi will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4:00 p.m., C.S.T. on April 30, 1995. If requested, OSM will hold a public hearing on April 25, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Alabama and Mississippi. Requests to speak at the hearing must be received by 4:00 p.m., C.S.T. on April 15, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below. Office of Surface Mining, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209.

Copies of the applicable parts of the Alabama and Mississippi programs, SMCRA, the implementing Federal regulations, information provided by Alabama and Mississippi concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290-7282.

**FOR FURTHER INFORMATION CONTACT:** Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290-7282.

**SUPPLEMENTARY INFORMATION:****I. Background****A. The Energy Policy Act**

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage

includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

#### *B. The Federal Regulations Implementing the Energy Policy Act*

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. \* \* \* The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 29, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are

counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later

than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5

for operations conducted after October 24, 1992.

### C. Enforcement in Alabama

By letter to Alabama dated December 14, 1994, OSM requested information from Alabama that would help OSM decide which approach to take in Alabama to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. AL-520). By letter dated January 1, 1995, Alabama responded to this OSM request (Administrative Record No. AL-521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the requirements of section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a "to the extent required by State law" limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis will be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made due to the proposal to supersede State program provisions. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

### D. Enforcement in Mississippi

By letter to Mississippi dated December 14 1994, OSM requested information from Mississippi that would help OSM decide which approach to take in Mississippi to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administration Record No. MS-328). Mississippi has not responded to the December 14, 1994, letter requesting information on underground coal mines.

Mississippi has had no surface nor underground coal mining operations since October 24, 1992. At the present time, Mississippi is in the process of completely revising its approved regulatory program.

## II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Alabama and Mississippi to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

### A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

### B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 15, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing

to meet with OSM representatives to discuss recommendations on how OSM and Alabama and Mississippi should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

**David G. Simpson,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 95-8754 Filed 4-7-95; 8:45 am]

**BILLING CODE 4310-05-M**

## 30 CFR Part 938 and 920

### Pennsylvania and Maryland Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in Pennsylvania and Maryland, underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Pennsylvania and the Maryland regulatory programs (hereinafter referred to as the "Pennsylvania Program" and the "Maryland Program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with

Pennsylvania and Maryland and consideration of public comments, OSM will decide whether initial enforcement in Pennsylvania and Maryland will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4:00 p.m., E.D.T. on May 10, 1995. If requested, OSM will hold a public hearing on May 5, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Pennsylvania and Maryland. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on April 25, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below.

Copies of the applicable parts of the Pennsylvania and Maryland State programs, SMCRA, the implementing Federal regulations, information provided by Pennsylvania and Maryland concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782-4036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage

includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

###### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. \* \* \* The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are

counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later

than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5

for operations conducted after October 24, 1992.

### C. Enforcement in Pennsylvania

By letter to Pennsylvania dated December 13, 1994, OSM requested information from Pennsylvania that would help OSM decide which approach to take in Pennsylvania to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. PA 835.00). By letter dated January 24, 1995, Pennsylvania responded to this OSM request (Administrative record No. PA 835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of those are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing Section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair or subsidence damage in the following situations.

#### Water Supply Replacement

- \* Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.

- \* Cases where affected water supplies are located in the anthracite coal fields.

- \* Cases where landowners entered voluntary agreements allowing their supplies to be impacted.

- \* Cases where impacts occurred more than three years after completion of coal extraction.

- \* Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.

- \* Cases where the property owner failed to report the water supply problem within two years of its occurrence.

- \* Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the water supply and no pre-mining quality and quantity information is available.

- \* Cases where a mine operator purchased the property or compensated the property owner rather than replace the supply.

#### Repair or Compensate for Subsidence Damage

- \* Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.

- \* Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair/compensation requirements until the next permit renewal).

- \* Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.

- \* Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structure damage and water loss caused by underground mining operations conducted after October 24, 1994. Limitations, as discussed above, provide authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coal field residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coal field or for bituminous coal field for time period October 24, 1992 through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structure damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made final determination on 87 with 4 pending further study. PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under

review with no determination as to impacts from underground mining.

#### D. Enforcement in Maryland

By letter to Maryland dated December 13, 1994, OSM requested information from Maryland that would help OSM decide which approach to take in Maryland to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. MD 570.0). By letter dated March 29, 1995, Maryland responded to this OSM request (Administrative Record No. MD 570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7-5A-05.1, § 7-5A-05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

## II. Public Comment Procedures

OSM is requesting public comment to assist OHM in making its decision on which approach to use in Pennsylvania and Maryland to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

#### A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be

considered in OSM's final decision or included in the Administrative Record.

#### B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on April 25, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Pennsylvania and Maryland should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

**David G. Simpson,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 95-8753 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 247

[RIN 0790-AG16]

### Department of Defense Newspapers and Civilian Enterprise Publications

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule revises and provides DoD policy and updates procedures to meet changed circumstances for publishing DoD internal command information newspapers and civilian enterprise publications. It has minimal impact on some civilian printers who are contracted to print the publications.

**DATES:** Written comments on this proposed rule must be received by June 9, 1995.

**ADDRESSES:** Forward comments to American Forces Information Service, Attn: Print Media Policy, 601 N. Fairfax St., Alexandria, Virginia 22314-2007.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Frank Theising, USA, (703) 274-4868.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 247 is not a significant regulatory action. The rule does 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.

#### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)**

It has been certified that 32 CFR part 247 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

**List of Subjects in 32 CFR part 247**

Defense Communications, Government publications, Newspapers and Magazines.

Accordingly, 32 CFR part 247 is proposed to be revised to read as follows:

**PART 247—DEPARTMENT OF DEFENSE NEWSPAPERS AND CIVILIAN ENTERPRISE PUBLICATIONS**

Sec.

- 247.1 Purpose.
- 247.2 Applicability.
- 247.3 Definitions.
- 247.4 Policy.
- 247.5 Responsibilities.
- 247.6 Procedures.
- 247.7 Information requirements.

**Appendix A to part 247—Funded Newspapers****Appendix B to part 247—CE Publications****Appendix C to part 247—Mailing of DoD Newspapers, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications****Appendix D to part 247—AFIS Print Media Directorate****Appendix E to part 247—DoD Command Newspaper Review System****Appendix F to part 247—Deputy Secretary of Defense Policy Memorandum**

Authority: 10 U.S.C. 121 and 133.

**§ 247.1 Purpose.**

This part implements 32 CFR part 372 and implements policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) and Civilian Enterprise (CE) newspapers, CE guides, and installation maps in support of the DoD Internal Information Program.

**§ 247.2 Applicability.**

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, 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 includes the Coast Guard when operating as a Military Service in the Navy.

(b) Does not apply to the *Stars and Stripes (S&S)* newspapers and business operations. *S&S* guidance is provided in 32 CFR part 246.

(c) The term Commander, as used in this part, also means Heads of the DoD Components.

**§ 247.3. Definitions.**

*Civilian Enterprise (CE) guides and installation maps.* Authorized publications containing advertising that are prepared and published under contract with commercial publishers. The right to circulate the advertising in these publications to the DoD readership constitutes contractual consideration to pay for these DoD publications. The publications become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides.* Publications that provide DoD personnel with information about the mission of their command; the availability of command, installation, or community services; local geography; historical background; and other information. These publications may include installation telephone directories at the discretion of the commander; however, separate CE telephone directories are not authorized.

(2) *Installation Maps.* Publications designed for orientation of new arrivals or for visitors.

*DoD newspapers.* Authorized, unofficial publications, serving as part of the commander's internal information program, that support DoD command internal communication requirements. Usually, they are distributed weekly or monthly. DoD newspapers contain most, if not all, of the following elements to communicate with the intended DoD readership: command, military department, and DoD news and features; commanders' comments; letters to the editor; editorials; commentaries; features; sports; entertainment items; morale, welfare, and recreation news and announcements; photography; line art; and installation and local community news and announcements. DoD newspapers do not necessarily reflect the official views of, or endorsement of content by, the Department of Defense.

(1) *CE newspapers.* Newspapers published by commercial publishers under contract with the DoD Components or their subordinate commands. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the paper. Authorized news and information

sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military Departments, their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the newspaper if approved by the commander or public affairs officer (PAO), as the commander's representative. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE guides and installation maps and may contain supplements or inserts. They become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract.

(2) *Funded newspapers.* Newspapers published by the DoD Components or their subordinate commands using appropriated funds. The editorial content of these newspapers is prepared by the internal information section of the public affairs staff or other internal sources. Usually, these newspapers are printed by the Government Printing Office (GPO) or under GPO contract in accordance with Government printing regulations. 32 CFR part 397 specifies DPS as the sole DoD conduit to the GPO.

(3) *Overseas Unified Command (UC) newspapers.* Newspapers published for overseas audiences approved by the Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)) to provide world, U.S., and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, Department of Defense, Component, and subordinate command news and information.

(4) *News bulletin and summaries.* Publications of deployed or isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher level of command when no daily English language newspapers are readily available.

*Inserts.* A flier, circular, or freestanding advertisement placed within the folds of the newspaper. No disclaimer or other labeling is required.

*Option.* A unilateral right in a contract by which, for a specified time, the Government may elect to acquire additional supplies or services called for by the contract, or may elect to extend the term of the contract.

**Organizational Terms**

(1) *Command.* A unit or units, an organization, or an area under the command of one individual. It includes

organizations headed by senior civilians that require command internal information-type media.

(2) *DoD Components*. See § 247.2(a).

(3) *Installation*. A DoD facility or ship that serves as the base for one or more commands. Media covered by this Instruction may serve the command communication needs of one or several commands located at one installation.

(4) *Major command*. A designated command such as the Air Mobility Command or the Army Forces Command that serves as the headquarters for subordinate commands or installations that have the same or related missions.

(5) *Subordinate levels*. Lower levels of command.

*Supplements*. Features, advertising sections, or morale, welfare and recreation sections printed with or inserted into publications for redistribution. Supplements must be labeled "Supplement to the (name of newspaper)." Editorial content in supplements is subject to approval by the commander or the PAO as his or her agent.

#### § 247.4 Policy.

It is DoD policy that:

(a) A free flow of news and information shall be provided to all DoD personnel without censorship or news management. The calculated withholding of news unfavorable to the Department of Defense is prohibited.

(b) News coverage and other editorial content in DoD newspapers and publications shall be factual and objective. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(c) DoD newspapers shall distinguish between fact and opinion, both of which may be part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(d) DoD newspapers shall distinguish between editorials (command position) and commentaries (personal opinion) by clearly identifying them as such.

(e) News content in DoD newspapers shall be based on releases, reports, and materials provided by the DoD components and their subordinate levels, DoD newspaper staff members, and other government agencies. DoD newspapers shall credit sources of all material other than local, internal sources. This includes, but is not limited to, Military Department news sources, American Forces Information Service, and command news releases.

(f) DoD newspapers may contain articles of local interest to installation personnel produced outside official channels (e.g., stringers, local organizations), provided that the author's permission has been obtained, the source is credited, and they do not otherwise violate this part.

(g) DoD newspapers normally shall not be authorized the use of commercial news and opinion sources, such as Associated Press (AP), United Press International (UPI), New York Times, etc., except as stated in this paragraph and the following paragraph. The use of such sources is beyond the scope of the mission of command or installation newspapers and puts them in direct competition with commercial newspapers. The use of such sources may be authorized for a specific DoD newspaper by the cognizant DoD Component only when other sources of national and international news and opinion are not available.

(h) Overseas Unified Command (UC) newspapers published outside the United States may purchase or contract for and carry news stories, features, syndicated columns, and editorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the UC Commanders. Overseas UC newspapers, news bulletins, and news summaries authorized to carry national and world news may include coverage of U.S. political campaign news from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(i) The masthead of all DoD newspapers, guides, and installation maps shall contain the following disclaimer printed in type no smaller than 6-point: "This (DoD newspaper/guide or installation map) is an authorized publication for members of the Department of Defense. Contents of (name of the DoD newspaper/this guide/this installation map) are not necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or (the name of the publishing DoD component)."

(j) The masthead of DoD CE newspapers, guides, and installation maps shall contain the following statements in addition to that contained in paragraph (i) of this section:

(1) "Published by (name), a private firm in no way connected with the (Department of Defense/the U.S. Army/the U.S. Navy/the U.S. Air Force/the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate level)."

(2) "The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the (Department of Defense/the U.S. Army/ the U.S. Navy/ the U.S. Air Force/the U.S. Marine Corps), or (name of commercial publisher) of the products or services advertised."

(3) "Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user, or patron." If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(k) DoD newspapers, guides, and installation maps shall not contain campaign news, partisan discussions, cartoons, editorials, or commentaries dealing with political campaigns, candidates, or issues. DoD CE newspapers, guides, and installation maps shall not carry paid political advertisements for a candidate, party, or which advocate a particular position on a political issue. This includes those advertisements advocating a position on any proposed DoD policy or policy under review.

(l) DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. DoD newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program; the OSD; and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in 32 CFR part 46.

(m) DoD newspapers and CE guides shall comply with DoD Instruction 1100.13<sup>1</sup> pertaining to polls, surveys, and straw votes.

(1) The DoD Components and subordinate levels may authorize polls

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Pat Royal Road, Springfield, VA 22161.

on matters of local interest, such as soldier of the week, and favorite athlete.

(2) A DoD newspaper, guide, or installation map shall not conduct a poll, a survey, or a straw vote relating to a political campaign or issue.

(3) Opinion surveys must be in compliance with Military Service regulations.

(n) DoD newspapers will support officially authorized fund-raising campaigns (e.g., Combined Federal Campaign (CFC)) within the Department of Defense in accordance with DoD Directive 5035.1.<sup>2</sup> News coverage of the campaign will not discuss monetary goals, quotas, competition or tallies of solicitation between or among agencies. To avoid any appearance of endorsement, features and news coverage will discuss the campaign in general and not address specific agencies within the CFC.

(o) DoD newspapers, guides, or installation maps shall not:

(1) Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial product, commodity or service.

(2) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(3) Carry any advertisement that violates or rejects DoD equal opportunity policy. (See paragraph (j)(3) of this section).

(p) All commercial advertising, including advertising supplements, shall be clearly identifiable as such. Paid advertorials and advertising supplements may be included but must be clearly labeled as advertising and readily distinguishable from editorial content.

(q) Alteration of official photographic and video imagery will comply with the Deputy Secretary of Defense policy memorandum, subject: Alteration of Official Photographic and Video Imagery, December 9, 1994, (Appendix F of this part).

(r) Commercial sponsors of Armed Forces Professional Entertainment Program events and morale, welfare and recreation events may be mentioned routinely with other pertinent facts in news stories and announcements in DoD newspapers. (See DoD Instructions 1330.13<sup>3</sup> and 1015.2.<sup>4</sup>)

(s) Book, radio, television, movie, travel, and other entertainment reviews

may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any of its Components or their subordinate levels.

(t) All printing using appropriated funds will be obtained in accordance with 32 CFR part 397.

#### § 247.5 Responsibilities.

(a) The *Assistant to the Secretary of Defense for Public Affairs*, consistent with 32 CFR part 375, shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, AFIS.

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The *Director, American Forces Information Service*, shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD newspapers, guides, and installation maps.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this Instruction.

(3) Serve as the DoD point of contact in the United States for UC newspaper matters.

(4) Provide guidance to the UCs, Military Departments, and other DoD Components pertaining to DoD newspapers and CE publications.

(5) Monitor effectiveness of business and financial operations of DoD newspapers and provide business counsel and assistance, as appropriate.

(6) Sponsor a DoD Interservice Newspaper Committee composed of representatives of the Military Departments to coordinate DoD command or installation newspaper matters.

(7) Provide a press service for joint-Service news and information for use by authorized DoD newspaper editors.

(c) *The Secretaries of the Military Departments* shall:

(1) Provide policy guidance and assistance to the Department's newspapers and CE publications.

(2) Encourage the use of CE newspapers when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized internal information products under this part.

(4) Designate a member of their public affairs staff to serve on the DoD Interservice Newspaper Committee.

(5) Ensure all printing obtained with appropriated funds complies with 32 CFR part 397.

(d) *The Commanders of Unified Combatant (UC) Commands* shall:

(1) Publish UC newspapers, if authorized. In discharging this responsibility, the UC Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) Ensure that the UC newspaper is prepared to support U.S. forces in the command area during contingencies and armed conflict.

#### § 247.6 Procedures.

(a) *General.* (1) National security information shall be protected in accordance with 32 CFR parts 159 and 159a.

(2) Specific items of internal information of interest to DoD personnel and their family members prepared for publications in DoD newspapers, guides, or installation maps may be made available to requesters in the information can be released as provided in 32 CFR parts 285 and 286.

(3) Editorial policies of DoD newspapers, guides, and installation maps shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(4) DoD editors of publications covered under this part shall conform to applicable policies, regulations, and laws involving libel, photographic image alteration, copyright, classification of information, and U.S. Government printing and postal regulations.

(5) DoD newspapers, guides, and installation maps shall comply with 32 CFR part 310 regarding the DoD privacy program.

(b) *Establishment of DoD newspapers.*

(1) Commanders are authorized to establish Funded newspapers (Appendix A to this part) or CE newspapers (Appendix B to this part) when:

(i) A valid internal information mission requirement exists.

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of DoD knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and increase knowledge.

<sup>2</sup> See footnote 1 to section 247.4(m).

<sup>3</sup> See footnote 1 to section 247.4(m).

<sup>4</sup> See footnote 1 to section 247.4(m).

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of DoD information, which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling rumors, and keeping members informed on DoD information that will affect their futures. It provides information and assistance to family members, which improve their spirits and thereby the effectiveness of their military service and/or civilian member. The newspaper encourages participation in various positive leisure-time activities to improve morale and deter alcohol abuse and other pursuits that impair their ability to perform.

(D) The newspaper provides information to make command members aware of the hazards of the abuse of drugs and other substances, and of the negative impact that substance abuse has on readiness.

(E) CE newspapers provide advertisements that guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact in increased installation-community communication, which enhances mutual support.

(F) The newspaper increases organizational cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practices are vital, but are not an end unto themselves. They are the primary means to enhance receptivity of command communication through the newspaper.

(H) The newspaper exists to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher level of command to be the most cost-effective means of fulfilling the command internal communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible. The process of establishing a newspaper must include an investigation of the feasibility of publishing under the CE concept. This investigation must include careful consideration of the potential for real or apparent conflict of interest. If publishing under the CE concept is determined to be feasible, commanders

must ensure that they have obtained approval to establish the newspaper before authorizing their representatives to negotiate a contract with a CE publisher.

(3) DoD newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds shall not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper is authorized for each command or installation.

(i) If a newspaper is required at an installation where more than one command or headquarters is collocated, the host commander shall be responsible for publication of one funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters, shall assist the staff of the host newspaper with coverage. If required by unusual circumstance, a commander other than the host may publish the single authorized newspaper when the majority of affected organizations concur.

(ii) This provision is not intended to prohibit the headquarters of a geographically dispersed command that receives its local coverage in the host installation newspaper from publishing a command-wide newspaper; nor is it intended to prohibit a command that has information needs that are significantly different from the majority of the host installation audience from publishing a separate newspaper, when authorized by the designated approving authority. (See Appendix E to this part).

(iii) *Establishment of CE Guides and Installation Maps.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible. (See Appendix B to this part) Only one CE guide and installation map is authorized for each command or installation. The requirements of paragraph (b)(4) of this section, apply to CE guides and installation maps. These publications shall be approved by the next higher level. Approval authorities shall exercise care not to overburden community advertisers.

(iv) *Use of trademark.* The DoD Components and their subordinate levels shall trademark—State, Federal, or both—the names of their newspapers, guides, and installation maps, when possible.

(v) *Use of recycled products.* The public affairs office shall, whenever possible, based on contractual agreements, use recycled paper for publications covered under this part.

(vi) *Mailing requirements and sales and distribution of non-DoD publications.* See appendix C to this part.

(vii) *AFIS print media directorate.* See appendix D to this part.

(viii) *DoD command newspaper review system.* See appendix E to this part.

(6) When, in the opinion of the Assistant to the Secretary of Defense for Public Affairs, or the UC Commander, a UC newspaper is needed, establishment shall be directed by the Secretary of Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas UC newspapers.

#### § 247.7 Information requirements.

The biennial reporting requirement contained in this part has been assigned Report Control Symbol DD-PA(BI) 1638.

#### Appendix A to Part 247—Funded Newspapers

A. *Purpose.* Funded newspapers support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with 32 CFR part 397. The editorial content of these newspapers and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the S&S. Where printing by S&S is not feasible because of distance or other factors, Funded newspapers may be printed by other means. These are evaluated on a case-by-case basis with the cognizant DPS office.

B. *Name.* The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may be included in the nameplate, also. When possible, the DoD Components and their subordinate levels shall trademark the names of their publications, as stated in § 247.5(d).

C. *Masthead.* The masthead shall include the names of the commanding officer and the PAO, the names and editorial titles of the staff of the newspaper, and the mailing address and telephone number of the editorial staff, in addition to that required in subsection § 247.4(i).

D. *News and editorial materials.* The commander and the public affairs staff shall generate and select news, information, photographs, editorial, and other materials to be used. Authorized news and information sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military

Departments, their subordinate levels of command, and other Government Agencies. Civilian community service news and announcements of benefit to personnel assigned to the command or installation and their family members may also be used. Photographic images used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Military and DoD civilian personnel may not be assigned to duty at the premises of the contract printer to perform any job functions that are part of the business activities or contractual responsibilities of the contract printer. Members of the public affairs staff who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other production details provided for in the command contract with the contract printer. A member of the public affairs staff shall review proof copy to prevent mistakes.

F. *Funding.* The expense of publishing and distributing Funded newspapers is charged to appropriated funds of the publishing command.

G. *Printing.* Printing of a funded newspaper shall be handled in accordance with 32 CFR part 397 in conjunction with public affairs as the office of primary interest.

H. *Distribution.* Funded newspapers may be distributed through official channels.

Appropriated funds and manpower may be used for distribution of Funded newspapers, as required.

I. *Advertising.* Funded newspapers shall not carry commercial advertising. As a service, the Funded newspaper may carry nonpaid listings of personally owned items and services for sale by members of the command. Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in funded newspapers.

J. *Employment and gratuities.* DoD personnel shall not accept employment by or gratuities from GPO-contracted printers under contract to print funded newspapers. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract printer shall be in accordance with the 32 CFR part 84.

## Appendix B to part 247—CE Publications

A. *Purpose.* CE publications consist of DoD newspapers, guides, and installation maps. They support command internal communications. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the publication. CE publishers sell advertising to cover costs and secure earnings, print the publications, and may make all or part of the distribution. Periodically, CE publishers compete for contracts to publish these publications. Neither appropriated nor nonappropriated funds shall be used to pay for any part of a CE publisher's costs incurred in publishing a CE publication.

B. *Name.* The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate (flag). The emblem of the

command or installation may also be included in the nameplate. When possible, the DoD components and their subordinates shall trademark the names of their publications, as stated in § 247.6(d).

C. *Masthead.* The masthead shall include the following in addition to that required in § 247.4(i) and (j). "The editorial content of this publication is the responsibility of the (name of command or installation) Public Affairs Office." The names of the commanding officer and PAO, the names and editorial titles of the staff assigned the duty of preparing the editorial content, and the office address and telephone number of the editorial staff shall be listed in the masthead of DoD newspapers, but is not required in CE guides and installation maps. The names of the publisher and employees of the publisher may be listed separately.

D. *News and editorial materials.* The commander or the public affairs office shall provide oversight and final approval authority for news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Authorized news and information sources include the OATSD(PA), AFIS, the Military Departments and their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the publication if approved by the commander or PAO, as the commander's representative. Commercial news and opinion sources, such as AP, UPI, New York Times, etc., are not normally authorized for use in DOD newspapers except as stated in § 247.4(q). The paper may publish community service news and announcements of the civilian community for the benefit of command or installation personnel and their families. Imagery used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Neither military nor DOD civilian personnel shall be assigned to duty at the premises of the CE publisher. Neither military nor DOD civilian personnel shall perform any job functions that are part of the business activities or contractual responsibilities of the CE publisher either at the contractor's facility or the Government facility. The PAO and staff who produce the non-advertising content of the CE publication may perform certain installation liaison functions on publisher premises including monitoring and coordinating layout and design and other publishing details set forth in the contract to ensure the effective presentation of information. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Newspaper text-editing-system pagination and copy terminals owned by the CE publisher may be placed in the command or installation public affairs office under contractual agreement for use by the public affairs staff to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the printing and publication functions performed by the CE publisher. All costs of these terminals shall be borne by the CE newspaper publishers who shall retain title

to the equipment and full responsibility for any damage to or loss of such equipment. The relationship between the public affairs staff and employees of the CE contractor is that of Government employees working with employees of a private contractor. Supervision of CE employees; that is, the responsibility to rate performance, set rate of pay, grant vacation time, exercise discipline, assign day-to-day administrative tasks, etc., remains with the CE publisher. Any modification of the contract must be made by the responsible contracting officer. Public affairs staff members must be aware that employees of the contractor are not employees of the government and should be treated accordingly.

### F. Distribution of CE publications

1. A funded newspaper shall not be distributed as an insert to a CE newspaper, unless provided for in the CE contract, nor shall a CE newspaper be distributed as an insert to a funded newspaper.

2. Supplements clearly labeled as such, and advertising inserts, may be inserted into and distributed with a CE newspaper.

3. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

4. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE newspapers shall not be distributed outside the intended DOD audience and retirees, which includes family members. The CE publisher may provide complete copies of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

5. The CE publisher of a CE newspaper will provide the appropriate number of news racks determined by the installation commander for publication distribution. CE publishers are responsible for maintenance of these racks.

6. CE guides and installation maps may be delivered in bulk quantities to the appropriate installation offices to distribute these publications through official channels as necessary.

### G. Responsibilities Regarding Advertising

1. Only the CE publisher shall use the space agreed upon for advertising. While the editorial content of the publication is completely controlled by the installation, the advertising section, including its content, is the responsibility of the CE publisher. The public affairs staff, however, retains the responsibility to review advertisements before they are printed.

2. Any decision by a CE publisher to accept or reject an advertisement is final. The PAO may discuss with a publisher their decision not to run an advertisement, but cannot substitute his judgment for that of the publisher.

3. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DOD or Military Service regulations, including this part, or that may pose a danger or detriment to DOD personnel

or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DOD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this part. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements. If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DOD Directive 1325.6<sup>1</sup>.

4. DoD Directives 1325.6 gives the commander authority to prohibit distribution on the installation of a CE publication containing advertising he or she determines likely to promote a situation leading to potential riots or other disturbances, or when the circulation of such advertising may present a danger to loyalty, discipline or morale of personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the past performance of the advertiser. Prior to making a determination to prohibit distribution of a CE newspaper, the commander shall obtain a legal coordination.

5. CE publications may carry paid and unpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulations. (See DoD Instruction 1015.2.)<sup>2</sup>

6. Bingo games and lotteries conducted by a commercial organization whose primary business is conducting lotteries may not be advertised in CE publications. Non-lottery activities (such as dining at a restaurant or attending a musical performance) of a commercial organization whose primary business in conducting lotteries may be advertised in CE publications. Exceptions are allowed for authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. See section D. of Appendix C to this part.

#### H. CE Guides and Maps

1. The name of the publication may include the name and emblem of the command or installation.

2. At the discretion of the commander, an installation telephone directory may be included as a section of a CE guide. The telephone section shall be integral to the

guide, not separable, and part of the guide contract specifications. Separate CE telephone directories are not authorized. Required communication security information shall be printed on the first page of the telephone section and not on the cover of the guide. The cover of the guide may notify users that the publication contains the telephone directory.

3. CE contracts for guides and maps shall establish firm directory dates and shall contain provisions to ensure distribution is controlled by the command. Delivery dates may vary for guides and maps to make them more attractive to advertisers. The contract provisions shall specify delivery dates.

1. *Employment and gratuities.* DoD personnel involved with CE contracts shall not accept employment by or gratuities from a CE publisher. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract publisher shall be in accordance with 32 CFR part 84.

#### J. Contracting for a CE Publication

1. *General.* The DoD Components and their subordinate commands are authorized to contract in writing the CE publications. The underlying premise of the CE concept is that the DoD Components and their subordinate commands will save money by transferring certain publishing and distribution functions to a commercial publisher selected through a competitive process. The CE publication is printed and delivered to the command, installation, or its readership in accordance with the terms of a written contract. Oral contracts are not acceptable. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The command or installation guarantees first publication and distribution of locally-produced editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with terms of the contract.

2. *Contracting process.* Whether a first time initiative to establish CE publication or a recompetition of an existing CE contract, the process must start with advance planning as to the nature of the command's requirements, the contracting strategy, and the market of potential advertisers and competitors for the job. The CE contract solicitation and the contract itself must contain a statement of work that describes in legally sufficient detail the Government's requirements and the conditions and restrictions under which the contractor will perform. The cognizant contracting office of the CE contracting action shall be the contracting office which normally provides contracting support to the command for service contracts and other procurements of a general nature which are above the simplified shall purchase threshold. The contracting officer shall combine the statement of work with appropriate contractual terms and conditions, using 48 CFR chapter I and II as guides, although CE contracts are not subject to the FAR or DFARS, because they do not involve the expenditure of appropriated funds. The resulting solicitation and contract

shall completely identify the rights and obligations of both parties. Proposals shall be solicited from all known commercial publishers who could potentially become the CE contractor. Upon evaluation of the competing proposals by the Source Selection Advisory Committee (SSAC) and selection of a winner by the selecting official, the CE contract shall be awarded by the contracting officer. The CE contract shall not require the contractor to pay money to the command or to provide goods, services, or other consideration not directly related to the CE publication. In the event that only one offer is received, the SSAC may recommend to the selecting official that no award be made or that the contracting officer enter into negotiations with the sole offeror to obtain the best possible service and product of the Government.

3. *Statement of Work (SOW).* The SOW should be written to have the CE contractor perform as many of the publishing and distribution functions as practical to generate maximum savings to the Department of Defense. In so doing, care must be taken to balance Government requirements with a realistic view of the advertising revenue potential so as to achieve a contract that is commercially viable. The command's internal information needs shall be paramount. Some of the key issues that shall be addressed in the SOW follow:

a. A general description of the scope of the proposed contract including the name and nature of the publication involved; for example, weekly newspaper, annual guide and installation map. Normally, guides and installation maps are included in the same contract.

b. A description of editorial content to be carried; e.g., news, features, supplements, and factual information, along with provisions addressing the possible inclusion of contractor-furnished advertising supplements for newspapers, provided any such supplement shall have the prior approval of the commander.

c. A description of the rules for the inclusion of advertising in the publication. This provision shall specify that the commander's representative shall have the authority to specify newspaper advertising layout when required to enhance communications' effectiveness of the publication and shall require the contractor to notify advertisers of the requirements in § 247.4(i) and (j). The Military Departments will coordinate a standard set of ratios of advertising-to-editorial copy for multiples of pages for run of the publication advertising in CE newspapers that will be included in all DoD Component regulations supplementing this part. The recommended annual average is a ratio of 60/40. Inserts and advertising supplements will not count in the total ad to copy ratio; however, the commander may prohibit the distribution of supplemental advertising deemed excessive. Contract provisions shall be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command internal communication mission of the newspaper.

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Road, Springfield, VA 22161.

<sup>2</sup> See footnote 1 to section 4. of this Appendix.

d. A provision substantially as follows: "The contractor agrees not to enter into any exclusive advertising agreement with any firm, broker, or individual for the purpose of selling advertising associated with this contract."

e. A description of the CE contractor's responsibilities for distribution of the newspaper. This provision should address such matters as contractor furnishing of news racks along with contractor responsibility for maintenance of these racks.

f. A description of contractor-owned and/or contractor-furnished equipment such as text editing, copy terminals, and modems determined to be required to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the publication process.

g. A description of contractor-furnished editorial support services determined to be required. Such description must be in terms of the end product required; e.g., photography service and/or writer services, and not as a requirement to make available certain contractor personnel. In day-to-day performance and administration of the CE contract, contractor personnel performing such support services shall not be treated in any way as though they are Government employees.

h. A provision that the use, where economically feasible, of recycled paper for internal products will be a consideration for awarding the contract, as stated in § 247.6(e).

i. SOW's and REP's for CE newspapers shall specify standard newsprint, recyclable, subject to requirements of applicable laws and regulations.

4. *Contract provisions.* The CE concept is based on an exception to the Government Printing and Binding Regulations<sup>3</sup> published by the Congressional Joint Committee on Printing. While CE contracts are not subject to the FAR (48 CFR chapter I) or the DFARS (48 CFR chapter II), the FAR contains many clauses that are useful in protecting the interests of the Government. The following clauses may be helpful in obtaining the best possible CE publication:

a. *Status of FAR clause.* To clarify the status of FAR clauses appearing in CE contracts, the following clause shall be included in all new CE contracts: "The (name of DoD installation/unit/organization) is an element of the United States Government. This agreement is a United States Government contract authorized under the provisions of Department of Defense Instruction 5120.4 as an exception to the Government Printing and Binding Regulations published by the Congressional Joint Committee on Printing. Although this contract is not subject to the Federal Acquisition Regulation (FAR) or the Defense FAR Supplement (DFARS), FAR clauses useful in protecting the interests of the Government and implementing those provisions required by law are included in this contract."

b. *Option clause.* Insert a clause substantially the same as the following to extend the term of the CE publisher contract:

(1) "The Government may extend the term of this contract by written notice to the contractor within [insert in the clause the period of time in which the contracting officer has to exercise the option]; provided that the Government shall give the contractor a preliminary written notice of its intent to exercise the option at least 60 days before the contract expires. The preliminary notice does not commit the government to exercise the option." In the case of base closure or realignment the publisher has the right to request a renegotiation of the contract.

(2) "If the Government exercises the option, the extended contract shall be considered to include this option provision."

(3) "The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years."

c. *Default clause.* Insert the following clause in solicitations and contracts:

(1) "The Government may, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

(a) Deliver the CE publications in the quantities required or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract;

(c) Perform any of the other provisions of this contract."

(2) "If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, supplies or services similar to those terminated. However, the contractor shall continue the work not terminated."

(2) "The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract."

d. *Termination for convenience of the Government.* Insert the following clause in solicitations and contracts:

"The contracting officer, by written notice, may terminate this contract, in whole or in part if the services contracted for are no longer required by the Government, or when it is in the Government's interest, such as with installation closures. Any such termination shall be at no cost to the Government." The Government will use its best efforts to mitigate financial hardship on the publisher.

5. *Term of contract.* CE contracts may be entered into for an initial period of up to 2 years, and may contain options to extend the contract for one or more additional periods of 1 or 2 years duration. The total period of the contract, including options, shall not exceed 6 years, after which the contract must be recompeted.

6. *Exercise of options.* Under normal circumstances, when the contractor is performing satisfactorily, options for additional periods of performance should be exercised. However, the exercise of the option is the exclusive right of the Government, and decisions not to exercise the option, or to test the market before option

exercise, are within the contracting officer's discretion working in concert with the PAO and other command officials.

7. *Modification of the contract.* Any changes to the SOW or other terms and conditions of the contract shall be made by written contract modification signed by both parties.

8. *SSAC.* The commander shall appoint an SSAC. The committee shall participate in the development of the Source Selection Plan (SSP) before the solicitation of proposals, evaluate proposals, and recommend a source to the selecting official. Since cost is not a factor in the evaluation, award will be based on technical proposals, the offeror's experience and/or qualifications, and past performance.

a. The SSAC shall consist of a minimum of five voting members: a chairperson, who shall be a senior member of the command; senior representatives from public affairs and printing; and a minimum of two other functional specialists with skills relevant to the selection process. Each SSAC shall have non-voting legal and contracting advisors to assist in the selection process.

b. In arriving at its recommendations, the SSAC shall follow the SSP and avail itself of all relevant information, including the proposals submitted, independently derived data regarding offerors' performance records, the results of on-site surveys of offerors' facilities, where feasible, and in appropriate cases, personal presentations by offerors.

c. The work of the SSAC must be coordinated with the contracting officer to ensure that the process is objective and fair. All communications between the offerors and the Government shall be through the contracting officer. No member of the SSAC or the selecting official shall communicate directly with any offeror regarding the source selection.

d. In cases where a losing competitor requests a debriefing from the contracting officer, members of the SSAC may be called upon to participate so as to give the losing competitor the most thorough explanation practical as to why its proposal was not successful. No information regarding competitors' proposals shall be discussed with the unsuccessful offerors during debriefings, discussions, or negotiations.

9. *SSP.* A SSP (see sample SSP at attachment 1 to this Appendix) must be developed early in the planning process to serve as a guide for the personnel involved and ensure a fair and objective process and a successful outcome. The contracting officer is primarily responsible for development of the SSP, in coordination with the PAO and other members of the SSAC. Ideally, the SSP should be completed and approved prior to issuance of the solicitation; it must be completed and approved before the receipt of proposals.

10. *Evaluation criteria and proposal requirements.* The solicitation must specify, in relative order of importance, the factors the Government will consider in selecting the most advantageous proposal. In addition, the solicitation must specify the types of information the proposal must contain to be properly evaluated. These two aspects of the solicitation must closely parallel one another.

<sup>3</sup>Copies may be obtained, at cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

The contracting officer is primarily responsible for development of these two solicitation provisions, in coordination with the PAO, legal counsel, and members of the SSAC.

a. *Evaluation criteria for award.* Drawing upon the SSP, this feature of the solicitation must advise offerors what factors the Government will consider in evaluating proposals and the relative importance of each factor. The attached SSP (attachment 1 to this enclosure) provides an example of criteria that might be used. Note that under the "Services and/or Items Offered" factor, paragraph E.2.b. of attachment 1 to this appendix, it is necessary to list and indicate the relative importance of services and/or items *above the minimum requirements of the SOW* that the command would consider desirable and that, if offered, will enhance the offeror's evaluation standing. The offer of services and/or items not listed in the evaluation criteria shall not be considered in the evaluation of proposals, but may be accepted in the contract award if deemed valuable to the Government, PROVIDED the service and/or item involved is directly related to producing the publication and not in violation of any other statute or regulation. Examples of items that cannot be considered during the evaluation process are: press kits, laminated maps, economic development reports, or other separate publications not an integral part of the CE newspaper, guide, or installation map.

b. *Proposal requirements.* This provision of the solicitation must describe the specific and general types of information necessary to be submitted as part of the proposal to be evaluated. Offerors shall be notified that unnecessarily elaborate proposals are not desired.

#### Attachment 1 to Appendix B to part 247-SSP

##### A. Introduction

1. The objectives of this plan are:
  - a. To ensure an impartial, equitable, and thorough evaluation of all offerors' proposals in accordance with the evaluation criteria presented in the request for proposals (RFP).
  - b. To ensure that the contracting officer is provided technical evaluation findings of the SSAC in such a manner that selection of the offer most advantageous to the Government is ensured.
  - c. To document clearly and thoroughly all aspects of the evaluation and decision process to provide effective debriefings to unsuccessful offerors, to respond to legal challenges to the selection, and to ensure adherence to evaluation criteria.
2. This plan will be used to select a CE contractor for publication of the \_\_\_\_\_ newspaper (CE guide or installation map) and will:
  - a. Give each SSAC member a clear understanding of his or her responsibilities as well as a complete overview of the evaluation process.
  - b. Establish a well-balanced evaluation structure, equitable and uniform scoring procedures, and a thorough and accurate appraisal of all considerations pertinent to the negotiated contracting process.
  - c. Provide the selecting official with meaningful findings that are clearly

presented and founded on the collective, independent judgment of technical and managerial experts.

d. Ensure identification and selection of a contractor whose final proposal offers optimum satisfaction of the Government's technical and managerial requirements as expressed in the RFP.

e. Serve as part of the official record for the evaluation process.

##### B. Organization and Staffing

1. The SSAC will consist of the Chairperson and a minimum of four other voting committee members plus the non-voting advisors to the SSAC.

2. The SSAC committee members are:

Name	Position
	Chairperson.
	Member.
	Member.
	Member.
	Legal Advisor. <sup>1</sup>
	Contract Advisor. <sup>1</sup>

<sup>1</sup> Non-voting members.

##### C. Responsibilities

1. Selecting Official:
  - a. Approves the SSP.
  - b. Reviews the evaluation and findings of the SSAC.
  - c. Considers the SSAC's recommendation of award.
  - d. Selects the successful offeror.
2. Chairperson of the Source Selection Advisory Committee (C/SSAC):
  - a. Reviews the SSP.
  - b. Approves membership of the SSAC.
  - c. Analyzes the evaluation and findings of the SSAC and applies weights to the evaluation results.
  - d. Approves the SSAC report for submission to the selecting official.
3. Contracting Officer:
  - a. Is responsible for the proper and efficient conduct of the entire source selection process encompassing solicitation, evaluation, selection, and contract award.
  - b. Provides SSAC and the selecting official with guidance and instructions to conduct the evaluation and selection process.
  - c. Receives proposals submitted and makes them available to the SSAC, taking necessary precautions to ensure against premature or unauthorized disclosure of source selection information.
4. SSAC members shall:
  - a. Familiarize themselves with the RFP and SSP.
  - b. Provide a fair and impartial review and evaluation of each proposal against the solicitation requirements and evaluation criteria.
  - c. Provide written documentation substantiating their evaluations to include strengths, weaknesses, and any deficiencies of each proposal.
5. Legal advisor:
  - a. Reviews RFP and SSP for form and legality.
  - b. Advises the SSAC members of their duties and responsibilities, regarding

procurement integrity issues and confidentiality requirements.

c. Participate in SSAC meetings and provide legal advice as required.

d. Provides legal review of all documents supporting the selection decision to ensure legal sufficiency and consistency with the evaluation criteria in the RFP and SSP.

e. Advises the selecting official on the legality of the selection decision.

##### D. Administrative Instructions

1. *Evaluation overview.* The advisory committee will operate with maximum flexibility. Collective discussion by evaluators at committee meetings of their evaluation findings is permitted in the interchange of viewpoints regarding strengths, weaknesses, and deficiencies noted in the proposals relating to evaluation items. Evaluators will not suggest or disclose numerical scores or other information regarding the relative standing of offerors outside of committee meetings.

2. *Evaluation procedure.* The evaluation of offers is based on good judgment and a thorough knowledge of the guidelines and criteria applicable to each evaluation factor.

a. Numerical scoring is merely reflective of the composite findings of the SSAC. The evaluation scoring system is used as a tool to assist the Chairperson of the SSAC in determining the proposal most advantageous to the Government.

b. The most important documents supporting the contract award will be the findings, conclusions, and reports of the SSAC.

3. *Safeguarding data.* The sensitivity of the proceedings and documentation require stringent and special safeguards throughout the evaluation process:

a. Inadvertent release of information could be a source of considerable misunderstanding and embarrassment to the Government. It is imperative, therefore, for all members of the SSAC to avoid any unauthorized disclosures of information pertaining to this evaluation. Evaluation participants will observe the following rules:

(1) All offeror and evaluation materials will be secured when not in use (i.e., during breaks, lunch, and at the end of the day).

(2) All attempted communications by offeror's representatives shall be directed to the contracting officer. No communications between members of the SSAC or the selecting official and offerors regarding the contract award or evaluation is permitted except when called upon under the provisions of paragraph J.8.d, of Appendix B to this part.

(3) Neither SSAC members or the selecting official shall disclose anything pertaining to the source selection process to any offeror except as authorized by the contracting officer.

(4) Neither SSAC members or the selecting official shall discuss the substantive issues of the evaluation with any unauthorized individual, even after award of the contract.

##### E. Technical evaluation procedures

1. *Evaluation process.* Proposals will be evaluated based on the following criteria as indicated in section M of the solicitation: The

evaluation worksheet (attachment 2 to this appendix) shall be used to score the technical factors. Using the technical evaluation worksheet, each member of the SSAC will independently review each proposal and assign an appropriate number of points to each factor being considered. Point scores for each factor will range from "0" to "5" based on the committee member's evaluation of the proposal. Upon completion of individual evaluations, the group will meet in committee with the Chairperson and arrive at a single numeric score for each factor in the proposal.

2. *Criteria.* An example of applicable evaluation criteria and their relative order of importance are listed below in paragraphs E.2.a. through d of this appendix. Criteria and weights are provided as an example only. The SSAC must determine its own weighting factors tailored to meet the needs of the particular CE publication and describe the relative weights assigned in the RFP; e.g., "Evaluation factors are listed in descending order of importance; criteria #1 is twice as important as criteria #2," etc.

a. *Technical and production capability.* Scores will range from "0" (unacceptable), to "5" (exhibits state-of-the-art, award winning, or clearly superior technical ability to produce the required newspaper, guide, or installation map). Factors to be considered for newspaper contracts include: level of automation; compatibility of automation with existing PAO automation (unless other automation is provided); printing capability; production equipment; physical plant (capabilities); and driving distance to the plant. Similar factors may be considered for guides and installation maps.

b. *Services and/or items offered.* Scores will range from "0" (unacceptable), to "5" (the offer of equipment, such as automation equipment; or services, such as editorial or photographic services as set forth in the contract solicitation that will greatly enhance the newspaper and/or its production). Factors to be considered for newspapers include: offer of automation equipment and the quality and amount of equipment offered; the quality and amount of services offered; the usefulness of the services and/or items to the public affairs office in enhancing the newspaper; the impact of the services and/or items on other parts of the contract. Similar factors may be considered for guides and installation maps. The offer of equipment or services not specifically related to producing the publication will not result in the assignment of a higher score.

c. *Past performance record.* Scores will range from "0" (no experience in newspaper, guide, or installation map publishing and/or unsatisfactory, previous performance), to "5" (long-term, highly successful experience publishing similar newspapers, guides, or installation maps). Factors to be considered include: demonstrated ability to unsuccessfully produce a CE or similar publication; demonstrated printing ability (types of printing, history of newspaper, guide, or installation map printing); demonstrated success in contract performance in a timely and responsive manner; demonstrated capability to sell advertising and successfully recoup publication costs.

d. *Management approach.* Scores will range from "0" (approach unacceptable), to "5" (proposal demonstrates a sound and innovative approach to interfacing with the PAO and managing the CE publication operation). Factors to be considered include: The offeror's proposed approach to:

- (1) Interfacing with the PAO staff.
  - (2) Controlling the quality and timeliness of the finished product.
  - (3) Sale of ads of the type that enhance the publication's image in the community and with the readership at large.
  - (4) Ensuring that contractor's personnel are properly supervised and managed.
3. *Weighting factors.* Points will be assigned to the final score of each factor in a proposal as determined by multiplying the score assigned (e.g., "0," "1," "2," "3," "4," or "5") by the relative weight of the individual criterion as indicated:

Factor	Relative weight (per-cent)	Maximum points
Criterion 1 .....	40	200
Criterion 2 .....	30	150
Criterion 3 .....	20	100
Criterion 4 .....	10	50
		500
(Example Only):		
Criterion 1 Score 5 (5×40) Total Points ....		200
Criterion 1 Score 4 (4×30) Total Points ....		120
Criterion 1 Score 3 (3×20) Total Points ....		60
Criterion 1 Score 2 (2×10) Total Points ....		20
		400

4. *Report of findings and recommendations.* After the SSAC has completed final evaluation of proposals and all weighting has been completed, the committee will prepare a written report of its findings and recommendations, setting forth the consensus of the committee and its composites scores (Sample at attachment 3 to this Appendix). The Chairperson will sign the report to confirm its accuracy and his agreement with the recommendation. All copies of proposals and evaluation worksheets will be returned to the contracting officer.

**Attachment 2 to Appendix B to Part 247—Sample Evaluation Worksheet**

Contractor \_\_\_\_\_  
 Evaluator \_\_\_\_\_  
 Date \_\_\_\_\_

Evaluation Criteria and Scores (Range 0–5 Points for Each)

1. Technical and production capability: \_\_\_\_\_
2. Services and items offered: \_\_\_\_\_
3. Past performance record: \_\_\_\_\_
4. Management approach: \_\_\_\_\_

<sup>1</sup> Narrative Discussion:  
 Strengths  
 Weaknesses  
 Deficiencies

**Attachment 3 to Appendix B to Part 247—Sample Memorandum for Selecting Official**

Subject: Evaluation of Proposals RFP No. \_\_\_\_\_

1. All proposals received in response to subject RFP have been evaluated by the Source Selection Advisory Committee (SSAC). The results and comments are listed below.

a. Offeror's proposals were rated as follows:

Offeror Name  
 Numerical Score

b. Summary Narrative Comments. (This section of the report shall be a summary of the individual strengths and weaknesses in each proposal, along with any deficiencies that are susceptible to being cured through written or oral discussions with the offeror, as noted by the SSC evaluators. This summary should be supported by detailed narratives contained on the individual evaluator's worksheets.)

2. Recommendation.

Chairperson, SSAC

**Appendix C to Part 247—Mailing of DoD Newspapers, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications**

A. *Policy.* It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations. (See DoD Instruction 4525.7<sup>1</sup> and DoD 4525.8–M<sup>2</sup> Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. *Definition.* DoD appropriated fund postage includes all means of paying postage using funds appropriated for the Department of Defense. These means include meter imprints and stamps, permits imprints, postage stamps, and other means authorized by the U.S. Postal Service.

C. *Use of appropriated fund postage.*

1. DoD appropriated fund postage shall be used only for:

- a. Mailing copies to satisfy mandatory distribution requirements.
- b. Mailing copies to other public affairs offices for administrative purposes.
- c. Mailing copies to headquarters in the chain of command.
- d. Bulk mailings of DoD newspapers to subordinate units for distribution to members of the units.

<sup>1</sup> Discussions of strengths, weaknesses, and deficiencies should reference the specific evaluation factor involved to ensure that proposals are evaluated only against the criterion set forth in the RFP, to facilitate debriefings, and to provide an effective defense to any challenges regarding the legality of the selection process.)

<sup>2</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>3</sup> See footnote 1 to section A. of this Appendix.

e. Mailing information copies to other U.S. Government Agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a DoD newspaper or CE publication in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Component or its subordinate levels of command.

g. Mailing copies of DoD newspapers, guides, or installation maps to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. DoD appropriated fund postage shall not be used for mailing:

a. To the general readership of DoD newspaper, guides, and installation maps, unless specifically excepted in this part.

b. By a CE publisher.

c. CE publications other than newspapers in bulk. (See paragraph C.1.d. of this section).

3. Generally, DoD newspapers and CE publications shall be mailed as second class Requester Publication Rate, third-class bulk, or third- or fourth-class mail.

D. *Legal prohibitions.* Compliance with 18 U.S.C., 1302 and 1307 is mandatory. 18 USC Section 1302 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. 18 USC 1307 authorizes exceptions pertaining to authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee to play).

E. Review of mailing and distribution effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers-per-copy ratios, and use of the U.S. Postal Service to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

F. *Non-DoD publications.* A commander shall afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he or she commands in accordance with DoD Directive 1325.6. Such publications shall not be distributed through official channels. These publications may be made available through subscription paid for by the recipient or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. They will be placed only in stands or racks provided by the responsible publisher. The responsible publisher will maintain the stand or rack to present a neat and orderly

appearance. Subscriptions paid for by a recipient may be home-delivered by the commercial distributor in installation residential areas.

#### Appendix D to Part 247—AFIS Print Media Directorate

A. *General.* The Print Media Directorate (AFIS-PM), an element of AFIS, develops, publishes, procures, and distributes a variety of print media products that support DoD-wide programs and policies for targeted audiences throughout the DoD community. Products include the following:

1. *Press and Art Pack*, a weekly package of camera-ready articles, photographs, and art distributed principally to DoD newspaper editors containing articles addressing several of the DoD internal information plan subject areas.

2. *DEFENSE* magazine, a bimonthly periodical featuring articles authored by senior military and civilian officials on DoD programs and policies. An annual almanac edition highlights DoD's organization.

3. *Defense Billboard*, a monthly poster featuring topics of particular interest to junior Military Service members, but applicable to general DoD audiences.

4. Pamphlets, booklets, and other posters covering a variety of joint interest information topics.

5. AFIS-PM also posts the *Press and Art Pack* and selected feature stories on Army, Navy, Air Force, Coast Guard, and OATSD(PA) computer bulletin boards. PAOs and editors may download text and art in a form readily usable for word processing or desktop publishing.

B. *Use of materials published by print media directorate.* With the exception of copyrighted matter, all materials published by AFIS-PM may be reproduced or adapted for use by DoD newspaper editors as appropriate. When AFIS-PM material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy-oriented nature of *DEFENSE* magazine contents, particular care shall be taken to preserve the original context, tone, and meaning of any material adapted, revised, or edited from this publication.

C. *Eligible activities.* The following activities are eligible to receive the above listed AFIS-PM products:

1. All authorized DoD newspapers.

2. Headquarters of the DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by the DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

D. *Procedures.*

1. The *Press and Art Pack* is mailed directly to requesting eligible organizations. Requests should be forwarded directly to: American Forces Information Service, Director of Print Media, 601 North Fairfax Street, Room 230, Alexandria, VA 22314-2007.

2. Requests shall include name and address of newspaper or activity, frequency of publication, whether the requesting

newspaper is funded or CE, and a sample copy of the publication.

3. Notification of changes of address, newspaper title, or other status shall be forwarded immediately to the address in paragraph D.1. of this Appendix.

4. All other AFIS-PM materials should be requisitioned through the Military Service's or organization's publications distribution system.

#### Appendix E to Part 247—DoD Command Newspaper Review System

A. *Purpose.* The purpose of the DoD command newspaper review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. *Policy.* DoD newspapers shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. *Approving authorities.*

1. The ASD(PA) shall be the approving authority for newspapers published by the DoD Components and designated Unified Combatant Commands, less the Military Departments.

2. Within the Military Departments, the Secretary or a designated representative shall be the approving authority. This authority shall be delegated no lower than the major command or equivalent level.

D. *Review criteria.*

1. Each newspaper shall be evaluated on the basis of mission essentiality, communication effectiveness, cost-effectiveness, and compliance with applicable regulations.

2. In implementing the requirement that only one newspaper is authorized at each installation, any competing needs of an installation and its tenant commands shall be considered in accordance with § 247.6(b)(5) (i) and (ii).

E. *OSD command and newspaper review board.*

The OSD Command Newspaper Review Board shall be chaired by the Director, AFIS. Members shall be senior personnel representing functional areas of the command communication process (public affairs, editorial, design and layout, production, etc.). Members shall be drawn from OSD and Defense Agencies, nominated by office and agency heads at the invitation of the chair. A technical advisory panel of relevant specialties (printing, postal, distribution, contracting, legal, etc.) may be established at the discretion of the chair. The primary purpose of this board is to review requests for the publication of new newspapers, but at the direction of the chairperson, could expand their purpose to review other areas of the program.

1. Recommendations may include the establishment, disestablishment, or continuance of a newspaper; changes in volume, frequency, format, or paper stock; and cost reduction measures.

2. Recommendations shall have the concurrence of two-thirds of the voting board members.

F. *Military department command newspaper review.* Military Departments shall establish appropriate procedures to accomplish command newspaper review and reporting requirements.

G. *Appeals.* Appeals shall be made within 30 calendar days of the approving authority's decision if publishing activities have new information to present. Representatives of a publishing activity may make presentations to a board and respond to questions during open sessions of the board.

H. *Reporting requirements*

1. The DOD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated at attachment 1 to this Appendix for each newspaper published, and six recent copies of the newspaper to: Director, American Forces Information Service, Attn: Print Media Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314-2007.

Requests for approval of new newspapers may be submitted at any time, using the format at attachment 1 to this Appendix.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the OATSD(PA) (ATTN: Director, AFIS) a report of the Military Department's review of newspapers. A cover memorandum shall include summary data on total number of newspapers, number eliminated, and total cost for the year being reported, along with a listing of the information indicated at attachment 1 of this appendix.

3. One information copy of each issue of all DOD newspapers shall be forwarded on publication date to the address in paragraph H.1. of this Appendix.

4. Information copies of CE newspaper contracts shall be forwarded to the address in paragraph H.1. of this section, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers.

**Attachment 1 to Appendix E to Part 247—Request for Continuation and/or Establishment of DOD Newspapers**

As required by section H. of this appendix, the following information shall be provided biennially regarding newspaper published by the DOD Components (less Military Departments), and when requesting approval for a new newspaper:

A. Name of newspaper.

B. Publishing command and mailing address.

C. Printing arrangement:

1. Government equipment.

2. Government contract with commercial printer.

3. CE contract with commercial publisher (give name, mailing address, and phone number of commercial publisher).

D. Automation capabilities (desktop publishing, computer bulletin board, etc.)

E. Frequency and number of issues per year.

F. Number of copies printed and estimated readership.

G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.

H. Size of newspaper staff, listed as full time, part time, and contractor-provided.

I. Annual costs of:

1. Editorial and administrative.

2. Supply and equipment.

3. Printing (funded only).

4. Distribution and mailing.

5. Staff transportation.

J. Attach six recent copies of the newspaper.

K. For requests for approval of new newspapers: Provide a comprehensive statement of the necessity for the newspaper including, if a tenant command, why host installation newspaper does not serve the needs of the requestor's audience. Attach six recent copies of newspapers published by the host and any other tenants.

**Attachment 2 to Appendix E to Part 247—Military Department Newspaper Data**

As required by section H.2. of this appendix, the following information shall be provided biennially regarding each newspaper published by the Military Departments:

A. Name of newspaper.

B. Publishing command and mailing address.

C. Printing arrangement:

1. Government equipment.

2. Government contract with commercial printer.

3. CE contract (give name, mailing address, and phone number of commercial publisher).

D. Automation capabilities (desktop publishing, computer bulletin board, etc.)

E. Frequency and number of issues per year.

F. Number of copies per issue and estimated readership.

G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issues.

H. Size of newspaper staff, listed as full time, part time, and contractor-provided.

I. Annual costs:

1. Editorial and administrative.

2. Supply and equipment.

3. Printing (funded newspaper only).

4. Distribution and mailing.

5. Staff transportation.

**Appendix F to Part 247—Deputy Secretary of Defense Policy Memorandum**

*The Deputy Secretary of Defense*

Memorandum for Secretaries of the Military Departments: Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense, Director, Defense Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Inspector General of the Department of Defense, Director, Operational Test and Evaluation, Assistants to the Secretary of Defense, Director, Administration and Management, Directors of the Defense Agencies, Directors of DoD Field Activities

Subject: Alteration of Official Photographic and Video Imagery

Photographic and video imagery has become an essential tool of decision makers at every level of command and in every theater of military operations. Mission success and ultimately the lives of our men and women in uniform depend on this imagery being complete, timely, and, above all, highly accurate. Anything that weakens or casts doubt on the credibility of this imagery within or outside the Department of Defense will not be tolerated.

The emergence of digital technology has significantly increased the capability of altering photographic and video imagery. This capability represents a potential threat to the credibility of Defense imagery. Since current Federal Regulations and DoD Directives do not specifically address the deliberate alteration of official photographic records, I believe guidance is required. I am providing this guidance by establishing the following as Department of Defense policy on the alteration of official photographic and video imagery:

a. The alteration of official Defense imagery by persons acting for or on behalf of the Department of Defense is prohibited except as outlined below:

(1) Photographic techniques common to traditional darkrooms and digital imaging stations such as dodging, burning, color balancing, spotting, and contrast adjustment that are used to achieve the accurate recording of an event or object are not considered alterations.

(2) Photographic and video image enhancement, exploitation, and simulation techniques used in support of unique cartography, geodesy, intelligence, medical, RDT&E, scientific, and training requirements are authorized if they do not misrepresent the subject of the original image.

(3) The obvious masking of portions of a photographic image in support of specific security or criminal investigation requirements is authorized.

(4) The use of cropping, editing, or enlargement to selectively isolate, link, or display a portion of a photographic or video image is not considered alteration. However, cropping, editing or image enlargement which has the effect of misrepresenting the facts or circumstances of the event or object as originally recorded constitutes a prohibited alteration.

(5) The digital conversion and compression of photographic and video imagery are authorized.

(6) Photographic and video post-production enhancement, including animation, digital simulation, graphics, and special effects, used for dramatic or narrative effect in education, recruiting, safety and training illustrations, publications, or productions is authorized under either of the following conditions:

(a) the enhancement does not misrepresent the subject of the original image, or;

(b) it is clearly and readily apparent from the context or from the content of the image or accompanying text that the enhanced image is not intended to be an accurate representation of any actual event.

b. Official Defense imagery includes all photographic and video images, regardless of the medium in which they are acquired, stored, or displayed, that are recorded or produced by persons acting for or on behalf of Department of Defense activities, functions, or missions.

My intent with the above policy is to ensure the absolute credibility of official DoD photographic and video imagery within and outside the Department of Defense.

This memorandum is effective immediately. A DoD Directive incorporating the substance of this memorandum shall be issued within 90 days.

John Deutsch

Dated: March 30, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-8239 Filed 4-7-95; 8:45 am]

BILLING CODE 5000-04-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD09-95-008]

#### Drawbridge Operation Regulations; Chicago River, IL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of intent to form a negotiated rulemaking committee; request for public comment and membership.

**SUMMARY:** The Coast Guard intends to form a negotiated rulemaking committee to develop regulations governing the operation of drawbridges over the Chicago River in Chicago, Illinois for the passage of recreational vessels. The Coast Guard will establish the committee under the provisions of the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act.

**DATES:** Comments and nominations for membership must be received on or before May 8, 1995.

**ADDRESSES:** Comments and nominations for membership should be sent to Mr. Robert Bloom, Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, or may be delivered to room 2083D at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522-3993. Comments will become part of the docket and will be available for inspection or copying at room 2083D, at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The principal person involved in drafting this document are Mr. Robert Bloom, Chief, Bridge Branch, and Commander James M. Collin, District Legal Officer, Ninth Coast Guard District, Cleveland, Ohio.

##### Background

On April 18, 1994 (59 FR 18298), the Coast Guard issued an amendment to its regulation for drawbridge operations on the Chicago River (33 CFR 117.391). The amendment replaced on-demand drawbridge openings for recreational vessels, except during rush hour periods, with significant restrictions on openings, flotilla specifications and advance notice requirements. Prior temporary deviations to the regulations, permitted under 33 CFR 117.43, also had restricted drawbridge openings.

On September 26, 1994, the Coast Guard's action was rescinded by the United States District Court for the District of Columbia in the Court's order in the case of *Crowley's Yacht Yard, Inc. Plaintiff v. Federico Peña, Secretary, United States Department of Transportation, Defendant* (C.A. No. 94-1152 SSH), which also reinstated the previous regulation.

In response to the Court's action and to obtain data for a new regulatory initiative, the District Commander issued a temporary deviation to the regulations for the period from October 11, 1994 to December 5, 1994 and received public comments through January 15, 1995. The deviation also permitted only limited weekday openings, required advance notice for openings, and included flotilla specifications.

On February 10, 1995, the District Commander authorized a 90 day deviation for the period for April 15, 1995 through July 14, 1995, request written comments, and scheduled a public hearing (60 FR 8941, February 16, 1995). That deviation, described in

the **Federal Register** notice, would have required twenty-four hour notice for all openings, but did not restrict the timing of openings, except to exclude the rush hour periods recognized in the regulations currently in force. Based on all information available, including the written comments received to date and the presentations made at the public hearing held on March 9, 1995 in Chicago, the District Commander has revised the deviation and a notice of the revisions is published in this issue of the Federal Register. This revised deviation authorizes limited openings on specified weekdays with advance notice, as well as weekend openings.

The traditional notice and comment rulemaking process, augmented by the procedures for deviations, has not generated a permanent and acceptable resolution to the issue of drawbridge openings on the Chicago River. Therefore, the Coast Guard intends to form a negotiated rulemaking committee as an alternative process to produce an acceptable and enduring amendment to 33 CFR 117.391. Negotiated rulemaking does not guarantee success. If, for any reason, the Coast Guard is unable to convene a negotiated rulemaking committee, or if the committee is unable to reach a consensus on the content of a proposed rule, the Coast Guard will take action to publish a Notice of Proposed Rulemaking (NPRM) to initiate a traditional notice and comment rulemaking. The Coast Guard's goal is to publish a NPRM in July and a final rule by September 14, 1995.

##### Regulatory Negotiation

In 1990, Congress passed the Negotiated Rulemaking Act of 1990 (Pub. L. 101-648) (Reg-Neg Act) to establish a framework under which federal agencies could conduct negotiated rulemaking. Negotiated rulemaking is an adjunct to, and not a substitute for, the traditional notice and comment procedure described in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) for developing regulations. The Reg-Neg Act encourages federal agencies to consider bringing together representatives of all affected interests to resolve issues through negotiation. Negotiated rulemaking allows participants to focus less on individual positions and enables them to cooperate to develop a regulation that best incorporates all interests.

The Coast Guard and other administrations in the Department of Transportation has used negotiated rulemaking successfully. These prior experiences demonstrate that interested parties working together indeed are able

to identify major issues, gauge the importance of issues to interested parties, identify information and data important to resolving issues, and develop a proposal that is acceptable to all affected interests. Consequently, this approach results in practical regulations that accommodate the needs of all affected parties to the extent practicable.

One of the recommendations of The National Performance Review (REG 03) was that federal agencies should use negotiated rulemaking more frequently. In a March 4, 1995 memorandum, President Clinton directed the heads of executive agencies to use negotiated rulemaking as one of the important tools for streamlining and improving the regulatory process.

### Procedures and Guidelines

Subject to appropriate changes which may be made either as a result of comments received in response to this notice or during the negotiation process, the following proposed procedures and guidelines will apply to the negotiated rulemaking discussed in this notice. The Coast Guard is taking the necessary preliminary steps to charter a negotiated rulemaking committee and secure the services of a facilitator, the neutral party who would chair the committee and assist the negotiating process.

#### 1. Notice of Intent to Establish a Negotiated Rulemaking Committee and Request for Comment

When an agency of the federal government establishes or uses a group of people in the interest of obtaining advice or recommendations, it must charter the group as a federal advisory committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). Public notice of formation of an advisory committee is addressed as well by the Reg-Neg Act. This **Federal Register** notice indicates the Coast Guard's intent to charter the Chicago Drawbridge Negotiated Rulemaking Committee (committee) and—

- a. Identifies the issues involved in the rulemaking;
- b. Identifies the affected interests;
- c. Solicits public comment on the use of regulatory negotiation for the rulemaking and on the identified issues, parties, and guidelines.

#### 2. Issue for Negotiation

The committee would attempt to reach consensus on amendments to 33 CFR 117.391, the regulation governing the opening of City of Chicago-owned bridges over the Chicago River, as it applies to recreational vessels.

#### 3. Participants

The number of participants in the committee would not exceed 12 to ensure effective communications and consensus building. The Coast Guard is making inquiries among identified interests to determine if it is possible to agree on representatives of those interests and on the scope of the issues to be addressed. The Coast Guard believes that negotiation has the best prospects for successful resolution of the issues.

One purpose of this notice is to assist the Coast Guard in determining whether there are other interests that may be affected substantially by the negotiations but would not be represented by the affected interests listed later in the notice. It is not necessary for each potentially affected individual or organization to have its own representative. Rather each interest should be represented adequately by the selected parties, and the committee should be balanced fairly. Individuals and organizations who are not members of the committee may attend the negotiating sessions and confer with committee members.

#### 4. Requests for Representation

Persons or organizations who believe they would be impacted significantly by any proposed amendment to 33 CFR 117.391 and who believe their interests would not be represented adequately by any of the potential participants specified later in this notice may apply for, or nominate another person for, membership on the committee. The application or nomination must include: (1) the name of the applicant or nominee and a brief description of the interest the person represents; (2) evidence that the applicant or nominee is authorized to represent parties related to the interest the person proposes to represent; (3) a written commitment that the applicant or nominee would participate in good faith; and (4) the reason that the interests specified in this notice do not represent adequately the interests of the applicant or nominee. Such applications should be submitted to the contact person at the address provided at the beginning of the notice by the deadline indicated.

If other persons or interests request membership in the negotiations, the Coast Guard will determine whether those interest would be affected substantially and whether they would be represented adequately by an identified interest. After reviewing the comments, the Coast Guard will issue a notice announcing the establishment of the committee, unless it determines that

regulatory negotiation is not practicable. Negotiations will begin soon after a committee is chartered and a notice is published in the **Federal Register**.

#### 5. Good Faith

Participants must be willing to negotiate in good faith. In this regard, it is important that each interest group, including the Coast Guard, designate senior personnel to represent its members. The Coast Guard expects the representatives to inform their respective interest groups of the progress of the negotiations during the process. If the negotiations are to be successful, the interest groups should be willing to accept the product of the committee.

#### 6. Facilitator

The Coast Guard will use a neutral facilitator to conduct the negotiations in an efficient manner. The facilitator is not involved with the substantive development of enforcement of the regulation. The facilitator serves as chair of the committee and may confer with and offer suggestions to the other members on reaching consensus. This person also may request the parties to present additional material or to reconsider their positions. As a neutral party, a facilitator is able to make objective decisions about negotiating particular issues and identifying particular interests.

#### 7. Administrative Support and Meetings

The Ninth Coast Guard District would provide support services to the committee for conducting its meetings and drafting its proposal. The meetings of the committee would take place in Chicago. If regulatory negotiation is chosen, it is the Coast Guard's goal to convene the committee on or about June 5, 1995 for an information, orientation, and administrative procedure session. Negotiation would commence on or about June 12, 1995 after the majority of the Spring breakout season has passed. Negotiations would continue on a weekly basis, with the committee meeting perhaps daily at some times, in order to reach consensus by July 7, 1995. A short schedule for the committee is essential if the Coast Guard is to meet its goal of publishing a NPRM in July and a final rule by September 14, 1995 in order for new regulations to be effective for the Fall return of vessels to the boatyards. The date and location of the first meeting would be announced in the **Federal Register**. Because of the anticipated compressed schedule of meetings, the Coast Guard would develop a procedure, such as a call-in number or

electronic bulletin board, to provide up-to-date information on scheduled meetings.

It is anticipated that following the close of the public comment period, the committee would meet briefly to consider the comments received and prepare its final report on any desired modifications in the final rule.

#### 8. Consensus

The goal of the negotiating process is consensus. Generally, consensus means that each interest should concur in the result. The facilitator would mediate the negotiation process.

#### 9. Record of Meetings

In accordance with the FACA requirements, the Coast Guard would keep a record of all committee meetings. The minutes would be placed in the public docket for the rulemaking (CGD09-95-004). Committee meetings would be open to the public, subject to space availability.

#### 10. Committee Protocols

Under the general guidance of the facilitator, and subject to applicable legal requirements, the committee would establish protocols for its meetings.

#### 11. Agency Action on Committee Proposal

The Commander, Ninth Coast Guard District would publish any proposal on which the committee reaches consensus as a NPRM, providing the proposal is consistent with the Coast Guard's statutory authority and Executive Order 12866. If the committee's proposal is modified in any manner, the NPRM would identify the modifications so that the public could distinguish the modifications from the committee's proposal. If the committee does not reach consensus, it shall report on those areas on which agreement was reached.

#### 12. Final Committee Report

The committee will be furnished copies of any comments received on the NPRM and will have an opportunity to meet and consider modifications to its recommendations based on those comments. If consensus can be reached, the committee's final report would recommend a final rule. Commander, Ninth Coast Guard District would then issue the rule amending 33 CFR 117.391, providing it is consistent with Coast Guard authority and Executive Order 12866.

#### 13. Termination

The committee would terminate on the date indicated in its charter

(September 30, 1995) or when it submits its final report to the Coast Guard, whichever is earlier.

#### 14. Failure of the Committee to Reach Consensus

In the event that the committee is unable to reach consensus, the Coast Guard will develop a NPRM or final rule, as appropriate, and publish it in the **Federal Register**. As stated previously, the Coast Guard's goal is to publish a NPRM in July and a final rule by September 14, 1995.

#### Potential Participants

The committee members should have expertise in the issues under negotiation and should be able to represent adequately their affected interests. The Coast Guard has identified the following as interests affected by the rulemaking: the City of Chicago; boatyards; boaters; and the U.S. Coast Guard. In addition, Chicago business groups and public interest organizations have expressed concern over the operation of the Chicago River bridges. The Coast Guard has initiated discussions with representatives of potential members of the committee, and will continue those overtures, to explain the Reg-Neg process and to determine the likelihood of being able to convene a successful Reg-Neg committee. The Coast Guard is pleased that officials of the City of Chicago have indicated their willingness to participate.

Formation of the committee will allow representatives of all affected interests to participate directly in the rulemaking process. The Coast Guard welcomes comment on the appropriateness of these interests for participation in the negotiation. Suggestions for other potential participants are encouraged, but it is not necessary for every concerned organization to be represented, providing that all affected interests are represented adequately. Further, negotiating sessions will be open to the public who may communicate with committee members. The Coast Guard will ensure that the committee is balanced with respect to the interests represented.

Dated: April 5, 1995.

#### Rudy K. Peschel,

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

[FR Doc. 95-8759 Filed 4-6-95; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 165

[CGD13-95-008]

#### Safety Zone Regulations; Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Blast Over Bellingham Fireworks Display in Bellingham, Washington. This event is held each year on the Fourth of July on the waters of Bellingham Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217-6009).

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received.

All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a 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 LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

#### Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Forth of July Blast Over Bellingham in Bellingham, Washington. This event is held on the waters of Bellingham Bay each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Blast Over Bellingham Fireworks Display is being held as part of the celebration of the Fourth of July Independence Day in Bellingham, Washington. This event is sponsored by the Whatcom County Chamber of Commerce. The fireworks display is conducted from a barge located on the waters of Bellingham Bay, Bellingham, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range during the event may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone around the fireworks barge and prohibit entry into the area that surrounds the fireworks barge during the event. This safety zone

will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

#### Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a half of one square nautical mile on Bellingham Bay adjacent to Squalicum Harbor. Entry into the safety zone would be restricted for less than three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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. 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. Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this action in accordance with 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 proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Blast Over Bellingham Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new § 165.1304 is added to read as follows:

#### § 165.1304 Bellingham Bay, Bellingham, WA.

(a) *Location.* The following area is a safety zone: All portions of Bellingham Bay bounded by the following coordinates: Latitude 48° 44' 09" N, Longitude 122° 30' 07" W; thence to Latitude 48° 44' 09" N, Longitude 122° 29' 57" W; thence to Latitude 48° 44' 02" N, Longitude 122° 29' 57" W; thence to Latitude 48° 44' 02" N, Longitude 122° 30' 07" W; thence returning to the

origin. This safety zone resembles a square centered around the barge from which the fireworks demonstration will be launched. Floating markers will be placed by the sponsor of the fireworks demonstration to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated: March 29, 1995.

**R. K. Softye,**

*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 95-8642 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 165

[CGD13-95-010]

RIN 2115-AA97

#### Safety Zone Regulations; Lake Union, Seattle, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Fireworks Display on Lake Union, Seattle, Washington. This event is held each year on the Fourth of July on the waters of Lake Union. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

#### FOR FURTHER INFORMATION CONTACT:

LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (206) 217-6009.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received. All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a 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 LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

##### Discussion of Proposed Regulation

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Fireworks Display on Lake Union, Seattle, Washington. This event is held on the waters of Lake Union each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year surrounding the fireworks barge to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to

better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Lake Union Fireworks Display is held annually as part of the celebration for the Fourth of July Independence Day in the Lake Union community. This event is sponsored by One Reel Incorporated. The fireworks display is conducted from a barge located on the waters of Lake Union, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone and prohibit entry into the area that surrounds the fireworks barge during the event. Under the proposed regulations, the Captain of the Port may establish transit lanes along the east and west shorelines of Lake Union. If established, boaters would be allowed to transit north and south through the safety zone in these lanes. These lanes would remain open until 10 p.m. and then be closed until the conclusion of the fireworks display. This safety zone will be enforced by representatives of the Captain of the Port, Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

##### Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than eight hundred square yards in the center of Lake Union. Entry into the safety zone around the fireworks barge would be restricted for less than three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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. 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. Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this action in accordance with 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 proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Lake Union Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1306 is added to read as follows:

#### § 165.1306 Lake Union, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of the waters of Lake Union bounded by the following coordinates: Latitude 47°30'32"N, Longitude 122°20'34"W; thence to Latitude 47°38'32"N, Longitude 122°19'48"W; thence to Latitude 47°38'10"N, Longitude 122°19'45"W; thence to Latitude 47°38'10"N, Longitude 122°20'24"W; thence returning to the origin. This safety zone begins 1000 feet south of Gas Works Park and encompasses all waters from east to west for 2500 feet. Floating markers will be placed by the sponsor of the fireworks demonstration to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into the safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA. The Captain of the Port may establish transit lanes along the east and west shorelines of Lake Union and may allow boaters to transit north and south through the safety zone in these lanes. If established, these transit lanes will remain open until 10 p.m. and then be closed until the end of the fireworks display (approximately 30 minutes).

Dated: March 29, 1995.

#### R.K. Softye,

*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 95–8643 Filed 4–7–95; 8:45 am]

BILLING CODE 4910–14–M

### 33 CFR Part 165

[CGD13–95–009]

RIN 2115–AA97

### Safety Zone Regulations; Commencement Bay, Tacoma, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Forth of July Freedom Fair Airshow and Fireworks Display in Tacoma, Washington. This event is held each year on the Fourth of July on the waters of Commencement Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217–6009).

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received.

all comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a 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 LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

#### **Discussion of Proposed Regulation**

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Freedom Fair Airshow and Fireworks Display in Tacoma, Washington. This event is held on the waters of Commencement Bay each year from 2 p.m. on July fourth to 12:30 a.m. on July fifth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Freedom Fair Airshow and Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Tacoma, Washington. This event is sponsored by the Tacoma Fourth of July Commission. The airshow is conducted over the waters of Commencement Bay just off shore from Ruston Way and the Old Town area. The Federal Aviation Administration (FAA) requires that the waters below the airshow aerobatics be closed to all spectators. This required closed area measures 1000 yards by 1800 yards on the waters of Commencement Bay, Tacoma, Washington, along the shoreline of Ruston Way. The fireworks display is conducted from a barge located inside the airshow closure area. The fireworks display will take place late in the evening after the airshow is complete. This one day event attracts a large number of spectators gathered on the

waters near the airshow and fireworks display. Spectators who approach the fireworks barge at close range during the event may be struck by debris falling from the overhead fireworks display. To promote the safety of both the spectators and participants, and to keep spectators away from both the airshow aerobatics area and the fireworks barge during the events, the proposed regulations would establish a safety zone and prohibit entry into the area surrounding the events. This safety zone will be enforced by representatives of the Captain of the Port, Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

#### **Regulatory Evaluation**

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a one square nautical mile on Commencement Bay adjacent to the Old Town area on Ruston Way. Entry into the safety zone would be restricted for less than nine hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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 jurisdiction with populations of less than 50,000. 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. Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that the proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

#### **Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### **Federalism**

The Coast Guard has analyzed this action in accordance with 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 proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Fourth of July Freedom Fair Airshow and Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

#### **Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

#### **PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new section 165.1305 is added to read as follows:

**§ 165.1305 Commencement Bay, Tacoma, WA.**

(a) *Location.* The following area is a safety zone: All portions of Commencement Bay bounded by the following coordinates: Latitude 47° 17' 34" Longitude 122° 28' 36" W; thence to Latitude 47° 17' 06" N, Longitude 122° 27' 40" W; thence to Latitude 47° 16' 42" N, Longitude 122° 28' 06" W; thence to Latitude 47° 17' 10" W, Longitude 122° 29' 02" W; thence returning to the origin. This safety zone resembles a rectangle lying adjacent to the shoreline along Ruston Way. Floating markers will be placed by the sponsor of the event to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July the fourth from 2 p.m. to 12:30 a.m. July the fifth unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated: March 29, 1995.

**R. K. Softye,**

*Captain, U.S. Coast Guard, Captain of the Port of Puget Sound.*

[FR Doc. 95-8644 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR PART 165**

[CGD13-95-007]

RIN 2115-AA97

**Safety Zone Regulations; Elliott Bay, Seattle, WA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Ivar's Fireworks Display in Seattle, Washington. This event is held each year on the Fourth of July on the waters of Elliott Bay. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations to better inform the boating public.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle,

WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:**

LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (Telephone: (206) 217-6009).

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason concurrence with, or any recommended changes in, the proposal. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons desiring acknowledgment of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received. All comments received during the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a 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 LT Susan Workman, Assistant Operations Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office.

**Discussion of Proposed Regulation**

The Coast Guard is proposing to adopt permanent safety zone regulations for the annual Fourth of July Ivar's Fireworks in Seattle, Washington. This event is held on the water of Elliott Bay

each year from 9:30 p.m. to 11 p.m. on July fourth. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Ivar's Fourth of July Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Seattle, Washington. This event is sponsored by Ivar's, Incorporated. The fireworks display is conducted from a barge located on the waters of Elliott Bay, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range may be struck by falling debris from the overhead fireworks display. To promote the safety of both the spectators and participants and to keep spectators away from the fireworks barge during the fireworks display, the proposed regulations would establish a safety zone and prohibit entry into the area that surrounds the fireworks barge during the event. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

**Regulatory Evaluation**

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by the proposed regulation would encompass less than a half of one square nautical mile on Elliott Bay adjacent to Myrtle Edwards Park. Entry into the safety zone would be restricted for less than three hours on the day of the event. These restrictions would have

little effect on maritime commerce in the area.

### Small Entities

Under the Regulatory Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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. 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. Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

### Federalism

The Coast Guard has analyzed this action in accordance with 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 proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Ivar's Fourth of July Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Security measures, Waterways.

### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new section 165.1307 is added to read as follows:

#### § 165.1307 Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a safety zone: All portions of Elliott Bay bounded by the following coordinates: Latitude 47°37'22" N, Longitude 122°22'06" W; thence to Latitude 47°37'06" N, Longitude 122°21'55" W; thence to Latitude 47°36'54" N, Longitude 122°22'05" W; thence to Latitude 47°36'09" N, Longitude 122°22'25" W; thence returning to the origin. This safety zone resembles a square centered around the barge from which the fireworks will be launched and begins 100 yards from the shoreline of Myrtle Edwards Park. Floating markers will be placed by the sponsor of the fireworks display to delineate the boundaries of the safety zone.

(b) *Effective dates.* These regulations become effective annually on July fourth from 9:30 p.m. to 11 p.m. unless otherwise specified by **Federal Register** notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

Dated March 29, 1995.

**R.K. Softye,**

*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 95-8645 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Corps of Engineers

#### 33 CFR Part 211

#### Excessing of Lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The Corps of Engineers proposes to expand its policy regarding excess lands with Indian reservations. This action flows from Congressional intent expressed in Public Law 102-575, language in Public Law 103-211 encouraging the Corps to proceed with the Department of the Interior to identify excess lands and transfer them to the Tribes, the President's policies regarding Native Americans, and our desire to give to the Tribes as much interest in the project lands at Lakes Sakakawea and Oahe as possible under existing law. If approved, this policy will enable the Corps to retain sufficient real property interests in certain Corps administered lands to fulfill project purposes, yet declare certain other interests in the lands excess to project needs, thereby permitting eventual transfer to the Department of Interior to be held in trust for the Tribes.

**DATES:** Comments must be received on or before July 10, 1995; dates for public hearings will be announced to the public at a later date.

**ADDRESSES:** Comments should be mailed to U.S. Army Corps of Engineers District, Omaha, ATTN: CEMRO-OP-TN (Mike George), 215 North 17th Street, Omaha, NE 68102-4978. Addresses for public hearings will be announced to the public at a later date.

**FOR FURTHER INFORMATION CONTACT:** Mike George at (402) 221-3988.

#### SUPPLEMENTARY INFORMATION:

#### Background

As part of the Garrison Diversion Unit Commission, authorized by P.L. 98-360, the Joint Tribal Advisory Committee (JTAC) was formed for the purpose of assessing impacts to the Three Affiliated Tribes (TAT) of the Fort Berthold Reservation and the Standing Rock Sioux Tribe (SRST) resulting from the construction of the Garrison Dam/Lake Sakakawea Project and the Oahe Dam and Lake Project. In its recommendations, the JTAC stated that

some former Indian lands should be returned to the tribes.

The criteria used by the JTAC in identifying lands for return to the tribes was based on a contour elevation which approximated the reservoir maximum operating pool. As recommended in the Final Report of the Joint Tribal Advisory Committee, the Omaha District conducted a "Special Assessment of Project Lands" with the intent of identifying project lands which would not have been acquired under current acquisition criteria. The ruling guide was the 1971 Joint Acquisition Policy adopted by the Secretary of Army and Secretary of Interior and recorded in 32 CFR 644.4 and 43 CFR part 8. As a result of the Special Assessment, 7,583 acres at lake Sakakawea and 3,218 acres at Lake Oahe were identified as lands which would not have been acquired under current acquisition criteria. Further analysis found that even though these lands would not have been acquired under current acquisition guidelines, some were nonetheless currently committed to project purposes such as recreation or fish and wildlife management. Corps policy, as expressed in Engineer Regulation (ER) 1130-2-400, provides that lands which otherwise would be excess (because they do not fall within current acquisition guidelines), but which are committed to valid project purposes, will not be declared excess. At Lakes Sakakawea and Oahe, 1,692 and 2,832 acres, respectively, were so identified. In addition, some lands were encumbered by outgrants of interests in the lands, such as leases and licenses.

In 1989, in accordance with the policy expressed in ER 1130-2-400, the Secretary of Army decided to exclude the lands devoted to recreation or wildlife purposes, but to otherwise transfer the balance (5,891 acres at Lake Sakakawea and 386 acres at Lake Oahe). A report of excess was completed and the property was transferred to the GSA which, in turn, transferred it to the Department of the Interior to be held in trust for the tribes in accordance with P.L. 93-599. P.L. 93-599 provides that excess federal lands within the reservation boundaries of a federally-recognized tribe be transferred to the Department of the Interior to be held in trust for that tribe. The TAT accepted the transfer of 5,878.25 acres at Lake Sakakawea (the 5,891 acre figure mentioned above was adjusted and refined when property descriptions were prepared), the SRST, however, rejected the transfer of 386 acres at Lake Oahe. The transfer to the TAT was completed in July, 1992.

On October 30, 1992, the President signed the "Reclamation Project Authorization and Adjustment Act" (P.L. 102-575) into law. Title XXXV of this Law, "The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act" (106 Stat. 4731), specified that administrative jurisdiction over all lands above a specific contour (more or less the reservoir maximum operating pool) would be transferred from the Army to the Department of the Interior. Interior was then required to offer the former owners or their heirs (including tribal members, individual allottees, and non-Indians) a right to repurchase these lands. Any lands not repurchased were to be offered to the Tribes for purchase. The Army attempted to transfer administrative jurisdiction over the property to the Department of Interior in October 1993, but the Department of Interior did not formally accept the transfer. The land transfer provisions of the Equitable Compensation Act were repealed on February 12, 1994 as part of the California Earthquake Emergency Appropriations Act (section 407 of Public Law 103-211). Legislative history cited excessive costs of the proposed transfer as the reason for the repeal.

The repeal of the land transfer provisions of the equitable Compensation Act included a proviso that "the U.S. Army Corps of Engineers should proceed with the Secretary of Interior to designate excess lands and transfer them pursuant to Public Law 93-599." Again, P.L. 93-599 envisions the transfer of excess Federal lands within Indian reservations to the Department of the Interior to hold in trust for the tribes.

As indicated, the Corps had determined previously that application of the existing excessing policy, as expressed in ER 1130-2-400, would not result in designation of additional excess lands. Because of the expression of congressional intent found in Public Laws 102-575 and 103-211, and the great public interest in this issue, the Assistant Secretary of the Army (ASA(CW)) decided to look again at this issue and to determine whether a new policy could be developed that would take into account the competing interests, and allow us to declare certain interests in real estate not necessary for project purposes to be excess.

Based on input from the North and South Dakota congressional delegations, state government, the Tribes, special interest groups, the public and others, the Office of the ASA(CW) developed proposed criteria for excessing certain interests in land for purposes of further public discussion. Under this concept,

the Corps would retain only such interests in lands as are necessary for project purposes and transfer the remaining interests to GSA for ultimate disposition to the Department of the Interior for the benefit of the Tribes. In identifying the lands that could be transferred, the following criteria/factors would be considered: (1) Investments made by others in the property; (2) the need to maintain access to public and private land; (3) the need to maintain municipal and rural water supply systems; (4) precedential implications. Furthermore, the Office of the ASA(CW) proposed that only lands acquired from the SRST and TAT should be considered for excessing.

### Public Input

The ASA(CW) held public meetings in North and South Dakota in June of 1994 to solicit public input on the proposed criteria. Written input was also solicited and received. A Summary of Public Input can be examined. A general discussion of the public input follows:

Most commentors, whether they favored or disfavored the proposed action, urged more public and state government participation in this effort, and encouraged an open process.

Many commentors expressed concerns regarding continued access to shoreline for recreation purposes and grazing. Many commentors also noted concerns regarding existing recreation areas. Some of these commentors expressed the view that recreation areas should remain in government hands to guarantee continued public use.

Some commentors stated that lands on which the government had expended tax dollars should remain open to the public. Others stated their desire that lands on which private investments have been made should be withheld from transfer, even though those lands were merely leased from the Corps.

Many commentors stated that the repeal of the Equitable Compensation Act was a broken promise to the Indians. Many also expressed the need for the government to redress the flooding of Indian communities when the projects were built. Some commentors noted that the interests or investments of lessees on Corps lands should not be protected in perpetuity, because those interests are, by nature, only temporary.

Many commentors stated that lands should be returned to non-Indian former owners also.

Some commentors were concerned that this action would increase existing jurisdictional confusion. Other

commentors questioned the precedential implications of this action.

#### Test

As a result of the public input received, the ASA(CW) determined that the proposed criteria were appropriate, but that they should be tested by practical application. Corps headquarters directed the Omaha District to randomly sample 10 parcels of former tribal land at Lake Oahe and Lake Sakakawea and apply the four criteria/factors mentioned above to each parcel to illustrate, by example, the effect of implementing this policy.

The Omaha District selected 10 sections (one square mile) of land at each reservoir that contained former tribal lands. Once the sections were chosen, a map was prepared showing the relationship of the former tribal land to all other project lands within that section.

Applying a 2.5 acre blockout using close tangents above the contour of the maximum operating pool, parcels were identified which could be considered candidates for transfer. Each of these former tribal tracts were then inventoried, and the four mentioned criteria were applied to the candidate transfer parcels. A matrix was prepared for the purpose of summarizing the parcels and providing a basis for comparison.

The findings of this study indicate that along the 828 miles of shoreline at lake Sakakawea, using these criteria, there would be less than 800 acres available for excess. The findings at Lake Oahe indicate that along the 265 miles of shoreline less than 1,600 acres would be available for excess. Depending on the application of the above mentioned criteria, these numbers will likely be less.

The results of the study, as well as the maps prepared for the study, are on file at the Omaha District office, and may be examined.

#### Conclusion

After reviewing and considering the public input received and upon examining the results of this study, the Acting Assistant Secretary of the Army (Civil Works), in consultation with the Commander, U.S. Army Corps of Engineers, Missouri River Division and the Commander, U.S. Army Corps of Engineers, Omaha District, determined that the three of the four proposed criteria were valid criteria/factors that should be considered in determining which lands could be declared excess at Lakes Sakakawea and Oahe. The fourth criterion, "consider precedential implications," was deemed unnecessary

since this rule is limited to Corps lands within the Standing Rock Sioux Reservation and the Fort Berthold Reservation of the Three Affiliated Tribes and does not apply to other Corps projects. Also, the ASA(CW) determined that it would be appropriate and desirable to consider all former trust lands, allotted as well as tribal, for excessing for the following reasons: Inclusion of all trust lands is consistent with the manner in which lands were acquired for the project, and it creates more manageable land units for both the tribe and the Corps of Engineers. Further, including all former trust lands would be consistent with congressional intent.

#### Public Participation

Dates and addresses for public meetings will be announced at a later date.

Although this document is a notice of proposed rulemaking that solicits public comment, the Corps of Engineers has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act. The requirements of Executive Order No. 12291 do not apply to these procedures. These regulations do not constitute a "major rule within the meaning of the Executive Order."

#### List of Subjects in 33 CFR Part 211

Claims, Flood control, Indian reservations, Public lands, Real property acquisition, Reservoirs, Rights-of-way, Waterworks.

For the reasons set forth in the preamble, the Corps of Engineers proposes to amend 33 CFR Part 211, as set forth below:

#### Part 211—Real Estate Activities of the Corps of Engineers in Connection with Civil Works Projects

1. The authority citation for § 211.148 is added to read as follows:

**Authority:** Section 211.148 issued under 40 U.S.C. 483, 486.

2. A new center heading and § 211.148 are added, to read as follows:

#### Excessing of Lands Within Indian Reservations

**§ 211.148 Excessing of lands within the Fort Berthold Reservation of the Three Affiliated Tribes at Lake Sakakawea and the Standing Rock Sioux Tribe Reservation at Lake Oahe.**

For the projects at Lake Oahe and Lake Sakakawea, interests in real estate

that are not required for project purposes may be considered excess to project purposes when:

(a) The lands lie within the external boundaries of the Standing Rock Sioux Tribe Reservation or the Fort Berthold Reservation of the Three Affiliated Tribes;

(b) The lands are former trust lands, either allotted or tribal, acquired for the project; and

(c) Appropriate interests in the lands may be retained, or conditions imposed, as are necessary to preserve the integrity of legislatively authorized project operations; provided:

(1) There has been no substantial capital investment in the property which cannot be recovered by the investor prior to excessing;

(2) There will be no unreasonable impact on access to public and private land; and

(3) There will be no unreasonable impact on municipal and rural water supply systems.

Dated: March 23, 1995.

Approved:

**Elizabeth L. Fagot,**

*Deputy Director of Real Estate.*

[FR Doc. 95-8236 Filed 4-7-95; 8:45 am]

BILLING CODE 3710-62-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[AD-FRL-5182-6]

RIN 2060-AC19

### National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule: clarification.

**SUMMARY:** This action proposes clarifying changes and corrections to certain portions of the "National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks" (collectively known as the "hazardous organic NESHAP" or the "HON"). This action proposes to remove three compounds (glycerol tri-(polyoxypropylene)ether, polyethylene

glycol, and polypropylene glycol) from the list of chemical production processes regulated by the HON. The production of these compounds is also included in the source category "Polyether Polyols Production" and will be regulated by that national emission standards for hazardous air pollutants (NESHAP). The EPA is also proposing several changes to the equipment leak requirements to clarify the intent of certain provisions, to correct oversights, and to simplify demonstration of compliance with the regulation.

**DATES: Comments.** Comments must be received on or before May 10, 1995, unless a hearing is requested by April 20, 1995. If a hearing is requested, written comments must be received by May 25, 1995.

**Public Hearing.** Anyone requesting a public hearing must contact the EPA no later than April 20, 1995. If a hearing is held, it will take place on April 25, 1995, beginning at 10 a.m.

**ADDRESSES: Comments.** Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-20 (see docket section below), room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

**Public Hearing.** If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5580.

**Docket.** Dockets No. A-90-20 and A-89-10, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M-1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260-7548 or 260-7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254.

## SUPPLEMENTARY INFORMATION:

### I. Background

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA promulgated in the **Federal Register** NESHAP for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63. Since the rule was issued, the EPA has received inquiries regarding certain portions of the rule and EPA has concluded that it is necessary to clarify these provisions and to correct several oversights.

### II. Removal of Polyols From Table 1 of Subpart F

The list of SOCMI chemicals currently includes three compounds—glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol—whose production emissions will be regulated by the NESHAP for "Polyether Polyols Production," a category of major sources for which a maximum achievable control technology (MACT) standard is scheduled to be promulgated by November 15, 1997. According to documentation for the list of source categories, the definition of "Polyether Polyols Production" encompasses all commercially important polyether polyols, and therefore would clearly include these three chemical productions currently subject to the HON.

The EPA believes that it would be more reasonable and efficient to regulate emissions from production of all polyether polyols under only one rule, rather than regulating some processes under one rule and other polyol processes under a different rule. Specifically, the production process for all polyether polyols is very similar, and typical polyol facilities may manufacture both SOCMI and non-SOCMI polyether polyols with the same equipment. Thus, EPA concluded that it would be inappropriate to regulate polyols under the HON. Also, because hazardous air pollutant (HAP) emissions from polyether polyol production are relatively low, postponing regulation of polyether polyols would not forestall large HAP emission reductions.

Accordingly, the EPA proposes to remove these three chemicals from the list of SOCMI chemicals, located in table 1 of subpart F of the final rule, and to address these production processes under the subsequent polyether polyols production rule.

## II. Proposed Changes to Subpart H

### A. Consolidation of Equipment Leak Programs

Since 1981, EPA and States have issued a number of different guidelines and regulations for controlling emissions from equipment leaks. Some companies have reported that they have to comply with anywhere from 5 to 11 different equipment leak programs at one plant site. These programs principally differ in applicability criteria and have minor differences in other details of the provisions. Because of concerns regarding the cost of maintaining separate programs, the Regulatory Negotiation Committee (Committee) that negotiated the proposed rule upon which subpart H is based agreed that compliance with the negotiated rule would also constitute compliance with any overlapping applicable new source performance standards (NSPS) or NESHAP (e.g., subpart VV of part 60 or subpart J of part 61). Unfortunately, this provision (40 CFR § 63.160(b)) does not allow enough consolidation of programs to adequately address the problem. Owners and operators of process units subject to the HON still must maintain multiple programs because process units may have non-HAP containing process equipment as well as HAP containing process equipment. Consequently, a number of industry representatives and a State agency have requested that EPA also allow owners and operators the option of consolidating all the volatile organic compounds (VOC) and HAP equipment leak programs into one program for each process unit. The EPA agrees that consolidation of programs will allow for more efficient management of programs, reduce cost of compliance, and improve compliance. As EPA believes that the HON contains more stringent requirements than any other Federal equipment leak regulations, EPA proposes to allow override of those requirements with the provisions of subpart H. It is proposed to add a new paragraph (c) to § 63.160 to allow an owner or operator to elect to comply with subpart H for all VOC containing process equipment in the process unit in lieu of compliance with 40 CFR part 60 subparts VV, GGG, or KKK or with 40 CFR part 61 subparts F or J. The EPA also encourages States to allow consolidation of State equipment leak programs under subpart H. The EPA believes that establishing one program for a plant site or process unit would reduce costs to States and local agencies for permitting and enforcing rules as well as reduce the cost of

compliance for owners or operators of sources.

#### *B. Sampling Connection Systems*

Subpart H requires that each sampling connection system be equipped with either a closed-loop or closed-vent system or that a closed-purge system be used, and that the system either return the purge directly to the process, collect and recycle the purge, or send the purge to a control device. Following issuance of the final rule, several chemical companies inquired whether the purge material could be sent to a hazardous waste treatment, storage, and disposal facility (TSDF) or a controlled wastewater collection and treatment facility in lieu of sending the purge to a control device as specified in § 63.172. Typically, the purge material could not be returned to the process due to polymerization or other characteristics that severely limited the utility of the material. The EPA agrees that this control option would meet the intent of the sampling connection system provisions, which is to ensure that purged material is captured and either returned to a process or destroyed. Therefore, it is proposed to add provisions to § 63.166 to allow treatment of collected purge material at permitted TSDF or solid waste facilities. The proposed provisions also allow use of waste management units complying with §§ 63.133–63.138 of subpart G. The proposed § 63.166 also includes minor clarifying edits to paragraphs (a) and (b)(1) through (b)(3). Also, due to numerous questions, EPA is proposing to add a definition for the term sampling connection system.

#### *C. Less Frequent Monitoring of Valves in Phase III*

Since the final rule was issued, EPA has received inquiries about the feasibility of using data collected before April 22, 1994 and use of data that differs slightly from the requirements of § 63.180(b). Although the preamble to the final rule (59 FR 19446) did state that the rule was intended to allow owners or operators the flexibility to initiate phase III of the valve standard at anytime, the revisions to subpart H did not include an explicit statement that data collected before April 22, 1994 could be used or that less frequent monitoring within Phase III could begin. Some of the callers seemed to be concerned that the requirements for monitoring data specified in § 63.180(b) precluded use of data collected before the rule was final. Consequently, it is proposed to add paragraphs to § 63.168 and § 63.174 to specifically allow use of data collected before April 22, 1994. It

is also proposed to clarify that data collected before April 22, 1994 may have minor deviations from the requirements in § 63.180(b)(1) through (b)(6). Examples of minor deviations from the requirements of § 63.180(b)(1) through (b)(6) are use of a slightly different monitoring frequency or monitoring at a different leak definition provided the data would still indicate the presence or absence of a leak.

#### *D. Flow Indicators*

In the HON, as well as in other section 111 and 112 standards, EPA has required the use of flow indicators or car-seal systems to ensure that emissions are continuously vented to an appropriate control device [see § 63.172(j)(1) for example]. The EPA has recently learned that, as these provisions are presently drafted, it appears that either flow must be measured or that specified equipment (i.e., car-seal systems or lock and key-type valve configurations) must be used. The intent of these provisions is to provide a means of indicating when emissions are bypassing a control device. There was no intention in drafting these provisions to limit the method used for detecting or monitoring for potential by-passes of control devices. The EPA has concluded that these provisions need to be clarified and the clearest way is to expand the definition of flow indicator to include reference to devices that do not measure flow and to remove the reference to presence of flow from the by-pass monitoring requirement. The EPA is proposing to amend subpart H to clarify this provision by adding a definition for "flow indicator" and by revising paragraph (j)(1) of § 63.172.

#### *E. Safety Issues With § 63.163 and § 63.167*

Since the final rule was promulgated, EPA has learned of a few situations where compliance with the provisions of the rule creates, or has the potential to create, serious safety hazards for plant or monitoring personnel. These concerns arise because no provisions presently exist in some sections of subpart H to exempt unsafe situations from specific equipment or monitoring requirements. The need for these provisions was not raised in the Committee discussions or in the public comments. The EPA believes that the concerns are being raised now as the rule is being implemented because these safety issues only arise in a few cases.

Consequently, EPA is proposing to add unsafe-to-monitor provisions for pumps and an exemption from the requirement to cap, or plug, open-ended

lines or valves for materials that represented a safety or explosion hazard. The unsafe-to-monitor provision for pumps is patterned after the unsafe-to-monitor valve provisions. Pumps that are unsafe-to-monitor are pumps that are located in an area that presents an imminent danger to personnel due to the presence of toxic materials, explosive process conditions, or high pressure. This provision would exempt pumps in unsafe locations from routine monitoring requirements, but would require monitoring during safe-to-monitor periods.

The EPA is also proposing to exempt open-ended lines or valves containing materials that represented a safety or explosion hazard from the requirement to equip the line with a cap or plug. The EPA has recently learned that in a few processes the requirement to cap, or plug, the line could result in trapping highly-reactive monomer in the line. In these cases, the polymerization reaction will cause serious overpressure and catastrophic equipment failure presenting a safety hazard to plant personnel and creating the potential for greater emissions to the atmosphere than if the line were left uncapped.

#### *F. Inaccessible and Difficult-to-Monitor Agitators*

The Committee developed the requirements for agitators based on the assumption that agitators were technologically similar to pumps. In the Committee discussions, it was assumed that agitators would be just as accessible as pumps. The EPA has recently learned that there are a few facilities where agitators are inaccessible, and it simply is not feasible to monitor this equipment. Consequently, it is proposed to add an exemption for inaccessible agitators and to provide consideration for difficult-to-monitor agitators. The proposed provisions in §§ 63.173(h) and (i) are patterned after the difficult-to-monitor valve provisions and the inaccessible connector provision in § 63.174(h)(1)(iii). Because it is conceivable that there could also be processes where agitators are located in areas that pose an imminent danger to monitoring personnel, provisions to exempt unsafe-to-monitor agitators are also proposed. Recordkeeping requirements for difficult-to-monitor and unsafe-to-monitor equipment are included in the proposed revisions to § 63.181(b)(7).

#### *G. Porcelain Connectors*

In development of the connector provisions, the Committee exempted glass and glass-lined connectors from the monitoring requirements because of

the limited potential for on-line repair. The Committee was concerned that tightening of bolts on glass and glass-lined connectors presented a high risk of breakage and potential for significant accidental releases. Since the rule was issued, EPA has learned that porcelain connectors are also used at some facilities. Since porcelain connectors, as well as other forms of ceramic materials, would also have a high risk of breakage during on-line repairs, EPA is proposing to revise § 63.174(h)(1) to use the more generic terminology "ceramic or ceramic-lined" connector.

#### H. Pressure Test for Batch Process Equipment

Two changes are being proposed to the pressure test provisions of § 63.180(f). The pressure test provisions for batch process equipment were derived from general industry practice and EPA's experience with testing of tank trucks and railcars for vapor tightness. In development of these provisions, the Committee assumed that this testing would be conducted on equipment operating at pressures greater than atmospheric but less than 10 pounds per square inch gauge (psig). The EPA has since learned that there are some batch operations operating at essentially atmospheric pressure for which the pressure/vacuum test provisions represent the only practical means of complying with the standard. Unfortunately, the Committee agreed to language on the test provisions that does not allow pressurization beyond the operating pressure of the equipment. The EPA believes that this is an unintentional limitation on the availability of the pressure test option. Therefore, EPA is proposing to revise § 63.180(f)(1) to allow pressurization to less than the set pressure of any pressure relief device or to within safety limits of the operating equipment. The EPA has also recently become aware that there are batch processes operating at greater than 10 psig for which the owner or operator also wishes to use the pressure/vacuum test provisions of the rule. In such cases, the precision requirements for the pressure gauge ( $\pm 2.5$  mm mercury in the range of the test pressure) could mean no pressure gauge would be available or no gauge would be available at a reasonable cost. To determine whether any revision to these provisions would be appropriate, the EPA reviewed the basis for the precision specification for the pressure gauge. It was found that the precision specified in the rule was the result of the assumed range of test pressures, an assumed test duration of 15 minutes, and a relative accuracy of  $\pm 10$  percent.

Based on these findings EPA thinks that it would be appropriate to allow an alternative procedure for cases where a pressure gauge with a precision of  $\pm 2.5$  mm mercury in the range of the test pressure is not reasonably available. The EPA proposes to allow the owner or operator to use a pressure gauge with a precision of  $\pm 10$  percent of the test pressure and to extend the duration of the test for the time necessary to detect a pressure loss (or rise) that equals a rate of 1 psig/hr.

#### IV. Proposed Changes to Subpart I

##### A. Notification and Compliance Dates for Process Changes

Presently, subpart I does not specify compliance dates for process units or equipment affected by operational changes as is done in §§ 63.100(k) through (m) of subpart F. These subpart F provisions specify the notification and approval requirements for each type of change as well as the compliance date for equipment affected by the change. These procedures were included in subpart F to allow HON sources to follow the administrative procedures in subpart F, subpart G, and, as appropriate, the administrative procedures of subpart A and the operating permits rule until final action on the section 112(g) rule resolves the question of whether individual MACT standard administrative procedures supersede the administrative procedures of the section 112(g) rule. These provisions were omitted from subpart I. To correct this omission paragraphs (g)(3), (g)(4), and (h) are proposed to be added to § 63.190 to specify compliance dates for operational changes that are expected to occur.

##### B. Definitions

Definitions for "process unit" and "source" are proposed to be added to § 63.191 to correct an oversight. These definitions were inadvertently omitted in drafting the final rule. The proposed definition for "process unit" is derived from the original definition agreed to by the Committee. The proposed definition for "source" is based on the definition for "source" in subpart F.

Due to several requests for clarification of the applicability of subpart I to operations at pharmaceutical facilities, the EPA is also proposing a revision to the definition of "pharmaceutical production process." The provisions of subpart I were intended to apply only to those pharmaceutical production processes that synthesize a pharmaceutical product. At facilities with solvent recovery capabilities, waste

solvent from the synthesis process is generally recovered and purified in a step separate from the pharmaceutical synthesis process. The provisions of subpart I were not intended to cover such solvent recovery processes. Peripheral operations not necessary for the production of the drug, such as formulation (the physical mixing of one or more final products), tablet coating (physically coating the final product), and solvent recovery (repurifying the solvent after drug production and reintroducing the pure solvent into raw solvent storage), are not considered part of the pharmaceutical production process as defined in subpart I. Therefore, EPA is proposing to add a phrase to the last sentence in the definition to clarify that solvent recovery operations located at pharmaceutical facilities are not subject to the provisions of Subpart I. This definition for "pharmaceutical production process" in subpart I should be viewed as being unique to subpart I and should not be viewed as determining applicability in other standards.

##### C. Bench-Scale Batch Process Equipment

It has recently come to EPA's attention that there are a few pharmaceutical companies producing products in extremely small batches using laboratory or small bench-scale equipment. The equipment in these processes is very small (typically valves and connectors are less than 0.5 inches in diameter) and is closely-spaced. These small bench-scale processes typically produce a kilogram or less of product per batch and only a small number of batches are run each year. However, because the components in these processes are generally in HAP service more than 300 hours per year, the processes would be subject to the provisions of subparts I and H. The EPA is revising § 63.190(f) of subpart I to clarify that bench-scale batch processes are not subject to the provisions of subpart I and H. A definition for "bench-scale batch process" is also being added to § 63.191 of subpart I. The EPA thinks that this correction is necessary because the equipment cannot reasonably be monitored and repaired routinely for any rational benefit. The equipment in these processes is so tightly situated that access by the monitor probe is essentially precluded and it is difficult to determine the origin of a leak if one is detected. Furthermore, due to the size of these units, emissions would be insignificant due to the small number of components, the amount of time the components are in HAP

service, and the small quantities of materials processed.

## V. Administrative

### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's proposed changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions, alternative test procedures, and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

### B. Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA believes that these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 subparts F, H and I of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 63 continues to read as follows:

**Authority:** Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101-549, 104 Stat. 2399).

### Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

#### Table 1 of Subpart F—[Amended]

2. Table 1 of subpart F is amended by removing the entries for glycerol tri-(polyoxypropylene)ether, polyethylene glycol, and polypropylene glycol and their associated CAS number and group number.

### Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

3. Section 63.160 is amended by adding a new paragraph (c) to read as follows:

#### § 63.160 Applicability and designation of source.

\* \* \* \* \*

(c) If a process unit subject to the provisions of this subpart has equipment to which this subpart does not apply, but which is subject to a standard identified in paragraph (c)(1) or (c)(2) of this section, the owner or operator may elect to apply this subpart to all such equipment in the process unit. If the owner or operator elects this method of compliance, all VOC in such equipment shall be considered, for purposes of applicability and compliance with this subpart, as if it were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph, shall be deemed to constitute compliance with the standard identified in paragraph (c)(1) or (c)(2) of this section.

(1) 40 CFR part 60 subpart VV, GGG, or KKK; or

(2) 40 CFR part 61 subpart F or J.

\* \* \* \* \*

4. Section 63.161 is amended by adding in alphabetical order the definitions "flow indicator" and "sampling connection system" to read as follows:

#### § 63.161 Definitions.

\* \* \* \* \*

*Flow indicator* means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be present, in a line.

\* \* \* \* \*

*Sampling connection system* means an assembly of equipment within a

process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

\* \* \* \* \*

5. Section 63.163 is amended by adding paragraph (j) to read as follows:

#### § 63.166 Standards: Pumps in light liquid service.

\* \* \* \* \*

(j) Any pump that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor pump is exempt from the requirements of paragraphs (b) through (e) of this section if:

(1) The owner or operator of the pump determines that the pump is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

6. Section 63.166 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 63.166 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § 63.162(b) of this subpart. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid to a process;

(3) Be designed and operated to capture and transport the purged process fluid to a control device that complies with the requirements of § 63.172 of this subpart; or

(4) Collect and transport the purged process fluid to a system or facility identified in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) A waste management unit as defined in § 63.111 of subpart G of this part, if the waste management unit is subject to, and operated in compliance with the provisions of subpart G of this part applicable to group 1 wastewater streams.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

7. Section 63.167 is amended by adding paragraph (e) to read as follows:

**§ 63.167 Standards: Open-ended valves or lines.**

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would prevent an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraph (a) through (c) of this section.

8. Section 63.168 is amended by adding a new paragraph (a)(3) to read as follows:

**§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.**

(3) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6) of this subpart.

9. Section 63.172 is amended by revising the first sentence of paragraph (j)(1) to read as follows:

**§ 63.172 Standards: Closed-vent systems and control devices.**

(1) Install, set or adjust, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

10. Section 63.173 is amended by adding paragraphs (h), (i) and (j) to read as follows:

**§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.**

(h) Any agitator that is difficult-to-monitor is exempt from the requirements of paragraphs (a) through (d) of this section if:

(1) The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or it is not accessible at anytime in a safe manner;

(2) The process unit within which the agitator is located is an existing source

or the owner or operator designates less than 3 percent of the total number of agitators in a new source as difficult-to-monitor; and

(3) The owner or operator follows a written plan that requires monitoring of the agitator at least once per calendar year.

(i) Any agitator that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraphs (a) through (d) of this section.

(j) Any agitator that is designated, as described in § 63.181(b)(7)(i) of this subpart, as an unsafe-to-monitor agitator is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the agitator determines that the agitator is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (a) through (d) of this section; and

(2) The owner or operator of the agitator has a written plan that requires monitoring of the agitator as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

11. Section 63.174 is amended by adding a new paragraph (b)(4) and by revising the first sentence of paragraph (h)(1) introductory text to read as follows:

**§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.**

(4) The use of monitoring data generated before April 22, 1994 to qualify for less frequent monitoring is governed by the provisions of § 63.180(b)(6).

(h)(1) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (c) of this section and from the recordkeeping and reporting requirements of § 63.181 and § 63.182 of this subpart.

12. Section 63.180 is amended by redesignating paragraph (b)(2) as (b)(2)(i) and revising the first sentence of newly designated paragraph (b)(2)(i), by adding a paragraph (b)(2)(ii), by revising paragraph (b)(4)(iii), by revising paragraph (b)(6) by revising paragraph (f)(1), and by adding a sentence to paragraph (f)(4) to read as follows:

**§ 63.180 Test methods and procedures.**

(2)(i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(iii) The instrument may be calibrated at a higher methane concentration than the concentration specified for that piece of equipment. The concentration of the calibration gas may exceed the concentration specified as a leak by no more than 2,000 parts per million. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million.

(6) Monitoring data that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may be used to qualify for less frequent monitoring under the provisions in § 63.168 (d)(2) and (d)(3) or § 63.174 (b)(3)(ii) or (b)(3)(iii) of this subpart provided the data meet the conditions specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) The data were obtained before April 22, 1994.

(ii) The departures from the criteria specified in paragraphs (b)(1) through (b)(5) of this section or from the specified monitoring frequency of § 63.168(c) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring at a different leak definition

if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

\* \* \* \* \*

(f) \* \* \*

(1) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(2) \* \* \*

(3) \* \* \*

(4) \* \* \* If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least  $\pm 10$  percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 psig per hour.

\* \* \* \* \*

13. Section 63.181 is amended by revising the introductory text in paragraph (b)(7) and by revising paragraph (b)(7)(ii) to read as follows:

**§ 63.181 Recordkeeping requirements.**

\* \* \* \* \*

(b) \* \* \*

(7) The following information pertaining to all pumps subject to the provisions of § 63.163(j), valves subject to the provisions of § 63.168(h) and (i) of this subpart, agitators subject to the provisions of § 63.173(h) through (j), and connectors subject to the provisions of § 63.174 (f) through (h) of this subpart shall be recorded:

(i) \* \* \*

(ii) A list of identification numbers for the equipment that is designated as difficult to monitor, an explanation of why the equipment is difficult to monitor, and the planned schedule for monitoring this equipment.

\* \* \* \* \*

**Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks**

14. Section 63.190 is amended by revising paragraph (f), paragraphs (g)(1) introductory text and (g)(2) introductory text, by adding paragraphs (g)(3) and (g)(4), and revising paragraph (i) to read as follows:

**§ 63.190 Applicability and designation of source.**

\* \* \* \* \*

(f) The provisions of subparts I and H of this part do not apply to research and development facilities or to bench-scale batch processes, regardless of whether the facilities or processes are located at the same plant site as a process subject to the provisions of subpart I and H of this part.

(g)(1) If an additional process unit specified in paragraph (b) of this section is added to a plant site that is a major source as defined in section 112(a) of the Act, the addition shall be subject to the requirements for a new source in subparts H and I of this part if:

\* \* \* \* \*

(2) If any change is made to a process subject to this subpart, the change shall be subject to the requirements for a new source in subparts H and I of this part if:

\* \* \* \* \*

(3) If an additional process unit is added to a plant site or a change is made to a process unit and the addition or change is determined to be subject to the new source requirements according to paragraphs (g)(1) or (g)(2) of this section:

(i) The new or reconstructed source shall be in compliance with the new source requirements of subparts H and I of this part upon initial start-up of the new or reconstructed source or by April 22, 1994, whichever is later; and

(ii) The owner or operator of the new or reconstructed source shall comply with the reporting and recordkeeping requirements in subparts H and I of this part that are applicable to new sources. The applicable reports include, but are not limited to:

(A) Reports required by § 63.182(b), if not previously submitted, § 63.182(c) and (d) of subpart H of this part; and

(B) Reports and notifications required by subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

(4) If an additional process unit is added to a plant site, if a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, and if the addition or change is not subject to the new source requirements as determined according to paragraphs (g)(1) or (g)(2) of this section, the requirements in paragraphs (g)(4)(i) through (g)(4)(iii) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process

changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status required by § 63.182(c) of subpart H of this part.

(i) The added emission point(s) and any emission point(s) within the added or changed process unit are subject to the requirements of subparts H and I of this part for an existing source;

(ii) The added emission point(s) and any emission point(s) within the added or changed process unit shall be in compliance with subparts H and I of this part by the dates specified in paragraphs (g)(4)(ii)(A) or (g)(4)(ii)(B) of this section, as applicable.

(A) If a process unit is added to a plant site or an emission point(s) is added to an existing process unit, the added process unit or emission point(s) shall be in compliance upon initial start-up of the added process unit or emission point(s) or by April 22, 1997, whichever is later.

(B) If a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, if a compressor becomes subject to § 63.164 of subpart H, or if a deliberate operational process change causes equipment to become subject to subpart H of this part, the owner or operator shall be in compliance upon initial start-up or by April 22, 1997, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule. The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(iii) The owner or operator of a process unit or emission point that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements of subparts H and I of this part that are applicable to existing sources, including, but not limited to, the reports listed in paragraphs (g)(4)(iii)(A) and (g)(4)(iii)(B) of this section.

(A) Reports required by § 63.182 of subpart H of this part; and

(B) Reports and notifications required by subpart A of this part that are applicable to subparts H and I of this part, as identified in § 63.192(a) of this subpart.

(i) If a change that does not meet the criteria in paragraph (g)(4) of this section is made to a process unit subject to subparts H and I of this part, and the change causes equipment to become subject to the provisions of subpart H of this part, then the owner or operator shall comply with the requirements of subpart H of this part for the equipment as expeditiously as practicable, but in no event later than 3 years after the equipment becomes subject.

(1) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(2) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

\* \* \* \* \*

15. Section 63.191 is amended by adding in alphabetical order definitions for "bench-scale batch process," "process unit," and "source" to paragraph (b) and revising the definition of "pharmaceutical production process" in paragraph (b) to read as follows:

**§ 63.191 Definitions.**

(b) \* \* \*

*Bench-scale batch process* means a batch process (other than a research and development facility) that is capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

\* \* \* \* \*

*Pharmaceutical production process* means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent. Pharmaceutical production process does not mean process operations involving formulation activities, such as tablet coating or spray coating of drug particles, or solvent recovery.

\* \* \* \* \*

*Process unit* means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product. For the purposes of this subpart, process unit includes all unit operations and associated equipment (e.g., reactors and associated product separators and recovery devices), associated unit operations (e.g., extraction columns), any feed and product storage vessels,

and any transfer racks for distribution of final product.

\* \* \* \* \*

*Source* means the collection of equipment listed in § 63.190(d) to which this subpart applies as determined by the criteria in § 63.190. For purposes of subparts H and I of this part, the term *affected source* as used in subpart A of this part has the same meaning as the term source defined in this definition.

\* \* \* \* \*

[FR Doc. 95-8201 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 63**

[AD-FRL-5182-5]

RIN 2060-AC19

**National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This action proposes to correct errors and clarify regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHP or the HON. Because the revisions merely correct errors and clarify regulatory text the Agency does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

**DATES:** *Comments.* Comments must be received on or before May 10, 1995, unless a hearing is requested by April 20, 1995. If a hearing is requested, written comments must be received by May 25, 1995.

*Public Hearing.* Anyone requesting a public hearing must contact the EPA no later than April 20, 1995. If a hearing is

held, it will take place on April 25, 1995, beginning at 10:00 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-90-20 (see docket section below), room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5580.

*Docket.* Dockets No. A-90-20 and A-89-10, containing the supporting information for the original NESHP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M-1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260-7548 or 260-7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254.

**SUPPLEMENTARY INFORMATION:** If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received on any provision, that provision of the direct final rule will be withdrawn and all public comment received on that provision will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the

final rules section of this **Federal Register**.

#### Executive Order 12866 Review

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. Today's proposed revisions clarify the rule and do not add any additional control requirements. The EPA believes that these revisions would have a negligible impact on the results of the RIA and the change is considered to be within the uncertainty of the analysis.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 95-8200 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 799

[OPPTS-42111E, FRL-4927-8]

RIN 2070-AB94

#### Test Rule; Office of Water Chemicals Proposed Withdrawal of Certain Testing Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to withdraw certain testing requirements for two of the chemical substances listed in the Office of Water Chemicals test rule published in the **Federal Register** of November 10, 1993 (58 FR 59667). EPA required specified health effects testing for the two chemical substances because the substances are produced in substantial quantities and there may be substantial exposure to these substances, there are insufficient data to determine or predict the health effects from exposure to these substances in

drinking water, and the testing required is necessary to determine or predict these health effects. EPA believes that data recently made available to it are sufficient to determine or predict the health effects posed by short and long-term exposures to 1,1-dichloroethane in drinking water and are sufficient to determine or predict the health effects posed by long-term exposures to 1,1,2,2-tetrachloroethane in drinking water. Therefore, EPA is proposing the withdrawal of the 90-day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 90-day and 14-day testing requirements for 1,1-dichloroethane.

**DATES:** Written comments must be received by EPA on or before May 10, 1995.

**ADDRESSES:** Submit written comments, identified by the document control number (OPPTS-42111E) in triplicate to: TSCA Document Receipts Office (Mail stop 7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET G-99, 401 M St., SW., Washington, DC, 20460. A public version of the administrative record supporting this action, without confidential business information, is available for inspection at the above address from 12 p.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** James G. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to withdraw the 90-day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 90-day and 14-day testing requirements for 1,1-dichloroethane in the Office of Water Chemicals test rule referenced above.

#### I. Proposed Modification

Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA proposed a test rule in the **Federal Register** of May 24, 1990 (55 FR 21393) and finalized the test rule in the **Federal Register** of November 10, 1993 (58 FR 59667), finding that four chemical substances; chloroethane (CAS No. 75-00-3); 1,1-dichloroethane (CAS No. 75-34-3); 1,1,2,2-tetrachloroethane (CAS No. 79-34-5); and 1,3,5-trimethylbenzene (CAS No. 108-67-8) are produced in substantial quantities and that there may be substantial exposure to these substances, that there are insufficient data to determine or predict the health effects from short and

long-term exposures to the substances in drinking water, and that testing is required to determine or predict the health effects from short and long-term exposures. Thus, EPA required subacute toxicity (oral 14-day repeated dose) and subchronic (oral 90-day) toxicity tests. The data from these studies would be used to develop Health Advisories (HA's) for the four unregulated drinking water contaminants that are monitored under section 1445 of the Safe Drinking Water Act (SDWA).

EPA has recently received requests to withdraw all or part of the testing required for two substances, 1,1-dichloroethane and 1,1,2,2-tetrachloroethane. On June 28, 1994, the Halogenated Solvents Industry Alliance (HSIA) requested that EPA revoke the subchronic (oral 90-day) toxicity test requirements for 1,1,2,2-tetrachloroethane (Ref. 1). This request was based on the availability of a 90-day subchronic toxicity drinking water study of 1,1,2,2-tetrachloroethane conducted in rats and mice by the National Toxicology Program (Ref. 2). EPA reviewed this study and believes that the study is sufficient to meet the 90-day subchronic toxicity test required under the test rule and to establish long-term Health Advisories for the Office of Water (OW) (Ref. 3). Therefore, EPA believes it is appropriate to withdraw the 90-day subchronic testing requirements for 1,1,2,2-tetrachloroethane.

HSIA also requested that EPA withdraw the 14- and 90-day subchronic toxicity testing required under the test rule for 1,1-dichloroethane. This request was based on a study conducted by Muralidhara et al. (Ref. 6) that characterizes the acute (24 hour), subacute (5 and 10 days), and the subchronic (90 days) toxicity potential of 1,1-dichloroethane. EPA reviewed the study and believes the study is sufficient to determine or predict both the short and long-term effects of exposure to 1,1-dichloroethane (Ref. 7). Therefore, EPA believes it is appropriate to withdraw both the 14- and 90-day subchronic toxicity tests required for 1,1-dichloroethane under the test rule for the OW substances.

EPA is providing 30 days from publication of this proposed modification for submission of written comments on the elimination of the subchronic toxicity (oral 90-day) test requirement for 1,1,2,2-tetrachloroethane and of both the subacute (oral 14-day repeated dose) and subchronic (oral 90-day) toxicity test requirements for 1,1,2,2-tetrachloroethane. If the 30 day deadline passes and no public comments have

been received that cause a change in the position set forth in this Notice, EPA will grant the proposed modification to delete these tests and publish a notice to the effect in the **Federal Register**.

## II. Comments Containing Confidential Business Information

Any person who submits comments that certain information claimed as confidential business information must label the specific information claimed as confidential by circling, bracketing, or underlining it, and marking it "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file without further notice to the submitter. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting confidential comments must prepare and submit a public version of the comments for the EPA public file.

## III. Rulemaking Record

EPA has established a docket for this rulemaking (docket number OPPTS-42111E). Currently, this docket contains the basic information considered by EPA in developing this proposal.

A public version of the record, from which all information claimed as CBI has been deleted, is available for inspection in the TSCA Nonconfidential Information Center, B-607, NE Mall, 401 M St., SW., Washington, DC. 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

The record includes the following information:

(1) Halogenated Solvents Industry Alliance (HSIA). Letter from Peter Voytek, Ph.D. to Connie Musgrove, USEPA entitled "Request for Modification of Study Requirements". (June 28, 1994).

(2) National Institute of Environmental Health Sciences (NIEHS). Letter from William Eastin, Ph.D. to Roger Nelson, USEPA (July 7, 1994) with two attachments:

(a) Pathco. "Chairperson's Report Structure Activity Relationship Studies of Halogenated Ethane-Induced Accumulation of Alpha-2U-Globulin in the Male Rat Kidney: Part A, B, C, -Studies Conducted in F344 Rats at Microbiological Associates".

(b) Microbiological Associates, Inc. Final Report Study Nos. 03554.11 - 03554.12, 1,1,2,2-Tetrachloroethane (TCE).

(3) USEPA. Memorandum from Bruce Mintz to Roger Nelson "Request for Office of Water Recommendation for Approval/Disapproval of 28 Jun 1994 HSIA Request for Modification of Test Standards for 1,1-Dichloroethane and 1,1,2,2-Tetrachloroethane (Office of Water Test Rule)".

(4) Voytek, P. Note (Fax) to Roger Nelson entitled "Preliminary Testing of 1,1-

Dichloroethane in Drinking Water". (Aug. 3, 1994).

(5) Unpublished. Original Draft of Report to EPA HERL, Cincinnati in 1986. James V. Bruckner, Ph.D. (Undated).

(6) Muralidhara, S., R. Ramanathan, C.E. Dallas and J.V. Bruckner. "Acute, Subacute and Subchronic Oral Toxicity Studies of 1,1-Dichloroethane (DCE) in Rats". *Society of Toxicology Abstract*. (1986).

(7) USEPA. Memorandum from Krishan Khanna to Roger Nelson "Review of 1,1-Dichloroethane (DCE) Data (TSCA Test Rule for Office of Water Chemicals)." Nov. 15, 1994.

## IV. Regulatory Assessment Requirements

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because the proposed amendment would relieve a regulatory obligation to conduct certain chemical tests.

### C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed test rule under the provisions of the Paperwork Reduction

Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070-0033.

This proposed rule would reduce the public reporting burden associated with the testing requirement under the final test rule. A complete discussion of the reporting burden is contained at 58 FR 59680.

## List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Health effects, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

**Authority:** 15 U.S.C. 2603

Dated: March 31, 1995.

### Lynn R. Goldman,

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR, chapter I, subchapter R, part 799 be amended as follows:

## PART 799 — [AMENDED]

a. The authority citation for part 799 would continue to read as follows:

**Authority:** 15 U.S.C. 2601, 2603, 2611, 2625.

b. In §799.5075 by revising paragraphs (a)(1), (c)(1)(i)(A), (c)(2)(i)(A), and (d)(1) to read as follows:

### §799.5075 Drinking water contaminants subject to testing.

(a) \* \* \*

(1) Chloroethane (CAS No. 75-00-3), 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), and 1,3,5-trimethylbenzene (CAS No. 108-67-8) shall be tested as appropriate in accordance with this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) An oral 14-day repeated dose toxicity test shall be conducted with chloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with §798.2650 of this chapter except for the provisions in §§798.2650(a); (b)(1); (c); (e)(3), (4)(i), (5), (6), (7)(i), (iv), (v), (8)(vii), (9)(i)(A), (B), (11)(v); and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90-day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not

feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

\* \* \* \* \*

- (2) \* \* \*  
(i) \* \* \*

(A) An oral 90-day subchronic toxicity test shall be conducted with chloroethane and 1,3,5-trimethylbenzene in accordance with §798.2650 of this chapter except for the provisions in §798.2650(e)(3), (7)(i), and (11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

\* \* \* \* \*

(d) \* \* \* (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A). Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective (insert date 44 days after publication of the final rule in the **Federal Register**).

\* \* \* \* \*

[FR Doc. 95-8734 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 3100

[WO-610-00-4110-2411]

RIN 1004-AC26

#### Promotion of Development, Reduction of Royalty on Heavy Oil

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) is issuing this proposed rule to amend the regulations relating to the waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment would establish the conditions under which the operators of properties that produce "heavy oil" (crude oil with a gravity of less than 20 degrees) can obtain a reduction in the royalty rate. This action is being taken to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production, provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically

recoverable oil can be obtained from the reservoir or field. The BLM believes that this amendment will result in substantial additional revenue for the States and Federal Government, increase the cumulative amount of domestic oil production from existing wells, increase the percentage of oil recovery from presently developed reservoirs, minimize the necessity of drilling new wells with their additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability in the jobs and services related to the domestic oil industry.

**DATES:** Comments should be submitted by June 9, 1995. Comments postmarked after this date may not be considered as part of the decisionmaking process in issuance of a final rule.

**ADDRESSES:** Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Dr. John W. Bebout, Bureau of Land Management, (202) 452-0340.

**SUPPLEMENTARY INFORMATION:** Existing section 3103.4-1 of Title 43, Code of Federal Regulations, provides two forms of Federal oil and gas royalty reduction: on a case-by-case basis upon application, and for stripper wells. In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development, or that a lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The provision concerning stripper well properties allows royalty reduction for properties that produce an average of less than 15 barrels of oil per eligible well per well-day.

The Bureau of Land Management (BLM) has reason to believe that additional royalty relief for producers of heavy crude oil may be necessary to maintain current levels of development, promote investment in enhanced recovery efforts, and encourage maximum recovery of the resource, thus warranting royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209).

Fluctuating oil prices, combined with high production costs, have resulted in an uncertain economic future for producers of low gravity crude oil. As

recently as last January, California producers of heavy crude were spending between \$9 and \$10 to produce a barrel of crude oil that was typically selling for between \$8.50 and \$9 per barrel (from data provided by the Conservation Commission of California Oil and Gas Producers). When depreciation, depletion, and amortization costs were considered, nearly 69% of the state's production was uneconomic and more than 13,000 industry and industry-related jobs were at risk (California Independent Petroleum Association).

Heavy crude oil prices have recently risen to the point that the immediate crisis in California has passed. Many of the heavy oil properties remain only marginally economic, however, and are vulnerable to future down-turns in oil prices. As many as two-thirds of the marginal properties could be lost during a period of sustained low oil prices (National Petroleum Council Committee on Marginal Wells/Executive Summary—Draft). The danger in losing these wells is that, although production from individual wells may be small, their collective loss would be significant. The United States would lose the opportunity to take advantage of new technologies being developed by the Department of Energy (DOE) and industry, and the remaining recoverable reserves would be lost.

This proposed rule would preserve the contribution of marginal producers of heavy crude oil to the national reserve base. As a result of this relief, more wells should stay on line (even in periods of depressed oil prices), fewer recoverable reserves should be lost, and there will be less adverse economic impact on States and local communities.

The DOE has modeled the BLM's proposed royalty rate reduction for heavy crude oil. It is DOE's conclusion that the proposal will benefit all producers of heavy oil while remaining revenue neutral to all oil producing States except California (California contains the majority of the nation's heavy oil reserves). Assuming a West Texas Intermediate Crude oil price of \$20 per barrel—a price consistent with recent oil markets—the proposal can be expected to increase recoverable reserves in California by around 72 percent, from 132.8 million barrels to 228.5 million barrels.

A provision of the proposed rule provides for the termination of individual royalty reductions should the average price of West Texas Intermediate Crude oil rise to a level greater than \$24 per barrel for a period of at least 6 consecutive months. This provision is intended to ensure that

royalty relief is only provided during periods of low market prices.

The proposed rule establishes a sliding scale royalty rate for qualifying heavy-oil-producing properties. The sliding scale is intended to somewhat offset the reduced prices paid for oil as oil gravity decreases. The reduced royalty rate applies to qualifying heavy oil properties rather than individual wells, because production is normally not measured for individual oil wells, and is based on the average gravity of the oil weighted by the production of heavy oil from each well within the property. A weighted average gravity is used to prevent gravity manipulation by selectively producing wells on a property with heavier gravity crude. Using a weighted average of oil gravity encourages maximum recovery from all wells within a property by removing the economic advantage of selective production.

The rule provides that either the operator (as defined at 43 CFR 3100.0-5) or the payor (as defined at 30 CFR 208.2) must calculate the weighted average gravity of the oil—measured on the American Petroleum Institute (API) scale—produced from a property every 12 months to determine the appropriate royalty rate. In no case, however, would the royalty rate exceed the rate established by the terms of the lease.

The section amended by this proposed rule also provides for royalty rate reductions for stripper oil wells. Many provisions of this proposed rule are essentially the same as the provisions of the existing regulations that pertain to stripper wells, except that references to "stripper well" have been replaced with "heavy oil well." The similarity between the existing provisions pertaining to stripper wells and the provisions of this proposed rule could allow for some restructuring of section 43 CFR 3103.4-1 to reduce the overall regulatory text and to increase clarity. The public is invited to comment on whether reorganizing 43 CFR 3103.4-1 should be considered in preparing the final heavy oil royalty reduction rule.

The principal author of this proposed rule is Dr. John W. Bebout, Senior Technical Specialist, Fluids Group, assisted by the Regulatory Management Team, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The BLM has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because the proposed royalty rate reduction is voluntary, requires no additional paperwork, and applies to all operators regardless of size. Additionally the BLM has determined, under Executive Order 12630, that the rulemaking will not cause a taking of private property.

The BLM has certified that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010-0090 and 1004-0145.

#### List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—mineral resources, Oil and gas production, Mineral royalties.

On March 30, 1995, an outdated version of this proposed rule was published in the **Federal Register** (60 FR 16424) by mistake. That proposed rule publication is hereby withdrawn, and this version is published in its place.

For the reasons stated in the preamble, and under the authorities cited below, Part 3100, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

#### PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

**Authority:** 30 U.S.C. 181, et seq., 30 U.S.C. 351-359.

#### Subpart 3103—Fees, Rentals and Royalty

2. Section 3103.4-1 is amended by revising paragraph (b)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

#### § 3103.4-1 Waiver, suspension, or reduction of rental, royalty or minimum royalty.

\* \* \* \* \*

(b)(1) An application for the benefits under paragraph (a) of this section on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM

office. It must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

\* \* \* \* \*

(e)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(f) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures.

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (f)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1994, the operator must submit Purchaser's Statements for July, August, and September of 1994;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1994, the

operator must submit Purchaser's Statements for the months of September 1993, and March and September 1994; and

(iii) If a property has multiple sales each month, the operator must submit

Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/payor for

calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V_1 \times G_1) + (V_2 \times G_2) + (V_n \times G_n)}{V_1 + V_2 + V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V<sub>1</sub> = Average Production (bbls) of Well #1 over the last 3 calendar months of sales

V<sub>2</sub> = Average Production (bbls) of Well #2 over the last 3 calendar months of sales

V<sub>n</sub> = Average Production (bbls) of each additional well (V<sub>3</sub>, V<sub>4</sub>, etc.) over the last 3 calendar months of sales

G<sub>1</sub> = Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales

G<sub>2</sub> = Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales

G<sub>n</sub> = Average Gravity (degrees) of each additional well (G<sub>3</sub>, G<sub>4</sub>, etc.) over the last 3 calendar months of sales

*Example:* Lease "A" has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above—

$$\frac{(4,000 \times 13) + (6,000 \times 21) + (2,000 \times 14)}{(4,000 + 6,000 + 2,000)} = 17.2 \text{ Weighted Average API gravity for property}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (f)(3) of this section and assigned to all property subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) *Qualifying royalty rate determination.*

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no further reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (f)(5)(iii) of this section).

(ii) *Calculating the qualifying royalty rate.* If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the nearest whole

degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

ROYALTY RATE REDUCTION FOR HEAVY OIL

Weighted average API gravity (degrees)	Royalty rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

(iii) *New royalty rate effective date.* The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months. If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

(iv) *Royalty rate determinations in subsequent years.* (A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty

rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (f)(5)(ii) of this section.

(B) The operator/payor must compare the newly determined royalty rate to the initial qualifying royalty rate. The operator/payor must notify BLM of its determinations under this paragraph and paragraph (A) of this § 3103.1-4(f)(5)(iv). The new royalty rate will not become effective until the first day of the second month after BLM receives notification, and will remain effective for 12 calendar months. Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will return to the rate in the lease terms.

(v) *Prohibition.* Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (f).

(vi) *Certification.* The operator/payor must use the applicable royalty rate when submitting the required royalty

reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (f), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (f).

(vii) *Agency action.* If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable immediately upon receipt of this notice. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil

gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (f) upon 6 month's notice in the **Federal Register** when BLM determines that—

(i) The average oil price remains above \$24 per barrel over a period of 6 consecutive months (based on the West Texas Intermediate Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1997, the royalty rate reductions authorized by this paragraph (f) have not been effective in reducing the loss of otherwise recoverable reserves. This will be determined by evaluating the expected versus the actual abandonment rate, the number of enhanced recovery

projects, and the amount of operator reinvestment that can be attributed to this rule.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) for oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3-2 will continue to apply.

\* \* \* \* \*

Dated: April 4, 1995.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 95-8702 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-84-P

# Notices

Federal Register

Vol. 60, No. 68

Monday, April 10, 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

### Food Safety and Inspection Service

[Docket No. 95-012C]

#### National Advisory Committee on Microbiological Criteria for Foods; Meeting; Correction

This notice revises the information provided in the **Federal Register** notice (60 FR 17313) published on April 5, 1995, (FR Doc. 95-8237). The meeting of the National Advisory Committee on Microbiological Criteria for Foods will extend over three days, rather than the two previously announced. Therefore, the meeting will be held from 1:00 PM to 5:00 PM on April 17 and from 8:00 AM to 5:00 PM on April 18 and 19 at the Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203, (703) 528-6000.

Additionally, the meeting agenda will include a briefing and preliminary discussion of FSIS' "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" (60 FR 6774) proposed rulemaking. A meeting of the Advisory Committee will be held prior to the closing of the comment period for a full discussion of the proposed rulemaking. The correct meeting agenda for the April meeting is as follows:

- I. Ethics Training
- II. Raw Poultry Labeled Fresh
- III. Discussion of the "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" proposed rulemaking
- IV. Working group meetings for meat and poultry, and seafood
- V. Future Topics
- VI. Public Comments

Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street, NW., Washington, DC 20250-3700. Background materials and

the meeting agenda are available for inspection by contacting Mr. Fedchock on (202) 254-2517.

Done at Washington, DC, on: April 6, 1995.

**Michael R. Taylor,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 95-8902 Filed 4-6-95; 3:43 pm]

BILLING CODE 3410-DM-P

### Forest Service

#### Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

**SUMMARY:** The Oregon Coast Provincial Advisory Committee will meet on April 27, 1995, in Newport, Oregon, at the Shilo Inn, 536 SW Elizabeth Street. The meeting will begin at 10 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Context of the Advisory Committee, including background on the President's Forest Plan; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on who they represent; and (7) open public forum. All Oregon Coast Province Advisory Committee meetings are open to the public. The "open forum" is scheduled near the conclusion of the meeting. Interested citizens are encouraged to attend. The Committee welcomes the public's written comments on committee business at any time.

#### FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Harry Bonini, Public Affairs Officer, at (503) 750-7075, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: March 31, 1995.

**James R. Furnish,**

*Forest Supervisor.*

[FR Doc. 95-8686 Filed 4-7-95; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Kansas Advisory Committee will meet on Friday, April 28, 1995, from 1 p.m. until 4 p.m. at the Prairie Band Potawatomi Reservation, Senior Citizens Meal Site, 14880 K Road, Mayetta, Kansas 66509. The purpose of the meeting is to collect information on civil rights issues in order to plan future projects in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 5, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-8824 Filed 4-7-95; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene from 1:30 p.m. and adjourn 4:30 p.m. on Friday, April 28, 1995, at the Holiday Inn—Emerald Beach, 1102 South Shoreline Boulevard, Corpus Christi, Texas 78401. The purpose of the meeting is to discuss civil rights issues in Texas and plan a future project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214-653-6779, or Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-0508). Hearing-impaired

persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 29, 1995.

**Carol-Lee Hurley**

*Chief, Regional Programs Coordination Unit*  
[FR Doc. 95-8687 Filed 4-7-95; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Census Advisory Committee on Agriculture Statistics; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will be held on May 18, 1995 at California State University, Fresno, California.

The Committee advises the Director, Bureau of the Census, on the conduct of periodic censuses of agriculture and related surveys, and the kind of information that should be obtained from respondents about agriculture production and operations; prepares recommendations regarding the conduct of agriculture data programs and the contents of agriculture reports; and presents the views of major suppliers and users of agriculture statistics on agriculture data programs and products.

The Committee is composed of 21 members. Twenty members are appointed by the presidents of the nonprofit organizations having representatives on the Committee, and one member is a representative from the Department of Agriculture.

The May 18 meeting will begin at 9 a.m. and adjourn at 5 p.m., and the meeting agenda is: (1) call to order and introduction; (2) introductory remarks by the Deputy Director, Bureau of the Census; (3) reorganization and the role of the Agriculture and Financial Statistics Division; (4) data sharing initiative; (5) 1992 Census of Agriculture data and products; (6) plans for the 1997 Census of Agriculture; (7) status of 1994 Farm and Ranch Irrigation Survey; (8) rural data needs; (9) public questions and comments; (10) Committee recommendations; and (11) election of chairperson for 1996.

This meeting is open to the public and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below in advance of the meeting.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. Joseph Reilly, Agriculture and Financial Statistics Division, Bureau of the Census, Room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, D.C. 20233) Telephone (301) 763-8557—TDD (301) 457-2540, FAX (301) 763-8315.

Dated: March 30, 1995.

**Martha Farnsworth Riche,**

*Director, Bureau of the Census.*

[FR Doc. 95-8662 Filed 4-7-95; 8:45 am]

BILLING CODE 3510-07-P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

April 4, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** April 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 362 is being increased for carryforward. As

result, the limit for Category 362, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

April 4, 1995.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on April 11, 1995, you are directed to amend further the directive dated December 16, 1994 to increase the limit for Category 362 to 6,023,139 numbers<sup>1</sup> as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 95-8708 Filed 4-7-95; 8:45 am]

BILLING CODE 3510-DR-F

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 1994.

**DEPARTMENT OF DEFENSE****Office of the Secretary****Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD)**

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on April 19–20, 1995 at Science Applications International Corporation (SAIC), McLean, 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 these meetings the Task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

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 these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: April 3, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–8654 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

**Defense Science Board Task Force on Role of Federally Funded Research and Development Centers (FFRDC's) in DoD Mission**

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on April 8, 1995 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Arlington, Virginia.

This meeting is scheduled on short notice because of unforeseen circumstances that require this Task Force to assimilate large volumes of information into a proposed final report

in order to meet a Congressionally mandated suspension.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756–2096.

Dated: April 3, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–8655 Filed 4–7–95; 8:45 am]

BILLING CODE 5000–04–M

**Department of the Army****Army Science Board; Notice of Closed Meeting**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 26 April 1995.

*Time of Meeting:* 0900–1530.

*Place:* Pentagon—Washington, DC.

*Agenda:* The Army Science Board's Ad Hoc Study on "Tank Modernization" will meet to review sponsor guidance from the Huntsville meeting, threat briefings, update briefings and tank briefings. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, the Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 95–8688 Filed 4–7–95; 8:45 am]

BILLING CODE 3710–08–M

**DEPARTMENT OF EDUCATION****Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act,

since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 21, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. Sherrill, (202) 708–9915.

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:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: April 4, 1995.

**Gloria Parker,**

*Director, Information Resources Group.*

**Office of Elementary and Secondary Education**

*Type of Review:* Expedited.

*Title:* Applications for Grants Under the Comprehensive Regional Centers Program.

*Frequency:* Annually.

*Affected Public:* State, Local or Tribal Governments.

*Reporting Burden:*

Responses: 100

Burden Hours: 2,200

*Recordkeeping Burden:*

*Recordkeepers:* 0

Burden Hours: 0

*Abstract:* This form will be used by State Educational agencies to apply for funding under the Comprehensive Regional Centers Program. The Department will use the information to make grant awards.

*Additional Information:* Clearance for this information collection is requested by April 21, 1995. An expedited review is requested in order to give the various entities sufficient time to prepare plans/applications, and to publish the application by May 1.

[FR Doc. 95-8657 Filed 4-7-95; 8:45 am]

BILLING CODE 4000-01-M

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 7, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708-9915. 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:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: April 4, 1995.

**Gloria Parker,**

*Director, Information Resources Group.*

### Office of Elementary and Secondary Education

*Type of Review:* Expedited.

*Title:* State Plan for the Even Start Family Literacy Program—Part B of Title I of the ESEA

*Frequency:* Annually

*Affected Public:* State, Local or Tribal Governments

*Reporting Burden:*

Responses: 56

Burden Hours: 840

*Recordkeeping Burden:*

Recordkeepers: 0

Burden Hours: 0

*Abstract:* The Secretary is requiring each State to submit a State plan showing how it will operate the Even Start Family Literacy Program. The Department will use the information to facilitate oversight of the program with regard to the fiscal accountability of the States in their administration of a discretionary grants program, and States' compliance with the statute. It will also use the information to ensure that States are operating consistently with their plans, for research and evaluation.

*Additional Information:* Clearance for this information collection is requested by April 7, 1995. An expedited review is requested in order

to give the States sufficient time to prepare plans/applications, and to allow for revisions/reproduction of the application.

[FR Doc. 95-8658 Filed 4-7-95; 8:45 am]

BILLING CODE 4000-01-M

### Direct Grant Programs for Native Hawaiians

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year 1995.

**SUMMARY:** The Secretary invites applications for new awards for fiscal year (FY) 1995 under the Department's direct grant programs for Native Hawaiians and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**.

**DATES:** The chart for each principal office (Charts 1 and 2) includes the following dates for each program or competition: (1) the date on which applications will be available; (2) the deadline for submission of applications; and (3) the deadline date for transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties under Executive Order 12372 (Intergovernmental Review of Federal Programs).

### FOR APPLICATIONS OR FURTHER

**INFORMATION:** The address and telephone number for obtaining applications for, or further information about, a program are in the application notice for that program.

*For Users of TDD or FIRS:* Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a 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.

*For Electronic Access to Information:* Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official

application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Organization of Notice**

Each principal program office is assigned a separate chart as follows:

Chart 1—Office of Elementary and Secondary Education.

Chart 2—Office of Special Education and Rehabilitative Services.

**Note:** The Office of Postsecondary Education will publish a separate notice inviting applications for the Native Hawaiian Higher Education Program.

Each of the charts that lists individual programs or competitions contains the following information:

- The CFDA number and the name of each affected program.
- The date of availability of applications.
- The deadline date for transmitting applications.
- The deadline date for transmitting comments under intergovernmental review (Executive Order 12372).
- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards.

Following the chart for each principal program office are additional details for each affected program with an application notice in this combined notice, including—

- A brief statement of the purpose of the program;
- A list of eligible applicants;
- Information regarding priorities, if any;
- Supplemental information, if necessary, regarding selection criteria,

any fiscal matters peculiar to the program or competition, or other matters;

- The project period in months;
- Available funds;
- The name, address, and telephone number of the person or office at the Department to contact for applications or information; and
- A citation of the statutory or other legal authority for the program.

**Note:** The Department of Education is not bound by any of the estimates in this notice.

**National Education Goals**

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103-227). The Act enunciates eight National Education Goals for the year 2000:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge

and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

**Applicability of the Federal Debt Collection Procedures Act of 1990**

The programs announced in this notice make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101-647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

CHART 1.—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.209 A Native Hawaiian Family-Based Education Centers Program.	04/14/95	06/02/95	08/02/95	\$1,500,000 to \$5,600,000 .....	\$1,900,000	1-3
84.210A Native Hawaiian Gifted and Talented Program.	04/14/95	06/02/95	08/02/95	\$1,200,000 .....	1,200,000	1
84.296A Native Hawaiian Community-Based Education Learning Centers Program.	04/14/95	06/02/95	08/02/95	\$267,000 to \$800,000 .....	267,000	1-3
84.297A Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program.	04/14/95	06/02/95	08/02/95	\$500,000 to \$1,500,000 .....	500,000	1-3

CHART 2.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.221A Native Hawaiian Special Education Program	04/14/95	06/02/95	08/02/95	\$1,200,000	\$1,200,000	1

#### 84.209A Native Hawaiian Family-Based Education Centers Program

*Purpose of Program:* To support projects that expand the operation, throughout the Hawaiian Islands, of Family-Based Centers that include: (1) Parent-infant programs for prenatal through three-year-olds; (2) preschool programs for four- and five-year-olds; (3) continued research and development; and (4) a long-term follow-up and assessment program, which may include educational support services for Native Hawaiian language immersion programs or transition to English-speaking programs. This program is authorized by section 9205 under Part B of Title IX of the Elementary and Secondary Education Act.

*Eligible Applicants:* Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

*Project Period:* Up to 60 months.

*Available Funds:* \$5,600,000.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

*Plan of Operation:* (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

*Quality of Key Personnel:* (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

*Adequacy of Resources:* (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

*For Applications or Further Information Contact:* Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW., Room

4500, Portals Building, Washington, DC 20202-6140. Telephone (202) 260-2502, or FAX: (202) 205-0302.

*Program Authority:* 20 U.S.C. 7905.

#### 84.210A Native Hawaiian Gifted and Talented Program

*Purpose of Program:* To support a program for gifted and talented education that is designed to: (1) Address the special needs of Native Hawaiian elementary and secondary school students who are gifted and talented students; and (2) provide those support services to the families of such students that are needed to enable such students to benefit from the program. This program is authorized by section 9207 under Part B of Title IX of the Elementary and Secondary Education Act.

*Eligible Applicants:* Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

*Project Period:* Up to 60 months.

*Available Funds:* \$1,200,000.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79-82, 85 and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

*Plan of Operation:* (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

*Quality of Key Personnel:* (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

*Adequacy of Resources:* (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

*For Applications or Further Information Contact:* Beth Baggett, U.S. Department of Education, 600

Independence Avenue SW., Room 4500, Portals Building, Washington, DC 20202-6140. Telephone (202) 260-2502, or FAX: (202) 205-0302.

*Program Authority:* 20 U.S.C. 7907.

#### 84.296A Native Hawaiian Community-Based Education Learning Centers Program

*Purpose of Program:* To support collaborative efforts between community-based Native Hawaiian organizations and community colleges to develop, establish, and operate a minimum of three community-based education learning centers that meet the needs of families and communities through the coordination of such programs and services as preschool programs, after-school programs, and vocational and adult education programs. This program is authorized by section 9210 under Part B of Title IX of the Elementary and Secondary Education Act.

*Eligible Applicants:* Collaborative efforts between community-based Native Hawaiian organizations and community colleges.

*Project Period:* Up to 60 months.

*Available Funds:* \$800,000.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79-82, 85 and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

*Plan of Operation:* (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

*Quality of Key Personnel:* (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

*Adequacy of Resources:* (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

*For Applications or Further Information Contact:* Beth Baggett, U.S.

Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, DC 20202-6140. Telephone (202) 260-2502, or FAX: (202) 205-0302.

*Program Authority:* 20 U.S.C. 7910.

#### **84.297A Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program**

*Purpose of Program:* To support programs for the following purposes: (1) The development of curricula to address the needs of Native Hawaiian students, particularly elementary and secondary school students, which may include programs of instruction conducted in the Native Hawaiian language, and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions; (2) the development and implementation of preteacher training programs in order to ensure that student teachers within the State of Hawaii, particularly student teachers who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students, within the context of Native Hawaiian culture, language and traditions; and (3) the development and implementation of inservice teacher training programs, in order to ensure that teachers, particularly teachers employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students, within the context of Native Hawaiian culture, language and traditions. This program is authorized by section 9209 under Part B of Title IX of the Elementary and Secondary Education Act.

*Eligible Applicants:* Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

*Project Period:* Up to 60 months.

*Available Funds:* \$1,500,000

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the

Secretary distributes the 15 points as follows:

*Plan of Operation:* (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

*Quality of Key Personnel:* (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

*Adequacy of Resources:* (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

*For Applications or Further Information Contact:* Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, DC 20202-6140. Telephone: (202) 260-2502, or FAX: (202) 205-0302.

*Program Authority:* 20 U.S.C. 7909.

#### **84.221A Native Hawaiian Special Education Program**

*Purpose of Program:* To support projects that address the special education needs of Native Hawaiian students consistent with the purposes of the program as authorized by section 9208 under Part B of Title IX of the Elementary and Secondary Education Act.

*Eligible Applicants:* Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

*Project Period:* Up to 60 months.

*Available Funds:* \$1,200,000

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in CFR 75.210. These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

*Plan of Operation:* (§ 75.210(b)(3)). Ten additional points will be added for a possible total of 25 points for this criterion.

*Quality of Key Personnel:* (§ 75.210(b)(4)). Three additional points will be added for a possible total of 10 points for this criterion.

*Adequacy of Resources:* (§ 75.210(b)(7)). Two additional points will be added for a possible total of 5 points for this criterion.

*For Applications or Further Information Contact:* Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-9099, or FAX: (202) 205-8105.

*Program Authority:* 20 U.S.C. 7908.

Dated: April 3, 1995.

**Thomas W. Payzant,**

*Assistant Secretary for Elementary and Secondary Education.*

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 95-8661 Filed 4-7-95; 8:45 am]

BILLING CODE 4000-01-P

#### **National Educational Research Policy and Priorities Board; Meeting**

**AGENCY:** National Educational Research Policy and Priorities Board, Education.

**ACTION:** Notice of committee meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the National Educational Research Policy and Priorities Board's Committee on the Regional Educational Laboratories. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

**DATE AND TIME:** April 20, 1995, 8:15 a.m. to 10:00 a.m.

**ADDRESS:** The San Miguel Room of the Grand Hyatt Hotel, 345 Stockton Street, San Francisco, CA 94108.

**FOR FURTHER INFORMATION, CONTACT:** John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, D.C. 20208-7564. Telephone: (202) 219-2065; FAX: (202) 219-1466.

**SUPPLEMENTARY INFORMATION:** The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Committee on the Regional Educational Laboratories of the Board is open to the public. The agenda for the April 20 meeting provides for the

review and comment by the Committee of the proposed statement of work for the Regional Educational Laboratories forthcoming contractual competition.

The public is being given less than 15 days notice because of the urgency required to meet the rigorous procurement schedule associated with the regional educational laboratories competition. The Office of Educational Research and Improvement anticipates announcing competition guidelines by May 15 in order to select the regional educational laboratories by November 30, 1995, the date contracts for the current labs expire.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, D.C. 20208-7564.

Dated: April 4, 1995.

**Sharon P. Robinson,**  
*Assistant Secretary, Office of Educational Research and Improvement.*

[FR Doc. 95-8649 Filed 4-7-95; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

[FE Docket No. 95-16-NG]

#### **Boston Gas Company; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas to Canada**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Boston Gas Company blanket authorization to import up to 10 Bcf of natural gas from Canada and to export up to 10 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 27, 1995.

**Clifford P. Tomaszewski,**  
*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-8747 Filed 4-7-95; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 95-14-NG]

#### **Midcon Gas Services Corp.; Order Granting Blanket Authorization to Export Natural Gas to Canada and Mexico**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Midcon Gas Services Corp. blanket authorization to export up to a combined total of 300 Bcf of natural gas to Canada and Mexico over a period of two years beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 27, 1995.

**Clifford P. Tomaszewski,**  
*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95-8746 Filed 4-7-95; 8:45 am]

BILLING CODE 6450-01-P

### Federal Energy Regulatory Commission

[Docket No. RP95-218-000]

#### **Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of May 1, 1995:

Nineteenth Revised Sheet No. 20A  
Original Sheet No. 94F

Algonquin states that the purpose of this filing is to (i) flow through refunds of \$127,082.81 received from O&R Energy Inc., including interest, related to Algonquin's purchased gas adjustment mechanism; and (ii) allocate an additional charge of \$21,942.73 from Texas Eastern Transmission Corporation.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8668 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-224-000]

#### **ANR Pipeline Co.; Notice of Request for Waiver**

April 4, 1995.

Take notice that on March 31, 1995, ANR Pipeline Company (ANR) requested a waiver of Section 31(c) of its FERC Gas Tariff, Second Revised Volume No. 1, which requires it place into effect a "Deferred Transportation Cost Adjustment" to be effective May 1, 1995.

ANR states that as originally contemplated, the "Deferred Transportation Cost Adjustment" was intended to track ANR's Account No. 858 costs over the prior annual period. However, as a result of orders issued in Docket No. RP94-43-000, the tracker did not go into effect until January 9, 1995. Therefore, ANR states that pursuant to its tariff, an adjustment for this short period would reflect actual cost experience only for the partial month of January 1995. The remainder of the "Deferred Transportation Costs" for the months of February through April, 1995, would be based on estimates.

ANR states that if the "Deferred Transportation Cost Adjustment" were to go into effect on May 1, 1995, based on ANR's estimates, the charge would result in a rate adjustment to the Mainline Area Access rate of \$.0018 when expressed at a 100% load factor. Other transportation related services reflect similar rate adjustments. Rather than implement an adjustment based primarily on estimates, and make further adjustments to reflect actual experience in subsequent Deferred Transportation Cost Adjustment filings,

ANR has proposed to defer the reconciliation for this short period until ANR's next annual filing when actual costs during this period will be known.

ANR states that all of its FERC Gas Tariff, Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 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 the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8669 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP95-228-000]**

**Carnegie Interstate Pipeline Co.;  
Notice of Proposed Change in FERC  
Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Carnegie Interstate Pipeline Company (CIPCO), the successor to Carnegie Natural Gas Company, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of May 1, 1995: Eleventh Revised Sheet No. 7

CIPCO states that this is its quarterly filing pursuant to revised Section 32.2 of the General Terms and Conditions of its FERC Gas tariff to reflect prospective changes in transportation costs associated with unassigned upstream capacity held by CIPCO on Texas Eastern Transmission Corporation (Texas Eastern) for the 3-month period commencing May 1, 1995 and ending July 31, 1995. The filing reflects an increase in the Transportation Cost Rate (TCR) from \$1.0490 to \$1.1519. The new TCR includes a TCR Adjustment of \$1.0850 and a TCR Surcharge of \$0.0669.

CIPCO states that copies of its filing were served on all jurisdictional

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 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 in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8670 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP95-222-000]**

**CNG Transmission Corp.; Notice of  
Proposed Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Eighth Revised Sheet No. 32  
Eighth Revised Sheet No. 33  
First Revised Sheet No. 360  
First Revised Sheet No. 361  
Original Sheet No. 361A

CNG states that the purpose of this filing is to collect additional stranded upstream transportation costs, and to revise the General Terms and Conditions of CNG's tariff, to institute a quarterly filing for future Account No. 858 stranded cost recovery.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before April 11, 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 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. 95-8671 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP95-227-000]**

**Columbia Gas Transmission Corp.;  
Notice of Proposed Changes in FERC  
Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 99A

Original Sheet No. 99B

The proposed tariff sheets bear an issue date of March 31, 1995 and a proposed effective date of May 1, 1995.

Columbia states that this filing comprises Columbia's supplemental close out of its Account No. 191 pursuant to Section 39 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1, subject to: (i) Columbia's February 16, 1995, request for waiver of the close out period ending March 31, 1995, for nine months to December 31, 1995, for the sole purpose of making further adjustments with respect to resolution of imbalances with Tennessee Gas Pipeline Company; and (ii) GTC Section 39.3 which permits Columbia to recover costs beyond any close out period with respect to unpaid purchased gas costs attributable to the period before the filing of Columbia's July 31, 1991 bankruptcy petition.

In this filing, Columbia states that it is making a debit of \$90,126.21 to its Account No. 191 as a result of additional T&E reconciliation conducted pursuant to a Commission approved methodology, a \$431,318.03 debit as a result of implementing its exit fee settlement with Tennessee Gas Pipeline Company (concerning payment for pre-petition costs owed to Tennessee by Columbia with respect to Columbia's pre-Order No. 636 storage services on Tennessee), and a \$150,802.09 debit for fuel credit adjustments. These and other items result in a net debit to the Account No. 191 of \$627,457.55 in this filing.

Columbia states that copies of its filing have been mailed to all firm

customers and affected state regulatory commissions.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 11, 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 the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 95-8672 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA 92-61-001]

**Kentucky Power Co.; Electric Rates: Hearing, Accounting; Order Deferring Hearing Procedures**

April 4, 1995.

On November 25, 1994, the Chief Accountant issued a contested audit report, under delegated authority, noting that Kentucky Power Company (Kentucky Power) disagreed with certain recommendations made by the Division of Audits related to Kentucky Power's accounting for amounts billed by an affiliated service company. The Chief Accountant requested that Kentucky Power notify the Commission whether it would agree to dispose of the contested issue under the shortened procedures provided for by Part 41 of the Commission's regulations. *Kentucky Power Co.*, 69 FERC ¶ 62,172; See 18 CFR part 41.

On December 6, 1994, American Electric Power Service Corporation (AEPSC), responding for Kentucky Power, requested that the Commission defer further action on the contested issue pending the completion of a proceeding before the Securities and Exchange Commission (SEC). AEPSC informed the Chief Accountant that the SEC is considering a similar issue in its proposed amendments to Form U-13-60. The American Electric Power Company (AEP) and other registered public utility holding companies have responded to the SEC's request for public comment on this subject in FR Doc. 94-23164. AEPSC indicates that Kentucky Power and the other

jurisdictional AEP system companies may agree to adopt the recommendations of the Division of Audits related to the accounting classification of service company billings depending upon the final order of the SEC.

*It is ordered:*

(A) Further proceedings concerning the appropriateness of Kentucky Power's practices as discussed in the November 25, 1994, report issued by the Chief Accountant are hereby deferred pending completion of the proceeding before the SEC.

(B) Kentucky Power shall keep the Office of Chief Accountant advised of the status of the proceeding before the SEC. On or before June 30, 1995, and every six months thereafter, Kentucky Power shall provide the Commission a full status report on the proceeding and how it affects the issue raised by the Division of Audits.

(C) This order shall be published in the **Federal Register**.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 95-8673 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL95-35-000]

**Kootenai Electric Cooperative, Inc., Clearwater Power Co., Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. v. Public Utility District No. 2 of Grant County; Notice of Filing**

April 4, 1995.

Take notice that on March 2, 1995, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. (collectively referred to as "the Idaho Cooperatives") tendered for filing a complaint against Public Utility District No. 2 of Grant County (the District). In their complaint, the Idaho Cooperatives request the Commission to determine and fix the applicable portion of capacity and output to be made available to the Idaho Cooperatives from the Priests Rapids Project upon relicensing and expiration of existing power sales contracts.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests and the answer to

the complaint should be filed on or before April 21, 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 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. 95-8674 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-226-000]

**Mississippi River Transmission Corp.; Notice of Proposed Change in FERC Tariff**

April 4, 1995.

Take notice that on March 31, 1995 Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1995:

Tenth Revised Sheet No. 5  
Tenth Revised Sheet No. 6  
Tenth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of \$801,943, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the "Price Differential" cost of continuing to perform under certain gas supply contracts during the months of October through December 1994.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before April 11, 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 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 available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8675 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-221-000]

**Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, effective May 1, 1995:

Second Revised Sheet No. 267

Northern states that such tariff sheet is being submitted to modify the tariff provisions surrounding the Monthly Index Price, as follows: (1) To change the price discovery point from Custer County, Oklahoma to the MidContinent Pooling Point, and (2) To change the source of the daily quoted price from "Basic Watch" to a companion publication from the same publisher entitled, "BTU's Daily Gas Wire".

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before April 11, 1995. Protests will be considered by the Commission in determining the appropriate 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. 95-8676 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-4-28-000]

**Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Panhandle Eastern Pipe Line Company

(Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets in May 1, 1995.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through Of Cash-Out Revenues In Excess Of Costs And Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that the revised tariff sheets listed on Appendix A to the filing reflect the removal of (1) the existing \$.01 reduction to Panhandle's currently effective maximum Reservation Rates under Rate Schedules FT and EFT; (2) the existing .06¢ reduction to Panhandle's currently effective maximum Base Rate per Dt. under Rate Schedule SCT; and (3) the existing .03¢ reduction to Panhandle's currently effective maximum Base Rate per Dt. under Rate Schedules IT and EIT.

Panhandle states that the removal of the currently effective Section 25 adjustment from the Reservation and Commodity rates is supported by the workpapers contained in Panhandle's filing which show that, pursuant to Section 25(e) of the General Terms and Conditions, the level of cash-out revenues in excess of costs and scheduling charges assessed against affiliates for the twelve months ended January 31, 1995 were not of a sufficient magnitude to result in a reservation charge credit of at least one cent or a commodity charge credit of at least .01 cents.

Accordingly, Panhandle states that there will be no Section 25 adjustment in effect for the period May 1, 1995 through April 30, 1996. In accordance with Section 25(f) of the General Terms and Conditions the net revenues for the 12 months ended January 31, 1995 will be carried over to be added to and considered with the net revenues in Panhandle's next filing made pursuant to Section 25 of the General Terms and Conditions.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 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 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8677 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-225-000]

**Questar Pipeline Co.; Notice of Tariff Filing**

April 4, 1995.

Take notice that on March 31, 1995, Questar Pipeline Company, tendered for filing and acceptance to be effective May 1, 1995, revised tariff sheets as listed on Appendix A to this notice.

Questar states that these tariff sheets revise provisions in First Revised Volume No. 1 of its FERC Gas Tariff that are applicable to storage service by reflecting thermal (Dth) rather than volumetric (Mcf) tracking and billing.

Questar states further that it seeks Commission approval of revisions to the Statement of Rates, Rate Schedules, General Terms and Conditions and Forms of Service Agreements as required to reflect the Dth tracking and billing. Questar also seeks Commission approval of the correction of a minor technical oversight in transportation rate schedules wherein the word "volume" had not been previously replaced with the word "quantity." Questar explains that the proposed tariff revisions, which conform nomination and billing practices as requested by several storage customers, are also in harmony with the Commission's preference as expressed in its December 16, 1994, rulemaking proceedings in Docket Nos. RM95-3-000 and RM95-4-000.

Questar states that this filing was served upon its customers and the Wyoming and Utah public service commissions.

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 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 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 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.*

**Appendix A—Listing of Proposed Tariff Sheets**

Fourth Revised Sheet No. 6  
Second Revised Sheet No. 6A  
First Revised Sheet No. 14  
First Revised Sheet No. 23  
First Revised Sheet No. 32  
Second Revised Sheet No. 50  
Second Revised Sheet No. 51  
Second Revised Sheet No. 52  
First Revised Sheet No. 54  
First Revised Sheet No. 56  
First Revised Sheet No. 57  
First Revised Sheet No. 61  
First Revised Sheet No. 62  
First Revised Sheet No. 65  
Second Revised Sheet No. 66  
Second Revised Sheet No. 68  
First Revised Sheet No. 91  
First Revised Sheet No. 100  
First Revised Sheet No. 101  
First Revised Sheet No. 111  
First Revised Sheet No. 112  
First Revised Sheet No. 114  
First Revised Sheet No. 115  
First Revised Sheet No. 116  
Second Revised Sheet No. 117  
Second Revised Sheet No. 118  
First Revised Sheet No. 119  
First Revised Sheet No. 120  
First Revised Sheet No. 121  
First Revised Sheet No. 140  
First Revised Sheet No. 141  
First Revised Sheet No. 142  
First Revised Sheet No. 150  
First Revised Sheet No. 151  
First Revised Sheet No. 161  
First Revised Sheet No. 162  
First Revised Sheet No. 165  
Second Revised Sheet No. 166  
Second Revised Sheet No. 167  
Second Revised Sheet No. 168  
Second Revised Sheet No. 169  
First Revised Sheet No. 170  
First Revised Sheet No. 171  
Second Revised Sheet No. 172  
Second Revised Sheet No. 173  
Second Revised Sheet No. 186  
Second Revised Sheet No. 188  
Second Revised Sheet No. 190  
First Revised Sheet No. 192  
First Revised Sheet No. 193

[FR Doc. 95-8678 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-219-000]

**Texas Eastern Transmission Corp.;  
Notice of Proposed Changes in FERC  
Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of May 1, 1995:

Original Sheet No. 230  
Sheet Nos. 231-234

Texas Eastern states that by this filing, it proposes to grant, effective May 1, 1995, customers under Rate Schedule SCT enhanced transportation rights with respect to deliveries and receipts in Texas Eastern's Market Zones 1, 2 and 3. Texas Eastern proposes to add a new Section 9 to Rate Schedule SCT. These enhanced transportation rights are identical to the enhanced transportation rights granted by Texas Eastern to customers under Rate Schedules CDS and FT-1 in Docket No. RP94-357-000.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 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 in the Public Reference Room.

**Lois D. Cashell,**  
*Secretary.*

[FR Doc. 95-8679 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

**Texas Gas Transmission Corp.; Notice  
of Informal Settlement Conference**

April 4, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding commencing at 10:00 am on April 11, 1995, and continuing at 9:00 am on

April 12, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208-1076, or Russell B. Mamone (202) 208-0744.

**Lois D. Cashell,**  
*Secretary.*

[FR Doc. 95-8680 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-217-000]

**Trunkline Gas Co.; Notice of Proposed  
Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing Ninth Revised Tariff Sheet Nos. 6, 7, 8, 9 and 10 which are proposed to become effective May 1, 1995, consistent with Section 27.3(B)(1)(f)(i)(a) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1 (General Terms and Conditions).

Trunkline states that the purpose of this filing is to eliminate the Initial Stranded Transportation Cost Surcharges and to report that under the terms of its Tariff, there are no Remaining Excess recoveries to be repaid to shippers. Trunkline notes that upon the Commission's acceptance of Trunkline's Gas Supply Realignment (GSR) Costs recovery filing in Docket No. RP95-220-000, also filed on March 31, 1995, the revised tariff sheets included in this filing will be superseded.

Trunkline states that a copy of this filing has been served on all customers affected by this filing and the respective state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8681 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-220-000]

**Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff**

April 4, 1995.

Take notice that on March 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing Tenth Revised Tariff Sheet Nos. 6, 7, 8, 9 and 10 which are proposed to become effective May 1, 1995, consistent with Sections 27.2 (D)(1) and 27.3(B)(1)(f)(i)(a) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1 (General Terms and Conditions).

Trunkline states that the purpose of this filing is to dispose of certain Gas Supply Realignment (GSR) Costs incurred by Trunkline by offsetting those amounts against the excess recoveries of certain transition costs, using Commission-approved cross-crediting procedures contained in its Tariff. Trunkline further states that the principal amount proposed to be recovered via the Commission-approved cross-crediting method is \$806,242 which is \$87,382 less than the \$893,624 amount of Trunkline's GSR costs incurred as of the date of this filing and carrying charges up to the anticipated May 1, 1995 effective date.

Trunkline states that a copy of this filing has been served on all customers affected by this filing and the respective state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8682 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-223-000]

**Williston Basin Interstate Pipeline Co.; Notice of Tariff Revisions**

April 4, 1995.

Take Notice that on March 31, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed to make explicit in its tariff the ability to allow Williston Basin to accept nominations after the nomination deadline, to the extent operating conditions permit.

Williston Basin requests that the tariff sheets be made effective May 1, 1995.

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. 20246, 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 April 11, 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8683 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-937-000, et al.]

**Niagara Mohawk Power Corp., et al.; Electric Rate and Corporate Regulation Filings**

April 3, 1995.

Take notice that the following filings have been made with the Commission:

**1. Niagara Mohawk Power Corp.**

[Docket No. ER93-937-000]

Take notice that on March 20, 1995, Niagara Mohawk Power Corporation

tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**2. Madison Gas & Electric Co.**

[Docket No. ER94-1147-000]

Take notice that on March 23, 1995, Madison Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**3. West Penn Power Co.**

[Docket No. ER95-591-000]

Take notice that on March 17, 1995, West Penn Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. Southwestern Electric Power Co.**

[Docket No. ER95-660-000]

Take notice that on March 22, 1995, Southwestern Electric Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. Florida Power Corp.**

[Docket No. ER95-766-000]

Take notice that on March 20, 1995, Florida Power Corporation (FPC), tendered for filing letters dated February 14, 1995 providing "Rate Limitation Refunds" for calendar year 1994 to four of the Company's customers in accordance with provisions in Exhibit B of their contracts limiting the total bills for service to them to the amount that would be produced by applying the applicable Florida Municipal Power Agency rate to that service. The rate-schedule under which each is served and the Rate Limitation Refund made to each are as follows:

Rate schedule	Customer	Refund
Rate Schedule 114.	City of Bartow.	\$1,139,391.09
Rate Schedule 115.	City of Havana.	139,329.39
Rate Schedule 116.	City of Newberry.	126,992.20
Rate Schedule 117.	City of Mount Dora.	348,041.30

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **6. Southern Company Services, Inc.**

[Docket No. ER95-767-000]

Take notice that on March 20, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), filed a Service Agreement dated as of March 2, 1995 between NorAm Energy Services and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **7. Southern Company Services, Inc.**

[Docket No. ER95-768-000]

Take notice that on March 20, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a Service Agreement dated as of March 2, 1995 between InterCoast Power Marketing Company and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **8. Pacific Gas and Electric Co.**

[Docket No. ER95-769-000]

Take notice that on March 20, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing, as an initial rate schedule, a Control Area and Transmission Service Agreement (Agreement) providing rates, terms and conditions for service to be rendered by PG&E to Power Exchange Corporation (PXC), a power marketer.

The Agreement: 1) identifies the types of bulk power suppliers from whom PXC can purchase, describes the types of loads it can serve, and provides for accounting for such loads and resources, particularly resources whose output is sold to two or more entities concurrently; 2) establishes control area reliability obligations for PXC, e.g., resource load-following and spinning reserve requirements and energy deviation limits, and permits PXC to

satisfy these obligations by using its own resources, purchasing services from third parties, or purchasing services from PG&E, and 3) provides flexible, firm network transmission service on both a short-term and an annual basis among various generation "Input" points and load "Output" points specified by PXC.

Copies of this filing were served upon PXC and the California Public Utilities Commission.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **9. PECO Energy Co.**

[Docket No. ER95-770-000]

Take notice that on March 20, 1995, PECO Energy Company (PECO), filed a power sales Tariff (Tariff). The Tariff describes the general terms and conditions under which PECO will make available for sale energy from various sources on either a reserved or as-delivered basis at negotiated rates that are no higher than PECO's cost of service.

PECO requests an effective date for the Tariff of May 21, 1995.

PECO has served copies of the filing on the Pennsylvania Public Utility Commission.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **10. Wisconsin Electric Power Co.**

[Docket No. ER95-771-000]

Take notice that on March 20, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself an Electric Clearinghouse, Inc. (ECI). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on ECI, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **11. Northeast Empire Limited**

[Docket No. ER95-772-000]

Take notice that on March 20, 1995, Northeast Empire Limited Partnership #2 tendered for filing a waiver of a condition to an amendment to its rate schedule for sales of energy and capacity from its Ashland, Maine facility to Central Maine Power Company.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **12. Boston Edison Co.**

[Docket No. ER95-773-000]

Take notice that on March 21, 1995, Boston Edison Company (BECO), tendered for filing a Service Agreement and Appendix A for Electric Clearinghouse Inc. for the sale and/or exchange of power from time to time pursuant to BECO's Electric Tariff, Original Volume No. 6. BECO requests that this Service Agreement and Appendix A become effective on March 1, 1995.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **13. Boston Edison Co.**

[Docket No. ER95-774-000]

Take notice that on March 20, 1995, Boston Edison Company (BECO), tendered for filing a Service Agreement and Appendix A for ENRON Power Marketing, Inc. for the sale and/or exchange of power from time to time pursuant to BECO's Electric Tariff, Original Volume No. 6. BECO requests that this Service Agreement and Appendix A become effective on March 1, 1995.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **14. Boston Edison Co.**

[Docket No. ER95-775-000]

Take notice that on March 21, 1995, Boston Edison Company (BECO), tendered for filing a Service Agreement and Appendix A for Louis Dreyfus Electric Power Inc. for the sale and/or exchange of power from time to time pursuant to BECO's Electric Tariff, Original Volume No. 6. BECO requests that this Service Agreement and Appendix A become effective on March 1, 1995.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### **Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are one file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8667 Filed 4-7-95; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5187-5]

### 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 publication in the **Federal Register**].

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 0370.13.

#### SUPPLEMENTARY INFORMATION:

##### Office of Water

**Title:** Underground Injection Control Program Information (EPA ICR No. 0370.13; OMB Control No. 2040-0042). 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:** The Underground Injection Control (UIC) program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water from contamination by injected materials. Owners or operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State primacy agency. States must report to

EPA on permittee compliance and related information. The information is reported using standardized forms, and the regulations are codified at 40 CFR Parts 144 through 148. The data are used to ensure the safety of underground sources of drinking water.

**Burden Statement:** The public reporting and recordkeeping burden for this collection of information is estimated to average 56 hours per respondent 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 forms included in this collection of information.

**Respondents:** Owners and operators of underground injection wells, and States.

**Estimated No. of Respondents:** 6,199.

**Estimated Total Annual Burden on Respondents:** 361,714 hours.

**Frequency of Collection:** On occasion, quarterly, annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0370.13 and OMB Control No. 2040-0042 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0370.13, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040-0042, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: April 4, 1995.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-8736 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5187-1]

### Colloquium on Ecological Risk Assessment Guideline Development

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a colloquium sponsored by the U.S. Environmental Protection Agency Risk Assessment Forum to discuss development of an Agency-wide guideline based on EPA's ecological risk assessment framework. The Agency is especially interested in exploring the

experiences of individuals or organizations who have used the framework for evaluating ecological risk.

**DATES:** The colloquium will begin on Wednesday, May 3, 1995 at 8:00 a.m. and end at 5:00 p.m. Members of the public may attend.

**ADDRESSES:** The meeting will be held at the Old Town Holiday Inn, 480 King Street, Alexandria, Virginia (Tel: 703/549-6080).

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the colloquium. To attend the colloquium, call Eastern Research Group at 617/674-7374. Space is limited.

**FOR FURTHER INFORMATION CONTACT:** Bill van der Schalie, U.S. Environmental Protection Agency, Risk Assessment Forum (8101), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260-6743.

**SUPPLEMENTARY INFORMATION:** EPA is developing an Agency-wide guideline for ecological risk assessment based on the process described in the EPA report *Framework for Ecological Risk Assessment* (EPA/630R-92/001). This colloquium will provide an opportunity for members of the public to: (1) Be informed as to the purpose and proposed structure of the guideline; (2) discuss their own experiences with the Agency's framework for ecological risk assessment and (3) provide information for Agency consideration in guideline development.

The ecological risk assessment guideline is being prepared by EPA's Risk Assessment Forum, which includes senior scientists from the Agency's program offices, regional offices, and laboratories. Historically, the Forum is best known for developing Agency-wide human health risk assessment guidelines, but since 1989, the Forum has been working towards preparation of similar guidance for ecological risk assessment. Based in part on consultations with EPA's Science Advisory Board, the Forum approached ecological risk guidelines in a step-wise fashion, beginning with the source materials listed below. (Copies of these published documents may be obtained by calling EPA's Center for Environmental Research Information (CERI) in Cincinnati, Ohio at (513) 569-7562 and referencing the EPA document numbers provided.)

- Summary Report on Issues in Ecological Risk Assessment (EPA/625/3-91/018). This report summarizes discussions between EPA scientists and outside experts on issues relevant to guidelines development based on a

series of colloquia that inaugurated the Forum guidelines development effort.

- Framework for Ecological Risk Assessment (EPA/630/R-92/001). The peer-reviewed Framework Report describes basic concepts and terminology for the ecological risk assessment process.

- A Review of Ecological Case Studies from a Risk Assessment Perspective (EPA/630/R-92/005) and A Review of Ecological Case Studies from a Risk Assessment Perspective Volume 2 (EPA/630/R-94/003). These reports contain 17 peer-reviewed case studies that explore the relationship between the ecological risk assessment process described in the Framework Report and several types of ecological assessment.

- Ecological Risk Assessment Issue Papers (EPA/630/R-94/009) and Peer Review Workshop Report on Ecological Risk Assessment Issue Papers (EPA/630/R-94/008). Some issue paper topics correspond directly to sections of EPA's ecological risk assessment framework (conceptual model development, characterization of exposure, effects characterization, and risk integration methods), while others focus on cross-cutting issues (ecological significance, biological stressors, ecological recovery, uncertainty, and ascertaining public values in ecological risk assessment). The issue papers were revised based on comments received at an August, 1994 peer review workshop. The scientific background information in the papers will help provide a bridge between the basic concepts described in the Framework Report and the more substantial ecological risk assessment guidelines.

Work on the first ecological risk guideline, based on an expansion of the ecological risk framework, was recently initiated. As with previously published human health risk guidelines, the new ecological risk assessment guideline is intended to improve the quality of EPA's risk assessments, promote Agency-wide consistency; and inform the scientific community and the public. Guidelines are not rules for those outside of the Agency; they are intended primarily for use by EPA and contractors doing work for the Agency. While guidelines address major issues of concern, they do not provide detailed "how tos" or contain extensive background material for novice readers. Finally, guidelines are not program-specific; it is left to individual programs within EPA (e.g., Superfund, pesticides) to adapt the Agency-wide guidelines to their own needs.

Dated: March 27, 1995.

**Robert J. Huggett,**

*Assistant Administrator for Research and Development.*

[FR Doc. 95-8740 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00406; FRL-4948-3]

### **Guidance on Issuance of Worker Protection Standard Enforcement Actions in Response to Personal Protective Equipment Violations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On February 13, 1995, the Agency distributed its "Summary Guidance on Issuance of WPS Enforcement Actions" which applied to any violations of the Worker Protection Standard (WPS). EPA was recently asked to distribute further guidance specific to enforcement of the personal protective equipment (PPE) provisions of the WPS. In response, the Agency developed guidance which applies to PPE violations the 10 factors which EPA recommends be considered in determining the appropriate recipients of WPS enforcement actions. This guidance was distributed to EPA Regional Offices on March 30, 1995, for transmittal to state pesticide enforcement personnel, the intended audience for the guidance. EPA is publishing the March 30th guidance at the request of a state organization.

**FOR FURTHER INFORMATION CONTACT:** Patricia L. Sims, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance, 2245A, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 564-4048.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

EPA is providing this document in response to requests made for specific guidance concerning enforcement of the PPE provisions of the FIFRA WPS. This summary guidance is organized according to the 10 factors to be considered in determining the appropriate recipients of WPS enforcement actions, and employers/owners/operators' PPE responsibilities.

##### **II. Ten Factors for Consideration**

EPA recommends that accountability for compliance with the FIFRA WPS be decided on a common sense, case-by-case basis. "Summary Guidance on Issuance of WPS Enforcement Actions,"

provided February 1995, identifies the following 10 factors which EPA recommends States consider when they need to determine the appropriate recipient(s) of a WPS enforcement action:

1. Who has control over pesticide use;
2. Who directs pesticide use;
3. Who has control over the agricultural establishment for posting and other WPS-related responsibilities;
4. Who gives direction on the agricultural establishment for posting and other WPS-related responsibilities;
5. Who has control over the practices used by agricultural workers on the establishment;
6. Who directs the practices used by agricultural workers on the establishment;
7. Measures taken to comply with provisions of the WPS;
8. Actions taken in response to incidents of noncompliance;
9. History of prior violations; and
10. Ability to assure continuing compliance with the WPS.

Documentation by employers/owners/operators could assist them in demonstrating to State regulatory officials, their efforts to comply and responses to instances of noncompliance. The totality of the circumstances should be considered in each case. The 10 factors are not listed in any order of priority; each factor should be appropriately considered in every case.

##### **III. Employers/Owners/Operators PPE Responsibilities**

The 10 factors should be considered if an employee (including workers and handlers) does not use PPE required by the WPS. It is essential for employers/owners/operators to take an active role to assure that PPE is used.

The employer/owner/operator bears primary responsibility for WPS PPE compliance. Employers/owners/operators must provide, clean and maintain PPE, and instruct employees on its proper use. The employer/owner/operator has a responsibility to inform employees who do not use their PPE that such clothing or protective gear is required. In the case of pesticide handlers, the responsibility to follow label directions and use PPE properly is a shared one with the employer.

The employer/owner/operator also has a responsibility to take appropriate actions if an agricultural employee does not comply with instructions to use PPE. If an employee does not use WPS required PPE, appropriate supervisory actions that could be taken by the employer/owner/operator to achieve compliance include warnings and

nondiscriminatory discipline. If an employer/owner/operator provides employees with appropriate PPE, training and supervision per the specifications of the WPS, there should not arise an occasion on which the employer/owner/operator would be subject to a WPS/PPE enforcement action due to the individual decision of an agricultural employee not to use the PPE.

Enforcement officials will consider the facts of a case before determining how to respond to any WPS violation, consistent with the 10 factors identified in the Agency's February 1995 summary WPS enforcement guidance. EPA recommends that accountability for compliance be decided on a common sense basis, and that the totality of the circumstances be considered in each case, including enforcement actions in response to PPE violations.

Dated: April 4, 1995.

**Jesse Baskerville,**

*Director, Toxics and Pesticides Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 95-8726 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5187-3]

**The Use of the Benchmark Dose Approach in Health Risk Assessment**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability.

**SUMMARY:** This notice announces the availability of a report titled *The Use of the Benchmark Dose Approach in Health Risk Assessment* (EPA/630/R-94/007). This report was developed to serve as a background document for discussing benchmark dose applications to noncancer risk assessment.

**ADDRESSES:** To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569-7562, Fax: (513) 569-7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R-94/007).

**FOR FURTHER INFORMATION CONTACT:** Clare Stine, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260-6743.

**SUPPLEMENTARY INFORMATION:** For almost 10 years, scientists have been studying the benchmark dose (BMD) as a promising technique for the quantitative

assessment of noncancer health effects. The information presented in this report is one step in developing the basis for an EPA consensus on the role of benchmark methods in the quantitative assessment of noncancer health risk. The report presents a basic overview of the benchmark method, which may provide an additional quantitative approach to current EPA practice.

The document focuses especially on critical decisions that must be made in deriving a BMD and applying the BMD in risk assessment. Major decisions in using the BMD are explained, and the sensitivity of the final result to each assumption is evaluated. The document also identifies many unresolved issues in benchmark dose application and identifies research that may help resolve some of these issues.

Dated: March 24, 1995.

**Robert J. Huggett,**

*Assistant Administrator for Research and Development.*

[FR Doc. 95-8738 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5187-4]

**Report on the Technical Review Workshop on the Reference Dose for Aroclor 1016**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a report titled *Technical Review Workshop on the Reference Dose for Aroclor 1016* (EPA/630/R-94/006). This report compiles discussions from a technical review workshop on the reference dose for Aroclor 1016, which was held in Washington, DC, on May 24-25, 1994.

**ADDRESSES:** To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569-7562, Fax: (513) 569-7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R-94/006).

**FOR FURTHER INFORMATION CONTACT:** Clare Stine, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260-6743.

**SUPPLEMENTARY INFORMATION:** This report includes information and materials from a technical review workshop organized by the U.S. Environmental Protection Agency's Risk

Assessment Forum for the Agency's Reference Dose/Reference Concentration (RfD/RfC) Work Group. The meeting was held in Washington, DC, at the Barcelo Washington Hotel on May 24-25, 1994 (59 FR 23202).

EPA convened a balanced panel of experts from the fields of qualitative and quantitative effects of PCBs in humans and animals, perinatal toxicity, neurobehavioral effects, and hazard and risk evaluation for data on health effects other than cancer. EPA sought comments from these experts on the IRIS entry and related scientific sources. Reviewers at the workshop were asked to evaluate whether the reference dose fully considered available data and if scientifically responsible data analyses were clearly articulated in the IRIS data base entry. Reviewers approved some features of the IRIS entry, and recommended additional review and analysis for others.

This report collects workshop papers, including summary statements prepared by the chairperson for each workshop topic. Workshop participants contributed useful recommendations for the Agency's Reference Dose/Reference Concentration Work Group to consider in re-evaluating the RfD entry on IRIS.

Dated: March 24, 1995.

**Robert J. Huggett,**

*Assistant Administrator for Research and Development.*

[FR Doc. 95-8737 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5187-2]

**Report on the Workshop on Cancer Risk Assessment Guidelines Issues**

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a report titled *Report on the Workshop on Cancer Risk Assessment Guidelines Issues* (EPA/630/R-94/005a). This report compiles discussions from a technical review workshop on the draft document titled *Draft Revisions to the Guidelines for Carcinogen Risk Assessment* (External Review Draft; EPA/600/BP-92/003). Highlights of reviewers' pre-meeting comments on the draft document are included in the workshop report; copies of reviewers' comments in their entirety are available from the National Technical Information Service.

**ADDRESSES:** To obtain a single copy of the workshop report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental

Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel (513) 569-7562, Fax: (513) 569-7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R-94/005a).

To obtain a copy of reviewers' pre-meeting comments, interested parties should contact the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 487-4650. The document number is PB95-148201.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeanette Wiltse, U.S. Environmental Protection Agency (8601), 401 M Street SW., Washington, DC 20460, Telephone: (202) 260-7315.

**SUPPLEMENTARY INFORMATION:** The U.S. Environmental Protection Agency's Risk Assessment Forum and Office of Health and Environmental Assessment organized a workshop to technically review the Agency's draft revised cancer risk assessment guidelines (*Draft Revisions to the Guidelines for Carcinogen Risk Assessment*—External Review Draft; EPA/600/BP-92/003). The workshop was held on September 12-14, 1994, at the Hyatt Regency in Reston, Virginia (59 FR 43125).

EPA convened a panel of experts to evaluate and comment on technical issues in the draft document concerning mode of action, hazard identification, dose response, and default assumptions. This report, entitled Report on the Workshop on Cancer Risk Assessment Guidelines Issues (EPA/630/R-94/005a), compiles discussion and information from the technical review workshop. EPA will use the reviewers' comments and recommendations drawn from the workshop in considering revisions to the draft guidelines.

Dated: March 25, 1995.

**Robert J. Huggett,**

*Assistant Administrator for Research and Development.*

[FR Doc. 95-8739 Filed 4-7-95; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### 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 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, D.C. 20573.

Forwarders International, Inc., 10926 LaCienega Blvd, Inglewood, CA 90304, Officers: Ghassan M. Choueiti, President; Fadia G. Choueiti, Vice President

FCH International Enterprises, Inc., 6819 NW 84 Ave., Miami, FL 33166, Officers: Fernando Chukuong, President; Maria J. Mullert, Manager  
Guy Timothy Nishida, 7429 Ogelsby Ave., Los Angeles, CA 90045 Sole Proprietor.

Dated: April 5, 1995.

By the Federal Maritime Commission

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95-8697 Filed 4-7-95; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Duane R. Roberts, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1995.

**A. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Duane R. Roberts*, Murrieta, California; *Robert W. Klemme*, Palos Verdes Estates, California; *Randall C. Luce*, Anaheim, California; *Richard B. Thomas*, Carona Del Mar, California; and *Entrepreneurial Capital Corporation*, Riverside, California; to acquire 19.55 percent, for a total of 23.85 percent, of the voting shares of FP Bancorp, Escondido, California, and

thereby indirectly acquire First Pacific National Bank, Escondido, California.

Board of Governors of the Federal Reserve System, April 4, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-8696 Filed 4-7-95; 8:45 am]

BILLING CODE 6210-01-F

### MSB Holding Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 April 24, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *MSB Holding Company*, Moorhead, Iowa; to engage *de novo* in making and

servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-8695 Filed 4-7-95; 8:45 am]

BILLING CODE 6210-01-F

### **BayBanks, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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. 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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 24, 1995.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. BayBanks, Inc.*, Boston, Massachusetts; to acquire NFS Financial Corp., Nashua, New Hampshire, and thereby engage in owning, controlling and operating a savings association that engages only in deposit-taking activities and lending and other activities, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**B. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

*1. Deutsche Bank AG*, Frankfurt (Main), Federal Republic of Germany; to retain First Call Corporation, Boston, Massachusetts, and thereby engage indirectly in providing data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

**C. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First American Corporation*, Nashville, Tennessee; to acquire Heritage Federal Bancshares, Inc., Kingsport, Tennessee, and thereby indirectly acquire Heritage Federal Savings Bank, Kingsport, Tennessee, and thereby engage in operating and savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, April 4, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-8694 Filed 4-7-95; 8:45 am]

BILLING CODE 6210-01-F

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Administration for Children and Families**

#### **Home Visitor Services (Number: OPE-HVS-5)**

**AGENCY:** Office of Policy and Evaluation (OPE), ACF, DHHS.

**ACTION:** Announcement of the availability of funds and request for applications to provide research assistance for the Home Visitor Services Demonstration.

**SUMMARY:** The Office of Policy and Evaluation of the Administration for Children and Families (ACF) announces the availability of Federal funding to provide research assistance for the Home Visitor Services Demonstration. Funding under this announcement is authorized by section 1110 of the Social

Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647).

**DATES:** The closing date for submission of applications is June 9, 1995.

**ADDRESSES:** Application receipt point: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., MS 6C-62 OFM/DDG, Washington, DC 20447; Attn: Mrs. Shirley Parker; Reference: Announcement Number OPE-HVS-5. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447.

#### **FOR FURTHER INFORMATION CONTACT:**

Administration for Children and Families, Office of Policy and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447; Attn: Nancye Campbell, telephone (202) 401-760.

**SUPPLEMENTARY INFORMATION:** The Office of Policy and Evaluation of the Administration for Children and Families announces that competing applications are being accepted for Federal financial assistance to provide research assistance for the Home Visitor Services (HVS) Demonstration. A single award will be made under this announcement. The recipient will receive an initial financial award for 12 months and be eligible to apply on a non-competitive basis for a continuation award of 12 months duration. The recipient will also be expected to enter into a cooperative agreement with ACF.

This program announcement consists of four parts. Part I provides background information about the HVS demonstration. Part II describes the activities supported by this announcement and application requirements. Part III describes the application review process. Part IV provides information and instructions for the submission of applications.

#### **Part I—Introduction**

ACF has entered into a partnership with the Henry J. Kaiser Family Foundation to develop and assess a demonstration of home visiting services for teenage parents on AFDC who are required to participate in the Job Opportunities and Basic Skills Training (JOBS) program. Through a separate

competitive process, ACF provided funding support for five state welfare agencies to plan, implement and conduct the demonstrations. Such funding support was only available to the single state agency responsible for the administration of the AFDC program as required by section 1115 of the Social Security Act.

The Kaiser Foundation has awarded a grant to the University of Pennsylvania to provide background analysis, project design assistance, and research assistance for the HVS initiative. However, the research assistance which can be provided through the Kaiser grant is insufficient.

*Background on the Demonstrations:* The Assistant Secretary for Children and Families sent a letter to the all state welfare directors announcing the availability of funds for demonstration grants to conduct the HVS demonstration. In the September of 1994 ACF awarded planning and development grants and waivers to five states (Illinois, Maryland, Ohio, Oregon, and Texas) to enable them to begin the design and development of a demonstration to incorporate home visiting services into their JOBS program for teenage parents and to participate in the demonstration. Based on performance during the feasibility (planning and development) phase, up to three states will be selected to continue full demonstration operation for an additional 24-month period.

The central goals of the HVS initiative are to help young AFDC families achieve economic self-sufficiency and to add to current knowledge regarding the effectiveness of strategies designed to improve the social, personal, health, and economic outcomes among teenage parents and their children. To achieve these goals, home visits by paraprofessionals will be included as a part of the JOBS program in demonstration sites and the interventions effect on a range of outcomes will be measured.

It is expected that the home visitors will establish a close relationship with the teens and their children while they are also providing them with instruction and supportive guidance in four areas: parenting; family planning; obtaining appropriate health care; and accessing community resources and supports. In addition to the provision of direct services in the four areas mentioned, the home visitors will also be a link between the teen and the JOBS program and welfare agency. Through the relationships developed through regular, weekly visits to provide the instruction and guidance in the four key areas discussed above, it is also

expected that the visitors will be able to identify potential problems early and bring appropriate attention to the problems or otherwise help the young mother resolve the problem as it relates to participation in JOBS or other areas.

The home visits will be targeted to teen parents who are applying for AFDC for the first time or who have their first child while on AFDC, and who are required, through waiver authority, to participate in education, training or employment activities under JOBS. The home visitors will be "housed" in two types of JOBS settings: the program staffed by the welfare agency and a program staffed by a service provider in the community (e.g., a community-based organization). While participation in the JOBS program and with the home visiting component is mandatory, considerable sensitivity to the concerns of the teens or other family members to having someone come into their home will be required. Therefore, the meetings between the teen and the visitor can occur at any suitable location. The curriculum to be used by the sites to address the key areas is being developed under the guidance of the University of Pennsylvania research team.

The welfare agencies which were considered for the demonstration grants were ones which proposed to operate the demonstration in sites which have an adequate caseload to identify approximately 425 new AFDC teen parent cases over a 12-month period and in which the JOBS program currently provides a comprehensive set of services targeted to teen parents. The community provider programs considered were ones in the same site which provide a comprehensive set of services in a single location and can enroll and serve at least 75 new teen parent cases. Specifically, in addition to the provision of appropriate education, training or employment activities, a comprehensive program is expected to provide: assistance with child care and transportation, specialized case management, and additional services targeted to teen parents such as parenting or life skills development. The selected sites were required to document their ability and willingness to randomly assign new teen parent cases to: (1) The current welfare-agency staffed JOBS program for teen parents, which will serve as the control group; (2) The welfare-agency staffed JOBS program with home visitors; and (3) The provider staffed JOBS program with home visitors.

In order to be considered as a site, the welfare agency was required to document their willingness and ability

to collect and provide the data necessary to support research analyses related to process, impacts, and costs which will be conducted by the University of Pennsylvania researchers through the Kaiser grant as well as that which will be conducted through this expanded effort.

## Part II—Project Design

*Purpose:* The purpose of the research assistance is, through technical support and impact, process, and cost analyses, to inform the public, including states, regarding the difference the addition of an intervention of regular home visits makes to teenage parents and, through them, to the lives of their children. This assistance is being sought because the extent of the research assistance to be provided through the grant from the Kaiser Foundation to the University of Pennsylvania for the initiative is not sufficient to address the complete scope of the planned effort. ACF is interested in (1) Expanding the knowledge base to include information about more sites and about the differential impacts of the two treatment groups: the intervention administered through the welfare agency, and the intervention administered through a provider agency (e.g., a community-based organization) and (2) Providing technical support to the sites regarding implementation and evaluation issues. The extent of the research assistance currently provided for through the Kaiser grant is limited to analyses of process, impacts, and costs in two sites with a single treatment group and a control group.

The primary measures to be used to assess program impact include, but are not limited to:

- Participation in education or employment-related activities under JOBS;
- High school/GED completion;
- Employment and earnings;
- Public assistance use;
- Repeat pregnancies and births;
- Immunizations for young children;
- Health status of mothers and children;
- Parent-child relationships.

The recipient will perform data collection and initial analyses that focus on the differential costs, processes, and impacts between the two treatment streams (i.e., welfare agency staffed setting and provider agency staffed setting) in all the sites. The analyses and technical support are expected to improve the available knowledge on how to help teenage parents who receive public assistance move toward economic self-sufficiency and provide safe and appropriate environments for their children. The results of the HVS

initiative are intended to assist States, other government agencies, and community organizations in improving and enhancing their employment and social service delivery systems for teen parents and their children.

**Eligible Applicants:** Organizations eligible to apply for financial assistance under this announcement include States, for-profit organizations, and public or private nonprofit organizations. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *and* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. Applications from nonprofit organizations that do not include the documentation will be rejected and receive no further consideration.

ACF is interested in providing financial support for this effort to an organization with staff with (1) experience in executing multi-site social experiments, (2) an understanding of the demographics and experiences of welfare dependent teenaged parents who are required to participate in activities designed to increase economic self-sufficiency and improve family planning skills, (3) experience in doing research involving waivers of federal AFDC and JOBS policies, and (4) experience in working directly with and obtaining relevant data (e.g., welfare data, participation data, earnings) from multiple state welfare programs.

**Minimum Requirements for Project Design:** In order to compete successfully in response to this announcement, the applicant should develop and submit a plan which:

- Includes an outline of a research design which takes into account specific features of the funded demonstration, the research objectives, and the components and services that comprise the JOBS programs which will be a part of the study. The outline should include proposed hypotheses to be addressed.

- Describes how a differential impact analysis will determine the effects of the different demonstration service delivery systems on participants and their children. The information to be included in this analysis should include impacts on participation in education and training activities, welfare use,

employment and earnings, repeat pregnancies and births, and parenting abilities, as well as others to be suggested by the applicant.

- Describes how a cost analysis will be conducted. The information to be included in the analysis should include program costs, support service costs, and welfare costs, as well as indirect costs, if appropriate, and other variables to be suggested by the applicant.

- Includes a description of the final report due at the end of this project period. This report is intended to inform State income maintenance and social service departments of the usefulness of different service delivery systems for the HVS intervention and to further general knowledge about serving teenage parents within the JOBS program.

- Includes the recipient's approach for working efficiently and effectively with the selected sites to provide technical support regarding implementation issues, random assignment implementation and monitoring, and evaluation data collection requirements. The technical support should focus on strengthening the sites' ability to deliver the services as prescribed by Federal guidelines in the context of their unique program models and their ability to meet the needs of the research effort (e.g., data collection and reporting, implementation and maintenance of random assignment) while also attempting to minimize the burden on the sites to meet those research needs.

- Includes financial support for HVS in addition to Federal funding to ensure uninterrupted research activities over the demonstration period. Applicants should provide evidence of funding commitments from organizations such as private foundations.

Also, the recipient must be prepared to enter into a cooperative agreement with ACF which will outline the terms of ACF's involvement in the HVS demonstration as well as the responsibilities of the recipient. The cooperative agreement: (a) Will provide that ACF retain authority for review of the ongoing policy design decisions in the demonstration; (b) Will provide that ACF approve the continuation of waivers and grant awards to any site in the demonstration; (c) will provide that ACF receive and review written guidelines or directives provided to the sites; (d) require ACF approval of the technical support and research design to be employed; and (e) will provide for ACF review of reports (other than quarterly progress reports) before publication.

**Project Duration:** This announcement is soliciting applications for project

periods up to 2 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 2 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 2-year project period will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

**Federal Share of the Project:** The maximum Federal share of the project is not to exceed \$250,000 for the first budget period or \$300,000 for the total two-year project period, subject to the availability of funds.

**Matching Requirement:** Grantees must provide at least five percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$300,000 in Federal funds must include a match of at least \$15,789 (5% total project cost).

**Anticipated number of Projects to be Funded:** One project will be funded under this announcement.

### Part III—The Review Process

#### A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. After a determination has been made that the minimum requirements, as set forth in this announcement, have been met, reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications to other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working directly with multiple state welfare agencies which provide specialized services, including case management and employment-related services, to

teen parents since such experience on the part of a recipient has the potential to substantially improve the theory and practice of designing service delivery systems for teenaged parents and their children on AFDC.

#### B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

#### Review Criteria

(1) *Organizational Experience* (10 points) The application should provide evidence of organizational experience in providing research assistance for social experiments.

(2) *Staff Skills and Responsibilities* (25 points) The application should provide evidence of staff experience (a) providing research assistance for social experiments involving multiple state AFDC and employment and training programs, particularly direct involvement with data collection through the State's public assistance, JOBS, and Unemployment Insurance data systems (include a list of published studies of these programs); (b) providing research assistance for multi-site experiments by state welfare agencies which provide case management and employment-related services for teen parents receiving AFDC; and (c) providing research assistance for demonstrations involving private foundations and Federal agencies. Applicants should list each consultant or other key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff. Applicants are encouraged to discuss staff experience in working with teenaged parents and programs which serve them.

(3) *Knowledge of Teenage Parents Who Are AFDC Recipients* (15 points) The application should provide evidence of the applicant's understanding of the demographics and experiences of teenaged parents on AFDC. Evidence of this understanding should include (a) familiarity with how teen parents interact with state welfare

agency programs, including AFDC and JOBS; and (b) knowledge of teen parents' participation in programs designed to improve their educational attainment and employability and affect other life course decisions such as repeat pregnancy and living arrangements.

(4) *Approach and Project Design* (35 points) The application should include: (a) An outline of a research design which takes into account specific features of the planned demonstration, the research objectives, and the components and services that comprise the "program" being studied including proposed hypotheses to be addressed; (b) a description of how a differential impact analysis will determine the effects of the demonstration on participants and their children; (c) a description of how a cost analysis will be conducted; and (d) the applicant's approach for providing guidance and assistance to State/local JOBS/HVS staff on the research study and meeting the needs of the research objectives.

(5) *Public-Private Partnerships* (10 points) In order to maximize the potential of using a limited Federal investment to further knowledge about the policies and practice of working with disadvantaged teenage parents, the application should provide evidence of commitments of non-Federal resources to the HVS study, including resources provided from other entities beyond the applicant organization. This criterion will be evaluated based on the amount of the non-Federal resources and the firmness of the commitment of the resources.

(6) *Budget Appropriateness* (5 points) The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A.

#### Part IV—Instructions for the Submission of Applications

This part contains information and general instructions for submitting applications in response to this announcement. Application forms with instructions may be obtained by contacting: Nancye Campbell, Office of Policy and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC. 20447; telephone (202) 401-5760; fax (202) 205-3598.

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with

their applications. Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of \$100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988 and with Part C—Environmental Tobacco Smoke, of Public Law 103-27. By signing and submitting the applications, applicants are providing the certifications and need not mail back the certifications with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

#### A. Required Notification of the State Single Point of Contact

This program announcement is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Virginia, Pennsylvania, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date

of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447; Attn: Mrs. Shirley Parker; Reference: OPE-HVS-5.

#### *B. Deadline for Submittal of Applications*

The closing date for submittal of applications under this program announcement is found at the beginning of this announcement under the heading DATES. Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., MS 6C-62 OFM/DDG, Washington, DC 20447; ATTN: Mrs. Shirley Parker; Reference: OPE-HVS-5. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447; Reference: OPE-HVS-5. Applications shall be considered as meeting the announced deadline if they are received on or before the deadline date at the place specified above.

*Late Applications:* Applications which do not meet the criteria under *Deadline for Submittal of Applications* are considered late applications. ACF shall notify each late applicant that its application will not be considered in the competition under this announcement.

*Extension of Deadlines:* ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or if there is widespread disruption of the mail. However, if ACF does not extend the deadline for all applicants, it may

not waive or extend the deadline for any applicants.

#### *C. Submitting the Application*

Each application package must include a signed original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Dated: April 3, 1995.

**Howard Rolston,**

*Director, Office of Policy and Evaluation.*

[FR Doc. 95-8757 Filed 4-7-95; 8:45 am]

BILLING CODE 4184-01-P

#### **Adoption Opportunities Program**

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Announcement of the Availability of Financial Assistance and Request for Applications to Carry Out Demonstration Projects Funded Under the Adoption Opportunities Branch in the Children's Bureau, Administration on Children, Youth and Families.

**SUMMARY:** The Children's Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1995 funds for grants to public or private nonprofit child welfare and adoption agencies, organizations and adoptive parent groups to assist in supporting programs directed to: (A) Increasing the placements in adoptive families of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families; (B) providing post-legal adoption services for families who have adopted special needs children; and, (C) increasing the rate of placement of children in foster care who are legally free for adoption. Funding for these grants is authorized under Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (P.L. 95-266, as amended).

This announcement contains all necessary application materials.

**DATES:** The closing date for submission of applications is June 9, 1995.

**ADDRESSES:** Applications may be mailed to the Department of Health and Human

Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** ACYF Operations Program, Telephone: 1 (800) 351-2293.

**SUPPLEMENTARY INFORMATION:** The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence, with particular emphasis on children who have special needs. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children, including children with disabilities; abused and neglected children; runaway and homeless youth; and children from Native American families.

The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field. The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

This program announcement consists of three parts. Part I provides information on the goals of the Children's Bureau (CB), the ACYF office which is requesting applications, and the statutory authorities for awarding grants.

Part II describes the review process and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

### Part I—Introduction

#### A. Goals of the Children's Bureau

Within ACYF, Children's Bureau coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services Program, the Child Welfare Research, Demonstration and Training Program, the Adoption Opportunities Program, the Temporary Child Care and Crisis Nurseries Program, Independent Living Program and the Abandoned Infants Assistance Program.

The Bureau's programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children and the unnecessary separation of children from families.

*B. The Statutory Authority Covering This Announcement is Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Pub. L. 95-266 as Amended)*

The Adoption Opportunities Program provides financial support for demonstration projects to: Improve adoption practices; eliminate barriers to adoption; and find permanent homes for children, particularly children with special needs. Authorization: Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, Section 203, as amended, Public Law 95-266; Pub. L. 98-457, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended, Title II, Section 201, Pub. L. 100-294; Pub. L. 102-295; 42 U.S.C. 5111 *et seq.*

### Part II—Review Process and Priority Areas

#### A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the "Eligible Applicants" section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applications from

ineligible organizations will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code Section 501(c)(3). The ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

#### B. Review Process and Funding Decisions

Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: Overrepresented populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations that administer or deliver human services; substantial involvement of volunteers; substantial

involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

#### C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria.

(1) Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual

features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(3). Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

(4). Staff Background and Organization's Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

#### D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

**Eligible Applicants:** This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

**Purpose:** This section presents the basic focus and/or broad goal(s) of the priority area.

**Background Information:** This section briefly discusses the legislative

background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

**Minimum Requirements for Project Design:** This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

**Project Duration:** This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

**Federal Share of Project Cost:** This section specifies the maximum amount of Federal support for the project for the first budget year.

**Matching Requirement:** This section specifies the minimum non Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$200,00 in Federal funds (based on an award of \$100,000 per budget period) must include a match of at least \$20,000 (10 percent of the total Federal cost).

**Anticipated Number of Projects To Be Funded:** This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Please note that applications that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed. Applicants should also note that non-responsiveness to the section "Minimum Requirements for Project Design" will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their

applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

#### E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1995, subject to the availability of funds. The size of the actual awards will vary.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, applicants should propose only that non-Federal share they can realistically provide since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

#### F. Grantee Share of Project Costs

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$200,000 in Federal funds (based on an award of \$100,000 per budget period), must include a match of at least \$20,000 (10 percent of the total Federal cost). If approved for funding, grantee will be held accountable for commitments of non-Federal resources and failure to provide the required

amount will result in a disallowance of unmatched Federal funds.

### G. Index of Priority Areas

To assist potential applicants in using this announcement, a priority area index in numerical order, is presented below.

- 1.01 Synthesis of Results of Minority Adoption Recruitment Projects for Special Needs Adoption
- 1.02 Field Initiated Applications to Improve Adoption Services to Children With Special Needs
- 1.03 Improved Permanency Outcomes of Adolescents
- 1.04 Service Improvements in Special Needs Adoption
- 1.05 Adoptive Placement of Foster Care Children
- 1.06 Respite Care as a Service for Families Who Adopt Children With Special Needs

### H. Priority Areas

- 1.01 Synthesis of Results of Minority Adoption Recruitment Projects for Special Needs Children

*Eligible Applicants:* State or local governments, public or private non-profit agencies, organizations, or universities.

*Purpose:* To collect, analyze, synthesize, and develop a report on current knowledge and results of minority recruitment services projects funded since 1989 by the Adoption Opportunities Program.

*Background Information:* In 1989, the Adoption Opportunities statute authorized funds for increased minority adoption recruitment services for families to adopt special needs children. Approximately 81 grants have been awarded to public and private agencies to provide adoption services for minority children and families. These efforts resulted in some successful models and products that could be replicated. These include recruitment models for One Church-One Child, Homes for Black Children and Friends of Black Children; curricula addressing cultural competence; resource guides; directories; adaptable public service announcements; practice manuals; and handbooks to assist workers in the area of special needs adoption recruitment.

The ACYF is interested in supporting an effort to review the body of work in the field of minority adoption recruitment services to determine (1) The number of projects which are now an ongoing part of the agencies' programs; (2) the results of the evaluations of the projects; (3) the number of families recruited and children placed; and (4) the

implications for public and private child welfare agencies and community based organizations. Information on funded projects can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, Maryland 20852; telephone (301) 231-6512.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the applicant should:

- Demonstrate an understanding of the literature and of the issues in minority recruitment services.
- Describe how the findings from these projects would be analyzed and synthesized into a report which would be useful to the field.
- Provide a plan for disseminating the report nationally.
- Provide assurances that at least one key person from the project will attend the annual child welfare conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Provide an executive summary and a final report on the project within 90 days after the project end date.

*Project Duration:* The length of the project must not exceed 17 months.

*Federal Share of Project Costs:* The maximum Federal share of the project is \$85,000.

#### *Matching or Cost Sharing*

*Requirement:* Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$85,000 in Federal funds must include a match of at least \$8,500 (10 percent of the total Federal cost).

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

- 1.02 Field Initiated Applications to Improve Adoption Services to Children With Special Needs

*Eligible Applicants:* State, Regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations.

*Purpose:* To improve adoption services for children with special needs through activities which are not addressed elsewhere in this announcement and have not been previously funded by the Adoption Opportunities Program. This priority

area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

*Background Information:* Public child welfare workers who provide adoption services are overburdened because of the shortage of staff and the increasing child welfare caseload. In many public agencies, adoption staff are expected to provide services not only to foster children with special needs and their potential adoptive families, but also to families requesting services for inter-country and other types of adoption. There is also a growing need to provide post-legal adoption services to preserve adoptive families as well as an increasing responsibility for search and reunion services. This places substantial burdens on limited adoption agency resources which are needed to serve the special needs population.

At any given time, approximately 69,000 foster children have a goal of adoption, 20,000 of which are legally free for adoption. Minority children continue to be over-represented among this group. Older children and sibling groups also continue to present unique challenges. Sub-populations, such as drug-exposed or medically-fragile infants and foster children with HIV and AIDS, will be or are currently testing the capacity of adoption programs. Other areas for innovation include the placement of large sibling groups, the preparation of children for adoption, open adoption and relative adoption. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes to all waiting children.

Because there are so many different issues that face the public and voluntary sectors, ACYF is requesting field-initiated applications that address the most problematic areas in serving foster children with special needs for whom adoption is the plan. These applications must be innovative and cannot be responsive to other priority areas identified in this announcement.

*Minimum Requirements for Project Design:* In order to compete successfully under this priority area, the applicant should:

- Describe the agency's current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been funded before, based on a review of the literature and any other relevant sources.

- Provide specific written commitments from cooperating or collaborating agencies, if appropriate.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design. The evaluation should focus on child and family outcome measures (e.g., number of families recruited, number of children placed, disruption rates, etc.).
- Describe how the agency would incorporate successful strategies of the project into its ongoing program.
- Provide assurances that at least one key person from the project will attend the Child Welfare Conference in Washington, D.C. (The conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and to address current child welfare trends and issues.)
- Provide assurances that the project will be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share of the project is \$300,000.

*Matching or Cost Sharing Requirement:* Grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$300,000 in Federal funds (based on an award of \$150,000 per budget period) must include a match of at least \$30,000 (10 percent of the total Federal cost).

*Anticipated Number of Projects to be Funded:* It is anticipated that seven projects will be funded.

### 1.03 Improved Permanency Outcomes for Adolescents

*Eligible Applicants:* State and local public agencies or private child welfare agencies in collaboration with a State or local public agency.

*Purpose:* To increase permanency for children over the age of thirteen through adoption or other options which can include kinship care and legal guardianship.

*Background Information:* Ideally, children in the foster care system should be reunited with their parents. In cases where reunification is not possible or in the best interest of children, adoption or other permanency arrangements must be expeditiously made. Some of the children awaiting adoptive families are listed on the National Adoption Exchange. The Exchange reports that 41 percent of the children registered on the Exchange are between the ages of 11 and 17. Fifty-five percent are African American, 30 percent are white, 8 percent are Hispanic and 5 percent are bi-racial. While adoption efforts are being made for these children, there are still many older children in the child welfare system who are not being prepared for adoption and who are perceived as being "unadoptable." In some cases not enough work has been done toward locating adoptive families; in other cases children have not been prepared for adoption; therefore, they do not understand what adoption means and tell workers they do not want to be adopted. Many of these teens are fearful of the rejection associated with having to wait for many years for a family to call their own.

Child welfare agencies need to review the case plans of the children served in this age group, to set new goals and actively provide the services that will assure permanency for these adolescents. There must also be a re-examination of staff's attitudes with respect to the adoption of adolescents. Conversations with the children about their goals and how they view their future could lead to more placements and ones that are suitable and lasting. This service requires skilled workers who view adoption as a positive option and who can work intensively and effectively in planning with these adolescents.

In 1993, a teenager named Charlotte who grew up in the foster care system was crowned Miss Teen USA at the age of 16. Charlotte had set the goal of adoption for herself and although she had lived with the same foster parents for 11 years, they did not adopt her. At her insistence, the State agency found a couple who adopted her when she was 17 years of age. Many more adolescents, like Charlotte, are waiting for a family and would like to have a support system or role model to help them make the transition from foster care to independence. If adoption is not possible, options such as kinship care, assisted guardianship, or transition to independent living should be explored.

The focus of this priority area is to ensure permanency for adolescents

through adoption, legal guardianship, planned long term foster care, or preparation for independent living.

Information on previously funded projects dealing with the adoption of older children can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, MD 20852; telephone (301) 231-6512.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the applicant should:

- Describe existing barriers to permanency for older children in the area.
  - Identify and verify by race, sex and age at least 25 adolescents to be served who are legally free for adoption.
  - Describe the approach to be used to work with the adolescents which build on knowledge of adolescent development, separation and attachment issues and permanency planning.
  - Describe a plan for using the resources of the National Resource Centers (Youth, Permanency Planning and Adoption) in implementing this project.
  - Identify the expected outcomes in terms of the number of adolescents to benefit by permanency.
  - Describe clearly the services to be provided, e.g. seminars, workshops, support services to adoptive families after placement or other services to meet the special needs of this age group.
  - Include a description of how families will be recruited and prepared to parent this age group of children.
  - Discuss efforts to work with foster parents to encourage them to adopt the adolescents in their care, i.e., availability of subsidy or other incentives to meet the needs of the child.
  - Provide information on any proposed collaboration and agreements with other organizations that will work with the project.
  - Provide assurance that the staff on the project are culturally diverse and competent to work with this population.
  - Describe plans to contract with a third party to conduct an independent evaluation of the project.
  - Provide assurance that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues).
- Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project of Project Costs:* The maximum Federal share of the project is \$375,000.

*Matching or Cost Sharing*

*Requirement:* Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$375,000 in Federal funds (based on an award of \$125,000 per budget period) must include a match of at least \$37,500 (10 percent of the total Federal cost).

*Anticipated Number of Projects to be Funded:* It is anticipated that five projects will be funded.

#### 1.04 Service Improvements in Special Needs Adoption

*Eligible Applicants:* State and local public or private non-profit child welfare agencies or agencies having access to the children in need of this service. Agencies or States which have not already demonstrated the models for replication described in this priority area will be given priority consideration.

*Purpose:* To replicate Federally funded adoption models in one of the following categories: (a) termination of parental rights (TPR); (b) minority recruitment; (c) staff training or (d) post-legal adoption services.

*Background Information:* There are currently over 500,000 children in the foster care system. A large number of these children will not be returning to their families and are in need of permanency in their lives. Adoption with a loving family is the plan for a number of these children. However, systemic barriers and inadequate service delivery prevent agencies from attaining permanency for these children. Service delivery models and training efforts have been developed through Federal adoption grants during the past 14 years to address some of the barriers. These models have: facilitated adoption placements; informed practice and policy; provided practical solutions to systemic problems in service delivery; increased public awareness of the waiting children; shortened the time children wait for adoption and provided needed services to maintain the family after the adoption has been legalized. However, dissemination of these models has been limited, which has reduced the opportunities for replication, or when models have been recognized as potentially useful, funding has not been

available in public agencies to replicate the projects.

#### (a) Termination of Parental Rights (TPR)

The Children's Bureau has funded demonstration grants in the past on termination of parental rights and reducing delays for children who wait. As early as 1983, a grant was awarded to the American Bar Association to work with five States to eliminate or minimize the legal barriers which impede the timely movement of children with special needs into adoptive families. Some of the States in the project were very successful in significantly reducing the time a child had to wait for TPR. One project in New Jersey was able to reduce the average length of time a child remains in the court process, once the termination papers were filed, from 34 weeks to six weeks. In 1988, four projects were funded to address specific problems or issues concerning TPR which act as barriers to adoption. A book entitled "Children Can't Wait: Reducing Delays for Children in Foster Care" by Paul Johnson and Katherine Kahn is based on the experience of the four projects. This book provides information to assist professionals and agencies in addressing permanency for children in the child welfare system. The book may be purchased from the Child Welfare and agencies in addressing permanency for children in the child welfare system. The book may be purchased from the Child Welfare League of America, 440 First St. N.W., Suite 310, Washington, D.C. 20001-2085.

#### (b) Minority Recruitment

Minority children are overrepresented in the child welfare system and minority families often face insurmountable systemic barriers in their attempts to become adoptive parents. However, it has been demonstrated that minority families are available, and do adopt.

For some agencies recruiting and maintaining families that are of the culture and race of the children in their care has proven to be difficult. There are excellent models to recruit families for minority children which utilize a combination of media, word-of-mouth, and community-based resources. Models such as One Church-One Child, and Friends of Black Children were developed over 10 years ago and have been institutionalized in some agencies and organizations. The One Church-One Child model has been demonstrated throughout the country and has proven to be successful in the recruitment and placement of minority children. The Friends of Black Children model has

been limited to specific geographical areas.

Another tool of recruiting families is through multi-media presentations such as: "Wednesday's child" segments; posters; radio and television public service announcements (PSA's); and billboards.

#### (c) Staff Training

ACYF recognizes that curricula are developed throughout the adoption field. Often these curricula are specialized to meet the needs of workers in providing particular services to their clients. The National Resource Center on Special Needs Adoption has developed two training curricula, one on Special Needs Adoption and the other on Cultural Competence. The special needs adoption curriculum has been disseminated to State agencies but has been under-utilized.

#### (d) Post-Legal Adoption Services

Post-legal adoption services are critical to the success of special needs adoptions. There is continuous need of these services to ensure that families have the support necessary to sustain themselves. Over 70 programs across the country have been funded to provide post-legal adoption services. These programs provided: Training for mental health professionals on adoption issues; training on how to work with sexually abused children; services for special groups such as HIV positive children and their parents; counselling and information on adoption search issues; development of training curricula; respite care services and training of respite care providers. In a project of the Illinois Department of Children and Family Services, a survey of adoptive parents was conducted which revealed that adoptive families could not find the right services for their adopted children and that families felt the need for support groups and the need for more information on the children being placed. In addition, the survey found that professionals needed adoption-sensitive training. A product of this grant was the publication entitled "The Role of the Public Agency Delivering Post Adoption Services," by Kenneth Watson.

#### *Minimum Requirements for Project Design:*

- Demonstrate an understanding of the literature and of the issues in the specific area of service improvement of this application (TPR, Staff Training, Post-Legal Services or Recruitment).
- Describe how the project will use program components to reduce the caseload of waiting children or improve

services for children who have been adopted and their families.

- Describe how the project will use other agencies and disciplines to implement its program.
- Describe the model to be replicated or type of training to be provided.
- Provide assurances that the project will be staffed and implemented within 90 days of the notification of the grant award.

- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

*Subject Duration:* length of the project must not exceed 24 months.

*Federal Share of Project Cost:* The maximum Federal share of the project is \$150,000 for the Termination of Parental Rights and Post-Legal Adoption Services and \$100,000 for the minority recruitment and training.

*Matching or Cost Sharing*

*Requirements:* Grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$150,000 in Federal funds (based on an award of \$75,000 per budget period) must include a match of at least \$15,000 (10 percent of the total Federal cost).

*Anticipated Number of Projects to be Funded:* It is anticipated that five grants for each model will be funded.

### 1.05 Adoptive Placement of Foster Care Children

*Eligible Applicants:* Eligibility is limited to State social service agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from the receiving grants.

*Purpose:* To develop programs which will assist States in their efforts to increase the placement of foster care children legally free for adoption according to a pre-established plan and goals for improvement.

*Background Information:* The Adoption Opportunities legislation, as

amended by Public Law 100-294, authorizes the funding of grants to States to improve adoption services for the placement of special needs children who are legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received Federal grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Exchange's Network; to develop a consortium of States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs; and to form a national post-legal adoption consortium of States to focus on models of post-legal adoption services. More than half of the States have received grants in the above stated areas to improve adoption services.

Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placements in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient numbers of trained and experienced staff; and when there are available resources and administrative commitments to adoption and to coordinated community-based efforts.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the applicant should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placements.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application. (The rate of placement is the number of children placed divided

by the number of children waiting for adoption.)

- Describe the methods to be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.

- Propose and describe an evaluation component which would focus on the innovations to be used to improve the placement of children who are legally free for adoption and which would address the successes and failures of the initiative.

The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Data should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures to be used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.

- Document how the program would be continued beyond Federal funding or as part of the agency's ongoing program, if successful, and describe the specific steps which would be taken to accomplish this.

- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, D.C. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

*Project Duration:* The length of the project must not exceed 12 months.

*Federal Share of Project Costs:* The maximum Federal share of the project is \$100,000.

*Matching or Cost Sharing*

*Requirement:* Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$100,00 in Federal funds

must include a match of at least \$10,000 (10 percent of the total Federal cost).

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

#### 1.06 Respite Care as a Service for Families Who Adopt Children With Special Needs

*Eligible Applicants:* States, local government entities, public or private non-profit licensed child welfare or adoption agencies, university affiliated programs, licensed child care or respite care providers or incorporated adoptive parent groups with experience in working with adoptive populations.

*Purpose:* To develop or replicate a variety of affordable respite care models for adoptive parents of children with special needs, especially for adoptive parents of medically fragile or severely physically or emotionally disabled children.

*Background Information:* ACYF recognizes the need for respite services for adoptive families in order to maintain and support the family unit. Respite may be needed early in the adoptive placement or later in the child's development. Results of research studies indicate that the majority of care is requested to relieve the primary caregiver for vacations, emergencies and planned circumstances.

There are few specialized respite care programs for adoptive families that provide a period of temporary relief or rest from parental responsibilities despite the increasing availability of post-legal adoption services. Such programs can be especially helpful to families who adopt children with special needs by providing support during emergencies or respite from the daily demands of a special needs child. Generally, such respite care is provided by skilled caregivers or companions; however, with proper preparation it can also be provided by friends and relatives in the family's home or in another location.

In some respite programs training and reimbursement are offered to whomever the family designates as provider, an arrangement which is mutually satisfying because it allows the family to control the quality of care. Also, this approach may offer families living in rural areas the flexibility of locating their own provider since distance frequently limits respite resources.

Since 1990, ACYF has awarded grants to expand and develop respite care services for adoptive parents of children with special needs. These projects have developed services such as: payment to families to seek their own respite services in their own homes for short

periods of time and weekends; recruiting and training individuals to provide short breaks for adoptive parents and to provide supportive services to parents such as tutorial and recreational activities outside the home and sponsoring camp programs and other specialized events for the children and their families. The programs funded in 1990 which ended in September 1993 are the University of Kansas, Bureau of Child Research; La Hacienda Foster Care, Tucson, Arizona; University of Alabama at Birmingham; Mercy Respite Care Corporation, Grand Rapids, Michigan; Northwest Adoption Exchange, Seattle, Washington; New Haven Foster Family Agency, Vista, California; Department of Human Services, Trenton, New Jersey; Adoptive Parent Group of South Wisconsin, Inc., Madison, Wisconsin; Kent State University, Research and Graduate Studies, Kent, Ohio; Resources for Adoptive Parents, Minneapolis, Minnesota; Department of Human Resources, Reno, Nevada; Department of Human Resources, Atlanta, Georgia; and Department of Mental Health and Mental Retardation, Waterbury, Vermont. Information about these programs can be secured from the National Adoption Information Clearinghouse, 11426 Rockville Pike, Suite 410, Rockville, Maryland 20852, telephone: (301) 231-6512.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the applicant should:

- Describe plans to develop or replicate respite care models for the adoptive parents of special needs children that include, but are not limited to:
  - Facility-based models such as those located in churches, day care centers, community-based group homes, rehabilitation centers, and "mother's day out" programs, weekend respite, evening respite, and overnight respite programs;
  - In-home respite care services offered in the family's home and,
  - Respite host family services offered in the provider's home.
    - Describe respite care services that would be provided for parents of children who are medically fragile, or who have severe physical or emotional problems.
    - Describe the preparation, referral, follow-up, and counselling services that would be provided to respite service users.
    - Describe the collaboration that would be established with groups such as community recreational services,

churches, day care centers, group homes, residential treatment centers, adoptive parent groups, and University Affiliated Programs in the provision of the respite services.

- Describe the training that would be provided to service providers and how specific models of respite care would be developed or replicated.
- Estimate the number of special needs children and families that would be served and document that a sufficient volume of special needs adoptive families exists to support a program of the size proposed.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide assurances that at least one key person from the project will attend the annual Child Welfare Conference in Washington, DC. The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Cost:* The maximum Federal share of the project is \$450,000.

*Matching or Cost Sharing Requirement:* Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$450,000 in Federal funds (based on an award of \$150,000 per budget period) must include a match of at least \$45,000 (10 percent of the total Federal cost).

*Anticipated Number of Projects:* It is anticipated that a minimum of five projects will be funded.

#### Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with

the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

*A. Required Notification of the State Single Point of Contact*

The Adoption Opportunities Program is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs. When comments are submitted directly to ACF, they should be addressed to:

**ADDRESSES:** Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, S.W., Washington, DC 20447.

*B. Deadline for Submission of Applications*

**Deadline:** Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at:

**ADDRESSES:** Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

2. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.

**Late Applications:** Applications which do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

**Extension of Deadlines:** ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

*C. Instructions for Preparing the Application and Completing Application Forms*

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. *SF 424 Page 1, Application Cover Sheet.* Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

**Top of Page.** Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

**Item 1. Type of Submission—** Preprinted on the form.

**Item 2. Date Submitted and Applicant Identifier—**Date application is submitted to ACYF and applicant's own internal control number, if applicable.

**Item 3. Date Received By State—**State use only (if applicable).

**Item 4. Date Received by Federal Agency—**Leave blank.

**Item 5. Applicant Information**  
**Legal Name—**Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

**Organizational Unit—**Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

**Address—**Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and

P.O. Box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

**Item 6. Employer Identification Number (EIN)—**Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

**Item 7. Type of Applicant—**Self-explanatory.

**Item 8. Type of Application—**Preprinted on the form.

**Item 9. Name of Federal Agency—**Preprinted on the form.

**Item 10. Catalog of Federal Domestic Assistance Number and Title—**Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

**Item 11. Descriptive Title of Applicant's Project—**Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

**Item 12. Areas Affected by Project—**Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

**Item 13. Proposed Project—**Enter the desired start date for the project and projected completion date.

**Item 14. Congressional District of Applicant/Project—**Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

**Items 15. Estimated Funding Levels.** In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

**Item 15a.** Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum

amount specified in the priority area description.

*Items 15b-e.* Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part II, Sections E and F, and the specific priority area description.

*Item 15f.* Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

*Item 15g.* Enter the sum of items 15a-15e.

*Item 16a.* Is Application Subject to Review By State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1995.

*Item 16b.* Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

*Item 17.* Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

*Item 18.* To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

*Item 18a-c.* Typed Name of Authorized Representative, Title,

Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

*Item 18d.* Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

*Item 18e.* Date Signed—Enter the date the application was signed by the authorized representative.

*2. SF 424A—Budget Information—Non-Construction Programs.* This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

*Section A—Budget Summary.* This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

*Section B—Budget Categories.* This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period if the proposed project period is 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

*Justification:* Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries,

and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

*Fringe Benefits—Line 6b.* Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Travel—6c.* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

*Justification:* Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Equipment—Line 6d.* Enter the total costs of all equipment to be acquired by the project. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. For all other applicants, the threshold for equipment is \$500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

*Justification:* Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

*Supplies—Line 6e.* Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

*Justification:* Specify general categories of supplies and their costs.

*Contractual—Line 6f.* Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, Other.

*Justification:* Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements of \$25,000 for non-governmental and governmental entities and are requesting an award without competition should include a sole source justification in the application which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price. (*Note: Previous or past experience with a contractor is not sufficient justification for sole source.*)

*Construction—Line 6g.* Not applicable. New construction is not allowable.

*Other—Line 6h.* Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

*Justification:* Specify the costs included.

*Total Direct Charges—Line 6i.* Enter the total of Lines 6a through 6h.

*Indirect Charges—6j.* Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are

included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b) from (a). The remainder is what the applicant can claim as part of its matching cost contribution.

*Justification:* Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

*Total—Line 6k.* Enter the total amounts of lines 6i and 6j.

*Program Income—Line 7.* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

*Justification:* Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

*Section C—Non-Federal Resources.* This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR 74.2, as the value of non-cash contributions provided by non-Federal third parties. Their party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting

and specifically identifiable to the project or program.

*Justification:* Describe third party in-kind contributions, if included.

*Section D—Forecasted Cash Needs.* Not applicable.

*Section E—Budget Estimate of Federal Funds Needed For Balance of the Project.* This section should only be completed if the total project period exceeds 17 months.

*Totals—Line 20.* For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

*Section F—Other Budget Information.* *Direct Charges—Line 21.* Not applicable.

*Indirect Charges—Line 22.* Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

*Remarks—Line 23.* If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

### 3. Project Summary Description.

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first

part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. *Program Narrative Statement.* The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see Section C, Part II), using the following headings:

- (a) *Objectives and Need for Assistance;*
- (b) *Approach;*
- (c) *Results and Benefits Expected;* and
- (d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part II, Evaluation Criteria.

The narrative should be typed double-spaced on a single side of an 8½" × 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. *Organizational Capability Statement.* The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have

responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. *Part IV—Assurances/Certifications.* Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary; and Certification Regarding Environmental Tobacco Smoke. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug-Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496-7041.

#### D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

- One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
- Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
- Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424, REV 4-88);
- Budget Information—Non-Construction Programs (SF 424A, REV 4-88);
- Budget justification for Section B—Budget Categories;
- Table of Contents;
- Letter from the Internal Revenue Service to prove non-profit status, if necessary;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Project summary description and listing of key words;
- Program Narrative Statement (See Part II, Section C);
- Organizational capability statement, including an organization chart;
- Any appendices/attachments;
- Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88); and
- Certification Regarding Lobbying.

#### E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690-8243 or 690-6297.

The catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.652.

Dated: March 30, 1995.

**Olivia A. Golden**

*Commissioner, Administration on Children, Youth and Families.*

BILLING CODE 4184-01-P



**INSTRUCTIONS FOR THE SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

**Item and Entry**

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

- “New” means a new assistance award.
- “Continuation” means an extension for an additional funding/budget period for a project with a projected completion date.
- “Revision” means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by

each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

**BILLING CODE 4184-01-P**

OMB Approval No. 0348-0044

**BUDGET INFORMATION — Non-Construction Programs**

**SECTION A — BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

**SECTION B — BUDGET CATEGORIES**

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)  
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year				
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$	\$	\$	\$	\$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTALS (sum of lines 16 -19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

**INSTRUCTIONS FOR THE SF-424A****General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program required the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) Through (g.)

For *New applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) Through (g.)  
(continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter

in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e)

should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**ASSURANCES—NON-CONSTRUCTION PROGRAMS**

**Notes:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination

statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of

underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) with prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

\_\_\_\_\_  
Signature of authorized certifying official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Applicant Organization

\_\_\_\_\_  
Date Submitted

BILLING CODE 4184-01-P

**U.S. Department of Health and Human Services**  
**Certification Regarding Drug-Free Workplace Requirements**  
**Grantees Other Than Individuals**

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantees may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) \_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 6, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)*

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P



### Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provisions of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95-8760 Filed 4-7-95; 8:45 am]

BILLING CODE 4184-01-P

### Agency for Toxic Substances and Disease Registry

#### [Announcement 516]

### Public Health Conference Support Grant Program

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of funds in fiscal year (FY) 1995 funds for the Public Health Conference Support Grant Program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the Section Where To Obtain Additional Information.)

#### Authority

This program is authorized under Sections 104 (i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, [42 U.S.C. 9604 (i)(14) and (15)].

### Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

#### Eligible Applicants

Eligible applicants are the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

#### Availability of Funds

Approximately \$125,000 will be available in FY 1995 to fund approximately 6 awards. It is expected that the average award will be \$20,000, ranging from \$10,000 to \$30,000.

Applications requesting more than \$30,000 will be given a lesser priority and will be subject to the availability of funds. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economy class fare) for non-Federal employees.

2. Grant funds may *not* be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment/personal expenses, food or refreshments, cost of travel and payment of a full time Federal employee, for per diem or expenses other than local mileage for local participants, or reimbursement of indirect costs. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds *cannot* be used for this purpose.

### Recipient Financial Participation

Because this program provides *partial* funding only, it is necessary that organizations seeking these grant funds be able to show additional support in the form of finances, services, etc. For each organization contributing funding, a letter must be included documenting that support.

#### Purpose

This program will provide *partial* support for non-Federal conferences on disease prevention, health promotion, and information/education projects related to hazardous substances in the environment. Applications are being solicited for conferences on: (1) Health effects of toxic substances in the environment; (2) Disease and toxic substance exposure registries; (3) Hazardous substance removal and remediation; (4) Emergency response to toxic and environmental disasters; (5) Risk communication; (6) Environmental disease surveillance; and (7) Investigation and research on hazardous substances in the environment. Because conference support by ATSDR creates the appearance of ATSDR co-sponsorship, there will be active participation by ATSDR in the development and approval of those portions of the agenda supported by ATSDR funds. In addition, ATSDR will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. ATSDR funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by ATSDR. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda.

ATSDR reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

#### Program Requirements

Grantees must meet the following requirements:

A. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition and printing). Many of these items may be developed in conjunction with assigned ATSDR project personnel.

B. Provide draft copies of the agenda and proposed ancillary activities to ATSDR for approval. Submit copy of final agenda and proposed ancillary activities to ATSDR for approval.

C. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press releases, etc.). ATSDR must review and approve all materials with reference to ATSDR involvement or support.

D. Manage all registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures, etc.).

E. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

F. Develop and conduct education and training programs on prevention of health effects of hazardous substances.

G. Participate in the analysis of data from conference activities.

H. Collaborate with ATSDR staff in reporting and disseminating results and relevant prevention education and training information to appropriate Federal, State, and local agencies, and the general public.

#### Evaluation Criteria

Applications for support of the types of conferences listed in the Purpose section above will be reviewed and evaluated according to the following criteria:

##### A. Proposed Program and Technical Approach—50%

The description of: (a) the public health significance of the proposed conference including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment; (b) the feasibility of the conference in terms of an operational plan; (c) clearly stated conference objectives and the potential for accomplishing those objectives; and (d) the method of evaluating the conference.

##### B. The Qualification of Program Personnel—30%

Evaluation will be based on the extent to which the proposal has described: (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish the proposed conference.

##### C. Applicant Capability—20%

Evaluation will be based on the description of (a) the adequacy and

commitment of institutional resources to administer the program, and (b) the adequacy of the facilities to be used for the conference.

##### D. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. Applications requesting funds in excess of \$30,000 may not be fully funded, depending upon availability of funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

#### Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.161.

#### Application Submission and Deadline

The original and two copies of the Application Form PHS 5161-1 (OMB Number 0937-0189) shall be submitted to Henry S. Cassell, III, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Rd., NE., Room 300, Mailstop E-13, Atlanta, GA 30305, on or before June 13, 1995. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

##### 1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the review committee. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

##### 2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

#### Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 516. You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from Margaret A. Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, telephone (404) 842-6797. Programmatic technical assistance may be obtained from Diana Cronin, Project Officer, Agency for Toxic Substances and Disease Registry, Division of Health Education, 1600 Clifton Road, NE., Mailstop E-33, Atlanta, GA 30333, telephone (404) 639-6206.

Please refer to Announcement 516 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: April 4, 1995.

#### David Satcher,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95-8716 Filed 4-7-95; 8:45 am]

BILLING CODE 4163-70-P

#### Centers for Disease Control and Prevention

#### Agency for Toxic Substances and Disease Registry Policy on the Inclusion of Women and Minorities in Externally Awarded Research

**AGENCY:** Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice is a request for comments on the CDC<sup>1</sup> policy on the inclusion of women and minorities in externally awarded research. This policy is intended to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC supported studies involving human subjects, whenever feasible and appropriate. Furthermore, it is CDC policy to proactively identify significant gaps in knowledge about health problems that affect women and racial and ethnic minority populations and to encourage studies which address these problems. (NOTE: This policy is consistent with requirements for CDC intraagency research.)

**DATES:** Written comments on the policy must be received on or before June 9, 1995. This policy, when finalized, will be applicable for all CDC externally awarded projects submitted on and after October 1, 1995.

**ADDRESSES:** Written comments can be sent to the Centers for Disease Control and Prevention, Attention: Office of the Associate Director for Science, Mailstop D-39, 1600 Clifton Road, NE., Atlanta, GA 30333.

**FOR FURTHER INFORMATION CONTACT:** Inquiries should be directed to Dixie E. Snider, Jr., M.D., M.P.H., telephone (404) 639-3701 or Barbara W. Kilbourne, R.N., M.P.H., telephone (404) 639-1242.

**SUPPLEMENTARY INFORMATION:** CDC Policy on the Inclusion of Women and Minorities in Externally Awarded Research.

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CDC Inclusion Review Committee  
Responsibility and Members

### I. Introduction

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) are committed to protecting the health of all people regardless of their sex, race, ethnicity, national origin, religion, sexual orientation, socioeconomic status, or other characteristics. To the extent that participation in research offers direct benefits to the participants, underrepresentation of certain population subgroups denies them the opportunity to benefit. Moreover, for purposes of generalizing study results, investigators must include the widest possible range of population groups.

A growing body of evidence indicates that the health conditions and needs of women are different from those of men. Some health conditions are unique to women and others are more prevalent in women. For some illnesses, there are marked distinctions, not only in onset and progression of disease, but also in the preventive, treatment and educational approaches necessary to combat them in women. Furthermore, initial entry into the health care system may be different for some subgroups of women, such as poor and uninsured women. Lesbians may also enter the health care system differently because they may be less likely to seek or receive prevention services, like cancer screening, because they may not seek or receive family planning services. The Public Health Service Task Force on Women's Health Issues published a report in 1987 stating that it is becoming more important to note the environmental, economic, social, and demographic characteristics that influence a woman's health status. The Task Force focused in on the direct and indirect effects these factors could have on the status of a woman's health and noted that when a woman is "outside the normal range of societal expectations," that is, she is of an ethnic or cultural minority or if she is physically or mentally disabled, her health status is at greater risk. These basic observations are not always recognized or reflected in study protocols and proposals.

The disparity in health outcomes between majority and some racial and ethnic minority groups is now well documented. Although some minority populations, e.g., some Asian groups, have better overall health status than non-Hispanic whites, many racial and ethnic minority populations have dramatically shorter life expectancy,

higher morbidity rates and inadequate access to quality health care. The Secretary's Task Force on Black and Minority Health issued a report in 1985 noting the underrepresentation of racial and ethnic minorities in research. This underrepresentation has resulted in significant gaps in knowledge about the health of racial and ethnic minority populations and their responses to interventions.

### II. Definitions

#### A. Human Subjects

Under this policy, the definition of human subjects in Title 45 CFR Part 46, the Department of Health and Human Services regulations for the protection of human subjects applies: "Human subject means a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual or (2) identifiable private information."

#### B. Research

Under this policy, the definition of research in Title 45 CFR Part 46, the Department of Health and Human Services regulations for the protection of human subjects applies: "Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." All proposed research involving human subjects conducted using CDC funding will be evaluated for compliance with this policy, including those projects that are exempt from Institutional Review Board (IRB) Review (as specified in Title 45 CFR Part 46). However, nothing in this policy is intended to require IRB review of protocols which otherwise would be exempt. This policy applies to all CDC externally awarded research regardless of the mechanism of financial support (e.g., grant, cooperative agreement, contract, purchase order, etc.). This policy does not apply to those projects in which the investigator has no control over the composition of the study population (e.g., cohort studies in which the population has been previously selected or research follow-up to outbreak investigations).

#### C. Racial and Ethnic Categories

##### 1. Minority Groups

This policy shall comply with the Office of Management and Budget (OMB) Directive No. 15 and any changes that may occur as it is reviewed and revised. OMB Directive No. 15 defines the minimum standard of basic racial and ethnic categories, which are used below. Despite their limitations (as

<sup>1</sup> References to CDC also apply to the Agency for Toxic Substances and Disease Registry (ATSDR).

outlined in the Public Health Reports "Papers from the CDC/ATSDR Workshop on the Use of Race and Ethnicity in Public Health Surveillance"), these categories are useful because they allow comparisons to many national data bases, especially Bureau of the Census and national health data bases. Therefore, the racial and ethnic categories described below should be used as basic minimum guidance, cognizant of their limitations.

**American Indian or Alaskan Native:** A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**Asian or Pacific Islander:** A person having origins in any of the original peoples of Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

**Black, not of Hispanic Origin:** A person having origins in any of the black racial groups of Africa.

**Hispanic:** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

## 2. Majority Group

**White, not of Hispanic Origin:** A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

While investigators should focus primary attention on the above categories, CDC recognizes the diversity of the population. For example, Blacks describe themselves in several different ways: African American and Caribbean (Haitian, Jamaican, West Indian, Trinidadian). Native Hawaiians have expressed the desire to be considered a separate racial/ethnic category exclusive of the current Asian/Pacific Islander designation. Therefore, investigators are encouraged to investigate national or geographic origin or other cultural factors (e.g., customs, beliefs, religious practices, etc.) in studies of race and ethnicity, and their relationship to health problems. Furthermore, since race, ethnicity, and cultural heritage may serve as markers for other important characteristics or conditions associated with a health problem or outcome, investigators should actively seek to identify these other characteristics or conditions.

## III. Policy

### Research Involving Human Subjects

Applicant institutions must ensure that women and racial and ethnic

minority populations are appropriately represented in their proposals for research. Women and members of racial and ethnic minority groups should be adequately represented in all CDC-supported studies involving human subjects, unless a clear and compelling rationale and justification establishes to the satisfaction of the CDC that inclusion is inappropriate or clearly not feasible. This policy does not apply to studies when the investigator cannot control the race, ethnicity, and sex of subjects; however, women and racial and ethnic minority populations must not be routinely and/or arbitrarily excluded from such investigations. Women of childbearing potential should also not be routinely and/or arbitrarily excluded from participation; however, there are ethical/risk issues to consider for exclusion. Information on differences in outcome or risk profiles should be further reason for exclusion. Therefore, pregnancy status may need to be determined prior to enrollment for some studies and, if necessary, during an intervention to safeguard the participants' health.

## IV. Guidance for Applicant Institution Investigators and Decision Makers in Complying With This Policy

### A General

In determining whether special efforts should be made to set specific enrollment goals for women and members of racial and ethnic minority groups in research or whether to design special studies to specifically address health problems in such populations, principal investigators should consider the following points:

- Is the disease or condition under study unique to, or is it relatively rare in men, women or one or more racial and ethnic minority populations?
- What are the characteristics of the population to which the protocol results will be applied? Does it include both men and women? Does it include specific racial and ethnic minority populations?
  - Are there scientific reasons to anticipate significant differences between men and women and among racial and ethnic minority populations with regard to the hypothesis under investigation?
  - Are there study design or recruitment limitations in the protocol that could result, unnecessarily, in underrepresentation of one sex or certain racial and ethnic minority populations?
  - Could such underrepresentation cause an adverse impact on the

generalizability and application of results?

- Is the underrepresentation correctable?
- Does racial and ethnic characterization of study subjects serve a *bona fide* purpose or might it serve only to stigmatize a group?

Inclusion of women and/or racial and ethnic minority groups in research can be addressed either by including all appropriate groups in one single study or by conducting multiple studies. In general, protocols and proposals for support of studies involving human subjects should employ a design with sex and/or minority representation appropriate to the scientific objectives. It is not an automatic requirement that the study design provide sufficient statistical power to answer the questions posed for men and women and racial and ethnic groups separately; however, whenever there are scientific reasons to anticipate differences between men and women and/or racial and ethnic groups, with regard to the hypothesis under investigation, investigators should include an evaluation of these sex and minority group differences in the study proposal. If adequate inclusion of one sex and/or minority group is impossible or inappropriate with respect to the purpose of the proposed study, or if in the only study population available, there is a disproportionate representation of one sex or minority/majority group, the rationale for the study population must be well explained and justified. The cost of inclusion of women and/or racial and ethnic minority groups shall not be a permissible consideration for exclusion from a given study unless data regarding women and/or racial and ethnic minority groups have been or will be obtained through other means that provide data of comparable quality. Acceptable reasons for exclusion are as follows:

- (1) Inclusion is inappropriate with respect to the health of the subjects;
  - (2) Inclusion is inappropriate with respect to the purpose of the study;
  - (3) There is substantial scientific evidence that there is no significant difference between the effects that the variables to be studied have on women and/or racial and ethnic minority groups;
  - (4) There are already substantial scientific data on the effects that variables have on the excluded population;
  - (5) Inclusion is inappropriate under other circumstances determined acceptable by the CDC.
- In each protocol or proposal, the composition of the proposed study

population must be described in terms of sex and racial and ethnic group together with a rationale for its choices. Sex and racial and ethnic issues should be addressed in developing a study design and sample size appropriate for the scientific objectives of the investigation. The proposal should contain a description of the proposed outreach programs, if necessary, for recruiting women and racial and ethnic minorities as participants. Investigators must safeguard the consent process by promoting open and free communication with the study participants. Investigators must seek to understand cultural differences and variety of languages inherent in the population to be enrolled. The possibility of non-proficiency of speaking and/or reading English by a potential study participant must be considered and assurances given that adequate provision has been made for appropriate translation of the consent document or the availability of translators to ensure an adequate understanding of the research.

#### *B. Studies of Public Health Interventions*

Investigators must consider the following when planning an intervention trial:

- If the data from prior studies strongly indicate the existence of significant differences of clinical or public health importance in intervention effect between the sexes or among racial and ethnic populations, the primary question(s) to be addressed by the scientific investigation and the design of that study must specifically accommodate this. For example, if men, women, and racial and ethnic minority groups are thought to respond differently to an intervention, then the study should be designed to answer separate primary questions that apply to men, women, and/or specific racial and ethnic groups with adequate sample size for each.

- If the data from prior studies strongly support no significant differences of clinical or public health importance in intervention effect between subgroups, then sex and race and ethnicity are not required as subject selection criteria. However, the inclusion of sex and racial and ethnic subgroups is still strongly encouraged.

- If the data from prior studies neither support nor negate the existence of significant differences of clinical or public health importance in intervention effect, then the study should include sufficient and appropriate entry of men and women and racial and ethnic minority populations so that valid analysis of the

intervention effect in each subgroup can be performed.

- If women of childbearing potential are to be included and if there is a reason to suspect that there may be adverse events in pregnant women, pregnancy status may need to be determined prior to enrollment for some intervention trials.

#### **V. Implementation**

##### *A. Date of Implementation*

This policy applies to all CDC externally awarded projects submitted on and after October 1, 1995.

##### *B. Roles and Responsibilities*

Certain individuals and groups have special roles and responsibilities with regard to the implementation of these guidelines.

##### **1. Applicant Institution Investigators**

Applicant institution investigators should assess the theoretical and/or scientific linkages between sex and race and ethnicity and their topic of study. Following this assessment, the applicant institution investigator will address the policy in each protocol, application and proposal, providing the required information on inclusion of women and minorities in studies, and any required justifications for exceptions to the policy.

##### **2. CDC Technical/Peer Review Groups**

In conducting technical/peer review of contract, grant, or cooperative agreement applications for scientific and technical merit, CDC Center/Institute/Office (C/I/O) Directors will ensure that CDC technical/peer review groups, to the extent possible, should include women and racial and ethnic minorities and will do the following:\*

- Evaluate the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation or evaluate the proposed justification when representation is limited or absent.
- Evaluate the proposed exclusion of a certain racial and ethnic minority population and males or females on the basis that a requirement for inclusion is inappropriate.

\*C/I/O Directors may waive this requirement if it is clearly inappropriate or clearly not feasible.

- Determine whether the design of the study is adequate to measure differences when warranted.
- Evaluate the plans for recruitment and outreach for study participants including whether the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

- Include these criteria as part of the technical assessment and assign a score.

##### **3. CDC Center/Institute/Office Directors**

CDC C/I/O Directors are responsible for ensuring that CDC externally awarded research involving human subjects meet the requirements of these guidelines. CDC C/I/O Directors will also inform externally awarded investigators concerning this policy and monitor its implementation during the development, review, award, and conduct of research.

##### **4. CDC Institutional Review Boards (IRBs)**

CDC IRBs are responsible for ensuring that CDC investigators have adequately addressed the inclusion of women and racial and ethnic minorities in research protocols that require CDC IRB approval.

##### *C. External Award Consideration*

CDC project officers shall design their Requests for Contracts and Requests for Assistance in compliance with this policy. CDC C/I/O Directors shall ensure this policy is fully considered and implemented prior to the release of the Request for Contract and Request for Assistance to the CDC Procurement and Grants Office. CDC funding components will not award any grant, cooperative agreement, or contract nor support any externally funded project to be conducted or funded in fiscal year 1996 and thereafter which does not comply with this policy.

##### *D. Recruitment Outreach by Externally Awarded Investigators*

Externally awarded investigators and their staff(s) are urged to develop appropriate and culturally sensitive outreach programs and activities commensurate with the goals of the research. The purpose should be to establish a relationship between the investigator(s), populations, and community(ies) of interest so that mutual benefit is achieved by all groups participating in the study. Investigators should document the process for establishing a partnership with the community(ies) and the mutual benefits of the study and ensure that any factors (e.g., educational level, nonproficiency in English, low socioeconomic status) are accounted for and handled appropriately. In addition, investigator(s) and staff(s) should take precautionary measures to ensure that ethical concerns are clearly noted, such that there is minimal possibility of coercion or undue influence in the incentives or rewards offered in

recruiting into or retaining participants in scientific studies.

#### *E. Dissemination of Research Results*

Externally awarded investigators are urged to make special efforts to disseminate relevant research results to the communities who participated in the studies and to the populations to which they pertain, especially racial and ethnic minority populations which may have cultural, language, and socioeconomic barriers to the easy receipt of such information.

### **VI. Evaluation**

#### *CDC Inclusion Review Committee Responsibility and Members*

A CDC Inclusion Review Committee (IRC) with representatives from the CDC Office of the Associate Director for Science, the CDC Office of the Associate Director for Minority Health, and the CDC Office of the Associate Director for Women's Health will review any questions, issues, or comments pertaining to this policy and recommend necessary changes or modifications to the Director, CDC. This committee will meet regularly to review compliance with this policy and evaluate the impact of this policy on research activities at CDC. The CDC IRC may periodically conduct random audits of research protocols to assess compliance with this policy.

Dated: March 30, 1995.

**Claire V. Broome,**

*Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).*

[FR Doc. 95-8718 Filed 4-7-95; 8:45 am]

BILLING CODE 4163-18-P

#### [Announcement 525]

### **Continuation of the Development of Technology for the Measurement of Lead in Blood; Notice of Availability of Funds for Fiscal Year 1995**

#### **Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a grant program for the continuation of the development of new and innovative technology, or significant improvement of existing technology, for the measurement of lead in blood. CDC has supported such development efforts under a grant program since FY 1992 and under Cooperative Research and Development Agreements (CRADAs) since 1991. State, community and physician office-based childhood lead poisoning

prevention programs have a need for reasonably priced, accurate, precise, portable, rugged, and easy-to-operate instruments or analytical techniques to measure the concentration of lead in blood. Such programs screen large numbers of infants and young children and identify those with lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section **Where To Obtain Additional Information.**)

#### **Authority**

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317B(b) [42 U.S.C. 247b-3(b)] of the Public Health Service Act, as amended.

#### **Smoke-Free Workplace**

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

#### **Eligible Applicants**

Eligible applicants are limited to those organizations which are currently developing innovative technology for the measurement of lead in blood, funded under CDC grant Announcement 269 (included in the application package), or organizations which have a current CDC Cooperative Research and Development Agreement (CRADA) dealing with blood lead measurement technology. However, if funded, the CDC CRADA dealing with blood lead will be terminated.

**Note:** Eligible applicants are encouraged to enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

#### **Availability of Funds**

Approximately \$800,000 is available in FY 1995 to fund up to three grants. It is expected that the average award will be \$250,000, ranging from \$100,000 to \$500,000. It is expected that the awards will begin on or about June 30, 1995, and will be made for a 12-month budget period within a project period of

up to one year. Funding estimates may vary and are subject to change.

#### **Purpose**

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. Universal screening of children is recommended in "Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control," (October 1991); however, the lack of analytical systems (methods plus instrumentation) which are easy-to-operate, rugged, and suitable for field use in screening programs have made it difficult and costly for agencies to develop programs for the elimination of this totally preventable disease. This program will provide financial support for the continuation and possible completion of the development and validation of new and innovative technology leading to better blood lead measurement systems.

#### **Program Requirements**

The following are essential requirements of the Grantee:

1. Provide a principal investigator with the authority, responsibility, and research experience to carry out the objectives of the grant.
2. Provide qualified staff, laboratory and/or production facilities, equipment, and other resources necessary to carry out the objectives of the grant.
3. Conduct a scientifically sound, goal-oriented research and development program which will yield all or portions of practical analytical systems which measure one or more chemicals in complex solutions. Understand and address the difficult analytical problem presented by a blood sample matrix.
4. Publish the results of the research effort in the peer-reviewed scientific literature, or otherwise make the research findings available for objective evaluation and use.
5. Provide evidence of significant progress under the previous grant or CRADA for blood lead measurement technology consistent with the goals and objectives of the original grant or CRADA, and clearly show that successful completion could be reasonably expected within the one year project period.

#### **Evaluation Criteria**

The applications will be reviewed and evaluated according to the following criteria:

##### *1. Understanding of the Problem (30%)*

By progress under previous grant or CRADA agreement, the Applicant has

demonstrated understanding of whole blood matrix effects, interferences, and contamination issues. Applicant's prototype instrument(s) and/or experimental data address CDC criteria of accuracy, precision, compactness, ruggedness and ease of use, as described in grant Announcement 269 and/or CRADA agreement.

#### 2. Technical Progress and Approach to Remaining Problems (30%)

Sound technical approach, as demonstrated by analytical performance of applicant's prototype instruments or experimental data. Performance should meet CDC criteria, or show evidence of adequate performance attainable under this announcement.

#### 3. Management Plan (20%)

Applicant should describe a plan to finalize the development of their instrument as a manufacturable, marketable, commercial product. Key points include appropriate business resources or collaborations, market research, field testing, regulatory compliance, distribution and support, or plans to sell the technology to a third party for final production and marketing.

#### 4. Program Personnel (10%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering or other relevant scientific disciplines, (b) detailed allocations of time and effort of staff devoted to the project.

#### 5. Collaboration (5%)

While collaboration is not required, it is encouraged if necessary to accomplish the research objectives in a timely manner. If applicable, the applicant should have demonstrated the ability to collaborate with other research centers, manufacturers, or commercial interests to conduct the described research and development plan. Evidence of collaborative relationships include jointly developed plans for developing separate components of the analytical system and written commitments of support from other program-related entities that describe the collaborative activities or serious negotiation or agreements with companies experienced in the development, marketing and support of clinical instruments.

#### 6. Publication of the Research Effort (5%)

The purpose of this grant is to encourage the rapid development and

deployment of measurement systems for blood lead which will be useful in lead poisoning prevention screening programs. Therefore, an explanation of how the grantee plans to encourage the publication of the research findings or otherwise make the information available to the public is required.

*Research which results only in findings of academic interest with no practical application to the objectives of the grant is not acceptable.*

#### 7. Budget Justification (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

#### 8. Human Subjects Review (Not Scored)

The applicant must clearly indicate whether or not human subjects will be involved in their research.

#### Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

#### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

#### Other Requirements

##### Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

##### Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

#### Application Submission and Deadline

The original and five copies of the application form PHS 398 (OMB Number 0925-0001) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, on or before May 31, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6630. Programmatic technical assistance may be obtained from Dayton T. Miller, Ph.D. or Robert L. Jones, Ph.D., Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F-18, Atlanta, GA 30341-3724, telephone (404) 488-4452.

Please refer to Announcement 525 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the "Introduction"

through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

A copy of "Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control," (October 1991) may be obtained from the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F-28, Atlanta, GA 30333, telephone (404) 488-7330.

Dated: April 3, 1995.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-8717 Filed 4-7-95; 8:45 am]

BILLING CODE 4163-18-P

**CDC Advisory Committee on the Prevention of HIV Infection: Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announced the following committee meeting.

*Name:* CDC Advisory Committee on the Prevention of HIV Infection.

*Times and Dates:* 9 a.m.-4:30 p.m., May 8, 1995; 9 a.m.-12 noon, May 9, 1995.

*Place:* Sheraton Colony Square Hotel, 188 14th Street, NE, Atlanta, Georgia 30061.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This committee charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of HIV infection and AIDS, the epidemiologic and laboratory study of HIV and AIDS, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

*Matters to Be Discussed:* The Committee will be updated on the ongoing reorganization of CDC's HIV/AIDS prevention programs. Other discussions will center around current HIV prevention activities. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE, Mailstop E-40, Atlanta, Georgia 30333, telephone (404) 639-2918.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-8715 Filed 4-7-95; 8:45 am]

BILLING CODE 4163-18-M

**National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting**

Pursuant to Pub. L. 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

*Name:* NCVHS Subcommittee on Mental Health Statistics.

*Time and Date:* 9 a.m.-5 p.m., May 17, 1995.

*Place:* Room 503A-529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The Subcommittee will continue to work in developing managed care minimum data sets for enrollment and encounter data.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436-7050.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-8714 Filed 4-7-95; 8:45 am]

BILLING CODE 4163-18-M

**Health Care Financing Administration**

[MB-84-N]

RIN 0938-AG77

**Medicaid Program; Rescission of the Guidelines for Documenting Medicaid Recipient Access to Immunizations Under the Vaccines for Children (VFC) Program**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice rescinds the guidelines that we published in the **Federal Register** on October 3, 1994, that required States to document equal access to immunizations for Medicaid children if States elected to use lower vaccine administration fees than the maximum charges that were published and applicable under the Vaccines for Children program. These guidelines are rescinded in response to public comments on the October 3, 1994 notice. States indicated that there were numerous problems regarding the collection of useable data.

**FOR FURTHER INFORMATION CONTACT:** Marge Sciulli, (410) 966-0691.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 3, 1994, we published in the **Federal Register** a notice with comment period (59 FR 50235) that listed, by State, the interim regional maximum charges that providers may impose for the administration of pediatric vaccines to Federally vaccine-eligible children under the Vaccines for Children (VFC) Program. (The VFC Program, which became effective on October 1, 1994, required States to provide a program for the purchase and distribution of pediatric vaccines to registered providers.) State Medicaid agencies may establish lower Medicaid fees than the maximum charges. According to the guidelines, States were required to provide assurances of equal access to immunizations for Medicaid children to the same extent as for the general population, unless their Medicaid payment rates equaled the maximum charges.

The October 3, 1994, notice allowed States the option of using one or more of the following guidelines to document equal access to immunizations for Medicaid children:

(1) Comparison of Ratios. In order for a State to have used this guideline as an equal access assurance, the ratio of Medicaid children immunized to the number of Medicaid children would have to be equal to or greater than the ratio of children in the general population immunized to the number of children in the general population.

(2) Comparison to Private Insurance. In order for the State to have used this guideline as an equal access assurance, the Medicaid rates for the administration of pediatric vaccines would have to be set at a rate equal to or greater than the private insurance company's rates up to the established State maximum fee.

(3) Practitioner Participation. Under this guideline, the State would have compared the number of Medicaid pediatric practitioners who are Medicaid program-registered providers to the total number of pediatric practitioners providing immunizations to children. The program-registered providers must have at least one Medicaid pediatric immunization claim per month or an average of 12 such claims during the year. The State would have needed 50 percent participation to show equal access through use of this guideline.

(4) Other. States had the flexibility to devise alternative measures of equal access to immunizations. These measures were to have been evaluated by HCFA before being found acceptable.

The October 1994 notice required State Medicaid agencies to specify the reimbursement for the administration of the pediatric vaccines, and, if applicable, submit documentation of equal access, due by April 1 of each year, beginning April 1, 1995 (and which is effective July 1, 1995), as part of its obstetrical/pediatric payment rate State Medicaid plan amendment submittal. The notice also stated that if the State Medicaid agency elected to pay the maximum regional amount statewide, it need only specify this in its State plan amendment submittal (no additional documentation would have been needed). However, if the State Medicaid agency elected to vary the vaccine administration fee by geographic areas within the State, the State must list the administration fee, specify the methodology, and provide data for each geographic area where the maximum charges are not applied. Additionally, the notice stated that, because of the October 1, 1994 implementation date, the State plan amendment must have been submitted by December 31, 1994, and have been effective October 1, 1994. For the interim period of October 1, 1994, through March 31, 1995, the notice provided that States may claim Federal matching funds for the costs of administration of vaccines to Medicaid-eligible children using the maximum charges or lower fees established on the basis of the guidance provided in the notice. For this interim State plan amendment, the State would have been required to submit the methodology to document access to immunizations but would not have been required to supply supporting data by which Medicaid beneficiary access to immunizations was assured. Beginning April 1, 1995, documentation of equal access to immunizations would have been required to be included as part of the yearly obstetrical/pediatric State plan amendment submittal in accordance with section 1926 of the Social Security Act.

## II. Rescission of Access Guidelines

As a result of our preliminary review of public comments on the October 1994 notice regarding the documentation of access requirements, we are rescinding the requirement that States use the access guidelines to provide assurances of equal access, pending further evaluation.

Following are some of the problems the commenters identified with the access requirements:

- Difficulties in obtaining current data on the number of children in the general population who have received

immunizations, despite the fact that States have data on the number of Medicaid children who have been immunized.

- Difficulties in obtaining private insurance information only on administration fee reimbursement. It is unlikely that private insurance companies will have a reimbursement rate that only covers the provider's costs for administration of the immunization.

- Difficulties in obtaining useable data currently. These problems stem from the fact that some States have not yet implemented the VFC Program for private providers.

- Difficulties in obtaining VFC Program reimbursement data. Due to the October 1, 1994, implementation date, most of the claims data that would be used to document access in April 1995 would reflect provider participation based on the current reimbursement system rather than reimbursement through the VFC program.

- Difficulties in obtaining reliable and meaningful measures of access. Commenters urged HCFA to develop meaningful measures of access for vaccines and for all other obstetrical and pediatric services.

As a result of the rescission of the access guidelines, States will not be required to provide a methodology or data to document that payment levels are sufficient to enlist enough providers so that immunizations under the State plan are available to Medicaid recipients at least to the extent that those services are available to the general population.

HCFA is forming a workgroup that will examine alternative measures of access to vaccines. After this examination is completed, we will evaluate the various suggestions of the group and formulate specific guidelines for States. These guidelines, along with responses to all other timely public comments on the October 3, 1994, notice, will be published in a final **Federal Register** document.

In accordance with the provisions of Executive Order 12866, this notice has been reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: February 5, 1995.

**Bruce C. Vladek,**  
*Administrator, Health Care Financing Administration.*

Dated: March 2, 1995.

**Donna E. Shalala,**  
*Secretary.*

[FR Doc. 95-8646 Filed 4-4-95; 4:13 am]

BILLING CODE 4120-01-P

## Substance Abuse and Mental Health Services Administration

### Hearing Procedures for Certain Issues Related to the Substance Abuse Prevention and Treatment and the Community Mental Health Services Block Grant Programs

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** Notice.

**SUMMARY:** SAMHSA administers two block grant programs: the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program and the Community Mental Health Services (CMHS) Block Grant Program, both of which are authorized by Title XIX of the Public Health Service (PHS) Act. Section 1945(e) of the PHS Act provides a State the opportunity for a hearing on certain noncompliance issues relating to the block grants prior to the Secretary taking final action against the State. To the extent that the hearing procedures contained in 45 CFR part 96, subpart E, 42 CFR part 50, subpart D, or 45 CFR part 16 do not apply to the noncompliance issue raised, the guidelines established below for hearings will apply to assist in providing a prompt and orderly hearing. When these procedures are applicable, the State will be provided a copy of the procedures with the notice of noncompliance.

These procedures are currently effective. However, we are inviting comments from the public on the procedures and such comments are to be sent to the information contact person identified immediately below within 60 days from the date of this publication. Comments received will be carefully considered and may cause the procedures to be revised.

**FOR FURTHER INFORMATION CONTACT:** Richard Kopanda, Acting Executive Officer, SAMHSA, 5600 Fishers Lane, Room 12-105, Rockville, MD 20857, Telephone No. (301) 443-3875.

### Hearing Procedures

#### *Sec. 1. Limitations on Issues Subject to Review During the Hearing*

The scope of review shall be limited to (a) the facts relevant to the noncompliance at issue, and (b) the necessary interpretations of those facts, any applicable regulations, and other relevant law. The legal validity of any regulations or statutes shall not be subject to review under these procedures.

*Sec. 2. The Request for a Hearing and the Hearing Official's Response*

(a) The State must submit a written notice to the Substance Abuse and Mental Health Services Administration (SAMHSA) requesting a hearing within 15 days of the date of the notice of noncompliance (which will set forth the reasons for the finding of noncompliance and be accompanied by a copy of these hearing procedures), unless some other time period is agreed to by the parties. The written notice must be sent to (*name and address of person identified in the letter to the State*). The written notice requesting a hearing must include a copy of the notice of noncompliance and a brief statement of why the decision of noncompliance is wrong.

(b) Within ten days after receiving the request for review, SAMHSA will send an acknowledgment, identify the hearing official and advise the State of the next steps.

*Sec. 3. The Procedures for Development of the Hearing File and Submission of Written Argument*

The procedures for development and the submission of written argument are as follows:

(a) *State's documents and briefs.*

Within 30 days after receiving the acknowledgment of the request for a hearing, the State shall submit to the hearing official the following (with a copy of SAMHSA at the address listed in sec. 2):

(1) A written statement, not to exceed 20 double-spaced pages, explaining why the Government's determination of noncompliance is wrong.

(2) A review file containing the documents supporting the State's argument, tabbed and reasonably organized, and accompanied by an index identifying each document. Only essential documents should be submitted to the hearing official.

(b) *SAMHSA's Documents and Brief.*

Within 30 days after receiving the State's submission, SAMHSA shall submit to the hearing official the following (with a copy to the State):

(1) A written statement, not exceeding 20 double-spaced pages in length, responding to the State's brief.

(2) A review file containing documents supporting the Government's decision of noncompliance, tabbed and reasonably organized, and accompanied by an index identifying each document. Only essential documents should be submitted to the hearing official.

(c) *The State's Reply Brief.* Within 15 days after receiving SAMHSA's

submission, the State may submit a short reply not to exceed 10 double-spaced pages (with a copy to SAMHSA at the address listed in sec. 2).

*Sec. 4. Opportunity for Oral Presentation*

(a) *Electing Oral Presentation.* Either the Federal Government or the State may request the opportunity for an oral presentation by submitting such a request in writing to the hearing official on or before the date the State is to submit its reply brief under section 3(c). The hearing official will grant the request if the official determines that a genuine and substantial issue of fact has been raised by the material submitted and that the consideration of the issue will benefit from an oral presentation. The hearing official may also upon his or her initiative request an oral presentation by the parties.

(b) *Preliminary Conference.* The hearing official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: Simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally. The hearing official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(c) *Time and Place of Oral Presentation.* The hearing official will attempt to schedule the oral presentation, if granted, within 30 days of the date of the last reply brief. The oral presentation will be held at a time and place determined by the hearing official following consultation with the parties.

(d) *Conduct of the Oral Presentation.*

(1) *General.* The hearing official is responsible for conducting the oral presentation. The hearing official may be assisted by one or more of his or her employees or consultants in conducting the oral presentation and hearing the evidence. While the oral presentation will be kept as informal as possible, the hearing official may take all necessary steps to ensure an orderly proceeding.

(2) *Admission of Evidence.* The formal rules of evidence do not apply and the hearing official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the

prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the hearing official. The hearing official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(3) *Transcripts.* The hearing official may have the oral presentation transcribed and, if so transcribed, the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(e) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505, 1001, or related statutes or regulations.

(f) *Post-hearing Procedures.* At his or her discretion, the hearing official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

*Sec. 5. Burden of Proof*

In all cases, the Government bears the burden of proving by a preponderance of the evidence that the State has not complied with the relevant provisions of the law. However, if a State is required to expend or otherwise account for money in a particular manner, the State shall have the burden of producing audible records to show how the money was spent or otherwise accounted for or there will be a presumption created that the State did not expend or otherwise account for the funds correctly.

*Sec. 6. Ex Parte Communications*

Except for minor or routine administrative and procedural matters, a party shall not communicate with the hearing official or his or her staff on the matter without notice to the other party. All written communications to the hearing official shall simultaneously be submitted to the other party.

*Sec. 7. Transmission of Written Communications and Calculation of Deadlines*

(a) Because of the importance of a timely review, all written communications are to be transmitted by facsimile or overnight express mail.

The date of transmission (for facsimile) or the day following mailing (for overnight mail) will be considered the date of receipt.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

**Sec. 8. Appointment of and Authority and Responsibilities of Hearing Official**

There shall only be one hearing official appointed to the case and that hearing official shall be appointed by the Administrator of SAMHSA. In addition to any other authority specified in these procedures, the hearing official shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

**Sec. 9. Administrative Record**

The administrative record of review consists of the review file including the government's notice and the State's request for a hearing; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the hearing official.

**Sec. 10. Written Recommendation**

(a) *Issuance of Recommendation.* The hearing official shall issue a written recommendation on the case which will be transmitted to the Secretary for a final decision. The written recommendation will set forth the reasons for the recommendation and describe the basis therefore in the record. The hearing official will send a

copy of the recommendation to the State and SAMHSA.

(b) *Date of Recommendation.* The hearing official will attempt to issue his or her recommendation within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the recommendation will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the hearing official will immediately communicate the recommendation to each party.

Dated: March 28, 1995.

**Nelba Chavez,**

*Administrator.*

[FR Doc. 95-8648 Filed 4-7-95; 8:45 am]

BILLING CODE 4162-20-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. N-95-3910]

**Office of Administration; Notice of Submissions of Proposed Information Collections to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

**ADDRESSES:** Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410,

telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 3, 1995.

**David S. Cristy,**

*Acting Director, Information Resources, Management Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Financial Statement.

*Office:* Housing.

*Description Of The Need For The Information And Its Proposed Use:* This form is used by HUD in determining factors involved when compromises are reached with borrowers to lighten the financial burdens in given cases of Title I Home Improvement and Mobile Home Loans.

*Form Number:* HUD-56142.

*Respondents:* Individuals or Households.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-56142 .....	1,258		1		1		1,258

*Total Estimated Burden Hours:* 1,258.  
*Status:* Extension, no changes.  
*Contact:* Anne Baird-Bridges, HUD, (202) 755-7570; Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: April 3, 1995.

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Tenant Participation on Multifamily Housing Projects.

*Office:* Housing.  
*Description Of The Need For The Information And Its Proposed Use:* This information collection provides tenants in certain types of subsidized multifamily housing projects an opportunity to comment on the project owners request for HUD approval of certain specified actions, including the continuation of the requirement for tenants participation in project rent

increases. HUD must take their comments into consideration when making approval decisions.

*Form Number:* None.

*Respondents:* Individuals or Households, State, Local, or Tribal Governments, Businesses or Other For-Profit, and Not-For-Profit Institutions.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Increase in Rents .....	160		1		13		2,080
Utility Conversion .....	160		1		23		3,680
Conversion—Residential to Other .....	160		1		18		2,880
Partial Release of Security .....	160		1		17		2,720
Major Capital Addition .....	160		1		22		3,520
Recordkeeping .....	160		1		5		800

*Total Estimated Burden Hours:* 15,680.

*Status:* Extension, no changes.

*Contact:* Barbara D. Hunter, HUD, (202) 708-3944; Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: April 3, 1995.

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Lease and Grievance Requirements 24 CFR Part 966.  
*Office:* Public and Indian Housing.  
*Description Of The Need For The Information And Its Proposed Use:* This collection covers the recordkeeping requirements incidental to the implementation of Federal regulations at 24 CFR Part 966 governing dwelling

lease and grievance procedures in public housing. The information is retained by the public housing agencies that manage public housing and is used for operational purposes.

*Form Number:* None.

*Respondents:* Individuals or Households and State, Local, or Tribal Governments.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping .....	3,330		1		60.5		201,454

*Total Estimated Burden Hours:* 201,454.

*Status:* Reinstatement, no changes.

*Contact:* Edward C. Whipple, HUD, (202) 708-0744; Joseph F. Lackey, Jr., OMB (202) 395-7316.

Dated: March 23, 1995.

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Single Family Application for Insurance Benefits.  
*Office:* Housing.  
*Description Of The Need For The Information And Its Proposed Use:* These forms will be used to provide the

Department with information needed to process and pay claims on defaulted FHA insured home mortgage loans.

*Form Number:* HUD-27011, Parts A, B, C, D, and E.

*Respondents:* Businesses or Other For-Profit.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-27011	8,000		11.25		1.33		119,700

*Total Estimated Burden Hours:* 119,700.

*Status:* Extension with changes.

*Contact:* Kitty M. Woodley, HUD, (202) 708-2163; Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: March 23, 1995.

[FR Doc. 95-8720 Filed 4-7-95; 8:45 am]

BILLING CODE 4210-01-M

**Office of the Secretary  
 Office of Lead-Based Paint Abatement and Poisoning Prevention**

[Docket No. N-95-3735; FR-3643-N-04]

**Announcement of Funding Awards; Lead-Based Paint Hazard Control in Priority Housing**

**AGENCY:** Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Lead-Based Paint Hazard Control in Priority Housing Grants. The announcement contains the names and

addresses of the award winners and the amounts of awards.

**FOR FURTHER INFORMATION CONTACT:** Ellis G. Goldman, Office of Lead-Based Paint Abatement and Poisoning Prevention, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-1822, ext. 112. The TDD number for the hearing impaired is (202) 708-9300 (not a toll-free number), or 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Lead-Based Paint program is authorized by the Departments of Veterans Affairs and

Housing and Urban Development, and the Independent Agencies Appropriations Act of 1993 (Pub. L. 102-389, approved October 6, 1992).

The purpose of the competition was to award grant funding for approximately \$142 million for a grant program for States and local governments to undertake lead-based paint hazard reduction in priority housing. The awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on April 21,

1994 (59 FR 19080). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of \$139,442,023 has been awarded, to thirty five (35) Category I grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

**AWARDEES FOR LEAD-BASED PAINT HAZARD CONTROL IN PRIORITY HOUSING**

City of Phoenix, AZ, 200 W. Washington, Phoenix, AZ 85003 .....	\$4,500,000
State of Arkansas, PO Box 1437/Slot 1330, Little Rock, AR 72203 .....	3,000,000
State of California, 700 N. 10th St., Sacramento, CA 95814 .....	6,000,000
Alameda County, CA, 2000 Embarcadero, Oakland, CA 94606 .....	5,996,861
City of Long Beach, CA, 2525 Grand Avenue, Long Beach, CA 90815 .....	5,999,986
State of Connecticut, 505 Hudson Street, Hartford, CT 06106-7106 .....	6,000,000
Town of Manchester, 41 Center St., PO Box 191, Manchester, CT 06045-0191 .....	2,000,000
City of Stamford, PO Box 10152, Stamford, CT 06904 .....	2,171,363
City of Savannah, PO Box 1027, Savannah, GA 31402-1027 .....	3,142,606
State of Georgia, 100 Peachtree St., Atlanta, GA 30303 .....	5,732,461
City of Kankakee, IL, 165 N. Schuyler Avenue, Kankakee, IL 60901 .....	1,250,000
State of Illinois, 535 W. Jefferson St., Third Floor, Springfield, IL 62761 .....	5,999,943
City of Boston, MA, 15 Beacon Street, 9th Floor, Boston, MA 02108 .....	5,997,015
City of Malden, MA, 200 Pleasant St., Govt. Ctr., #621, Malden, MA 02148 .....	4,000,000
Commonwealth of Massachusetts, 100 Cambridge Street, Room 1803, Boston, MA 02202 .....	4,642,330
City of Baltimore, MD, 303 E. Fayette Street, 8th Floor, Baltimore, MD 21202-3418 .....	6,000,000
City of Portland, 389 Congress St., Portland, ME 04101 .....	1,426,156
City of Detroit, 1151 Taylor, Room 20-C, Detroit, MI 48202 .....	5,917,839
City of St. Paul, 555 Cedar St., St. Paul, MN 55101-2260 .....	1,777,000
St. Louis County, 121 S. Meramec Ave., Clayton, MO 63105 .....	1,239,870
State of New Jersey, 101 South Broad Street, CN 051, Trenton, NJ 08625-0051 .....	6,000,000
State of New York, One Fordham Plaza, Bronx, NY 10458-5392 .....	6,000,000
City of Buffalo, City Hall, Room 313, Buffalo, NY 14202 .....	3,750,450
City of Syracuse, 201 E. Washington Street, Syracuse, NY 13202 .....	2,696,483
City of Cleveland, 1925 St. Clair Avenue, Cleveland, OH 44114 .....	5,549,133
City of Columbus, 50 West Gay St., Columbus, OH 43215-9040 .....	4,687,684
Montgomery County, 451 W. Third Street, Dayton, OH 45422 .....	4,903,030
City of Toledo, One Government Center, Suite 1800, Toledo, OH 43604 .....	1,500,000
City of Harrisburg, 10 N. 2nd St., MLKing, Jr., City Govt. Center, Harrisburg, PA 17101-1677 .....	1,200,000
State of Rhode Island, 3 Capitol Hill, 106 Cannon Bldg., Providence, RI 02908-5097 .....	6,000,000
City of Memphis, 701 N. Main St., Room 100, Memphis, TN 38107-2311 .....	3,500,000
City of Houston, 8000 North Stadium Drive, Houston, TX 77054 .....	3,941,526
City of Norfolk, 1101 City Hall Building, Norfolk, VA 23501 .....	1,653,118
City of Petersburg, 128 South Sycamore Street, Petersburg, VA 23803 .....	2,000,000
City of Richmond, 600 East Broad Street, Room 629, Richmond, VA 23219 .....	3,267,169
<b>Total .....</b>	<b>139,442,023</b>

Dated: March 28, 1995.

**Ronald J. Morony,**

*Acting Director, Office of Lead-Based Paint, Abatement and Poisoning Prevention.*

[FR Doc. 95-8684 Filed 4-7-95; 8:45 am]

BILLING CODE 4210-32-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[AK-962-1410-00-P]

**Notice for Publication, AA-6978-A; Alaska Native Claims Selection**

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo, Incorporated, for

approximately 613 acres. The lands involved are on Prince of Wales Island, Alaska.

**Copper River Meridian, Alaska**

T. 77 S., R. 88 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 10, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Margaret J. McDaniel,**

*Acting Chief, Branch of Gulf Rim Adjudication.*

[FR Doc. 95-8713 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-JA-P

[CO-933-95-1320-01; COC 56447]

**Notice of Coal Lease Offering by Sealed Bid; COC 56447**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Gunnison County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

**DATES:** The lease sale will be held at 11 a.m., Monday, May 15, 1995. Sealed bids must be submitted no later than 10 a.m., Monday, May 15, 1995.

**ADDRESSES:** The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Karen Purvis at (303) 239-3795.

**SUPPLEMENTARY INFORMATION:** The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is \$100 per acre or fraction thereof. No bid less than \$100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

**Coal Offered:** The coal resource to be offered is limited to coal recoverable by underground mining methods in the B and D/E coal seams on the Box Canyon Tract in the following lands:

**Sixth Principal Meridian**

T. 13 S., R. 90 W., 6th P.M.

- Sec. 10, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;
- Sec. 11, lots 9 to 12, inclusive, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;
- Sec. 14, lots 1 to 16, inclusive;
- Sec. 15, lots 1 to 4, inclusive, and E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ ;
- Sec. 22, lots 1 to 16, inclusive;
- Sec. 23, lots 1 to 16, inclusive;
- Sec. 26, lots 1 to 16, inclusive.

The land described contains 2,769.67 acres, more or less.

Total recoverable reserves are estimated to be 37 million tons. The B and D/E seams underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the B seam on an as-received basis is as follows:

Btu	12,975 Btu/lb.
Moisture (percent) .....	5.66
Sulfur Content (percent) .....	0.57
Ash Content (percent) .....	7.66

The estimated coal quality for the D/E seam on an as-received basis is as follows:

Btu	12,162 Btu/lb.
Moisture (percent) .....	6.45
Sulfur Content (percent) .....	0.57
Ash Content (percent) .....	9.31

**Rental and Royalty:** The lease issued as a result of this offering will provide for payment of an annual rental of \$3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

**Notice of Availability:** Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are

available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: March 30, 1995.

**Karen A. Purvis,**

*Solid Minerals Team Resource Services.*

[FR Doc. 95-8689 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-JB-M

**INTERSTATE COMMERCE COMMISSION**

[Docket No. AB-290 (Sub-No. 152X)]

**Norfolk Southern Railway Company—Abandonment Exemption—in Caswell County, NC**

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.1-mile rail line extending between milepost FD-196.9 and milepost FD-200.00 at Blanch, in Caswell County, NC.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending either with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 10, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup>

<sup>1</sup> The Commission will grant a stay if an informed decision on environmental issues (whether raised

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 20, 1995.<sup>3</sup> Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423-191.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 14, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 4, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

Secretary.

[FR Doc. 95-8711 Filed 4-7-95; 8:45 am]

BILLING CODE 7035-01-P

by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 94-82]

#### Earl N. Caldwell, M.D.; Revocation of Registration

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl N. Caldwell, M.D. of Highland Park, Illinois (Respondent), proposing to revoke his DEA Certificate of Registration, BC0950104, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f), and that Respondent was no longer authorized to handle controlled substances in the State of Illinois. 21 U.S.C. 824 (a)(3) and (a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the Government filed a motion for summary disposition on October 11, 1994, alleging that Respondent no longer held state authorization to handle controlled substances on the ground that the Illinois Department of Professional Responsibility, Medical Disciplinary Board, had placed Respondent's medical license on probation for five years and suspended his authority to handle controlled substances for the duration of that probationary term. Respondent filed an opposition to the Government's motion for summary disposition on October 31, 1994, arguing that the Illinois Board's decision had been rendered in error and, therefore, was not final pending administrative review.

On November 2, 1994, the administrative law judge entered her opinion and recommended a decision granting the Government's motion for summary disposition and recommending that the Respondent's DEA Certificate of Registration be revoked. No exceptions were filed by either party.

On December 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter pursuant to 21 CFR 1316.67,

based on findings of fact and conclusions of law as set forth herein.

Effective May 13, 1992, the Illinois Department of Professional Responsibility, Medical Disciplinary Board, suspended Respondent's license to practice medicine for five years and suspended his authority to handle controlled substances for the duration of that period. Respondent does not deny that his state license has been placed on probation for five years. As a result, Respondent is no longer authorized to dispense controlled substances in the State of Illinois.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. See *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987).

In a case where a practitioner is no longer authorized to handle controlled substances in the state in which he proposes to practice, a motion for summary disposition is properly entertained. It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC0950104, previously issued to Earl N. Caldwell, M.D., be, and it hereby is, revoked, and any pending applications for such registration be, and hereby are, denied. This order is effective May 10, 1995.

Dated: April 3, 1995.

**Stephen H. Greene,**

Deputy Administrator.

FR. Doc. 95-8650 Filed 4-7-95; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 94-76]

#### Rosalind A. Cropper, Inc.; Denial of Application

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to Rosalind A. Cropper, M.D. and Rosalind A. Cropper, Inc., of New Orleans, Louisiana, proposing to revoke her DEA Certificate of Registration, BC0747381, as a practitioner, deny any pending application for registration as a practitioner and deny the application of Rosalind A. Cropper, Inc. (Respondent) for DEA registration as a Narcotic Treatment Program (NTP). The statutory basis for the Order to Show Cause was that Dr. Cropper's continued registration as a practitioner and Respondent's registration as an NTP would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On December 16, 1994, the Government filed a motion for summary disposition alleging that the State of Louisiana had denied Respondent's application to operate an NTP within that State, and, that Respondent lacked authority from the Food and Drug Administration (FDA) to operate an NTP. The Government's motion was supported by a letter from an FDA official informing Respondent that because the State of Louisiana had denied its application to establish an NTP, the FDA was unable to approve its application. Respondents did not file a response to the Government's motion and did not deny that FDA and the State of Louisiana has denied its applications.

On January 18, 1995, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge and Order Severing Proceedings recommending that Respondent's application for DEA Certificate of Registration as an NTP be denied. Judge Bittner also ordered that the proceeding involving the proposed revocation of Respondent's registration as a practitioner be severed from Docket 94-76, be redocketed, and that the parties continue with prehearing procedures regarding that matter. No exceptions to Judge Bittner's opinion were filed by either party.

On February 21, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

By letter dated December 16, 1994, Respondent was advised that the FDA was unable to approve her application to the FDA to operate an NTP because

the State of Louisiana had denied her application to establish an NTP. Judge Bittner held that DEA does not have statutory authority under the Controlled Substances Act to register an NTP unless that entity is authorized by the FDA to dispense controlled substances. 21 U.S.C. 823(g). In a proceeding to obtain registration as an NTP, if the applicant does not possess the requisite FDA authorization to operate an NTP, a motion for summary disposition is properly entertained for it is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom, Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge in its entirety. Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Respondent's application for DEA Certificate of Registration as an NTP be, and it hereby is, denied. This order is effective May 10, 1995.

Dated: April 3, 1995.

**Stephen H. Greene,**  
*Deputy Administrator.*

[FR Doc. 95-8651 Filed 4-7-95; 8:45 am]  
BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-29,352]

#### **Hasbro, Inc. a/k/a Tonka Corporation El Paso Operations; El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Work Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on March 16, 1994 published in the **Federal Register** on March 30, 1994 (59 FR 14876).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that some of the workers had their unemployment insurance

taxes paid under Tonka Corporation, a division of Hasbro, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-29,352 is hereby issued as follows:

"All workers of workers and former workers at Hasbro, Inc., also known as (a/k/a) Tonka Corporation, El Paso Operations, El Paso, Texas who became totally or partially separated from employment on or after December 14, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 30th day of March 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-8723 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,505]

#### **Cushman Industries, Inc.; Hartford, CT; Notice of Revised Determination on Reconsideration**

On March 7, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 17, 1995 (60 FR 14452).

The findings show that the Hartford, Connecticut plant closed in December, 1994 when all production workers were laid off and production ceased.

New findings on reconsideration show that the company had increased imports of chucks in the relevant period.

#### **Conclusion**

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers at Cushman Industries, Hartford, Connecticut were adversely affected by increased imports of articles like or directly competitive with the chucks produced at Cushman Industries in Hartford, Connecticut. In accordance with the provisions of the Act, I make the following revised determination for workers of Cushman Industries, Hartford, Connecticut.

"All workers of Cushman Industries in Hartford, Connecticut who became totally or partially separated from employment on or after November 2, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 30th day of March 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-8722 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30, 360 etc.]

**BASF Corp., Lowland, TN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In the matter of: TA-W-30,360 Nylon Hosiery Department, TA-W-30,360A Polyester Filament Department, and TA-W-30,360B Nylon Staple Fibers Department.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 7, 1994, applicable to all workers of the Nylon Hosiery Department. The Notice was published in the **Federal Register** on January 3, 1995 (60 FR 148).

A **Federal Register** Correction was issued on February 10, 1995 revising the date of the petition to August 1, 1994. The correction was published in the **Federal Register** on February 17, 1995 (60 FR 9407). The certification was subsequently amended on February 10, 1995 to include the Polyester Filament Department. The amended notice was published in the **Federal Register** on February 17, 1995 (60 FR 9407).

At the request of the company, the Department again reviewed the certification for workers of the subject firm. New findings show that the Nylon Staple Fibers business was part of the Fiber Products Division and worker separations and declines in sales and production have occurred in the relevant periods. Accordingly, the Department is amending the certification to include all workers at the Lowland, Tennessee plant.

The amended notice applicable to TA-W-30,360 is hereby issued as follows:

All workers of BASF Corporation, Lowland, Tennessee who became totally or partially separated from employment on or after August 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC., this 29th day of March, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-8725 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,864]

**Bridgestone/Firestone, Incorporated, Decatur, Illinois; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 6, 1995 in response to a worker petition which was filed on March 6, 1995 on behalf of workers at Bridgestone/Firestone, Incorporated, Decatur, Illinois.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-30,787). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 29th day of March, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-8274 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-30-M

**Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of March 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate

subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,744; Gioia Macaroni/Borden, Inc., Buffalo, NY

TA-W-30,762; Hecla Mining Co., Inc., Republic Unit, Republic, WA

TA-W-30,814; Eagle Coach Corp., Brownsville, TX

TA-W-30,723; R. Neumann & Co., Hoboken, NJ

TA-W-30,754; UDT Sensors, Inc., El Paso, TX

TA-W-30,812; Anderson & Middleton, Grays Harbor Veneer Div. Hoquiam, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-30,708; U.S. Dept. of Agriculture, Food Safety Inspection Service, Import Inspection Div., New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,772; Anne Klein & Co., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,793; Phillips Petroleum Co., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,759; Touch of Elegance, Inc., Holland, MI

The subject firm experienced no sales during the 1994 including the earliest possible date of certification coverage under the Trade Act of 1974.

TA-W-30,724; Boise Cascade Corp., Timber & Wood Products Div. Plant No. 2, Council, ID

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,749; Bristol Myers Squibb, North Brunswick, NJ

The investigation revealed that criteria (2) has not been met. Sales or

production did not decline during the relevant period as required for certification.

TA-W-30,808, TA-W-30,809, TA-W-30,810, TA-W-30,811; Pennzoil Sulphur Co., Pecos, TX, Galveston, TX, Houston, TX and Tampa, FL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

#### **Affirmative Determinations for Worker Adjustment Assistance**

TA-W-30,701; Allied Signal, Inc., Filter and Spark Plug Group, Greenville, OH

A certification was issued covering all workers separated on or after February 6, 1994.

TA-W-30,763, TA-W-30,764; Oxford of Hamlet, Hamlet, NC, Oxford of Royston, Royston, GA

A certification was issued covering all workers separated on or after February 17, 1994.

TA-W-30,826; Dresser Industries, Dresser Industrial Valve Operation, Alexandria, LA

A certification was issued covering all workers separated on or after March 3, 1994.

TA-W-30,783; Personal Products Co., A Div of Johnson & Johnson, Milltown, NJ

A certification was issued covering all workers separated on or after June 12, 1994.

TA-W-30,819; AMSCO Basil Mfg, Wilson, NY

A certification was issued covering all workers separated on or after March 6, 1994.

TA-W-30,719; Joseph Frank, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after February 2, 1995.

TA-W-30,775; Swiss Maid Emblems, Fairview, NJ

A certification was issued covering all workers separated on or after February 8, 1994.

TA-W-30,662; McDonnell Douglas Corp., Douglas Aircraft Co., Long Beach, CA

A certification was issued covering all workers separated on or after March 15, 1995.

TA-W-30,721; Sunbeam Oster Household Products, Holly Springs, MS

A certification was issued covering all workers separated on or after January 26, 1994.

TA-W-30,736; Exxon Corp., Exxon Upstream Technical Computing Co., Houston, TX

A certification was issued covering all workers separated on or after January 31, 1994.

TA-W-30,844; Pro Group, Inc., Golf Bag Div., Pocahontas, AR

A certification was issued covering all workers separated on or after March 7, 1994.

TA-W-30,746; Editorial America SA, Virginia Gardens, FL

A certification was issued covering all workers separated on or after February 11, 1994.

TA-W-30,700; EG & G Vactic, Inc., St. Louis, MO

A certification was issued covering all workers separated on or after March 4, 1994.

TA-W-30,685, TA-W-30,686; TA-W-30,687; Alfred Angelo, Inc., Horsham, PA, Willow Grove, PA and Hatboro, PA

A certification was issued covering all workers separated on or after January 20, 1994.

TA-W-30,696; Statler Tissue Co., Augusta, ME

A certification was issued covering all workers separated on or after January 13, 1994.

TA-W-30,669 & A, B; Anadrill, Inc., Div. of Schlumberger Technology Corp & Operating at Various Locations in the Following States: A; LA, B; MS

A certification was issued covering all workers separated on or after January 23, 1994.

TA-W-30,788; Meridian Oil Houston Region, Houston, TX & Operating at Various Locations in the Following States: A; TX, B; AL, C; LA, D; OH, E; OK

A certification was issued covering all workers separated on or after February 20, 1994.

TA-W-30,713; Cascade Woloen Mill, Inc., Oakland, ME

A certification was issued covering all workers separated on or after January 26, 1994.

TA-W-30,779; KAO Infosystems Co., Plymouth, MA

A certification was issued covering all workers separated on or after January 31, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) Subchapter D,

Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely.

(B) that imports from Mexico or Canada or articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### **Negative Determinations NAFTA-TAA**

NAFTA-TAA-00376; W.E. Kautenberg Co., Freeport, IL

The investigation revealed that criteria (3) and (4) were not met. There was no shift of production from Kautenberg to Mexico or Canada during the period under investigation. A survey conducted with Kautenberg's customers revealed that there has been no increases of imports of brooms and brushes from Canada or Mexico.

NAFTA-TAA-00364; Gioia Macaroni/Borden, Inc., Buffalo, NY

The investigation revealed that criteria (3) and (4) were not met. There was no shift of production from the subject facility to Mexico or Canada during the period under investigation. Company imports of pasta from Canada or Mexico are negligible.

NAFTA-TAA-00369; Kennametal, Inc., El Paso, TX

The investigation revealed that the workers of Kennametal, Inc., El Paso, TX do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-00363; UDT Sensors, Inc., El Paso, TX

The investigation revealed that criteria (3) and (4) were not met. The investigation findings show that customer imports of light emitting diodes from Canada or Mexico did not

contribute importantly to worker separations at the subject firm.

#### **Affirmative Determinations NAFTA-TAA**

*NAFTA-TAA-00372; Thomas & Betts Co., Elizabeth, NJ*

A certification was issued covering all workers of Thomas & Betts Co., Elizabeth, NJ separated on or after February 17, 1994.

*NAFTA-TAA-00371; Fisher-Price/Mattel, Inc., Medina, NY*

A certification was issued covering all workers at Fisher-Price/Mattel, Inc., Medina, NY separated on or after February 10, 1994.

*NAFTA-TAA-00368; Essilor of America, St. Petersburg, FL;*

A certification was issued covering all workers at Essilor of America, St. Petersburg, FL separated on or after February 10, 1994.

*NAFTA-TAA-00367; Escod Industries, Colorado Operations, Canon City, CO*

A certification was issued covering all workers at Escod Industries, Colorado Operations, Canon City, CO separated on or after February 15, 1994.

*NAFTA-TAA-00366; Crown Cork & Seal Co., Inc., Swedesboro, NJ*

A certification was issued covering all workers of Crown Cork & Seal Co., Inc., Swedesboro, NJ separated on or after February 10, 1994.

*NAFTA-TAA-00361; Maska US, Inc., Bradford, VT*

A certification was issued covering all workers of Maska US, Inc., Bradford, VT separated on or after February 6, 1994.

I hereby certify that the aforementioned determinations were issued during the months of March, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 31, 1995.

#### **Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-8721 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-30-M

### **Mine Safety and Health Administration**

#### **Petitions for Modification**

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

#### **1. C&B Mining Company**

[Docket No. M-95-39-C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **2. C&B Mining Company**

[Docket No. M-95-40-C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **3. C&B Mining Company**

[Docket No. M-95-41-C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1100-2(a) (quantity and location of firefighting equipment) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as would the mandatory standard.

#### **4. C&B Mining Company**

[Docket No. M-95-42-C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **5. C&B Mining Company**

[Docket No. M-95-43-C]

C&B Mining, R.D. #2, Box 861, Coal Township, Pennsylvania 17866 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **6. Kerr-McGee Coal Corporation**

[Docket Nos. M-95-44-C and M-95-45-C]

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed petitions to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia No. 56-1 Mine (I.D. No. 11-02752) located in Saline County, Illinois. The petitioner proposes to use trailing cables to supply power to the Fletcher single boom roof bolter, Model No. CDR-13-EC-F, Approval No. 2G-2674A-4, and all updated approval extensions of this equipment as applicable. The petitioner requests that Item 1 of its petitions for modification and MSHA's Proposed Decisions and Orders for granted petitions, docket number M-91-12-C and M-94-53-C be amended. The petitioner asserts that

this request would facilitate equipment replacement or additions while maintaining the protection intended in the Decision and Order.

#### **7. Roberts Brothers Coal Company, Inc.**

[Docket No. M-95-46-C]

Roberts Brothers Coal Company, P.O. Box 397, Mortons Gap, Kentucky 42440 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Cardinal No. 2 Mine (I.D. No. 15-17216) located in Hopkins County, Kentucky. The petitioner proposes to operate its Diesel Powered Generator (DPG) without an earth referenced ground. As an alternative, the petitioner proposes to use resistors, ground fault relays and trips, and SHD-GC shielded cable. In addition, the skid base of the DPG will provide some earth ground protection. The petitioner states that this diesel powered generator provides power to different areas of the mine and to attach a grounding conductor to the earth referenced ground system would reduce mobility and effectiveness of the unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **8. Jordan Coal Company**

[Docket No. M-95-47-C]

Jordan Coal Company, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36-07681) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **9. Eastern Associated Coal Corporation**

[Docket No. M-95-48-C]

Eastern Associated Coal Corporation, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.380(f)(1)

(escapeways; bituminous and lignite mines) to its Lightfoot No. 1 Mine (I.D. No. 46-04332) located in Boone County, West Virginia. The petitioner proposes to ventilate on-board charging of batteries with a current of air coursed directly into the return air course; to use intake air to ventilate the scoop batteries that is of sufficient velocity to prevent smoke rollback or airflow reversal during a fire on the scoop and the accumulation of explosives gases; to install carbon monoxide sensors that are part of the AMS System over the battery charging unit; to install a mandoor in the permanent stopping behind the battery charger unit that would automatically open the mandoor in the event of a fire. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **10. Cross Mountain Coal, Inc.**

[Docket No. M-95-49-C]

Cross Mountain Coal, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.350 (aircourse and belt haulage entries) to its Mine No. 10 (I.D. No. 40-03082) located in Anderson County, Tennessee. The petitioner proposes to use the air in the belt entry to ventilate active working places; to examine the belt conveyor entry at least once during each coal producing shift at intervals that would be most effective while miners are working; to follow all other MSHA fire protection requirements, especially those pertaining to water lines, fire hoses, fire suppression systems, warning devices, and flame-resistant belting; and to install a low-level carbon monoxide detection system in all belt entries used as intake air courses as an early warning fire detection system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **11. Cross Mountain Coal, Inc.**

[Docket No. M-95-50-C]

Cross Mountain Coal, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Mine No. 10 (I.D. No. 40-03082) located in Anderson County, Tennessee. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system

would identify a sensor location instead of each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **12. Leeco, Inc.**

[Docket No. M-95-51-C]

Leeco, Inc., 100 Coal Drive, London Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Mine No. 62 (I.D. No. 15-16412) located in Perry County, Kentucky. Due to flooding and other hazardous conditions in Seals Nos. 1 and 2, traveling the affected areas would be unsafe. As an alternative, the petitioner proposes to establish evaluations points and to perform weekly examinations. The petitioner states that application of the standard would result in a diminution of safety to the miners.

#### **13. Peabody Coal Company**

[Docket No. M-95-52-C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky. The petitioner requests that MSHA's Proposed Decision and Order, docket number M-93-06-C be amended to eliminate coverage of the 1 South seals, 2 South seals, 3 South seals, 4 South seals, and 1 West seals off the 1 Submain North in the Decision because these areas have been sealed since the previous petition was granted.

#### **14. Holnam, Inc.**

[Docket No. M-95-04-M]

Holnam, Inc., 3500 Highway 120, P.O. Box 349, Florence, Colorado 81226 has filed a petition to modify the application of 30 CFR 56.6901 (black powder) to its Portland Quarry (I.D. No. 05-00037) located in Fremont County, Colorado. The petitioner proposes to destroy model rocket engines containing black powder and desensitized black powder sweepings in blast holes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### **15. Asbury Graphite Mills, Inc.**

[Docket No. M-95-05-M]

Asbury Graphite Mills, Inc., R.D. #7, Box 1, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 56.14101 (brakes) to its Kittanning Plant (I.D. No. 36-

07653) located in Armstrong County, Pennsylvania. The petitioner proposes to install hydraulic micro lever locks on three of its Yale Forklift Trucks instead of standard parking brakes due to specific situations and concerns outlined in their petition that reduce the effectiveness of standard pad and drum parking brakes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 16. Tg Soda Ash, Inc.

[Docket No. M-95-06-M]

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22215 (separation of intake and return air (I-A, II-A, III, and V-4 mines)) to its Wyoming Soda Ash Operations (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petitioner proposes to use controlled district recirculation of mine air to improve mine ventilation and the quality of the miner's work environment by providing an excessive airflow to dilute and carry away dust, methane, and diesel fumes from the mining and abandoned areas of the mine. The petitioner states that this recirculation fan system would be inspected during each operating shift on a weekly basis and that weekly examination results would be included in the weekly ventilation report which would be kept on the surface; that the fan would be monitored and the monitors checked for proper operation on a weekly basis by a qualified person; that mine personnel would be familiarized and trained on the recirculation system, monitoring requirements, and emergency escape procedures; and that its emergency plan would be updated to include the controlled recirculation system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1995. Copies of these petitions are available for inspection at that address.

Dated: April 3, 1995.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 95-8690 Filed 4-7-95; 8:45 am]

BILLING CODE 4510-43-P

### NATIONAL CREDIT UNION ADMINISTRATION

#### Privacy Act of 1974; Revisions to Systems of Records

**AGENCY:** National Credit Union Administration.

**ACTION:** Notification of a revised system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the National Credit Union Administration (NCUA) is issuing public notice of its intent to modify the system of records maintained by the Office of Inspector General (OIG), NCUA-20, currently titled, "Investigation Files, NCUA", formerly located in the NCUA Office of Internal Auditor. The Office of Internal Auditor preceded the Office of Inspector General, which was created by action of the NCUA Board on March 23, 1989, in response to the Inspector General Act amendments of 1988. The proposed modifications will: (1) Rename the system, "Office of Inspector General (OIG) Investigative Records—NCUA;" (2) drop one routine use; (3) add two new routine uses, and (4) add certain Privacy Act exemptions. In addition, we are making other technical and editorial revisions to the system to make it more accurate.

**EFFECTIVE DATE:** The revised system of records will become effective without further notice on May 10, 1995, unless comments postmarked or posted on the NCUA Electronic Bulletin Board on or before that date cause a contrary decision. If, based on NCUA's review of comments received, changes are made, NCUA will publish a new final notice. NCUA will not withhold records under the (j)(2) or (k)(2) exemptions until adoption of the final rule amending 12 CFR 792.34 to add the Privacy Act (j)(2) and (k)(2) exemptions to this system of records.

**ADDRESSES:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314. Comments may also be posted on the NCUA Electronic Bulletin Board at 800 876-1684 or 703 518-6480. Copies of comments may be examined in the Office of Inspector General, 5th floor, at 1775 Duke Street, Alexandria, VA.

**FOR FURTHER INFORMATION CONTACT:** Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, telephone (703) 518-6352.

**SUPPLEMENTARY INFORMATION:** The NCUA/OIG performs its duties in accordance with the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988 (Pub. L. 95-452, as amended, 5 U.S.C. App. 3)(IG Act). The OIG is an independent unit within the NCUA and was established to promote economy, efficiency, and effectiveness in the administration of NCUA programs and operations, and to detect and prevent fraud, waste and abuse in such programs and operations.

The NCUA is republishing system of records NCUA-20, currently titled, "Investigation Files—NCUA," to: (1) Rename the system; (2) drop one routine use; (3) add two new routine uses; (4) add the (j)(2) and (k)(2) exemptions; and (5) update other information in the previously published notice in this system of records.

NCUA is renaming NCUA-20, currently titled, "Investigation Files—NCUA", to "Office of Inspector General—Investigative Records." This is because the former publication referred to the investigative files of the NCUA Office of Internal Auditor, the predecessor office of the OIG. The system will consist of files and records compiled by the OIG on NCUA employees or other persons involved with the NCUA's programs or operations who have been or are under investigation for criminal or civil fraud, abuse, and other civil and criminal wrongdoing related to the NCUA's programs and operations. The NCUA/OIG has the authority to conduct such investigations under the IG Act.

NCUA is omitting one routine use, number (1) "Information gathered is used for intra-agency purposes," because this routine use duplicates an exception in the Privacy Act, at 5 USC 552a, Section (b)(1).

NCUA is adding two new routine uses to NCUA-20: (1) To authorize the use of OIG investigative records for obtaining information from other sources; and (2) to permit the disclosure of records to the Department of Justice to obtain legal advice. These new routine uses are identified as routine uses numbered 1 and 2 in the system notice. Routine use numbered 3 is a reference to Appendix A, the agency's standard routine uses. The new routine uses are compatible with the purpose for which the OIG's

records were collected in that they provide for disclosure to assist the NCUA/OIG to collect information in the conduct of its investigations, and to obtain legal advice from the government's attorneys on the pursuit of such investigations.

Other information in the system is being updated to reflect changes in the way information is retrieved, stored, and safeguarded and to describe accurately the categories of individuals covered and the categories of records being maintained.

In a separate notice published in the proposed rule section of today's issue of the **Federal Register**, the NCUA is giving public notice of a proposed rule to amend 12 CFR 792.34 to exempt this system of records from certain provisions of 5 USC 552a under subsections (j)(2) and (k)(2).

The NCUA proposes to exempt certain files within the new system of records from disclosure to individuals who are the subject of a record in the system. The exemptions would cover investigative material compiled for law enforcement purposes. The information in this new system is proposed to be exempt pursuant to 5 USC 552a(j)(2) insofar as these records are maintained by a component of the OIG, the Office of the Assistant Inspector General for Investigations, which performs as its principal function any activity pertaining to the enforcement of criminal laws, and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

The NCUA is also proposing to exempt NCUA-20 from certain provisions of the Privacy Act under 5 USC 552a(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2): Provided however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a

source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section (9-27-75), under an implied promise that the identity of the source would be held in confidence.

Accordingly, the NCUA proposes to revise NCUA-20 as follows:

#### **NCUA-20**

##### **SYSTEM NAME:**

Office of Inspector General (OIG)  
Investigative Records—NCUA.

##### **SYSTEM LOCATION:—**

Office of Inspector General, NCUA,  
1775 Duke Street, Alexandria, VA  
22314-3428.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Subjects of investigation, complainants, and witnesses referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The system is comprised of paper files of all OIG and some predecessor Office of Internal Auditor reports, correspondence, cases, matters, cross-indices, memorandums, materials, legal papers, evidence, exhibits, data, and workpapers pertaining to all closed and pending investigations and inspections.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Inspector General Act of 1978, as amended, 5 USC App.3; 12 USC 1766.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The National Credit Union Administration Office of Inspector General (NCUA/OIG) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

1. NCUA/OIG may disclose information from this system of records as a routine use to any public or private source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

2. NCUA/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary to obtain its legal advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

3. NCUA/OIG may disclose information from this system of records for the purposes set forth in Appendix A of the agency's system of records notice, published at 53 FR No.186, page 37373 (September 26, 1988.)

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

###### **STORAGE:**

Information contained in this system is stored manually in files.

###### **RETRIEVABILITY:**

Information is retrieved in files by case number, general subject matter, or name of the subject of investigation.

###### **SAFEGUARDS:**

Case reports and workpapers are maintained in approved security containers and locked filing cabinets in a locked room. Associated paper records are stored in locked metal filing cabinets, safes, or similar secure facilities.

###### **RETENTION AND DISPOSAL:**

###### *Investigative Case Files*

1. Case files are normally destroyed when they are 5 years old.

2. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

###### **SYSTEM MANAGER(S) AND ADDRESS:**

Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

###### **NOTIFICATION PROCEDURE:**

This System of Records is generally exempt from the notice, access, and amendment requirements of the Privacy Act. However, the NCUA will entertain written requests to the systems manager on a case by case basis for notification regarding whether this system of records contains information about an individual. Requests should be marked "Privacy Act request," state the name and address of the requester, and provide a notarized statement, or other documentation, e.g., copy of a driver's license, attesting to the individual's identity. Requests submitted on behalf of other persons must include their

written, notarized authorizations. Such requests in the form prescribed may also be presented in person at the Office of Inspector General, Room 5041, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in the following section on "Record Access Procedures."

**RECORDS ACCESS PROCEDURES:**

Same as "Notification procedure."

**CONTESTING RECORD PROCEDURES:**

Same as "Notification procedure."

**RECORD SOURCE CATEGORIES:**

The OIG collects information from many sources, including the subject individuals, employees of the NCUA, other government employees, and witnesses and informants, and non-governmental sources.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 USC 552a(j)(2), this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 USC 552(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), this system of records is exempt from 5 USC 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 12 CFR 792.34 of the NCUA regulations.

Dated at Alexandria, VA, this 30th day of March 1995.

By the National Credit Union Administration Board.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 95-8336 Filed 4-7-95; 8:45 am]

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**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**
**National Endowment for the Humanities**
**Meetings of Humanities Panel**

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

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**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:**

David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 20, 1995.

*Time:* 9:00 a.m. to 5:00 p.m.

*Room:* M-14.

*Program:* This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs for projects beginning after August, 1995.

2. *Date:* April 25, 1995.

*Time:* 9:00 a.m. to 5:00 p.m.

*Room:* M-14.

*Program:* This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after August, 1995.

3. *Date:* April 27, 1995.

*Time:* 9:00 a.m. to 5:00 p.m.

*Room:* M-14.

*Program:* This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to

the Division of Education Programs, for projects beginning after August 1995.

**David C. Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 95-8762 Filed 4-7-95; 8:45 am]

BILLING CODE 7536-01-M

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**NUCLEAR REGULATORY COMMISSION**
**River Bend Station, Unit 1 Gulf States Utilities Company and Cajun Electric Power Cooperative, Inc. Finding of No Significant Antitrust Changes Time for Filing Requests for Reevaluation**

In connection with the applications for amendments filed by Gulf States Utilities Company (licensee or GSU) dated January 13, 1993, as supplemented, the Director of the Office of Nuclear Reactor Regulation made a finding on October 15, 1993, that there have been no significant changes in the licensee's activities or proposed activities since the completion of the antitrust operating license review of the River Bend Station (River Bend). Subsequently, an NRC order and two licensing amendments dated December 16, 1993, were issued which transferred GSU's ownership in River Bend to Entergy Corporation and the operation of River Bend to Entergy Operations, Inc. On March 14, 1995, the United States Court of Appeals For the District of Columbia Circuit issued an Order vacating the NRC order and the two accompanying licensing amendments and remanding the case to the NRC.

In light of the foregoing, the Director of the Office of Nuclear Reactor Regulation has reviewed the Court of Appeals decision in *Cajun Electric Cooperative, Inc. v. FERC*, 28 F.3d 173 (D.C. Cir. 1994) and the earlier findings in this matter has made a new finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant changes in the licensee's activities have occurred subsequent to the previous antitrust review of River Bend. The finding is as follows:

Under Section 105 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135 (Act), 10 CFR 50.80 and 50.90, the Nuclear Regulatory Commission (NRC or Commission) conducts an antitrust review of changes in ownership or operator of a power production facility after initial licensing. In situations where requests for a change in ownership or operator have been received after issuance of an operating license for such a facility, the staff has conducted a significant change review to determine whether the

licensee's activities create or tend to create a situation inconsistent with the antitrust laws. The Commission delegated the authority to make the significant change determination to the Director, Office of Nuclear Reactor Regulation (NRR).

Based upon an analysis of the extensive comments received in response to the initial decision published in the **Federal Register** on October 20, 1993 (58 FR 54175), information presented in other regulatory proceedings involving the proposed merger of Gulf States Utilities Company (GSU) and Entergy Corporation (Entergy), the staff concludes that the changes in GSU's activities which have been identified by the staff do not constitute significant changes as envisioned by the Commission in its *Summer* decision. The conclusion of the staff analysis is as follows:

Where appropriate, the staff considered the testimony and information submitted to other regulatory agencies in developing a record necessary to satisfy its own regulatory mandate. From the information made available to the staff, the staff was able to determine that the concerns raised by the commenters are covered by and should be resolved before the NRC by existing license conditions. The staff does not believe that the outstanding issues raised before the NRC are germane to a licensing proceeding. Consequently, the staff is providing the commenters the opportunity to resolve their NRC concerns in a Section 2.206 enforcement proceeding.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the previous antitrust review of the River Bend Station that would warrant the initiation of a new antitrust review. Signed this 5th day of April, 1995.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation, not to exceed 10 pages in length including attachments, with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The requests must be received by the Commission within 10 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant changes determination should be limited to new information not previously submitted in connection with the Director's Reevaluation Finding published in the **Federal Register** on December 13, 1993 (58 FR 65200), such as information about facts

or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland the 5th day of April 1995.

For the Nuclear Regulatory Commission.

**William T. Russell,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-8834 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-318]

#### Exemption

In the matter of Baltimore Gas and Electric Comp. (Calvert Cliffs Nuclear Power Plant Unit No. 2).

#### I

Baltimore Gas and Electric Company (BG&E or the licensee) is the holder of Facility Operating License No. DPR-69, which authorizes operation of Calvert Cliffs Nuclear Power Plant Unit No. 2 (the facility/CC-2), at a steady-state reactor power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

#### II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

#### III

By letter dated February 24, 1995, BG&E requested temporary relief for CC-2 from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the second Type A test by approximately 24 months (from the 1995 refueling outage, currently scheduled to begin in March 1995, to the spring 1997 refueling outage) and would permit the third Type A test to be performed during the spring 1999 refueling outage, coincident with the

end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval. This would extend the CC-2 second 10-year service period to 12 years.

The licensee's request cites the special circumstance of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. The licensee has analyzed the results of the previous Type A tests performed at CC-2. Four Type A tests have been conducted from 1979 to date. The initial Type A test failed; however, prompt corrective actions were taken and the subsequent tests were successful as detailed in Section IV of this Exemption. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. Therefore, application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

#### IV

Section III.D.1.(a) of appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the second Type A test by approximately 24 months. This would permit the test to be performed during the spring 1997 refueling outage, as noted above, and would extend the second 10-year service period to 12 years. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to

achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request.

As previously noted, the initial Type A test failed. This failure was due to three sources: (1) The containment recirculation sump isolation valve, MOV-4145; (2) the temporary level indicators on the steam generators; and (3) the packing gland of a main steam line inboard vent valve. The first leakage source was identified as a problem with the limit switch setting on MOV-4145 that prevented full closure. Resetting the switches and closing the valve electrically corrected the source of leakage. This valve is now tested periodically to ensure the limit switch settings allow full closure, and the value has not demonstrated excessive leakage in any subsequent Type A test. The temporary level indicators, are components which are only in place while the plant is shutdown. Upon identification of the leakage path, the temporary configuration was isolated and has not resulted in any further leakage. The third component condition which led to an excessive leakage rate during this test was attributed to a packing failure in the main steam inboard vent valves. This condition was corrected by backseating the vent valves to eliminate leakage. In a subsequent refueling outage, the vent valves were removed and the connection was sealed with blind flanges. Following the licensee's prompt identification and corrective actions, three additional Type A tests have been successful and have demonstrated a good containment performance. Thus, the Type A test results only confirm the results of the Type B and C test results. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. Since the first failure, all Type A tests have passed with significant margin and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed.

The NRC staff has also made use of the information in a draft staff report, NUREG-1493, which provides the technical justification for the present appendix J rulemaking effort which also

includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate test (Type B and C). According to results given in NUREG-1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3 percent of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The CC-2 experience has also been consistent with these results as previously noted.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded 1.0L<sub>a</sub>. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowance leakage, the as-found leakage was less than 2L<sub>a</sub>; in one case the leakage was found to be approximately 2L<sub>a</sub>; in one case the as-found leakage was less than 3L<sub>a</sub>; one case approached 10L<sub>a</sub>; and in one case the leakage was found to be approximately 21L<sub>a</sub>. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L<sub>a</sub> (approximately 200L<sub>a</sub>, as discussed in NUREG-1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the appendix J, Type A test at CC-2 would result in significant degradation of the overall containment integrity. As a result, the application of the regulation of these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension for CC-2 of one cycle (24 months) for the performance of

the appendix J, Type A test, and to permit the third Type A test to be performed during the spring 1999 refueling which extends the second 10-year service period to 12 years to be acceptable. As a condition for granting this exemption, the licensee will perform visual containment inspections.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 14979).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 3rd day of April 1995.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—III,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 95-8707 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

**Pacific Gas & Electric Co., Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from Facility Operating License Nos. DPR-80 and DPR-82, issued to Pacific Gas and Electric Company (the licensee) for operation of Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would grant relief from the requirement in Section III.D.1.(a) of Appendix J to 10 CFR Part 50 that the third Type A test in a 10-year service period be conducted when the plant is shut down for the 10-year plant inservice inspections and allows the licensee to perform the three Type A tests at approximately equal intervals within each 10-year service period.

The proposed action is in accordance with the licensee's application for exemption dated February 16, 1994.

*The Need for the Proposed Action*

The proposed action is needed so that the licensee, given the 18-month fuel cycles at Diablo Canyon, is not required to perform a fourth Type A test in order to meet the Appendix J requirement and the Diablo Canyon Technical Specification requirement that Type A tests be conducted at 40 months plus or

minus 10 months during each 10-year service period.

#### *Environmental Impacts of the Proposed Action*

The proposed exemption would not adversely affect primary containment integrity. The three required Type A tests would still be conducted within the 10-year service period while giving the licensee flexibility in scheduling consistent with Diablo Canyon's 18-month fuel cycles. The combination of the Appendix J requirement and the current Diablo Canyon Technical Specification requirement would necessitate that the licensee, because of Diablo Canyon's 18-month fuel cycles, perform Type A tests at the second and fourth refueling outages but then would not permit the third Type A test to be conducted on a schedule that meets both requirements. The Commission has completed its evaluation of the proposed action and concludes that the intent of Section III.D.1.(a) of appendix J that containment leak-tight integrity be verified periodically throughout service lifetime is met when licensees perform three sets of Type A tests at approximately equal intervals over the 10-year service period. Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

#### *Alternatives to the Proposed Action*

Since the commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would result in a larger expenditure of licensee resources to

perform a fourth Type A test within a 10-year service period. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on February 16, 1995, the staff consulted with the California State official, Mr. Hank Kocol of the Department of Health Services, regarding the environmental impact of the proposed action. The State official had not comments.

#### **Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Director, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-8706 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

#### **Environmental Assessment and Finding of No Significant Impact Regarding Termination of the Shoreham Nuclear Power Station, Nuclear Power Facility License No. NPF-82**

The U.S. Nuclear Regulatory Commission is considering the issuance of an Order modifying the June 11, 1992, Order (the decommissioning Order) that authorized the Long Island

Power Authority (LIPA or the licensee) to decommission the Shoreham Nuclear Power Station (SNPS), Unit 1, at Wading River, New York. The SNPS is located in the town of Brookhaven, Suffolk County, New York, about 50 miles east of New York City, on the north shore of Long Island. The modifying Order would terminate License No. NPF-82 and release the site for unrestricted use based on the successful completion of decommissioning.

#### **Environmental Assessment**

##### *Identification of Proposed Action*

By letter dated June 27, 1991, the former licensee, Long Island Lighting Company (LILCO), and supplemented by letter dated August 4, 1994, the current licensee, LIPA, requested termination of the SNPS, Nuclear Power Facility (NPF) License No. NPF-82 (Docket No. 50-322). NRC approved, by Order dated June 11, 1992, the decommissioning of the SNPS. The June 11, 1992, Order contained the staff's Environmental Assessment and Finding of No Significant Impact related to the decommissioning of SNPS.

The licensee has completed the decommissioning and Final Termination Surveys of the SNPS. Representatives of the Oak Ridge Institute for Science and Education (ORISE), under contract to NRC, conducted a series of independent confirmatory surveys, during four site visits from February 1993 through November 1994. The proposed action would be to terminate the SNPS License No. NPF-82 and release the facility and site for unrestricted use.

##### *The Need for the Proposed Action*

To release the SNPS for unrestricted access and use, License No. NPF-82 must be terminated.

##### *Environmental Impact of License Termination*

In June 1992, NRC approved, by Order, the decommissioning of the SNPS. The June 11, 1992, Order contained the staff's Environmental Assessment and Finding of No Significant Impact related to the decommissioning of SNPS.

Based on an agreement between the Philadelphia Electric Company (PECO) and LIPA, the slightly irradiated fuel stored in the SNPS spent fuel pool was transferred to the Limerick Generating Station for use. The dismantlement and decontamination of the SNPS began in June 1992 and was completed in accordance with an approved decommissioning plan (DP), as supplemented, in August 1994. All

contaminated waste generated during the SNPS decommissioning has been removed from the site.

The approved DP, as supplemented, contained the SNPS Final Termination Survey Plan (Plan). The Plan described the methods used by the licensee to demonstrate compliance with existing NRC unrestricted release criteria. The guidelines used by the licensee for residual radioactivity at the SNPS are consistent with the values provided in Table 1, of Regulatory Guide 1.86, which establishes acceptable residual surface contamination levels. NRC authorized alternative contamination limits for iron-55 and tritium above those specified in Regulatory Guide 1.86. These alternative criteria were presented to the Commission in SECY 94-145 and increased the allowable residual average and maximum total residual beta activity levels for iron-55 and tritium from 5000 average total and 15,000 maximum total (fixed plus removable) disintegrations per minute (dpm)/100 square centimeters to 200,000 average total and 600,000 maximum total dpm/100 square centimeters, respectively. This permitted the licensee to safely retain on site major portions of the reactor bioshield wall that did not exceed the gamma dose rate criterion or the surface contamination limits for other isotopes, but which would have required offsite disposal under the original iron-55 and tritium surface contamination limits of Regulatory Guide 1.86. A concentration limit for cobalt-60 in soil and other bulk materials of 8 picocuries per gram was also established. An average gamma dose rate criterion of 5 uR per hour above background, at a distance of 1 meter from indoor accessible surfaces, was used. For outdoor surfaces, individual gamma exposure rates are not to exceed 10 uR per hour above background at 1 meter.

The licensee implemented a phased approach to its Final Termination Surveys and completed final radiological surveys in August 1994. These survey measurements were verified by the NRC contractor, ORISE. The ORISE confirmatory surveys confirmed that the licensee's measurements meet the existing criteria for unrestricted release. Since the existing unrestricted release criteria have been met, there is no significant radiological impact on the environment from the release of the site.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes no significant non-

radiological impacts are associated with the proposed action.

In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order is procedural in nature and will have no significant impact on the quality of the human environment. The proposed Order terminates the SNPS, Unit 1, Facility License No. NPF-82.

#### *Alternative to the Proposed Action*

Since the NRC staff has concluded that there are no environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

#### *Agencies and Persons Consulted*

The licensee initiated the request for termination of the SNPS License No. NPF-82. The NRC staff reviewed the request and representatives from ORISE performed confirmatory surveys. The staff consulted with the State of New York regarding environmental impacts of the proposed action, and the State did not provide any comments.

#### **Finding of No Significant Impact**

NRC has determined not to prepare an environmental impact statement for the proposed action. Based on the foregoing environmental assessment, NRC has concluded that the issuance of an Order will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The licensee's request to terminate the SNPC license presented in letters dated June 27, 1991 (SNRC-1818), and August 4, 1994 (LSNRC-2178); (2) the Commission's Order approving decommissioning dated June 11, 1992; (3) the licensee's Termination Survey Final Report, Phase 1 (LSNRC-2101), dated September 30, 1993; the licensee's Termination Survey Final Report, Phase 2 (LSNRC-2144), dated February 4, 1994; the licensee's Termination Survey Final Report, Phase 3 (LSNRC-2173), dated June 14, 1994; the licensee's Termination Survey Final Report, Phase 4 (LSNRC-2184), dated October 12, 1994; and (4) the ORISE Final Confirmatory Reports dated July 1993, September 1994, and February 1995. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Shoreham Wading River Public Library, Route 25A, Shoreham, NY 11786. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

DC 20555, Attention: Director, Division of Waste Management.

Dated at Rockville, Maryland, this 3rd day of April, 1995.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 95-8705 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

### **Decommissioning of the Depleted Uranium Impact Area of the Jefferson Proving Ground, Madison, IN; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS), conduct a scoping process for the EIS, and conduct a scoping meeting.

**SUMMARY:** The NRC intends to prepare an Environmental Impact Statement for the decommissioning of the depleted uranium (DU) impact area (the Delta Impact Area) of the Jefferson Proving Ground (JPG), Madison, Indiana. The DU impact area was used by the U.S. Army, during the period of 1983-1994, to perform testing of DU projectiles and munitions in accordance with NRC License No. SUB-1435. The U.S. Army has requested an exemption (under 10 CFR 40.14) from NRC requirements in 10 CFR 40.4 to allow termination of the license with land use restrictions on the Delta Impact Area. This notice is to inform the public and any concerned parties of NRC's intent to prepare an EIS in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

**DATES:** Written comments on matters covered by this notice received by June 9, 1995 will be considered in developing the scope of the EIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date. A public scoping meeting will be held at the Madison Junior High School cafeteria located on 701 Eighth Street, Madison, Indiana. The scoping meeting will be held on April 26, 1995, from 7 to 10 p.m.

**ADDRESSES:** Written comments on the matters covered by this notice or the scoping meeting should be sent to: Rules Review and Directives Branch,

U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held on April 26, 1995, at 7 p.m., in the cafetorium of the Madison Junior High School, 701 Eighth Street, Madison, Indiana, 47250.

**FOR FURTHER INFORMATION CONTACT:**

Boby Eid, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: (301) 415-5811.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Nuclear Regulatory Commission (NRC) has the statutory responsibility under the Atomic Energy Act of 1954, as amended, for protection of public health and safety and the environment related to the use of source, byproduct, and special nuclear material. Part of this responsibility is to ensure safe and timely decommissioning of the nuclear facilities which NRC licenses. This responsibility includes providing guidance to licensees on how to plan for and prepare their sites for decommissioning.

Decommissioning, as defined in the NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated and the property can be released in accordance with NRC requirements. Radioactive materials in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation need to be reduced to acceptably low levels that allow the property to be released. Licensees must then demonstrate by a site radiological survey that residual radioactive material in all facilities and environmental media has been properly reduced or eliminated and that, except for any residual radioactive material found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

**Need for Proposed Action**

The Jefferson Proving Ground (JPG) is currently listed in the NRC's Site Decommissioning Management Plan (SDMP) because it contains a relatively extensive amount of soil contaminated with DU. In addition, the residual DU contamination could potentially cause contamination of groundwater and surface water onsite. The JPG site covers 55,264 acres that were used to evaluate and test ammunition and components from 1941 to 1994. An extensive portion of the site contains unexploded ordnance (UXO) from testing. A portion of the site was used, from 1983 to 1994, for testing of depleted uranium (DU) penetrators and DU munitions in accordance with the NRC license granted to the U.S. Department of the Army, Jefferson Proving Ground, on December 16, 1983. The Army received, stored, and fired DU munitions at the site. Approximately 100,000 kg of DU penetrators were fired from three positions designated J, 500 center, and K5. The majority of DU penetrators (89,000 kg) were fired from the 500 center position.

The DU impact area (Delta Impact Area) is the area where DU penetrators, or their fragments, eventually stopped after being fired from one of the three positions several miles down range. This area constitutes approximately 3,000 acres located in the south-central portion of JPG. In addition to the penetrators, the area also contains abundant UXOs from testing ordnance that did not contain uranium. The DU penetrators were fired at "soft" targets (e.g., cloth) and eventually came to rest on top of or in the soil. Some of the penetrators are embedded in trees or were deposited in streams on the site. Many of the penetrators remained intact and appear as straight or bent metal rods. Some fraction of the penetrators probably fragmented upon impact into rocks, soil, and trees. The Army was able to recover around 30,000 kg of the fired DU. DU penetrators (un-fired and recovered) were stored in buildings and facilities at the site located south of JPG firing line.

The Army is currently the owner of the JPG site. However, in accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100-526), the Army is required to close JPG no later than September 30, 1995.

As part of the mandatory closure of JPG, the Army informed the NRC, in a letter dated February 16, 1995, of its intent to terminate that portion of the license for all areas located south of JPG firing line in a manner consistent with

the unrestricted reuse criteria in accordance with 10 CFR 40.42. The Army has performed remediation and decontamination activities in buildings and facilities south of the firing line and has recently submitted a final radiological survey report, which is currently under review by NRC staff. NRC intends to conduct a confirmatory survey of that portion of the site prior to removing it from the license and releasing it for unrestricted use.

The Army also requested an exemption (under 10 CFR 40.14) from the requirements to allow termination of the license and release of the DU impact area with restrictions on future land use. This request was based upon a potential high risk due to the presence of high concentrations of UXOs in the DU impact area, the risks associated with accidental detonation of the UXOs in any remediation activity to recover the DU penetrators, the high cost of remediation, and the potential for environmental damage. The Army and the U.S. Fish and Wildlife Service (USFWS) are currently discussing potential inclusion of approximately 47,000 acres of JPG site into the National Wildlife Refuge System, which would encompass the Delta Impact Area containing the DU penetrators. The Army has indicated its belief that the restricted termination of the Delta Impact Area would be compatible with the future use of the land as a wildlife refuge.

The Army has performed environmental monitoring of soil, surface water, and groundwater in and around the Delta Impact Area. Environmental samples were collected semi-annually or quarterly from such environmental media. More recently, the Army conducted a scoping survey of the Delta Impact Area. The Army removed DU penetrators that could be safely detected and collected during the scoping survey. Detailed characterization (e.g., sampling and radiological analysis) of subsurface soil of the DU Impact Area was not conducted due to a possible risk from the UXOs.

The NRC has determined that approval of the Army's request would constitute a major federal action and, therefore, warrants preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. The Army's request for an exemption without any further remediation or cleanup, may involve radiological and non-radiological risks to humans and the environment resulting from direct exposure to DU

material on site or from subsequent migration of DU via groundwater or surface water. In addition, this action may constitute an irretrievable commitment of land resources dedicated for specific use due to the presence of DU contamination onsite.

An estimated 70,000 kg of DU is currently present in the impact area. The DU exists in and on the soil as uranium metal or as contaminated soil. The DU may also be leaching to some extent from the penetrators and migrating into soil around the penetrators. The concentration of DU in the soil is expected to exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's SDMP Action Plan (57 FR 13389; April 16, 1992). As described in the 1992 Action Plan, the criteria are applied on a site-specific basis with emphasis on attaining residual contamination levels that are as low as is reasonably achievable (ALARA). Further, potential contamination of surface water and groundwater cannot be excluded at this stage. In order for the NRC to approve termination of the license with land use restrictions or other institutional controls, the NRC must ensure that the public and environment will be suitably protected both now and in the future.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with the decommissioning of JPG that are regulated by other agencies (e.g., the Indiana State Department of Environmental Management, the U.S. Environmental Protection Agency (EPA)). EPA and the State of Indiana are involved, for example, in overseeing the investigation and potential remediation of hazardous and non-radiological contamination on site. The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of JPG, but should also be useful to other agencies and stakeholders involved or affected by NRC decommissioning decisions.

### Description of Proposed Action

The proposed action would involve termination of the license and releasing the Delta Impact Area with land use restrictions, without performing any additional remediation of contaminated media. The impact area would be used, at least for the foreseeable future, as a wildlife refuge. Appropriate institutional controls would be imposed to ensure the durability of the land use restrictions. These may involve a variety of measures, such as environmental monitoring, fencing, patrolling, and posting the area.

### Preparation of an Environmental Impact Statement

Under the NEPA, Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decisionmaking processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and the costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action will be analyzed. The planned scope of the EIS includes consideration of radiological and non-radiological (e.g., UXOs) impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences of the proposed action and alternatives. The document will inform the Agency's decisionmakers in reviewing the licensee's remediation proposal and request for an exemption for the restricted release of the DU impact area at JPG.

### The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared in connection with a proposed action, NRC will publish a notice of intent in the **Federal Register** stating that an EIS will be prepared and will conduct an appropriate scoping process. In addition, this scoping process may include a public scoping meeting. NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice describes the proposed action and also, to the extent that sufficient information is available, the possible alternatives. The notice of intent should also describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with 10 CFR 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral or written comments on the proposed action and possible alternatives at the public scoping meeting at the Madison Junior High School cafeteria, 701 Eighth Street, Madison, IN, on April 26, 1995, from 7 p.m. to 10 p.m.; and

(2) The Commission will also accept written comments on the proposed action and alternatives. Written comments should be submitted by June 9, 1996, and should be sent to: Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

*(a) Define the Proposed Action To Be the Subject of the EIS*

The proposed action and alternatives are: (1) Restricted release without remediation, (2) Partial DU remediation, (3) Complete DU remediation, and (4) No Action. NRC will consider the designated "No Action" alternative for comparison with the other alternatives.

*(b) Determine the Scope of the EIS and the Significant Issues To Be Analyzed in Depth*

The NRC is proposing to analyze the costs and impacts associated with the proposed action and the proposed alternative decommissioning approaches. The following outline of the EIS reflects the current NRC staff views on the scope and major topics to be dealt with in the EIS:

### Proposed Outline: Environmental Impact Statement:

Abstract  
Executive Summary  
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- 3.6 Ecology
- 3.7 Socioeconomic Characteristics
- 3.8 Radiation
- 3.9 UXOs
- 3.10 Cultural Resources
- 3.11 Other Environmental Features

**4. Decommissioning Alternatives Analyzed and Method of Approach for the Analysis**

- 4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
- 4.2 Alternatives Considered—Each of the alternatives represents an alternative decommissioning approach.

(a) Alternative 1, Restricted Release without DU Remediation [Licensee's Proposed Action]. The Delta Impact Area would be released with land use restrictions compatible with the use of the area as a wildlife refuge. The depleted uranium contamination would be allowed to remain on site in the Delta Impact Area in excess of NRC's radiological criteria for decommissioning (e.g., 35 picoCuries DU per gram of soil). Additional remediation of the DU contamination would not be required. Appropriate institutional controls would be imposed to ensure the durability of the land use restrictions. These may involve a variety of measures, such as environmental monitoring, fencing, patrolling, and posting the area.

(b) Alternative 2, Partial DU Remediation. The top one foot of the soil in the Delta Impact Area would be remediated to remove DU contamination in excess of NRC's radiological criteria for decommissioning. Any radioactive waste generated in the remediation would be disposed of at a licensed disposal facility for low-level radioactive waste. Institutional controls would be imposed to restrict access to the Delta Impact Area; these controls would be compatible with the future intended use of the area as a wildlife refuge, as described in proposed action (i);

(c) Alternative 3, Complete DU Remediation. The soil and other environmental media (e.g., vegetation, surface water) in the Delta Impact Area would be remediated to remove DU contamination in excess of NRC's radiological criteria for decommissioning. Any radioactive waste generated in the remediation would be disposed of at a licensed disposal facility for low-level radioactive waste. Institutional controls would not be necessary to prevent unacceptable radiological risks to the public

because the DU contamination would be suitably reduced in accordance with NRC requirements in the Delta Impact Area. However, some controls may still be necessary to protect against the hazards associated with the UXOs;

(d) Alternative 4, No Action. The DU contamination would be allowed to remain onsite in its present configuration without additional remediation or land use restrictions. This alternative is being included for the purpose of comparison between the benefits and impacts associated with the other alternatives.

**4.3 Methods of Analysis of Alternatives**

- (a) Define a range of alternatives;
- (b) Evaluate the alternatives with respect to:
  - (1) The incremental impact to workers, members of the public, and the environment, both radiological and non-radiological, resulting from each alternative, and
  - (2) The costs associated with each regulatory alternative.
- (c) Perform a comparative evaluation of the alternatives based on the impacts and costs of each alternative from 4.3(b).

**5. Environmental Consequences, Monitoring, and Mitigation**

- 5.1 Remediation Consequences
- 5.2 Monitoring Programs
- 5.3 Mitigation Measures
- 5.4 Unavoidable Adverse Environmental Impacts
- 5.5 Relationship between Short-Term Uses of the Environment and Long-Term Productivity
- 5.6 Irreversible and Irrecoverable Commitments of Resources

**6. Costs and Benefits Associated with Decommissioning Alternatives**

- 6.1 General
- 6.2 Quantifiable Socioeconomic Impacts
- 6.3 The Benefit-Cost Summary
- 6.4 Staff Assessment

**7. List of Preparers****8. List of Agencies, Organizations, and Persons Receiving Copies of the Draft EIS****9. References**

Appendix A—Reserved for Comments on DEIS

Appendix B—Results of Scoping Process

*(c) Identify and Eliminate From Detailed Study Issues which Are Not Significant or Peripheral, or Those Which Have Been Covered by Prior Environmental Review*

The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this EIS because they have previously analyzed in a Generic Environmental Impact Statement (GEIS) (NUREG-0586) and included in an earlier rulemaking (53 FR 24018; June 28, 1988):

(i) Planning necessary to conduct decommissioning operations in a safe manner;

(ii) Assurance that sufficient funds are available to pay for decommissioning;

(iii) The time period in which decommissioning should be completed; and

(iv) Whether facilities should not be left abandoned, but instead be remediated to appropriate levels.

In addition, requirements were recently established in a separate rulemaking regarding timeliness of decommissioning for licensed facilities regulated under 10 CFR Parts 30, 40, and 70 (59 FR 36026; July 15, 1994). NRC also recently proposed establishing radiological criteria for decommissioning, which are supported by a draft GEIS (NUREG-1496, 59 FR 43200, August 22, 1994).

*(d) Identify any Environmental Assessments of EISs Which Are Being or Will Be Prepared That Are Related but Are Not Part of the Scope of This EIS*

An Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (59 FR 36026; July 15, 1994). NRC is presently developing a GEIS (NUREG-1496) to support the rulemaking which will establish generic radiological criteria for decommissioning (59 FR 43200; August 22, 1994). In addition, NRC is presently developing EISs for decommissioning sites owned by the Shieldalloy Metallurgical Corporation in Cambridge, OH, and Newfield, NJ; and Babcock and Wilcox Shallow Land Disposal Area, Parks Township, PA.

The Army has prepared a Final Environmental Impact Statement on the transfer of JPG's mission to Yuma Proving Ground, near Yuma, AZ (Closure of Jefferson Proving Ground, Indiana and Realignment to Yuma Proving Ground, Arizona—Environmental Impact Statement (September, 1991)). In addition, the Army also prepared a Draft EIS for Disposal and Reuse of JPG, which was recently announced in the **Federal Register** and is currently under public review (60 FR 15542; March 24, 1995).

*(e) Identify Other Environmental Review or Consultation Requirements Related to the Proposed Action*

NRC will consult with other Federal, state, and local agencies that have jurisdiction over the decommissioning of the JPG. For example, NRC has already been coordinating its reviews of decommissioning actions with EPA, the State of Indiana, the U.S. Fish and Wildlife Service, and other governmental agencies. NRC anticipates continued consultation with other

agencies, as appropriate, during the development of the EIS.

*(f) Indicate the Relationship Between the Timing of the Preparation of Environmental Analysis and the Commission's Tentative Planning and Decision Making Schedule*

NRC intends to prepare and issue for public comment a draft EIS in early 1996. The comment period would be for 90 days. The final EIS is scheduled for publication in the late 1996. This schedule may be impacted by the availability and adequacy of information about the site. Subsequent to completion of the final EIS, the NRC would review and act on a license amendment from the licensee requesting authorization for decommissioning the site. This could include review of the decommissioning plan as required in 10 CFR 40.42(c)(2), depending upon the outcome of the EIS.

*(g) Describe the Means by Which the EIS Will Be Prepared*

NRC will prepare the draft EIS according to the requirements in 10 CFR Part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as any benefits of the proposed action, including the environmental, economic, technical, and other benefits.

The EIS will be prepared by the NRC staff. NRC may rely, to some extent, on the other NEPA documents prepared by the Army in support of the transfer of the JPG mission and the intended reuse of JPG after closure. NRC may also seek some technical assistance from one or more contractors (e.g., a national laboratory), if there is a need for such support. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS (e.g., available environmental monitoring data, risk assessment for the DU contamination, and UXO risks and costs for remediation). Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC

will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process as well as place this information in the NRC's Public Document Room.

Dated at Rockville, Maryland, this 3rd day of April 1995.

For the U.S. Nuclear Regulatory Commission,  
**Michael F. Weber,**  
*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 95-8704 Filed 4-7-95; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35558; File No. SR-CBOE-94-40]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Three Business Day Settlement of Securities Transactions

March 31, 1995.

On November 7, 1994, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change will amend CBOE's rules to provide for three business day settlement of securities transactions. The Commission published notice of the proposed rule change in the **Federal Register** on December 29, 1994 to solicit comment from interested persons.<sup>2</sup> No comments were received. This order approves the proposal.

#### I. Description

On June 7, 1995, the standard settlement time frame for most securities transactions will be shortened from five business days after the trade date ("T+5") to three business days after the trade date ("T+3").<sup>3</sup> The proposal

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Securities Exchange Act Release No. 35137 (December 22, 1994), 59 FR 67355.

<sup>3</sup> On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes T+3 instead of T+5 as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891. The rule becomes effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

amends certain provisions of CBOE's rules consistent with a T+3 settlement cycle. These amendments will become effective on the same date as Rule 15c6-1.<sup>4</sup>

The proposed rule change will amend Chapter XXX (Stocks, Warrants and Other Securities) and Chapter XXXI (Approval of Securities for Original Listing) to reflect a three business day settlement cycle. The settlement time frame for regular way transactions for stocks and warrants contained in Rules 30.12 (a)(3), 30.31(a), and 31.40 will be amended to refer to the three business day settlement standard. Rules 30.12(a)(4) and 30.31(a)(iii) will be amended to provide that seller's option trades may not settle in less than four business days. Rule 30.31(b), concerning bids and offers in rights to subscribe, will be amended to eliminate the reference to the fourth and fifth business day preceding the final day for subscription. Rule 30.34(b) and (c) will be amended to change references to the five final business days for trading in warrants and the fifth business day preceding the expiration of a class of warrants to the three final business days and the third business day. Rule 12.3(b)(1)(C)(1)(iv), concerning the margin requirements for a call option contract, also will be amended to refer to the third business day prior to the date on which a right to exchange or convert expires.

Rules 30.32(a), 31.22(f), and 31.42 contain provisions setting forth ex-rights or ex-dividend dates (i.e., the dates when stocks trade without rights or dividends). All references to transactions in stocks being ex-dividend or ex-rights on the fourth business day preceding the record date will be changed to the second business day preceding the record date. For transactions when the record date occurs on a day other than a business day, the stock will be traded ex-divided on ex-rights on the third preceding business day rather than on the fifth preceding business day.

Four rules dealing with customer margin requirements also will be amended. Consistent with Regulation T,<sup>5</sup> Rules 21.25(a), 23.13(a), 24.11(a),

<sup>4</sup> The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

<sup>5</sup> 12 CFR 200.1-200.19 (1994), as amended, 59 FR 53565 (October 25, 1994).

and 30.51(a) currently require that initial margin deposits be made within seven full business days after the date on which a transaction giving rise to a margin requirement is effected. Rule 21.25(a) also requires that all long options must be paid in full within seven business days after the purchase date. Rule 21.25(e) provides that no margin is required in respect of government security options carried in a short position if the customer provides a custodial or Treasury security escrow receipt or letter of guarantee within seven business days. Regulation T was recently amended to revise the time limit within which a customer margin call must be satisfied to "the number of business days in the standard settlement cycle in the United States \* \* \* plus two business days."<sup>6</sup> Accordingly, all the time frames discussed above will be shortened to five business days.

## II. Discussion

The Commission believes the proposed rule change is consistent with Section 6 of the Act and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5)<sup>7</sup> of the Act which requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Currently, the rules of CBOE and other self-regulatory organizations control the time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6-1. As a result, CBOE's current rules establishing a T+5 settlement cycle will be inconsistent with Commission rules. This proposal will amend CBOE's rules to harmonize them with a T+3 settlement cycle.

The Commission believes that the benefits of a three day settlement cycle, as outlined in the release adopting Rule 15c6-1, apply equally to CBOE's proposed rule change.<sup>8</sup> With a T+3 settlement cycle, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the

value of those trades to deteriorate.<sup>9</sup> By reducing risk to the system, the proposed rule change furthers protection of investors and the public interest. CBOE's rules will assist the transition to a T+3 cycle by providing guidelines for related matters such as ex-dates. Thus, the proposed rule change is consistent with fostering cooperation and coordination with persons engaged in regulating, clearing, and settling transactions in securities and of perfecting the mechanism of a free and open market.

## III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-CBOE-94-40) be and hereby is approved, effective June 7, 1995.

For the Commission by the Division of Market Regulation pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-8665 Filed 4-7-95; 8:45 am]

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[Release No. 34-35551; File No. SR-PSE-95-08]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Its Rules on Short Interest Reporting

March 30, 1995.

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

<sup>9</sup>The adopting release stated, "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures, resulting in risk to the national clearance and settlement system." *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s (b)(1)(1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

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 Exchange is proposing to make a technical amendment to its rules on short interest reporting to allow members and member organizations for which the Exchange is the designated examining authority ("DEA") to report their "short" positions to self-regulatory organizations other than the Exchange. The text of the proposed rule change is as follows, wherein additions are *italicized*:

Rule 2.6(f)—No change.

#### Commentary

.01 No Change.

.02 *Members and member organizations for which the Exchange is the DEA need not report "short" positions to the Exchange as provided in Commentary .01 if such member or member organization has made arrangements, satisfactory to the Exchange, to report such positions to another self-regulatory organization.*

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

### 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 III 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

On January 27, 1995, the Commission approved a rule change proposal of the Exchange that requires members and member organizations for which the Exchange is the DEA to report certain "short" positions to the Exchange.<sup>3</sup> The Exchange is proposing an amendment to

<sup>3</sup> See Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995).

<sup>6</sup> See Federal Reserve System Release, Docket No. R-0840 (October 18, 1994), 59 FR 53565.

<sup>7</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>8</sup> See *supra* note 7.

that rule change to allow such members and member organizations to report their "short" positions to self-regulatory organizations other than the Exchange.

Specifically, the Exchange is proposing to add a new Commentary .02 to Rule 2.6(f) to provide that members and member organizations for which the Exchange is the DEA need not report short positions to the Exchange as provided in Rule 2.6(f), Commentary .01, if such member or member organization has made arrangements, satisfactory to the Exchange, to report such positions to another self-regulatory organization.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

### *B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

## III. 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 PSE. All submissions should refer to File No. SR-PSE-95-08 and should be submitted by May 1, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to adopt an interpretation to its short interest position reporting rules permitting a member to report such positions to another self-regulatory organization, pursuant to an arrangement satisfactory to the Exchange, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.<sup>4</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Further, the Commission notes that the Exchange has represented that, as the Designated Examining Authority ("DEA"), the Exchange will review compliance with its short interest rules during each oversight examination. Such examinations are conducted on a regular basis pursuant to the Exchange's status as DEA. Finally, the Exchange's financial compliance office will modify its examination module to ensure that the examiner checks for compliance with the short interest reporting rules.<sup>5</sup>

The Commission believes that the PSE proposal to adopt Commentary .02 as outlined above furthers the objectives of Section 6(b)(5) of the Act in that it should facilitate the efficient reporting of short interest positions without imposing an undue burden upon broker-dealers.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the PSE to ensure compliance with the short position reporting rules implemented as of March 1, 1995. Further, the new short position

<sup>4</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>5</sup> Conversation between David Semak & Michael Pierson, PSE, and Amy Bilbija, Commission, on March 24, 1995. The Exchange also indicated that, currently, there is only one member firm that will fall under the purview of the proposed amendment. The Exchange anticipates that only in rare occasions other members will need to make the arrangements provided for in the proposed rule change.

reporting procedure was noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.<sup>6</sup>

It is therefore ordered, pursuant to Section 19(b)(2)<sup>7</sup> that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

[FR Doc. 95-8666 Filed 4-7-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35553; File No. SR-Amex-94-57]

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 31, 1995.

On December 23, 1994, the American Stock Exchange, Inc. ("Amex") filed a proposed rule change (File No. SR-Amex-94-57) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 12, 1995, to solicit comments from interested persons.<sup>2</sup> The Commission received one written comment.<sup>3</sup> As discussed below, this order approves the proposed rule change.

### I. Description

In October 1993, the Commission adopted Rule 15c6-1 under the Act which will become effective June 7, 1995.<sup>4</sup> The rule establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. Several of the Amex's rules are interrelated with the T+5 settlement time frame. The purpose of the proposed rule change is to amend Amex's rules consistent with a T+3

<sup>6</sup> See Securities Exchange Act Release No. 35146 (December 23, 1994), 60 FR 518 (January 4, 1995).

<sup>7</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. § 78s(b) (1988).

<sup>2</sup> Securities Exchange Act Release No. 35197 (January 6, 1995), 60 FR 3007.

<sup>3</sup> Letter from P. Howard Edelstein, President Electronic Settlements Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

<sup>4</sup> Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (changing the effective date from June 1, 1995, to June 7, 1995).

settlement standard for securities transactions.

Rule 124(c) specifies the delivery date for regular way transactions which will be shortened to T+3. The references to a seller's option delivery to be made not less than six business days after the trade date contained in Rules 124(d) and 205C(2) will be changed to not less than four business days.

Rules 17(b) and 179(a) will require that all transactions and orders entered on a specialist's book in an issue of rights shall be made "next day" during the three business days preceding the final day for dealings in an issue of rights. Rules 17(c) and 179(b) will require all transactions and orders entered on a specialist's book in warrants shall be made for cash during the three final business days for trading in such issue. Rule 179(c) will require an order in an expiring equity securities entered on a specialist's book to be for "next day" delivery during the final three business days preceding the final day for trading.

The proposal will shorten by two days the time frames contained in Rule 423(4) for delivery of agent instructions with respect to receipt versus payment ("RVP") or delivery versus payment ("DVP") customer transactions. The proposal will shorten by two days the time frames contained in Rule 830 for the ex-dividend period and the ex-rights period (if the terms of the subscription are known sufficiently in advance) for stock transactions not made in cash. In addition, the proposal eliminates the separate ex-dividend and ex-right periods for transfers outside of New York.

Rule 858 directs settlement in contracts in bonds dealt in "and interest." The proposal will amend Rule 858 to provide that with respect to seller's option contracts, there shall be added to the contract price interest on the principle amount at the rate specified in the bond, which shall be computed up to but not including the day when delivery would have been due if the contract had been made "regular way."

Rule 862 will require that the return of loans of securities must be made on the third business day following the day on which notice is given. Rule 866 will require a loan of securities to be deliverable on the third business day following the day of the loan unless otherwise agreed to by the parties. Rule 882 will require that a seller deliver to the buyer a due-bill for dividends or rights to subscribe within three days after the record date if a security is sold before it is ex-dividend or ex-rights and delivery is made after the record date.

The references in Rule 882 to the equivalent New York record date will be eliminated.

Amex has requested that the proposed rule change become effective on the same date as Rule 15c6-1.<sup>5</sup> Rule 15c6-1 is scheduled to become effective on June 7, 1995. The transition from T+5 settlement to T+3 settlement will occur over a four day period.<sup>6</sup>

## II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.<sup>7</sup> Thomson believes that the Amex should amend Rule 423(5) which requires the use of the facilities of a securities depository for confirmation and acknowledgement of all depository-eligible transactions.

## III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.<sup>8</sup> Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. Amex's rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6-1. As a result, the Amex's current rules providing for a T+5 settlement cycle will be inconsistent with Commission rules. This proposal will amend the Amex's rules to harmonize them with a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent

<sup>5</sup> Letter from Ivonne Nagy, Special Counsel, Amex, to Michele Bianco, Attorney, Office of Securities Processing, Division of Market Regulation, Commission (December 30, 1994).

<sup>6</sup> Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

<sup>7</sup> Letter from P. Howard Edelstein, President, Electronic Settlement Group, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

<sup>8</sup> 15 U.S.C. 78f (1988).

in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.<sup>9</sup>

While the Thomson letter supports the Amex's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the Amex should amend Rule 423(5), which requires the use of the facilities of a securities depository for the confirmation and acknowledgement of all DVP and RVP depository-eligible transactions. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, DTC, and the Securities Industry Association. The Commission will continue to work with the industry to address Thomson's concerns. However, if the proposed rule change is not approved prior to the June 7, 1995, effective date of Rule 15c6-1, the Amex rules will conflict with the Commission Rule 15c6-1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rule 423 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that the anticompetitive effects pointed to by Thomson, if in fact there are any anticompetitive effects, are not caused by the proposed rule change approved by this order but rather by an existing Amex rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the

<sup>9</sup> The adopting release stated, "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

efficient clearance and settlement of securities.

#### IV. Conclusion

For the reasons stated above, the Commission finds that Amex's proposal is consistent with Section 6 of the Act.<sup>10</sup>

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-Amex-94-57) be and hereby is approved, effective June 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-8709 Filed 4-7-95; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

##### National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on May 17, 1995, from 9 am through 4 pm, at the U.S. Small Business Administration, 7th Floor, 633 17th Street, Denver, Colorado 80202.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street SW., Washington, DC 20416, telephone 202/205-7302.

**Dorothy A. Overall,**

*Director, Office of Advisory Council.*

[FR Doc. 95-8700 Filed 4-7-95; 8:45 am]

BILLING CODE 8025-01-M

##### Houston District Advisory Council; Public Meeting

The U.S. Small Business Administration Houston District Advisory Council will hold a public meeting on Thursday, April 27, 1995 at 1:30 p.m. in the SBA Conference Room, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074-1591, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Melton Wilson, Jr., District Director, U.S. Small Business Administration, 9301 Southwest Freeway, Suite 550,

Houston, Texas 77074-1591, (713) 773-6500.

Dated: April 4, 1995.

**Dorothy A. Overall,**

*Director, Office of Advisory Council.*

[FR Doc. 95-8699 Filed 4-7-95; 8:45 am]

BILLING CODE 8025-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Office of the Secretary

##### Application of Eagle Canyon Airlines, Inc., for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 95-4-8) Docket 50073.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Eagle Canyon Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than April 19, 1995.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 50073 and addressed to the Documentary Services Division (C-55, Room PL-401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (X-56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: April 4, 1995.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 95-8698 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-62-P

##### Office of Commercial Space Transportation

##### LEO Market Assessment

Notice is hereby given of an assessment of the low earth orbit (LEO) space market that will be undertaken by the Office of Commercial Space Transportation (OCST) of the Department of Transportation (DOT). This assessment will be an update to a prior study of the LEO market that

OCST conducted in February 1994, which was completed on the basis of information collected at a public meeting on February 10, 1994, and through private submittals. As with the former study, DOT is undertaking the assessment in support of its participation in various interagency working groups on space transportation and the efforts by the Office of the United States Trade Representative (USTR) to negotiate and/or monitor compliance with commercial space launch trade agreements between the U.S. and various economies-in-transition (EITs) offering commercial space launch services.

In order to complete the current assessment, DOT is again seeking data from interested parties that would assist in defining LEO launch requirements and in projecting future space transportation needs to support market demands. Specifically, OCST is interested in obtaining projections of the number of LEO payloads that will be launched between the years 1995-2010, as well as assessments of the types of services that may result from LEO satellites and their applications (e.g., remote sensing, mobile communications). OCST is also interested in obtaining short and long-range projections of the potential revenues that may be generated by these space-based systems. For purposes of this study, LEO can be considered to include Medium Earth Orbit (MEO) requirements as well (e.g., proposed communications satellite constellations in MEO).

At the present time, DOT does not plan to hold a public meeting to discuss new developments in the LEO market. Rather, the process for collecting information shall rely on written submissions, which can be provided to DOT by any interested party. Submissions designated as proprietary will be treated confidentially. Due to the immediate need for this data to support the various DOT and interagency efforts, written submissions should be provided as quickly as possible, and no later than noon on April 24, 1995, to the Office of Commercial Space Transportation, Room 5415, 400 Seventh Street, SW., Washington, DC 20590 or by fax to (202) 366-72cc. Additional information may be obtained by contacting Ms. Patti Grace Smith at (202) 366-8960 or Richard W. Scott, Jr. at (202) 366-2936.

Dated: April 5, 1995.

**Patti Grace Smith,**

*Associate Managing Director, Office of Commercial Space Transportation.*

[FR Doc. 95-8837 Filed 4-6-95; 11:35 am]

BILLING CODE 4910-62-P

<sup>10</sup> 15 U.S.C. § 78f (1988).

<sup>11</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>12</sup> 17 CFR 200.30(a)(12) (1994).

## Federal Aviation Administration

### Civil Tiltrotor Development Advisory Committee Infrastructure Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72-362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on April 27-28, 1995 at the headquarters of the Airport Council International located at 1775 K Street NW, Suite 500, Washington DC 20006. The meeting will begin at 9:00 a.m. on the 27th and conclude by 1:00 p.m. on the 28th.

The agenda for the Infrastructure Subcommittee meeting will include the following:

- (1) Briefings on assumptions and results of the CTRDAC economic analysis.
- (2) Review and discussion of the Subcommittee draft executive summary.
- (3) Review the Infrastructure Subcommittee work plans, schedule and assumptions.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202-267-9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least three days prior to the meeting. Issued in Washington, D.C., April 3, 1995.

**Richard A. Weiss,**  
*Designated Federal Official, Civil Tiltrotor Development Advisory Committee.*  
[FR Doc. 95-8766 Filed 4-7-95; 8:45 am]  
BILLING CODE 4910-13-M

### Civil Tiltrotor Development Advisory Committee Economics Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72-362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Economics Subcommittee that will be held on April 17, 1995 in Cambridge, MA, at the Volpe National

Transportation Systems Center (VNTSC), 55 Broadway, Kendall Square, in the Executive Conference Center, 12th Floor.

The meeting will begin at 9:30 a.m. and conclude by 3:00 p.m.

The Agenda for the third Economics Subcommittee meeting will include the following:

- (1) Review and discussion on the draft executive summary of the economics report.
- (2) Review of assumptions.
- (3) Review of schedule and work plans.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202-267-9451 by April 13. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least three days prior to the meeting. Issued in Washington, DC., April 4, 1995.

**Richard A. Weiss,**  
*Designated Federal Official, Civil Tiltrotor Development Advisory Committee.*  
[FR Doc. 95-8768 Filed 4-7-95; 8:45 am]  
BILLING CODE 4910-13-M

### Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

**DATES:** The meeting will be held on April 28, 1995, at 9:00 a.m. Arrange for oral presentations by April 20, 1995.

**ADDRESSES:** The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-

463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on April 28, 1995, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
  - Working Group Reports
- Delegation System—A special presentation on Delegation Options  
ELT  
Parts  
Production Certification  
ICPTF

- Review of Action Items
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 20, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 3, 1995.

**Daniel P. Salvano,**  
*Assistant Executive Director for ARAC Aircraft Certification Procedures.*  
[FR Doc. 95-8769 Filed 4-7-95; 8:45 am]  
BILLING CODE 4910-13-M

### National Highway Traffic Safety Administration

#### Petition for Exemption From the Vehicle Theft Protection Standard; Volkswagen of America, Inc.

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This notice grants in full the petition of Volkswagen of America, Inc. (VW) for an exemption from the parts-marking requirements of the vehicle theft protection standard for a high-theft car line whose nameplate and effective model year is confidential. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard

equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

**DATES:** The exemption granted by this notice is effective beginning with (confidential) model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

**SUPPLEMENTARY INFORMATION:** On December 13, 1994, the National Highway Traffic Safety Administration (NHTSA) received a petition dated December 7, 1994, from Volkswagen of America, Inc. (VW) requesting an exemption from the theft protection standard for a car line for the (confidential) model year. The nameplate of the car line is confidential. The petition was submitted pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Protection Standard*, and requested an exemption from parts marking based on the installation of a theft deterrent device as standard equipment for the car line. The petition filed by VW is complete, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated January 12, 1995, NHTSA granted the petitioner's request for confidential treatment of certain information, including the identity of the nameplate of the car line.

In its petition, VW provided a detailed description of the identity, design and location of the components of the antitheft device for the car line, including diagrams of the components and their location in the vehicle. VW stated that the system incorporates an alarm system that is comparable to other alarm systems for which NHTSA has granted exemptions. The system protects the hood, the trunk lid and all doors of the vehicle, and the radio. In addition, it includes an engine starter interrupt feature. VW stated that its antitheft system is similar to the one used as standard equipment on Toyota, Lexus, Nissan and Mazda car lines.

The device is designed to facilitate or encourage its activation by motorists. The antitheft device control unit is activated by turning the key in either of the front door locks to the lock position and holding the key in the lock position for at least one-half second.

The activated condition is indicated by a short "beep" signal from the alarm system horn. The device will be armed 0.2 seconds after activation if the hood, the vehicle doors and the trunk are properly closed. If a door, hood, or the

trunk is left open when the door key is turned to the lock position, the starter interrupt feature is activated, but the alarm system will only be armed, and the short "beep" on the alarm horn will only sound, when the door, hood or trunk that had been left open is closed. If an opened door, hood or trunk is not closed within one minute after the key is turned in either of the front door locks, the system will arm to protect all of the closed areas; and if the open area is subsequently closed, it will be protected as well.

This line is equipped with a power door locking system. All the doors and the trunk lock will be locked automatically when the key is turned to the lock position in either front door. Once the vehicle antitheft system has been activated, entry into the vehicle is accomplished by turning the key in either front door lock to the spring-loaded open position once and releasing it. This will deactivate the alarm system and will unlock only the door being operated. Turning the key in either front door lock to the open position a second time within four seconds of the first turn will deactivate the alarm system and will unlock all the doors and the trunk. When the trunk "unlocks" the lid does not open until the lock cylinder is pressed.

If any violation of protected areas occurs once the system has been activated, the alarm horn (mounted in the front hood area) will sound and the hazard warning flashers will actuate. Also, the starter interrupt feature will prevent the vehicle from starting.

The sounding of the horn and the actuation of the hazard warning flashers continues for a duration of 165 seconds. A subsequent attempt will reactivate the system for another 165 seconds. The antitheft device sensors are located in the trunk key cylinder. Once the key has been inserted the antitheft device is deactivated. However, closing the trunk lid reactivates the system.

The control module for the antitheft system is located in the instrument panel assembly and is accessible only from inside the vehicle after removal of the instrument panel components. The alarm system horn is located in the plenum area under the hood and is difficult to reach unless the plenum cover is removed. The vehicle hood latch may be released only from inside the vehicle. The door, trunk and engine hood contact switches are all inaccessible unless the door panels are removed or the hood or the trunk are opened.

The power circuit to the starter motor is interrupted when the alarm system is armed. If the antitheft device is

activated from any of the protected areas or if the ignition switch is turned on in an unauthorized effort to start the vehicle, the system will prevent the engine from being started.

The doors are protected through the interior light door contact switch. Should an attempt be made to enter the vehicle through one of the doors, the antitheft device is activated. The engine hood and trunk lid are protected through sensors located in the contact switch. Should these components be violated, the alarm will be activated. For VW-installed radios, the alarm is activated if an attempt is made to separate the radio from the instrument panel while the alarm is activated.

The starter interrupt is also activated when one of the protected areas is breached. Should a thief attempt to start the vehicle by any means other than a key, the engine will be immobilized.

VW addressed the reliability and durability of the antitheft system by providing information on the tests that were conducted on the device. The system has been tested prior to production release for specifications which require compliance with VW standards for electrical and electronic assembly operating requirements, for durability, thermal and mechanical shock resistance and electromagnetic capability. The applicable test procedures are: VW 801 01—Electrical and Electronic Assemblies in Motor Vehicles, Standardized General Test Conditions; VW 820 66—Electromagnetic Compatibility of Electronic Components; and VW 821 66—Electromagnetic Compatibility of Electronic Components in Vehicles, Externally Radiated Interferences.

In discussing why it believes that the antitheft device will be effective in reducing and deterring motor vehicle theft, VW noted that its antitheft device is comparable to that used on the Mazda RX-7, Mitsubishi Galant, Nissan 300ZX, and Toyota Cressida and Supra. It stated that all of these lines have experienced reduced theft rates since installing the system, and provided an analysis of the theft rates for these vehicles based on theft data published by NHTSA. That analysis showed that the Mazda RX-7 experienced a 74 per cent decrease in its theft rate from 1984 to 1989 and the Mitsubishi Galant experienced a 50 per cent decrease for the same period. It also showed a 53 per cent decrease for the Nissan 300ZX from 1983 to 1989, and a 10 per cent decrease for the Toyota Cressida and a 74 per cent decrease for the Toyota Supra for that time period.

The agency's review of the theft data for these vehicle lines shows results consistent with VW's analysis. The car

lines listed above have experienced an overall 63 per cent decline in theft rate from MY 1987 to MY 1992.

NHTSA believes that there is substantial evidence that the antitheft device that will be installed on the car line that is the subject of this notice will likely be as effective in reducing motor vehicle theft as compliance with the theft prevention standard (49 CFR part 541). The VW system will provide all of the five types of performance listed in Section 543.6(a)(3): promoting activation; attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. section 33106(c)(2) and 49 CFR 543.6(a)(4), the agency also finds that Volkswagen has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information VW provided about its device. This information included a description of reliability and functional tests conducted by VW for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the car line that is the subject of this notice in whole from the requirements of 49 CFR part 541.

If VW decides not to use the exemption for this car line, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements of 49 CFR 541.5 and 541.6 (marking of major components and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device upon

which that lines exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "[t]o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: April 4, 1995.

**Howard M. Smolkin,**

*Executive Director.*

[FR Doc. 95-8763 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-59-P

**Petition for Exemption From the Vehicle Theft Protection Standard; Mercedes-Benz of North America, Inc.**

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation (NHTSA) DOT.

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This notice grants in full the petition of Mercedes-Benz of North America, Inc. ("Mercedes") for exemption of its MY 1996 202 ("C-Class") car line from the parts marking requirements of the vehicle theft protection standard. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirement.

**DATES:** The exemption granted by this notice is effective beginning with the 1996 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

**SUPPLEMENTARY INFORMATION:** On November 29, 1994, Mercedes-Benz of North America, Inc. (Mercedes) submitted a petition for exemption from the theft prevention standard for its

model year (MY) 1996 202 car line (C-Class) pursuant to 49 CFR Part 543, *Exemption From Vehicle Theft Prevention Standard*, (59 FR 10756). The petition submitted by Mercedes meets the general requirements for a petition contained in 49 CFR 543.5, and the specific content requirements of § 543.6. Therefore, the petition is complete as required by § 543.7.

In its petition, Mercedes provided a detailed description of the identity, design and location of the components of the antitheft device for the car line, including diagrams of the components and their location in each vehicle. The system consists of a central locking system and an engine starter-interrupt function.

Mercedes states that a microprocessor antitheft system featuring an electronic engine immobilizer will be installed as standard equipment on all cars in the C-Class car line beginning in December 1994. The antitheft system will be phased in during MY 1995. The exemption is requested to begin with MY 1996 since the C-Class line will then have this antitheft system as standard equipment. The planned beginning of production for the MY 1996 C-Class line is mid-September 1995.

Mercedes states that the system is automatically activated either by using the infrared remote control unit or by locking the vehicle with the standard door/ignition key at either of the front door locks or at the trunk lock. The system is deactivated by the remote control or through the normal vehicle unlocking procedure, when the standard door/ignition key is turned in either of the front door locks or the trunk lock. An LED lamp on the radio flashes to call attention to the antitheft system and radio code functions.

The antitheft system of the C-Class line for which Mercedes seeks this exemption does not include a visual or an audible alarm feature as standard equipment. An enhanced antitheft system with an additional audible/visual alarm is available as an option. Mercedes stated that approximately 51 percent of MY 1994 C-Class car line customers ordered the enhanced version of the antitheft system. Mercedes also pointed out that NHTSA recently granted full exemptions to two General Motors car lines (based on theft rates) which had installed as standard equipment the "PASS-KEY" system which also does not have a visual or audible alarm function.

All the components of the new system (immobilizer, battery, wiring, wiring connections and switches) are located in areas inaccessible from underneath the

engine compartment. Locking the vehicle with the remote control or mechanical key causes the infrared central locking control unit to lock the exterior locks. The infrared remote control unit or the key then provides a coded signal that actuates the immobilizer, which prevents the vehicle from being operated under its own power. The engine ignition and fuel systems are electronically shut down and the steering and shift lever are mechanically locked.

Unlocking the vehicle with the remote control or the mechanical key signals the infrared remote central locking unit to centrally unlock the exterior lock, and provide an enabling code which de-energizes the immobilizer. Deactivation of the immobilizer, without unlocking the vehicle by using the remote or key, is prevented since no electrical connection exists between the mechanical plungers and the key-operated door locks. This means that if a window is broken, lifting the door plunger will unlock the specific door but will not deactivate the immobilizer. The interior central locking/unlocking switch is not connected to the immobilizer, ensuring that the vehicle cannot be inadvertently immobilized, and, at the same time, preventing the immobilizer from being defeated by breaking a window and depressing the interior switch. Removing and then reapplying battery power will not disable the immobilizer.

In addition to the immobilizer the C-Class car line has other features. The large diameter of the car line's lock cylinder helps increase the resistance to screwdrivers or lock-pullers. Standard anti-slim-jim covers placed over the front and rear door locking mechanisms further increase the vehicle's resistance to break-in attempts. Rear door lock/unlock mechanisms are routed to make the rods inaccessible to slim-jim type devices. The hood locking mechanism is shielded and the hood cable is routed so as to make it inaccessible from underneath the vehicle. The battery is located in the trunk compartment, preventing access from the exterior of the vehicle.

The door/ignition key is of a unique, internal cut design which is extremely difficult to duplicate. A copy of the steel key must be ordered directly from an authorized Mercedes dealer by using the vehicle identification number. Mercedes also states that owner verification measures are also in place at dealerships. The C-Class vehicle includes a ratcheting steering wheel lock as standard equipment. Instead of the lock pin breaking completely when forced, such as when the wheel is

turned with a breaker bar, the C-Class line's steering wheel lock will yield when the force exceeds a set level; then re-lock itself automatically when the force drops below the set level. The high force level at which the mechanism is designed to yield effectively prevents the vehicle from being steered.

Mercedes stated that the microprocessor control unit and all related system components have been subjected to a series of design and production tests. These tests include reversed polarity tests, over and under voltage tests, short circuit tests, electromagnetic interference tests, temperature and humidity tests, corrosion tests, vibration life cycle tests, and drop impact tests.

The entire system utilizes a microprocessor control unit with built-in self-test features which recognize and exclude sensor failures and allow the system to be easily maintained out in the field.

In discussing why it believes that this antitheft device will be as effective as parts marking in reducing and deterring motor vehicle theft, Mercedes states that the immobilizer for this theft deterrent system for the C-Class line is an improvement of the starter-interlock relay module which was incorporated into the 124 line (E-Class) and the 140 line (S-Class). The agency granted a petition for exemption for the 124 line and the 140 line was designated as a likely low-theft line.

Mercedes reiterated that even though the antitheft system on the C-Class line does not have any audible or visual alarm functions, theft data for exempted General Motors car lines without audible or visual alarm functions indicates that the lack of alarm functions has not prevented the systems from being effective. On January 19, 1995, Mercedes provided two charts indicating the reduction of theft rates of car lines that have installed as standard equipment an antitheft device without an audible or visual alarm function. One chart listed four lines, the Buick Riviera, Cadillac Eldorado, Cadillac DeVille, and Oldsmobile Toronado. Mercedes listed theft lines beginning with the MY 1986 through MY 1990. The antitheft systems were offered as standard equipment on these lines beginning with MY 1990.

Two of the lines, (Buick Riviera and Cadillac DeVille), decreased 33 percent and 54 percent respectively from the 1986 MY. The other two, (Cadillac Eldorado and Oldsmobile Toronado) increased 9 percent and 16 percent respectively. Coincidentally, the Eldorado and Toronado parts were interchangeable. The other chart provided by Mercedes depicted the theft

experience of the Chevrolet Camaro and Pontiac Firebird for MYs 1989-1992. Both lines continue to decrease in theft rates, 28 percent decrease for the Camaro and 41 percent decrease for the Firebird.

NHTSA believes that there is substantial evidence that the antitheft device that will be installed on the 1996 Mercedes C-Class car line will likely be as effective in reducing motor vehicle theft as compliance with the theft prevention standard (49 CFR Part 541). The Mercedes system will provide four of the five types of performance listed in Section 543.6(a)(3): Promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. It does not provide a means for attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key. However, the agency believes that Mercedes has provided substantial evidence that a system that lacks a device for attracting attention to unauthorized entry nevertheless can be as effective as parts marking in deterring motor vehicle theft.

As required by 49 U.S.C. section 33106(c)(2) and 49 CFR 543.6(a)(4), the agency also finds that Mercedes has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mercedes provided on its device. This information included a description of reliability and functional tests conducted by Mercedes for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the MY 1996 Mercedes C-Class car line in whole from the requirements of 49 CFR Part 541.

If Mercedes decides not to use the exemption for this car line, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements of 49 CFR 541.5 and 541.6 (marking of major components and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more

probative data upon which comparisons may be made.

NHTSA notes that if Mercedes wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device upon which that line exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions “[t]o modify an

exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.”

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore,

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: April 4, 1995.

**Howard M. Smolkin,**

*Executive Director.*

[FR Doc. 95-8770 Filed 4-7-95; 8:45 am]

BILLING CODE 4910-59-P

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 68

Monday, April 10, 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).

## UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

**TIME AND DATE:** 8:00 am, Wednesday, April 12, 1995.

**PLACE:** USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

**STATUS:** A portion of the meeting will be closed to the public.

### MATTERS TO BE CONSIDERED:

#### Portion Open to the Public

- Introduction of new Officers.

#### Portion Closed to the Public

- Review of commercial and financial issues of the Corporation
- Procedural matters

**CONTACT PERSON FOR MORE INFORMATION:** Barbara Arnold, 301-564-3354.

Dated: April 5, 1995.

**William H. Timbers, Jr.**

*President and Chief Executive Officer.*

[FR Doc. 95-8836 Filed 4-6-95; 8:45 am]

BILLING CODE 8720-01-M

## FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From Open Meeting, Wednesday, April 5, 1995

The following item has been deleted from the list of agenda items scheduled for consideration at the April 5, 1995, Open Meeting and previously listed in the Commission's Notice of March 29, 1995.

### Item No., Bureau, and Subject

7—Wireless Telecommunications—Title: Amendment of Part 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 the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89-553); Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253); and Implementation of Sections 3(n) and 322 of the Communications Act—(GN Docket No. 93-252). Summary: The Commission will consider service, licensing, and auction rules for the licensing of the 900 MHz Specialized Mobile Radio (SMR) service.

Dated: April 5, 1995.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-8835 Filed 4-6-95; 10:36 am]

BILLING CODE 6712-01-M

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b: **DATE AND TIME:** April 12, 1995, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note.**—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

### Consent Agenda—Hydro, 628th Meeting—April 12, 1995, Regular Meeting (10:00 a.m.)

CAH-1.

Project No. 2337-034, PacifiCorp

CAH-2.

Project No. 4797-036, Cogeneration, Inc.

CAH-3.

Project Nos. 6310-014 and 017, Gull Industries, Inc.

CAH-4.

Project Nos. 2570-018, 019 and 020, Ohio Power Company

CAH-5.

Project No. 10729-003, Murphy Hydro Company, Inc.

CAH-6.

Project No. 6879-016, Southeastern Hydro Power, Inc.

CAH-7.

Project No. 553-005 and Docket No. EL78-36-000, City of Seattle, Washington

CAH-8.

Project No. 2506-002, Mead Corporation, Publishing Paper Division

### Consent Agenda—Electric

CAE-1.

Docket No. ER95-262-000, Pacific Gas and Electric Company

CAE-2.

Docket No. ER94-1062-001, Montaup Electric Company

Docket No. EL94-68-001, Montaup Electric Company and Newport Electric Corporation

CAE-3.

Docket Nos. ER95-267-001 and EL95-25-001, New England Power Company

CAE-4.

Docket No. ER93-393-001, CLP Hartford Sales, L.L.C.

CAE-5.

Docket Nos. ER95-371-002 and ER93-777-004, Commonwealth Edison Company

CAE-6.

Docket No. EL95-16-001, Southern California Edison Company

Docket No. EL95-19-001, San Diego Gas & Electric Company

CAE-7.

Docket No. EL87-53-004, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company

CAE-8.

Docket No. EL93-55-001, Connecticut Light & Power Company

CAE-9.

Docket No. EL87-51-005, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company

Docket No. ER88-477-005, Gulf States Utilities Company

### Consent Agenda—Oil and Gas

CAG-1.

Docket No. PR95-2-000, Southeastern Natural Gas Company

CAG-2.

Docket No. PR95-3-000, Moss Bluff Gas Storage Systems

CAG-3.

Docket No. RP95-207-000, Equitrans, Inc.

CAG-4. Omitted

CAG-5.

Docket No. RP95-131-001, Northern Natural Gas Company

CAG-6.

Docket No. RP95-210-000, Transwestern Pipeline Company

CAG-7.

Docket No. ST95-1297-000, Channel Industries Gas Company

CAG-8.

Docket No. MT95-5-000, Transcontinental Gas Pipe Line Corporation

CAG-9.

Docket Nos. RP93-187-008, *et al.*, RP93-62-000, *et al.* and CP88-546-005, Equitrans, Inc.

CAG-10.

Docket No. RP94-229-002, Granite State Gas Transmission, Inc.

CAG-11.

Docket No. RP94-357-000, Texas Eastern Transmission Corporation

CAG-12.

Docket No. RP94-367-000, National Fuel Gas Supply Corporation  
 CAG-13.  
 Docket No. RP95-66-000, ANR Pipeline Company  
 CAG-14. Omitted  
 CAG-15.  
 Docket No. RP94-372-000, Southern Union Gas Company v. Northern Natural Gas Company  
 CAG-16.  
 Omitted  
 CAG-17.  
 Docket No. RP95-157-000, K N Interstate Gas Transmission Company  
 CAG-18.  
 Omitted  
 CAG-19.  
 Docket Nos. RP93-5-024 and RP94-220-006, Northwest Pipeline Corporation  
 CAG-20.  
 Omitted  
 CAG-21.  
 Docket No. PR93-4-001, Transok, Inc.  
 CAG-22.  
 Docket No. RP89-161-031, ANR Pipeline Company  
 CAG-23.  
 Docket No. RP85-202-017, Trunkline Gas Company  
 Docket Nos. RP85-203-021 and RP88-203-017, Panhandle Eastern Pipe Line Company  
 CAG-24.  
 Docket Nos. RP95-93-002 and RP91-212-015, Stingray Pipeline Company  
 CAG-25.  
 Docket No. RP92-149-004, Transcontinental Gas Pipe Line Corporation  
 CAG-26.  
 Docket Nos. RP94-43-008, 010 and RP95-58-001, ANR Pipeline Company  
 CAG-27.  
 Omitted  
 CAG-28.  
 Docket No. RP95-31-002, National Fuel Gas Supply Corporation  
 CAG-29.  
 Docket Nos. RP94-309-007, RP94-39-009, RP94-197-006 and RP93-151-019, Tennessee Gas Pipeline Company  
 CAG-30.  
 Omitted  
 CAG-31.  
 Docket No. AC95-52-000, Atmos Energy Corporation  
 CAG-32.  
 Docket No. GP91-5-000, Denovo Oil & Gas Inc.  
 CAG-33.  
 Omitted  
 CAG-34.  
 Omitted  
 CAG-35.  
 Docket No. RP95-2-001, Williams Natural Gas Company  
 CAG-36.  
 Docket No. MG92-3-001, Pacific Gas Transmission Company  
 CAG-37.  
 Docket No. MG95-5-000, Viking Gas Transmission Company  
 CAG-38.  
 Docket Nos. MG88-2-005, 006 and 007, Algonquin Gas Transmission Company

Docket Nos. MG95-1-000 and 001, Algonquin LNG, Inc.  
 Docket No. MG88-55-006, Panhandle Eastern Pipe Line Company  
 Docket No. MG88-26-006, Texas Eastern Transmission Corporation  
 Docket No. MG88-54-005, Trunkline Gas Company  
 Docket No. MG90-3-004, Trunkline LNG Company  
 Docket No. MG91-2-004, Southwest Gas Storage Company  
 CAG-39.  
 Docket No. RS92-1-011, ANR Pipeline Company  
 CAG-40.  
 Docket Nos. CP90-1050-003 and CP94-151-002, Panhandle Eastern Pipe Line Company  
 Docket No. CP94-152-001, Panhandle Field Services Company  
 CAG-41.  
 Docket Nos. CP93-613-000, 001, 002, CP93-673-000, 001 and 002, Northwest Pipeline Corporation  
 CAG-42.  
 Docket No. CP95-34-001, Columbia Gas Transmission Corporation  
 CAG-43.  
 Docket No. CP94-260-000, Algonquin Gas Transmission Company  
 CAG-44.  
 Docket No. CP94-342-000, Crossroads Pipeline Company  
 CAG-45.  
 Docket No. CP95-85-000, Aquila Energy Resources Corporation  
 Docket No. CP95-86-000, Tennessee Gas Pipeline Company  
 CAG-46.  
 Docket Nos. CP95-61-000 and CP95-62-000, Columbia Gas Transmission Corporation  
 CAG-47.  
 Omitted  
 CAG-48.  
 Docket No. CP94-181-000, Williams Natural Gas Company  
 CAG-49.  
 Docket No. CP94-329-000, El Paso Natural Gas Company  
 CAG-50.  
 Docket No. CP94-775-000, Tennessee Gas Pipeline Company  
 CAG-51.  
 Docket No. CP94-264-000, Canal Electric Company and Montaup Electric Company  
 CAG-52.  
 Docket No. CP95-39-000, Cavallo Pipeline Company  
 CAG-53.  
 Docket No. CP95-135-000, Associated Natural Gas, Inc.  
 CAG-54.  
 Docket No. RP94-43-011, ANR Pipeline Company  
 CAG-55.  
 Docket No. CP95-279-000, Questar Pipeline Company

**Hydro Agenda**  
 H-1.  
 Reserved

**Electric Agenda**  
 E-1.

Docket No. EL95-28-000, New York State Electric and Gas Corporation. Request for Declaratory Order and Enforcement.

**Miscellaneous Agenda**

M-1.  
 Docket No. RM91-12-000, Alternative Dispute Resolution. Final Rule.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR-1.  
 Docket Nos. IS94-10-005 and 006, Amerada Hess Pipeline Corporation  
 Docket Nos. IS94-11-005, 006, IS94-34-003 and 004, ARCO Transportation Alaska, Inc.  
 Docket Nos. IS94-12-005 and 006, BP Pipelines (Alaska) Inc.  
 Docket Nos. IS94-14-005 and 006, Exxon Pipeline Company  
 Docket Nos. IS94-13-005, IS94-15-005 and 006, Mobil Alaska Pipeline Company  
 Docket Nos. IS94-16-005, 006, IS94-38-006 and 004, Phillips Alaska Pipeline Corporation  
 Docket Nos. IS94-17-005, 006, IS94-31-005 and 006, Unocal Pipeline Company  
 Docket No. OR94-2-001 (Phase I), Trans Alaska Pipeline System. Opinion and Order on Initial Decision.

*II. Pipeline Certificate Matters*

PC-1.  
 Reserved  
 Dated: April 5, 1995.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-8855 Filed 4-6-95; 11:25 am]

BILLING CODE 6717-01-P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-95-08]

**TIME AND DATES:** April 21, 1995 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436

**STATUS:**

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-726-729 (Preliminary) (Polyvinyl Alcohol from China, Japan, Korea, and Taiwan)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: April 5, 1995.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95-8816 Filed 4-6-95; 8:45 am]

BILLING CODE 7020-02-P

**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Meetings

**TIME AND DATE:** 9:30 a.m., Thursday, April 13, 1995.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

**BOARD BRIEFING:**

1. Insurance Fund Report.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Open Meeting.
2. Request from State of Michigan for Exemption under Section 701.21(h), NCUA's Rules and Regulations, Member Business Loans.
3. Proposed Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
4. Proposed Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
5. Request from Midflorida Schools Federal Credit Union for a Field of Membership Expansion.

**RECESS:** 10:45 a.m.

**TIME AND DATE:** 11:00 a.m., Thursday, April 13, 1995.

**PLACE:** Board Room, 7th Floor, Room 4047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Appeal under Part 709, NCUA's Rules and Regulations. Closed pursuant to exemption (6).

**FOR FURTHER INFORMATION CONTACT:**

Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 95-8923 Filed 4-6-95; 3:05 pm]

**BILLING CODE 7535-01-M**

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Addition of Item to the Agenda of April 3, 1995

At a meeting on April 3, 1995, the Board of Governors of the United States Postal Service voted unanimously to add to the agenda consideration of filing

a request with the Postal Rate Commission for a rulemaking proceeding on initiatives for improvement of postal ratemaking and classification procedures.

The Board determined, in accordance with 5 U.S.C. section 552b(c)(2), that Postal Service business required that consideration be given at this meeting even though the item had not been on the agenda of the meeting as originally noticed in the **Federal Register** (60 FR 15176, March 22, 1995) and that no earlier public notice was possible.

In accordance with 5 U.S.C. section 552b(f)(1) and 39 C.F.R. section 7.6(a), the General Counsel of the United States Postal Service has certified that in her opinion the meeting could properly be closed to public observation pursuant to 5 U.S.C. section 552b(c)(3) and (10); 39 U.S.C. section 410(c)(4); and 39 C.F.R. section 7.3 (c) and (j).

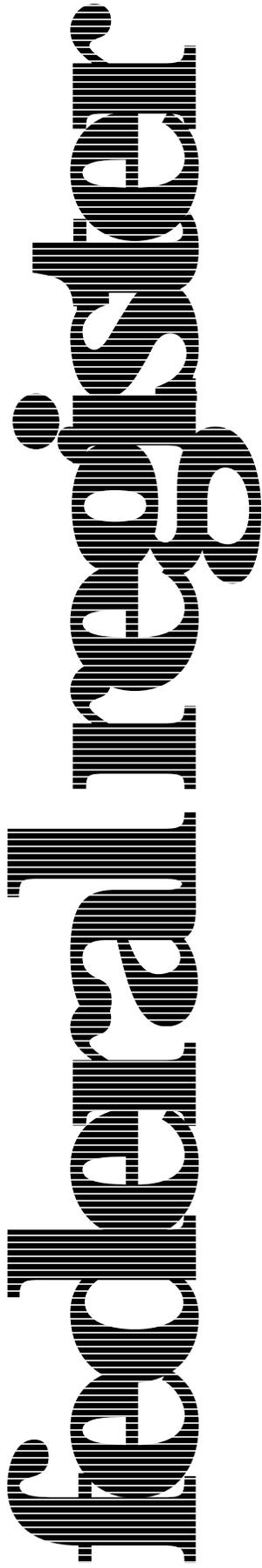
Requests for information concerning the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 95-8884 Filed 4-6-95; 3:06 am]

**BILLING CODE 7710-12-M**



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Monday  
April 10, 1995

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**Part II**

**Department of  
Housing and Urban  
Development**

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Office of the Assistant Secretary for  
Public and Indian Housing

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**24 CFR Parts 905 and 950  
Indian Housing Program: Amendments;  
Final Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Public and Indian Housing**

**24 CFR Parts 905 and 950**

[Docket No. R-95-1742; FR-3646-F-02]

RIN 2577-AB43

**Indian Housing Program: Amendments**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds a new part 950 to HUD's regulations. New part 950 contains the Indian Housing consolidated regulations that were previously set forth in 24 CFR part 905. In addition to moving the Indian Housing consolidated regulations from part 905 to part 950, the final rule amends a number of the Indian Housing consolidated regulations to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Room 4140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 755-0032. Hearing- or speech-impaired persons may use the TDD number (202) 708-0850. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**I. Paperwork Burden**

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are not effective until such time that OMB grants its approval. The approval number will be published in the **Federal Register** through separate notice.

**II. Background**

On August 1, 1994 (59 FR 39072), HUD published a proposed rule that would add a new part 950 to title 24 of the Code of Federal Regulations to contain the Indian Housing consolidated regulations. The proposed rule would also make simplifying amendments to these regulations, in

order to accomplish the primary goal of giving Indian Housing Authorities (IHAs) greater discretion and responsibility in administering their programs. The preamble to the proposed rule described HUD's consultation with its six Native American Program Area Offices, the National American Indian Housing Council, regional IHA associations, and other IHA representatives. The preamble also described HUD's four-year trend to provide IHAs with administrative flexibility through regulatory revisions (59 FR 39072).

Consistent with the principles of Executive Order 12866, HUD has reviewed the existing Indian Housing regulations and the public comments received on the proposed rule, and with this final rule modifies the regulations to make them more effective, consistent, understandable, and sensible.

**III. Comments on the August 1, 1994 Proposed Rule**

HUD solicited public comments on the proposed rule amending the Indian Housing program. By the expiration of the public comment period on September 30, 1994, HUD had received 15 comments, all from IHAs and tribal leaders. This final rule contains several changes to the proposed rule in response to these comments, as further described in the following section, which summarizes the comments according to their relevant subparts and provides HUD's responses to those comments.

**A. Subpart A—General**

**1. Applicability and Scope (§ 950.101)**

One commenter stated that § 950.101(a)(1) should expressly acknowledge that this rule applies to operations and funds arising from HUD programs. The current language states that HUD provides financial assistance (funds) to IHAs for the development and operation (operation) of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area. HUD was unclear what additional language was requested and believes that the current language adequately addresses the comment.

**2. Definitions (§ 950.102)**

One commenter requested that the definition of Allowable Utilities Consumption Level (AUCL) and Heating Degree Days (HDD) should be adjusted. The commenter requested that Cooling Degree Days be added, as HDD is irrelevant to Indian country.

Section 508 of the Cranston-Gonzalez National Affordable Housing Act (Pub.

L. 101-625, approved November 28, 1990) directed HUD to incorporate into the Performance Funding System (PFS) a methodology to adjust utility consumption to account for Cooling Degree Days that was the same as the methodology used to account for Heating Degree Days. The impetus for this legislation was that IHAs in the sunbelt that had to pay higher utility bills for air conditioning during hot summers wanted an adjustment in their PFS payments to account for the increased utility consumption. HUD published a proposed rule, and based on the comments received, HUD implemented an approach to greatly simplify the PFS by dropping all heating and cooling degree day adjustments. The final rule implementing this action was published in the **Federal Register** on October 13, 1994 (59 FR 51852). Additional information on this change can be found in the preamble of that rule.

There were a number of comments concerning the definitions of Adjusted Income and Annual Income. These suggestions included an increase in deductions, lowering the 30 percent rule, counting only the income from the head of household, counting only the income of head of household and spouse, and using net income rather than gross income. Also, a commenter requested that both child care and travel expenses be eligible deductions.

HUD appreciates the many comments received on the definition of Adjusted Income and Annual Income. In response to the comment to allow both travel and child care as deductions, section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) amended section 3(b)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) to allow for both deductions. HUD implemented this change by PIH Notice 93-23 dated May 19, 1993. The proposed rule included this revision, and the same language appears in this final rule. With regard to the other comments on Adjusted Income and Income, these terms are defined in the United States Housing Act of 1937. Section 3(b)(4) of that Act defines "income" as "income from all sources of each member of the household." Section 3(b)(5) contains the statutory definition of "adjusted income." The Office of Native American Programs is developing a legislation package for the program, and it will carefully review all comments as it prepares this proposal.

One commenter stated that the definition of disposition should exclude references to real estate, since the IHAs do not transfer any interest in the "real

estate." The commenter stated that the most that IHAs transfer by a quit claim deed is the remaining portion of the leasehold interest in the underlying land, together with the improvements. HUD agrees with the comment as it relates to trust and allotted land. However, there are many cases in Indian areas in which interest in the real estate is transferred. Due to these situations, HUD has not changed the definition.

One commenter requested that the tribal government and not HUD define low-income family based on a determination of tribal median income and adjustments to income due to family size, construction costs, or other local variations. Another commenter stated that IHAs should be able to establish their own income limits based on the tribes' economies, not on the local communities.

The definitions of low- and very low-income are found in the United States Housing Act of 1937. By statute, the definition of very low-income is tied to "50 per centum of median family income" for an area, and the definition of low-income is tied to "80 per centum of the median family income" for the area (42 U.S.C. 1427a). As required by statute, the meaning of the term "area" is affected by whether the local median family income is less than the respective State's nonmetropolitan median family income. In addition, the statute provides for adjustments to income limits for areas with unusually high or low incomes in relation to housing costs. Income limits are published annually by HUD. If an IHA or tribe feels that the median income for its area is not appropriate, they should contact the local HUD Office to obtain information on how to proceed with a request for a change.

### 3. Applicability of Civil Rights Requirements (§ 950.115).

A commenter stated that the civil rights quotation in § 950.115(a) in the proposed rule is misleading and the definition should additionally explain that these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. HUD agrees with this comment and has adjusted the definition in the final rule to include this statement.

A commenter suggested that HUD should strike the reference to handbooks in § 950.115(a)(3) of the proposed rule. This commenter also requested that the reference to Title VI, the Fair Housing Act, and the Americans with Disabilities Act in § 950.115(b) of the proposed rule be removed if they are not applicable to IHAs established by exercise of a tribe's

power of self-government. HUD agrees with both of these comments. HUD has removed the reference to handbooks and the language regarding the nonapplicability of those statutes in this section.

### 4. Displacement, Relocation, and Acquisition (§ 950.117)

One commenter stated that upon the request of a resident, an IHA should be allowed to relocate a resident temporarily to his or her traditional home even if it is not decent, safe, and sanitary, and the family should be eligible for relocation assistance. HUD agrees with this comment and has revised the language in § 950.117(b) for temporary relocation.

A commenter stated that in § 950.117(c)(2), the word "comparable" should be removed since it is subject to many interpretations, and that the IHA should be allowed to use any available Indian housing unit as a replacement. The commenter also requested that HUD add the following language: "Houses that do not meet Section 8 fair market rent would be allowed for comparable housing units." HUD is unable to eliminate the term "comparable" in this section of the rule. This term is defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4605), as amended. The use of "comparable" is also required by the Department of Transportation's government-wide rule implementing the URA (49 CFR part 24). The 1987 amendments to the URA specify that the Federal agencies covered by the URA no longer have independent statutory authority to promulgate their own separate URA regulations, and in implementing the URA they must follow the regulations published by the lead agency, which is the Department of Transportation.

### 5. Compliance With Other Federal Requirements (§ 950.120)

Multiple commenters suggested that the wage rate requirements of the Davis-Bacon Act (§ 950.120(c)) should be waived for Indian housing. However, the applicability of the Davis-Bacon Act to Indian housing is required under Section 12 of the United States Housing Act of 1937, as amended, and is not subject to waiver by HUD.

### 6. Establishment of IHAs by Tribal Ordinance (§ 950.126).

Several commenters agreed with § 950.126(b) of the proposed rule, which allows a tribe to determine the form of ordinance. However, one commenter objected to leaving ordinance terms and

wording up to tribes. Another commenter felt that HUD was leaving the ordinance up to the tribe, and therefore approval by the Department of Interior (DOI) should not be necessary. As stated previously, the intent of the revised regulation is to provide greater flexibility and control to IHAs and tribes in the administration of housing programs. This is the reason for allowing tribes the ability to determine the form of ordinance that is applicable for its area. However, HUD agrees with the comment regarding DOI approval and has removed the language regarding the need for such approval.

A commenter stated that § 950.126(d) of the proposed rule should be revised to require only those documents that demonstrate that an authority has been properly established. HUD agrees with this comment and has revised this section accordingly.

### 7. IHA Commissioners Who Are Tenants or Homebuyers (§ 950.130)

One commenter stated that they agreed that the change in the rule that explains the role of a commissioner when he or she faces a decision that affects them personally is an excellent idea. HUD appreciates the comment regarding this section.

### 8. Administrative Capability (§ 950.135)

One commenter agreed that the Administrative Capability Assessment (ACA) should be used with other tools to evaluate the need for technical assistance. Two commenters stated that there should be another appeal level, and one commenter requested that all appeals should go to HUD Headquarters. One commenter stated that the reference to HUD handbooks and other program requirements should be deleted since these do not constitute statutory or regulatory authority that is binding on the IHAs. One commenter stated that sanctions should be clearly defined in § 950.135(f)(2), and limitation on appeals should be eliminated from § 950.135(g)(2).

HUD agrees with the comment suggesting the removal of the handbook references in this section and has revised this section in the final rule. In response to the comments on the appeal process, HUD finds that the current appeal process will provide IHAs with the ability to appeal any decision regarding funding. All other appeals will not affect any funding. Furthermore, without limits to the appeal process, HUD would not be able to initiate corrective action when it finds a serious deficiency.

*B. Subpart B—Procurement*

## 1. General Comments.

Several commenters suggested minor changes in wording throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

## 2. Procurement Standards (§ 950.160)

One commenter wrote that the \$25,000 limit on small purchases created additional costs for IHAs. Since the publication of the proposed rule on August 1, 1994, Federal procurement regulations have increased the small purchase limit to \$100,000. HUD has adjusted this section accordingly.

Another commenter wrote that HUD should allow open market purchases from petty cash for commonly used supplies or purchases of less than \$500. Such purchases are allowed within existing regulations that are not changed by this rule.

## 3. Methods of Procurement (§ 950.165)

One commenter suggested the addition of language in § 950.165(c) that specifically states that an IHA may reject all proposals for soundly documented reasons and has the right to waive certain irregularities. General procurement methods currently allow these practices, and therefore they have not been added to this rule.

## 4. Other Requirements Applicable to Development Contracts (§ 950.170)

One commenter suggested that the bonding alternative allowing a 25 percent letter of credit should be deleted. HUD disagrees with this suggestion. Each of the options for surety other than 100 percent performance and payment bonds are included in the rule to enable IHAs to assist small or disadvantaged contractors that have the ability to perform but do not have the resources to pay for a performance and payment bond. IHAs have the option but are not obligated to use this option in their procurement.

Another commenter suggested that the rule should clarify that performance and payment surety continue through a contract's warranty period. The term of the surety is contained in individual contract provisions, and therefore HUD does not believe it should be added to this rule.

## 5. Indian Preference Requirements (§ 950.175)

HUD received a general comment that the revised Indian preference

requirements are not simplified from the previous rule. In these revised regulations, HUD has tried to accomplish two objectives. The first objective was to make the Indian Preference requirements less prescriptive, enabling IHAs and their tribes to determine the best methods for providing Indian preference in their programs. The second objective was to make HUD's Indian preference requirements identical across its programs to remove confusion for participating tribes. HUD is also revising the Indian Community Development Block Grant and Indian HOME program regulations to mirror the Indian Housing regulations. HUD believes it has met both these objectives but is receptive to any additional suggestions that would improve the Indian preference requirements.

## 6. Insurance (§ 950.190)

One commenter suggested that this section is unnecessarily complex and long. The contents of this section provide the basic requirements for insurance coverage, however, and therefore HUD has decided not to make any reductions at this time.

*C. Subpart C—Development*

## 1. General Comments

Several commenters suggested minor changes throughout the subpart to improve the readability and clarity of the language. For the most part, HUD agrees with these comments and has incorporated the suggested wording.

## 2. Allocation (§ 950.205)

One commenter suggested the conversion of the allocation method from a competitive nature to a formula funding. This commenter wrote that this would enable IHAs to better anticipate funding, thereby allowing for better long-range planning. HUD is investigating the potential for formula funding for development allocations; however, a change to a formula funding basis may require statutory authority.

## 3. Eligibility (§ 950.207)

In response to general comments on clarity within the rule, HUD has added a new section that specifies the eligibility requirements to apply for new Indian Housing development. Included in this section are performance thresholds not previously specified in the regulation but relied upon by HUD in determining eligibility.

## 4. Authority for Proceeding Without HUD Approval (§ 950.210)

Several commenters suggested that the rule would provide HUD great

latitude in requiring an IHA to obtain HUD approval of processing steps. In reviewing this section, HUD agrees that its wording is too broad and not fully consistent with administrative capability remedies contained in § 950.135. Accordingly, HUD has clarified this section to require HUD to follow the provisions of § 950.135 in its determination of performance deficiencies and remedies. Additionally, HUD has removed the examples of performance deficiencies.

This final rule consolidates time constraints on development in this section from throughout Subpart C. In response to several comments, the time constraints contained in the regulation are: (1) 24 months from program reservation to construction start, (2) 30 months from program reservation before HUD can recapture funds, and (3) six years from program reservation to closeout of development.

## 5. Production Methods (§ 950.215)

HUD received several comments that questioned the clarity of the production method descriptions. Upon review, HUD has determined that descriptions of production methods are more appropriately contained in program guides or handbooks. Accordingly, HUD has deleted the brief descriptions of production methods in this section.

Several comments were received concerning the definition of an IHA attachable asset required as security for force account construction approval and the need for IHAs to provide such security. Attachable assets are those assets that are unencumbered by restrictions on their use and that can be liquidated to pay for any overruns in the development of the project. HUD has reevaluated the risk associated with force account construction and has modified the surety requirements in this final rule. The final rule (§ 950.215(b)) allows Area Offices of Native American Programs (Area ONAPs) to approve the force account method without requiring the tribe or IHA to provide specific security to cover excess costs if the IHA agrees to construct the project in small stages with additional HUD oversight.

## 6. Total Development Cost (§ 950.220)

One commenter suggested that the \$1,500 Mutual Help contribution and development funded counseling should be deleted from the program. However, the \$1,500 Mutual Help contribution is required by the statute. HUD has modified the counseling provision to make it optional for IHAs.

One commenter suggested that the rule should include a detailed description of how total development

cost (TDC) standards are computed. By statute, HUD is required to establish TDC standards using two national cost indices, which are multiplied by 1.6 for elevator type structures and 1.75 for nonelevator structures. Total development cost standard requirements are published periodically in a departmental notice. HUD believes that such a notice is the appropriate vehicle for conveying TDC requirements, and therefore HUD has not adopted this suggestion.

One commenter suggested that the rule should require all projects to be funded at the full TDC standard. The TDC standard establishes the maximum allowable cost for a development and is not intended to provide a prescribed amount required to develop a project. Accordingly, HUD has not adopted this comment.

One commenter suggested that the rule should require HUD Area ONAPs to obtain the input of tribes in the determination of the adequacy of TDC areas. The TDC notice provides for IHAs to request a HUD assessment of the adequacy of TDC areas within their jurisdiction. HUD believes that this provision of the notice serves to obtain tribal input. Therefore, HUD has not adopted this suggestion.

HUD has significantly reduced § 950.220 of the proposed rule by deleting process items that are included in periodic TDC Notices, the discussion of the program reservation, and HUD cost review requirements. Additionally, HUD has rewritten the resident training and insurance subsections, and has added a separate subsection that includes the exception of donations and off-site water and sanitation facility infrastructure costs from the TDC calculation. HUD has modified the 30 month for construction cost and moved it to § 950.207.

#### 7. Application (§ 950.225)

To provide greater clarity in section titles, the Application section has been divided, with items involving program reservation and annual contributions contract (ACC) execution moved to a new section 950.227. HUD has deleted from the rule process activities that are included in the annual Notice of Funding Availability. HUD has also added a new paragraph (c), which clarifies the criteria under which HUD may approve new units for state-created IHAs.

#### 8. Program Reservation and ACC Execution (§ 950.227)

HUD received several comments supporting the elimination of the 3

percent limitation on initial planning funds.

One commenter suggested that the limitation on planning funds was too vague. Upon review, HUD has determined that since such limitations are included in the ACC, they are unnecessary in this rule.

To further clarify the change to a grant program, HUD has changed the term "program reservation" to "development grant approval" throughout the rule.

To streamline the development process, HUD has modified subpart C to remove the two-step process for executing the ACC for development. This final rule provides for execution of the ACC (or amendment) in the full amount of the grant upon approval of the grant. Amendments to the ACC would only be required if the character of the development were changed by the IHA.

This final rule also adds a new section 950.229 to address the process for establishing limits on the IHA's ability to incur obligations under the ACC. This section consolidates requirements for submittal of development cost budgets and contains the existing provision for comprehensive housing plans.

#### 9. Project Coordination (§ 950.230)

One commenter suggested that HUD should participate in project planning in order to provide technical assistance if requested by the IHA. The current wording does not prohibit HUD staff from participating in planning activities if the IHA requests, and HUD has sufficient staff resources available to provide such assistance. The decision to provide voluntary technical assistance is a joint decision of the IHA and HUD. HUD does not find that additional clarifying language is needed.

#### 10. Site Selection Criteria (§ 950.235)

HUD received several comments supporting the removal of the one acre limitation on site size. One commenter objected to prohibiting the cost of access roads as a project expense. With the exception of off-site water and sanitary facility infrastructure that Congress includes in Indian Housing appropriations, infrastructure development outside the boundaries of the IHA site(s) are not eligible project expenses. In the case of off-site access roads, Congress provides funding through the Bureau of Indian Affairs (BIA) to construct off-site roads. Accordingly, HUD has retained the restrictions on off-site access roads in this rule.

#### 11. Types of Interest in Land (§ 950.240)

Several commenters objected to the requirement for HUD approval of the form of lease. Because of the period of affordability requirements contained in the statute and in the ACC, HUD has a continuing interest in the availability of dwelling units for occupancy by eligible participants. It is in HUD's best interest to assure that the provisions contained in site leases provide sufficient protection for the government in this area. Therefore, HUD has retained the requirement for a HUD approved form of lease.

Another commenter objected to allowing leases of unrestricted fee simple land in lieu of outright purchase. In most instances, an IHA will prefer to purchase fee simple land instead of entering into a long-term lease. However, prohibiting leasing of unrestricted fee simple property would, according to HUD, unduly restrict IHA options in securing building sites.

Another commenter suggested that HUD allow tribes to build off tribal lands. There is no specific prohibition against an IHA using non-tribal sites. IHAs must operate within the jurisdiction of the tribe, which is generally within the tribe's reservation boundaries. If the IHA wishes to use sites not within the jurisdiction of the tribe that are subject to property taxes, they must obtain the cooperation of the taxing body.

#### 12. Environment (§ 950.247)

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103-233, approved April 11, 1994) provided for tribes or local governments to assume the responsibilities for environmental assessments of public and Indian housing sites. To implement this requirement, HUD is revising its environmental review regulations at 24 CFR part 58 to include the Indian Housing program. HUD is also adding a new section 950.247, Environment, in this rule to provide for local completion of the environmental assessment.

#### 13. Site Approval (§ 950.250)

HUD has decided to remove § 950.250(b)(3) from the final rule. This section had required IHA cooperation to enable HUD to complete the environmental assessment. Under the final rule, the tribe or local governing body will complete the environmental assessment.

One commenter suggested that there may be unnecessary duplication in the review of sites, and that HUD and the BIA should adopt a single environmental assessment procedure.

HUD and the BIA have made continuing efforts to coordinate environmental review procedures to minimize duplication of efforts. With the transfer of environmental review responsibility, the tribe or local government will work with the BIA in this regard.

One commenter suggested that sites should be inspected only when the IHA deems it appropriate. HUD finds that it is impossible to approve a site for inclusion in a development without first making an on-site visit to determine the suitability for development. Accordingly, HUD has not adopted this suggestion.

Another commenter suggested that environmental reviews should be limited to sites larger than 10 acres. The National Environmental Policy Act of 1969 (42 U.S.C. 4332) requires an environmental assessment for any development action regardless of the size of the site.

#### 14. Design Criteria (§ 950.255)

HUD received a number of comments objecting to requiring newly constructed Indian housing units to comply with specific building codes. This requirement is not new. Due to the investment of public funds and the long-term association between HUD and the IHA during the operating period, HUD finds that it is necessary to require minimum building standards. National building codes, such as the Uniform Building Code or the Uniform Plumbing Code, provide minimum standards for such development. HUD encourages tribes to develop and adopt building codes that reflect the needs of their areas. In the absence of adopted tribal codes, IHAs must rely on local, state, or national codes.

HUD has added a new subsection to specify that the IHA must perform a life cycle cost analysis in the IHA's selection of utility combinations.

#### 15. IHA Development Program (§ 950.260)

Several commenters stated that HUD's suggestion in the proposed rule (§ 950.260(a)(2)) that a development program should be submitted within 18 months of program reservation date was inappropriate since IHAs rely on schedules prepared at the project coordination meeting to reach development program submission. HUD agrees with these comments and has removed the subsection containing this suggestion.

In response to general comments for further streamlining of the process, and in order to recognize program evolution to a grant basis, HUD has removed the requirement for a development program

from the rule. In its place, HUD has specified the documents that are actually required prior to the IHA proceeding with final planning, bid/proposal solicitation, and construction start. These documents include a development cost budget reflecting the anticipated cost of constructing the project, certifications of compliance with program requirements, and project characteristics that were previously gleaned from the development program documents (§ 950.260(a) of the final rule).

#### 16. Construction and Inspections (§ 950.265)

One commenter suggested replacing the term "program requirements" with "all ACC, statutory, and regulatory requirements." HUD agrees and has made the modification.

Several commenters suggested that HUD should not monitor project construction if it was unwilling to perform project inspections. Congress has charged HUD with the oversight of appropriated funds. To properly perform this duty, HUD must monitor IHA compliance with all ACC, statutory, and regulatory requirements of the program, including the IHA's administration of its construction contracts.

Several commenters suggested that HUD should either do away with the 30 month requirement for reaching construction start or reduce the time to 24 months. The final rule has consolidated in § 950.210 all references to this 30 month period. HUD has changed the wording of the 30 month requirement to more closely follow the language of the statute, which limits HUD's ability to cancel a project before the end of the 30 month period. HUD has also adopted the suggestion that construction start should occur within 24 months after the program reservation date, and has added language that requires HUD, subject to the availability of resources, to provide technical assistance to an IHA that has not reached construction start within the 24 month time-frame.

In response to numerous suggestions for overall streamlining of the rule, HUD has rewritten this section to simplify the requirements.

#### 17. Correcting Deficiencies (§ 950.280)

HUD received a number of comments suggesting that HUD should be required to fund the correction of any design or construction deficiencies. HUD does not agree that it is obligated to fund the correction of all design or construction deficiencies. Under program requirements, IHAs are required to have

in place adequate systems to assure new developments are properly designed and constructed. As HUD attempts to remove its controls over IHA decisionmaking by conveying the authority to manage its developments, it would be inconsistent not to convey the responsibility to adequately manage those developments, as well. HUD does maintain the option of funding design or construction deficiency corrections when it believes it is appropriate to provide such funding.

One commenter suggested that the requirement for HUD approval to spend existing funds to correct design or construction deficiencies should be deleted. HUD agrees that, along with the responsibility to assure such corrections are made, the rule should provide the authority to spend existing funds appropriately, including remaining project development funds, operating receipts, or other funds available to the IHA. Therefore, HUD has removed the requirement for its prior approval.

#### 18. Fiscal Closeout (§ 950.285)

HUD has added language to this section emphasizing the importance of completing development grants in a timely manner. Under the limited oversight procedures now in effect for Indian Housing development, it is critical that grants be completed and the accounts audited as soon as possible after the date of full availability (DOFA).

#### 19. Reformulation

HUD received several comments suggesting that a new section be added authorizing IHAs to reformulate project funds at any time for any purpose without prior HUD approval. HUD provides funds to an IHA to develop a specified project. Consistent with other grant programs, if an IHA wishes to redirect project funds, a program modification must be proposed and approved before such reformulation can proceed. HUD has delegated the authority to approve reformulations to its Area ONAPs, which will expedite processing of requests by IHAs.

#### D. Subpart D—Operation

##### 1. Admission Policies (§ 950.301)

One commenter stated that § 950.301(a)(2)(iii) of the proposed rule needs to be strengthened to read "participants or the physical, financial or environmental aspects of the project" to help deal with applicants with a history of nonpayment or unit damage. Each IHA has the ability to develop admission policies that address the needs in its area. HUD's goal is to provide greater discretion to the IHAs

administering the housing program. Therefore, HUD does not feel that these additional regulatory requirements should be added for all IHAs. However, each IHA is encouraged to develop admissions policies to address individual needs, such as the ability to deal with applicants with a history of nonpayment or unit damage.

A commenter stated that the proposed language "for not less than 70 percent of the units" in § 950.301(a)(2)(iv) is a marked change from the earlier draft figure of 30 percent of the units. The commenter stated that the 30 percent figure seems high enough considering that others have been on the waiting list for years. The language in the current Indian housing regulation states that only 10 percent of non-Federal preference holders are eligible for admission in a given year. Section 501 of the National Affordable Housing Act amended the percentage to allow for 30 percent of non-Federal preference holders to be eligible for admission. The language in the proposed rule stated that the IHA shall develop tenant and homebuyer selection criteria designed: "(iv) For not less than 70 percent of the units made available for occupancy in a given fiscal year, to give a preference in the selection of participants who at the time they are seeking housing assistance, are involuntary displaced, living in substandard housing, or paying more than 50 percent of family income for rent" (Federal preference).

In the final rule, HUD will handle differently the issue of counting Federal preferences. The final rule on Preferences for Admission to Assisted Housing, published in the **Federal Register** on July 18, 1994 (59 FR 36616) revised the tenant selection preference provisions. The rule implements a statutory change that decreases the number of families that must be admitted on the basis of qualifying for a Federal selection preference, and specifically authorizes the adoption of local selection preferences by IHAs to be used in admitting some applicants. Because of several comments regarding how to count admissions, the language in the final rule frames the "counting" of admissions in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 percent of annual admissions may be families selected on the basis of local preference. Under that rule, a family that qualifies for a "Federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the IHA's local preference limit, and the selection is made without regard to that

Federal preference. A more detailed discussion of these preferences can be found in the preamble to that final rule. Changing the percentage would require Congress changing the statute.

Another commenter recommended that the language in § 950.301(a)(2)(iv) "at the time they are seeking housing assistance" be changed to "at the time an appropriate housing unit becomes available for their use," since these two events could occur at different times. It would be difficult to justify attaching a Federal preference to an applicant and then carrying that applicant for several months until a unit becomes available, if the applicant had found decent, safe, sanitary, and affordable housing in the interim.

The reference to which this commenter refers has been revised in the final rule regarding Preferences for Admission to Assisted Housing (59 FR 36616, July 18, 1994). That rule amended § 905.301, and included a section on verification of preference at § 905.304(c)(3). HUD believes that rule addresses the commenter's concern regarding the timing of applicant verification.

Another commenter stated that admission requirements continue to get too complex and difficult to administer. The commenter stated that the final rule regarding Preferences for Admission to Assisted Housing was clear, but that additional clarification is needed. HUD understands the concern of this commenter and has tried to simplify the regulation while implementing statutory provisions for admission.

One commenter stated that income limits should be abolished. Another commenter requested that HUD reduce the definitional age for an elderly person from 62 to 55. However, the provisions for admission of low-income families and the age definition for an elderly person are statutory, and therefore HUD cannot change them in this rule. HUD will consider both of these comments as HUD develops its legislative proposal for Indian housing.

## 2. Initial Determination, Verification, and Reexamination of Family Income and Composition (§ 950.315)

One commenter stated that recertifications should only be done once for elderly. Another commenter stated that recertification of participants should be every three years. However, the United States Housing Act of 1937 states that reviews of family income shall be made at least annually. Amending this provision would require a statutory change.

## 3. Total Tenant Payment—Rental and Turnkey III Programs (§ 950.325)

Many commenters objected to the 30 percent of monthly adjusted income provision in § 950.325(a)(i) of the proposed rule. Both tribes and IHAs submitted resolutions objecting to this provision. Commenters stated that this provision causes an unreasonable burden on tenants and does not provide an incentive to seek gainful employment. One commenter stated that the rule promotes dependency on the Federal Government for welfare assistance and destroys the initiative for self-sufficiency. Several commenters objected that automatically charging 30 percent, regardless of the quality of the unit, would have a discriminatory effect, in that it perpetuates poverty, is a disincentive for viable employment, and penalizes tribal members who are struggling to achieve economic sufficiency.

Many commenters requested a change in the total tenant payment from 30 percent to 20 percent. Some commenters requested that the percentage be lowered for the elderly only. Another commenter requested that a flat rent be charged or the IHA be allowed to charge minimum rents. Another commenter requested that no rent be charged for welfare families.

One commenter stated that § 950.325(a) should be changed to read as follows: "Total tenant payment shall be the highest of the following, up to the IHA's established ceiling rent (calculated using local income levels, rents, and economic conditions) rounded to the nearest dollar."

Many commenters recommended a change to the current ceiling rent policy. These commenters further stated that IHAs should be allowed to establish ceiling rates using local economic conditions to provide housing for the working poor at reasonable rates. Another commenter requested that ceiling rents be based on fair market rents for the particular reservation or a rent ceiling equal to the administrative fee for Mutual Help housing. The commenter stated that this would not conflict with the United States Housing Act of 1937, as the Mutual Help administrative fee generally represents the average monthly amount of debt service and operating expenses attributed to a dwelling unit.

HUD received many comments on the definitions of adjusted income and annual income. Several commenters stated that rent should be calculated based on net income; deductions should be changed to be comparable to IRS deductions because of the cost of living

increases; medical deductions should apply to everyone and there should be a secondary wage earner deduction; child support payments should be deducted from the person paying; elderly families should have a deduction of \$2,500; only one income should be used when calculating rent; more deductions should be given for child care; deductions should be allowed for child support; an inflation factor should be built into the deductions; no raises in payments if income increases; and deductions should be provided for investments.

HUD understands that the 30 percent rule and the definition of annual and adjusted income are of major concern in the Indian housing rental program. The United States Housing Act of 1937 establishes the amount of payment for rental housing and defines the term "income" and "adjusted income." Therefore, without a statutory change, HUD cannot address any of these requested changes. As indicated in other parts of this preamble, HUD is considering other regulatory changes for the public and Indian housing programs, and is preparing a legislative proposal for the Indian housing program. HUD will consider all of the comments above as it develops the proposal.

#### 4. Rent and Homebuyer Payment Collection Policy (§ 950.335)

A commenter stated that payment and collection policies should comply with ACC, statutory, and regulatory requirements, and not HUD guidelines. HUD agrees with this comment and has revised the language in this section of the final rule.

#### 5. Grievance Procedures and Leases (§ 950.340)

A commenter stated that (a)(iii) of the proposed rule should be struck, or HUD should at least explain that such a party may be an official or employee of the IHA. The reference from the commenter was incorrect, and therefore HUD is unable to determine the nature of the commenter's concerns. HUD would like to note that the language in § 950.340(a)(1) is statutory.

A commenter stated that § 950.340(a)(3)(ii) should be changed. The basic elements of due process should recognize Indian Civil Rights Act (ICRA) exceptions for tribal customs and practices. HUD finds it unnecessary to amend the rule to recognize exceptions from the Indian Civil Rights Act (ICRA) (25 U.S.C. 1301-1303), because the rule currently states in § 950.340(a)(1) that each IHA shall adopt grievance procedures that are appropriate to local

circumstances and that comply with the ICRA, if applicable.

A commenter stated that the phrase "related to the termination" in § 950.340(a) and (b) should be changed to "used" in the termination or eviction. HUD could not locate this phrase in subsection (a). HUD is unable to change the wording in subsection (b)(6) because it is a statutory requirement.

One commenter stated that this section attempts to give HUD the authority to determine whether tribal and state termination or eviction procedures provide the basic elements of due process. The commenter continued that since HUD has no authority over tribal sovereignty rights to determine its own eviction and termination procedures, this section should be removed from the rule. However, HUD's ability to determine the basic elements of due process is statutory, and therefore this section remains unchanged.

A commenter found a typographical error in § 950.340(b)(6) in the proposed rule. The provision should read "Specify that with respect to any notice." HUD has corrected the typographical error in the final rule.

#### 6. Fire Safety (§ 950.346)

A commenter recommended that this section be revised to change references to "hard-wire smoke detectors" to "hard-wire with battery back-up smoke detectors," and that this section should reflect the need for fire extinguishers in each unit. The commenter indicated that many Mutual Help homes have only battery operated smoke detectors, and that many of them are inoperable. The commenter stated that IHAs should be allowed to receive funding to bring such units up to code.

HUD received a second comment regarding the benefits of a residential range top suppression system that is capable of detecting a cooking grease fire originating on the range top, extinguishing the fire, and preventing reignition. The commenter provided sample specifications for the product for inclusion in the rule. The Fire Administration Authorization Act of 1992 (the Act) (Pub. L. 102-522, approved October 26, 1992) established applicable Federal standards for fire safety, and these standards are reflected in this rule. HUD considers it appropriate to reflect the minimum Federal requirements mandated by the Act and does not plan to establish more stringent requirements in this rule. To the extent that the State, tribal, or local jurisdiction in which the units are located has more stringent fire prevention and control standards, the

more stringent State, tribal, or local standards will govern. Further, HUD wishes to point out that funding is available under both the CIAP and CGP programs for fire safety needs. Under the competitive CIAP application process, work items related to fire safety are prioritized for funding along with emergency work items.

#### E. Subpart E—Mutual Help Homeownership Opportunity Program

##### 1. Scope and Applicability (§ 950.401)

One commenter asked what regulations exist for Mutual Help (MH) units placed under ACC before March 9, 1976. There are no regulations for the MH units placed under ACC prior to March 9, 1976. The document governing that program is the Mutual Help and Occupancy (MHO) Agreement.

##### 2. Special Provisions for Development of an MH Project (§ 950.413)

One commenter stated that paragraph (d) in this section of the proposed rule should be revised since it allows HUD to decide not to proceed with the development of a MH project. The commenter stated that this provision is inconsistent with the goal of the rule—HUD is giving IHAs greater responsibility, yet it is still reserving control and discretion as to how IHAs carry out the housing program. In response to this comment, HUD has removed this entire section. The provisions of § 950.135, Administrative capability, will apply prior to an action that would result in cancellation of a development by HUD, and the IHA would be involved and given every opportunity to respond and appeal if necessary.

##### 3. Selection of MH Homebuyers (§ 950.416)

One commenter requested that the Federal preference mentioned in § 950.416(d) be removed from this section because IHAs should select homebuyers with the ability to meet the obligations of the program, and Federal preference is in conflict with the ability to meet homebuyer obligations. However, as the commenter recognized, the Federal preference is a statutory requirement that HUD is unable to remove at this time. As mentioned previously in this preamble, the Office of Native American Programs is developing a legislative proposal and will consider this comment at that time.

One commenter requested that HUD revise § 950.416(e) on principal residency to emphasize that the determination of whether the home is necessary for the family's livelihood or

for cultural preservation be solely that of the IHA. In response to this comment, HUD has changed the wording on the principal residency as requested.

One commenter asked HUD to streamline this section and handle many of these requirements in a handbook or by Board policy. HUD has reviewed this section and streamlined where possible; however, many of the requirements in this section are statutorily based and therefore HUD cannot change them.

One commenter requested the inclusion of a discretionary preference that the local IHA would apply to handle unique situations in their area. On July 18, 1994 (59 FR 36616), HUD published a final rule in the **Federal Register** on Preferences for Admission to Assisted Housing. That rule specifically authorizes the adoption of local selection preferences by housing authorities in admitting some applicants. This rule permits IHAs to adopt preferences that respond to local housing needs and priorities after conducting public hearings. See §§ 950.301 and 950.303 of this final rule.

#### 4. MH Contribution (§ 950.419)

One commenter suggested that the MH contribution requirement should be at the option of the IHA. Another commenter requested that land cost be determined individually by each tribe through an appraisal with a cap of \$2500. The requirement for a MH contribution of at least \$1500 is statutory, and therefore HUD cannot remove the requirement from the rule. In response to these comments, however, HUD has revised this section to reflect the statutory requirement that the MH contribution be at least \$1500, rather than a maximum of \$1500, to allow for additional MH contributions by the homebuyer.

One commenter requested that a subsequent homebuyer be given credit for land donated by the tribe. HUD has recently provided guidance to the Area ONAPs that clarifies this section of the rule. A subsequent homebuyer can be given credit for a land contribution by a tribe and not be required to provide an additional MH contribution.

#### 5. Inspections, Responsibility for Items Covered by Warranty (§ 950.425)

One commenter recommended that §§ 950.425(a) (1) and (2) be revised to clarify that latent defects would be covered even after the warranty period. In response to this comment, HUD has streamlined this section, and this issue is now covered under the development section (§ 950.270(a)), in which HUD believes the language is clearer.

#### 6. Homebuyer Payments—Post-1976 Projects (§ 950.426)

One commenter requested that the percentage of income used for determining homebuyer payments be changed from 15 percent to 12 percent. Another commenter requested that the percentage for elderly be changed to 10 percent. Another commenter stated that MH should have fixed payments, which would eliminate the need for recertification. The requirement to charge MH participants 15 to 25 percent of income is statutory, and HUD cannot change it through regulation. However, as mentioned above, HUD's Office of Native American Programs will consider these comments when it develops its legislative proposal for Native American Programs.

#### 7. Maintenance, Utilities, and Use of Home (§ 950.428)

HUD received two comments regarding § 950.428(c) on inspections. One commenter requested that HUD eliminate the need for inspections. Another commenter stated that inspections should be based on the amount of equity in a homebuyer's account. In response to these comments, HUD has changed the requirement in the final rule for MH inspections. The language in the final rule states that the IHA shall conduct inspections of each home on a schedule developed by the IHA that ensures that the home is maintained in a decent, safe, and sanitary condition.

One commenter requested that the language in § 950.428(d) of the proposed rule be revised since the correction of warranty items is not the same as providing maintenance, and the two concepts should be distinct. HUD agrees, and in response to this comment HUD has revised this language.

HUD received two comments on § 950.428(g). One commenter stated that an IHA should be able to use Monthly Equity Payments Account (MEPA) funds for improvements without a waiver. Another commenter stated that the IHA, not HUD, should determine how MEPA funds can be used. This rule does not require an IHA to obtain approval or a waiver from HUD in order to allow a homebuyer to use MEPA funds for betterments and additions. The IHA also has the ability to determine whether the homebuyer needs to replenish the MEPA. Therefore, HUD has made no changes.

#### 8. Operating Subsidy (§ 950.434)

One commenter requested a change in the operating subsidy for collection losses so that the IHA could have funds

in advance to repair vacant units because of the lack of reserves. While HUD never intended to provide funds for needed repairs to a vacant unit after the repairs were completed, that was often the case due to the budget process and the need for the IHA to follow through on all collection efforts prior to receiving funds. HUD has modified the language in the final rule and will provide additional guidance on the process to the Area ONAPs so that funds can be provided to the IHA as soon as possible.

Two commenters requested additional subsidy in the MH program. One commenter requested operating subsidy for units converted for self-sufficiency or anti-drug programs. Another requested subsidy to pay for administrative costs involved with using the MEPA for low-income housing purposes. However, HUD finds that the administrative charge in the MH program should be used to cover the minimal costs associated with the programs mentioned above.

One commenter requested that operating subsidy be provided for counseling in the rental program and that all subsidy be provided at 100 percent. HUD provides operating subsidy for the rental program through the Performance Funding System, and the IHA can budget for staff to provide counseling in the rental program if the budget can support this service. HUD recognizes the difficulty that IHAs experience when subsidy is provided at less than 100 percent. However, the amount of subsidy is subject to annual congressional appropriations, and therefore HUD is unable to guarantee funding at 100 percent.

Several commenters requested that HUD take into account logistical concerns and IHA size when developing a formula for counseling and training funds. HUD agrees with the comments and will take these factors into account when developing the plan for providing operating subsidy funding for counseling and training. HUD will consult IHAs prior to implementation.

#### 9. Homebuyer Reserves and Accounts (§ 950.437)

Several commenters stated their support for the change to use MEPA funds for low-income housing purposes. HUD received several other comments on this regulatory change. One commenter suggested that the use of MEPA in § 950.437(b)(2)(ii) should be limited based on home inspections. This commenter stated that if there are maintenance items that need to be addressed, the IHA should not be allowed to use the MEPA. Another

commenter requested that the IHA be able to use MEPA funds for alternative types of housing aimed at middle-income Indian families. Another commenter requested more independence from HUD rules in § 950.437(b), but this commenter provided no additional information. HUD also received comments requesting clarification of the requirements for resident notification, eligible uses, and developing a formula for the percentage that can be used, as well as a request to change the definition of MEPA.

HUD appreciates the comments received on this major regulatory change. HUD developed this section of the proposed rule based on public comment during the Native American consultation process in order to give flexibility to IHAs that wish to use the MEPA. IHAs will be required to obtain approval for use of the MEPA and to maintain a sufficient reserve of equity for homebuyers in need of maintenance. Hopefully, this will address the concerns of the commenters regarding which IHAs will be eligible to use the MEPA for other low-income housing purposes.

With regard to the comment on expanding the use of the MEPA to middle-income families, HUD has determined that the use of MEPA funds must be limited to low-income housing purposes as long as the development is under the Annual Contributions Contract.

HUD plans to address many of the issues such as eligible uses in ONAP guidebooks. In streamlining the regulation, HUD found that it was best to handle policy questions in this way. It is also HUD's goal to give IHAs the ability to make decisions on the amount of MEPA available for use and the amount needed for homebuyer maintenance if they permit homebuyers to use the reserve.

One commenter stated that IHAs should not be required to pay interest on MEPA accounts if the funds are being used for other low-income housing purposes. The commenter requested clarification on how the IHA would earn or pay interest to homebuyers. The current Mutual Help and Occupancy Agreement between the IHA and the homebuyer states that interest on equity accounts will be provided annually. Due to this provision, HUD has not changed the regulation as requested.

One commenter requested that the first \$5,000 of MH equity be used as a nonrefundable downpayment. HUD believes that a requirement for a downpayment other than the \$1,500 MH

contribution would violate the intent of the United States Housing Act of 1937.

One commenter requested that HUD retain the Voluntary Equity Payment Account (VEPA). However, HUD removed the requirement for the VEPA to streamline the MH program. IHAs had indicated that the account was seldom used. If an IHA wants to continue to use a voluntary account, they have the ability to do so. However, without a VEPA, a homebuyer could continue to make additional monthly payments that would be deposited in the Monthly Equity Payment Account and be used to pay off a home in a shorter period of time, similar to the current VEPA.

#### 10. Purchase of Home (§ 950.440).

Several commenters indicated that they supported the change that allows the IHA to establish the purchase price schedule. One commenter requested national uniformity based on development cost. Another commenter requested clarification on whether the new regulations regarding purchase price would apply to existing homes. In response to the comments received, HUD will implement the provisions of § 950.440(b) of the proposed rule, which provides for the IHA to set the purchase price for initial and subsequent homebuyers, in the final rule. In response to whether the rule is retroactive, the IHA can implement the changes in the final rule for current homebuyers with their consent. The current MHO Agreement may differ on several topics. Since this is the contract between the homebuyer and the IHA, homebuyer consent would be required.

HUD received several other comments regarding § 950.440. One commenter requested that an IHA be allowed to convey a unit and still perform modernization after that unit is conveyed, if prior to conveyance that unit was on a comprehensive improvement assistance program (CIAP) or 5 year Comp Grant comprehensive plan. Another commenter requested that IHAs be allowed to perform only emergency work on a paid-off unit if there was a repayment plan for the delinquency. Another commenter stated that they agree with the changes, but they are concerned about the operating cost once the unit is paid off.

In response to these comments, HUD's Office of General Counsel (OGC) was asked to review the issue once more. OGC stated that they believe that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to

conveyance. However, once conveyed, the unit is not eligible for future assistance. The language in the regulations at 950.440 and 950.602 will be revised accordingly. In response to the comment that IHAs be allowed to perform only emergency work on a paid-off unit if there is a repayment plan for a delinquency, HUD believes that modernization may be required, either by statute or regulation, for these units, and therefore HUD has not changed the language in the rule. However, the IHA does have the ability to determine its priorities with respect to modernization work for all units and could limit the work to emergency items. In response to the comment regarding operating costs, until a unit is conveyed, the homebuyer is responsible for monthly payments in accordance with the Mutual Help and Occupancy Agreement. Therefore, the administration charge should still be collected to cover operating costs until the unit is conveyed.

One commenter requested that zero interest be applied to rental, Turnkey III, and Old Mutual Help. HUD issued guidance in Notice PIH 91-29, dated June 18, 1991, which provides for zero interest in the Old Mutual Help Program. HUD has also modified the Turnkey III rule at § 950.525 to provide for zero interest. It is not necessary to change the interest in the rental program, since all debt relating to the rental program has been forgiven through the loan forgiveness legislation, and since tenants are not charged interest with their housing payments.

One commenter requested that § 940.440(e)(6) be changed to allow an IHA to use proceeds from the sale for middle-income families. Recently, HUD's Office of General Counsel stated that there are no statutory restrictions that would prohibit the amendment of an Administrative Use Agreement to allow proceeds from the sale of homeownership units to be used for other housing purposes, including purposes other than for lower income housing. However, any proceeds of sale must still be used in connection with low- and very low-income persons. Therefore, HUD has not changed the language in the rule.

#### 11. Termination of MHO Agreement (§ 950.446)

One commenter stated that § 950.446(f)(3) suggests that the IHA is the entity that evicts. This commenter recommended that this section should instead indicate that the IHA initiates an eviction action. HUD agrees with this comment and has made the change.

## 12. Succession (§ 950.449)

One commenter stated that this is perhaps the most important and significant change to the Indian Housing regulations. Another commenter supported this change and stated it was in agreement with the IHA. Another commenter stated that "at the very least, there should be a provision that provides that the designation of a successor by the homebuyer must be approved by tribal government." Although HUD supports tribal involvement in the program, HUD believes that the homebuyer should determine the successor to their unit whenever possible, subject to any restrictions by the tribe on succession to the land.

## 13. Conversion (§§ 950.445 and 950.458)

HUD received several comments on the conversion process. One commenter requested that the requirement for an actual development cost certificate (ADCC) be eliminated, since this is a lengthy process and holds up conversions. Another commenter requested that HUD eliminate the requirement that a conversion application be in a form required by HUD. Another commenter requested that the MH contribution not be required in a conversion and that the lease process should not hold up a conversion. There was a general comment that HUD does not allow conversion.

In response to these comments, HUD has eliminated the need for an ADCC prior to conversion and the requirement that the conversion package be in a form required by HUD. HUD has not changed the requirement for a MH contribution, since it is a statutory requirement for every MH unit. However, the contribution can be in the form of land. HUD encourages the use of the conversion process whenever it is beneficial for an IHA. If an IHA is having difficulty with the conversion process, it should contact the Office of Native American Programs in Washington, D.C., at the address specified in the "For Further Information Contact" section, above.

### F. Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program

HUD received no comments on this subpart. However, HUD has made additional revisions in the final rule to streamline this program.

### G. Subpart G—Turnkey III Program

HUD only received one comment on the Turnkey III subpart of the rule. This commenter requested that a zero interest

rate apply to this program, as it does with Mutual Help Homeownership Opportunity Program. HUD had made this change in the proposed rule at § 950.525, and this change is included in this final rule.

Due to the fact that there are currently only 18 IHAs managing the Turnkey III Program, and in response to general public support for additional streamlining of the entire regulation, HUD has attempted to further reduce the regulatory requirements of this program.

### H. Subpart H—Lead-Based Paint Poisoning Prevention

With this final rule, HUD makes no changes to the existing regulations for lead-based paint poisoning prevention, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

### I. Subpart I—Modernization

#### 1. Comprehensive Improvement Assistance Program and Comprehensive Grant Program

HUD received many comments regarding the changes proposed for the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP). The comments were overwhelmingly supportive of HUD's efforts to simplify the programs. Many of the changes requested on CGP were implemented in the Public and Indian Housing Amendments to the CGP final rule, which was published in the **Federal Register** on August 30, 1994 (59 FR 44810).

One commenter indicated that CIAP should be an entitlement based on age and number of units, and that the formula must take into account small IHAs. However, the United States Housing Act of 1937 specifically provides for two different modernization programs based on housing authority size: a formula funded program for those with 250 or more units, and a discretionary application program for those with fewer than 250 units. Therefore, HUD could not implement this recommendation without a legislative amendment.

Another commenter recommended that CIAP have a five-year plan, like CGP. However, as stated above, funding of a CIAP is made through a competitive application process that does not allow forecasting funding availability for future years, as does the CGP. Although HUD encourages IHAs to plan for

modernization needs, a five-year plan would not serve the same purpose as in the CGP.

One commenter indicated that CIAP funds for IHAs should be a separate set-aside from Public Housing. Currently, there is only one appropriation for Public and Indian Housing. Therefore, implementing this recommendation would require a legislative change.

A commenter suggested that the process of moving CIAP/CGP funds to resident organizations should be in regulations. However, HUD finds that regulating a process for transferring funds to resident organizations would decrease local flexibility, and therefore HUD has not implemented this recommendation.

#### 2. Special requirements for Turnkey III and Mutual Help developments (§ 950.602)

Many commenters made recommendations regarding this section of Subpart I and a cross reference in the Mutual Help Homeownership Opportunity Program, Subpart E, § 950.440. Both references discuss the use of modernization funds for paid-off and conveyed units. In the final CGP rule (published in the **Federal Register** on August 30, 1994 (59 FR 44810)), HUD removed the regulatory prohibition against modernizing Mutual Help units that are paid off but not conveyed. The preamble to that rule stated:

The Department believes that the only regulatory restrictions on the modernization of paid-off Mutual Help units should be that: title has not been conveyed to the homebuyer; where the homebuyer has a delinquency at the end of the amortization period, non-emergency modernization work shall not be done until all delinquencies are repaid; and, the units shall be identified in the Comprehensive Plan (including the Physical Needs Assessments and Five-Year Action Plan). The prohibition against performing modernization work on conveyed units is based on a determination by the Department's Office of General Counsel that statutory authority for the expenditure of modernization funds is limited to existing public housing units. Once title is conveyed and the unit is no longer covered by the ACC, the unit is no longer a public housing unit and there is no legal authority for the expenditure of modernization funds provided under section 14 of the Act. IHAs that wish to modernize conveyed Mutual Help units must obtain funding from another source; e.g., proceeds from the sale of homeownership units or Bureau of Indian Affairs Housing Improvement Program funds. (59 FR 44811).

A group of IHAs consolidated their comments and offered two alternative recommendations for this rule's provisions on conveyed units at

§§ 950.602 and 950.440. They recommended that IHAs be allowed to convey a unit and still perform modernization after the unit is conveyed, if prior to conveyance the work was in an approved CIAP application or CGP Five-Year Plan, and the work is done within five years. Alternatively, they recommended that IHAs have the option to delay conveyance for up to five years to conduct modernization, but only with the written consent of the homebuyer.

Another IHA commented that conveyed units should be eligible for modernization work. The IHA argued that first priority should go to homebuyers who have shown good faith by paying for their homes and now have the deeds to the homes, and not to those who, because of a delinquent status, have not received their conveyance documents. The IHA recommended that in the renovation of paid-off units, IHAs should have the discretion to decide which units to modernize, whether the unit has been conveyed or not.

Two IHAs recommended that HUD allow old Mutual Help and Turnkey III units that have been conveyed to be brought back into the programs for the purpose of comprehensive modernization. The IHAs considered the proposed change to be unfair to homebuyers in paid-off units that were not included in the Comprehensive Plans because paid-off units were ineligible under the original regulation. Many of those units were conveyed before the proposed rule was published, which provided that units that are paid off but not conveyed are eligible for modernization. The IHAs argued that the conveyed units deserve the same consideration and have the same physical improvement needs, such as handicapped accessibility, lead-based paint testing, and meeting current codes.

As discussed in the preamble language for Subpart E, the Office of General Counsel (OGC) has advised that the statute can be read to allow modernization work to be done on units, title to which have been conveyed, but which were approved for modernization funding prior to conveyance. Therefore, HUD has revised the rule in response to the comments submitted on this issue. Although title can be conveyed once the unit has been approved for modernization funding, OGC recommends that IHAs delay conveyance until modernization work is completed on a Mutual Help unit.

In response to the comments requesting that modernization be eligible for a Mutual Help unit that has been conveyed but not approved for

modernization funding prior to conveyance, the prohibition is based on the determination that statutory authority for the expenditure of funds is limited to existing public housing units. Once title is conveyed and the unit is no longer owned by an IHA and covered by the ACC, the unit is no longer a public housing unit, and there is no legal authority for the expenditure of modernization funds provided under section 14 of the United States Housing Act of 1937.

Two commenters recommended that when units become paid off, the operating costs should be charged to the Comprehensive Grant Program. Another commenter recommended that the rule be revised to specify clearly that during the period after a unit becomes paid off, until it is modernized and title is conveyed, the homebuyer is responsible for the administration charge. In response to the first two comments, the United States Housing Act of 1937 requires that the homebuyer make monthly payments of at least an administration charge to cover monthly operating expenses on the dwelling. The second commenter was correct in the statement that the administration charge shall be made by a homebuyer until conveyance. HUD has included language to clarify this requirement in § 950.440 of the rule.

### 3. Contracting Requirements (CIAP) (§ 950.642) and Conduct of Modernization Activities (CGP) (§ 950.681)

One commenter stated that in order to assist new contractors in getting established an IHA should be allowed to give preference to new contractors and pay their licensing and bonding fees. A change to the contracting requirements would conflict with 24 CFR part 85, which contains the government-wide administrative requirements for grants. Paying licensing and bonding fees would give an unfair advantage to new contractors and would not provide fair and open competition as required by Part 85.

### 4. Eligible Costs (§ 950.666)

One commenter agreed with the increase from 10 percent to 20 percent in the cost limitation on management improvements in § 950.666(m)(2), but indicated that the cost limitation on administrative costs should also be increased from 7 percent to 10 percent. HUD appreciates the comment in support of the change in the cost limitation for management improvement. The cost limitation on administrative costs was increased from 7 percent to 10 percent of the annual

grant in the CGP final rule published in the **Federal Register** on August 30, 1994 (59 FR 44810), and effective September 29, 1994. That change is also reflected in this rule.

One commenter stated that the proposed rule is too restrictive with respect to room additions needed for handicapped accessibility. Three commenters recommended that the rule include additions to the living space in a dwelling unit as an eligible work item under CGP and CIAP. HUD implemented this recommendation for the CGP final rule cited above at § 905.666(c). That rule provides that "[a]dditional dwelling space may be added to existing units." A similar change has been made in this CIAP final rule at § 950.615(b).

### 5. Allocation of Assistance (§ 950.669)

A regional association of IHAs commended the proposed rule for allowing IHAs to hold public hearings earlier in the year using the prior year's formula amount for planning purposes. HUD appreciates the comment in support of this change.

### 6. Comprehensive Plan (Including Five-Year Action Plan) (§ 950.672).

One commenter anticipated a problem with unrealistically raising expectations by consulting with the residents on all five years of the Comprehensive Plan. The commenter recommended limiting resident participation to years when funds are available. However, section 14 of the United States Housing Act of 1937 requires that residents affected by the planned activities be given the opportunity to review and provide their input. This rule (§ 950.672(b)(5)) requires that at the annual Public Hearing the IHA present "information on the Comprehensive Plan/Annual Submission and the status of prior approved programs."

### 7. HUD Review and Approval of Comprehensive Plan (Including Five-Year Action Plan) (§ 950.675).

One commenter wanted to be able to maintain flexibility to move work items between years of the CGP Action Plan and have the ability to switch line items within the original scope of work. HUD has included the ability to undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current Annual Statement, or previously approved CIAP budgets in § 950.675(c) of the CGP final rule cited above.

*J. Subpart J—Operating Subsidy*

## 1. General Comments.

One commenter requested that the calculation for the PFS be changed because it is too complicated. Another commenter stated that the PFS should be designed specifically for IHAs. This commenter suggested that HUD should initiate a national study on PFS and how to redesign it. HUD recognizes the concerns regarding the PFS and how it relates to the Indian Housing program. However, any change in the PFS would require statutory and/or regulatory changes. At this time, HUD is studying the entire Indian Housing program. In this process, HUD will address any recommendation for change in this area.

Another commenter stated that IHAs should be provided with additional subsidy to cover the costs of implementing part 85. However, the PFS is designed to cover administrative costs of a well-managed IHA. In the Mutual Help program, the administration charge is used to cover an IHA's administrative expenses. There are no additional congressional appropriations to cover these costs, and therefore HUD cannot change the rule to accommodate this request.

## 2. Other Costs (§ 950.720).

A commenter stated that additional operating subsidy should be provided for user fees for the Mutual Help program. Section 122(c) of the Housing and Community Development Act of 1992 amended Section 203 of the Indian Housing Act of 1988 (Pub. L. 100-358, approved June 29, 1988) to provide user fees to municipalities specifically for each rental housing unit. The amendment did not include Mutual Help, and a legislative change would be necessary to provide this funding.

## 3. Operating Reserves (§ 950.740)

One commenter requested that HUD maintain the requirement for a maximum operating reserve in the rental program. However, HUD is making efforts to streamline regulations and give control of project operations to IHAs. This includes the determination by an IHA of the amount of reserves needed for efficient program operation. For that reason, HUD has eliminated the requirement for the maximum operating reserve in both the rental and Turnkey III programs.

## 4. Operating Budget Submission and Approval (§ 950.745)

A commenter recommended that HUD revise the Handbook early in Fiscal Year (FY) 1995 to implement the budget submission change. On October 4, 1994,

HUD issued HUD Notice 94-72, which implemented the revised procedures regarding operating budget submission. HUD has also modified this rule slightly to reflect the budget submission changes.

*K. Subpart K—Energy Audits, Energy Conservation Measures, and Utility Allowances General Changes*

## 1. General Comment

HUD received a comment suggesting that this entire section should be simplified, and it should reflect less HUD reviews and approvals. In response to this comment, HUD has reviewed the section and streamlined when possible. HUD has also removed many of the reviews and approvals mentioned by the commenter.

## 2. Energy Performance Contracts (§ 950.825)

One commenter requested that the word "shall" in the following sentence of § 950.825(a) be removed: "Energy performance contracting shall be conducted using one of the following methods of procurement \* \* \*." However, removal of the word "shall" would eliminate the need to conduct energy audits. HUD finds that its policies in this section support national energy conservation goals, and the elimination of the audits would not meet HUD's goals of reducing energy consumption or operating costs.

*L. Subpart L—Operation of Projects After Expiration of Initial ACC Term*

With this final rule, HUD makes no changes to the existing regulations for the operation of projects after the expiration of the initial ACC term, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in this rule in an effort to consolidate all the Indian housing regulations.

*M. Subpart M—Disposition or Demolition of Projects*

HUD received no comments on this subpart. HUD had taken steps to streamline this subpart in the proposed rule, and has made no additional changes in this final rule.

*N. Subpart N—Miscellaneous*

Subpart N was incorporated into subpart J (§ 950.772) of the final rule.

*O. Subpart O—Resident Participation and Opportunities General Provisions*

A final rule for the Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing was published in the **Federal Register** on

August 24, 1994 (59 FR 43622). With today's final rule, HUD makes no changes to the Resident Participation and Opportunities regulations, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

*P. Subpart P—Section 5(h) Homeownership Program*

A final rule for the Section 5(h) Homeownership Program for Public and Indian Housing was published in the **Federal Register** on November 10, 1994 (59 FR 56354). With today's final rule, HUD makes no changes to the Section 5(h) Homeownership regulations for Indian housing, other than to move them from part 905 to new part 950. However, HUD is republishing the existing regulations in today's rule in an effort to consolidate all the Indian housing regulations.

*Q. Subpart R—Family Self-Sufficiency*

HUD received no comments on this subpart. As stated in the proposed rule, HUD made very few changes to the regulation implementing the FSS program because the current regulation reflects the statutory provisions of section 23 of the United States Housing Act of 1937. HUD has revised the final rule to eliminate definitions that are included in § 950.102.

**IV. Other Matters***Finding of No Significant Impact*

At the time of the development of the proposed rule, a Finding of No Significant Impact with respect to the environment was 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 remains applicable to this final rule and is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10272, 451 Seventh Street, S.W., Washington, D.C. 20410.

*Regulatory Flexibility Act*

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 does not have a significant economic impact on a substantial number of small entities. The rule makes a number of amendments to the Indian Housing Consolidated Program regulations to simplify program

processes, reduce the number of regulatory requirements, and to provide more flexibility to local tribal and Indian housing authority officials in the administration of the Indian Housing program.

#### *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 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. As a result, the rule is not subject to review under the order.

#### *Executive Order 12606, 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. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

#### *Regulatory Agenda*

This rule was listed as sequence number 1894 in HUD's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57638) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### *Catalog of Domestic Assistance*

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

#### **List of Subjects**

##### *24 CFR Part 905*

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 950*

Aged, Grant programs—housing and community development, Grant programs—Indians, Disability,

Homeownership, Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended as follows:

#### **PART 905—[REMOVED AND RESERVED]**

1. Part 905 is removed and reserved.
2. Part 950 is added to read as follows:

#### **PART 950—INDIAN HOUSING PROGRAMS**

##### **Subpart A—General**

Sec.

- 950.101 Applicability and scope.
- 950.102 definitions.
- 950.110 Assistance from Indian Health Service and Bureau of Indian Affairs.
- 950.115 Applicability of civil rights requirements.
- 950.117 Displacement, relocation, and acquisition.
- 950.120 Compliance with other Federal requirements.
- 950.125 Establishment of IHAs pursuant to State law.
- 950.126 Establishment of IHAs by tribal ordinance.
- 950.130 IHA Commissioners who are tenants or homebuyers.
- 950.135 Administrative capability.

##### **Subpart B—Procurement**

- 950.160 Procurement standards.
- 950.165 Methods of procurement.
- 950.170 Other requirements applicable to development contracts.
- 950.172 Wage rates.
- 950.175 Indian preference requirements.
- 950.190 Insurance.
- 950.195 Lead-based paint liability insurance coverage.

##### **Subpart C—Development**

- 950.200 Roles and responsibilities of Federal agencies.
- 950.205 Allocation.
- 950.207 Eligibility.
- 950.210 Authority for proceeding without HUD approval.
- 950.215 Production methods.
- 950.220 Total development cost.
- 950.225 Application.
- 950.227 Initial development grant approval and ACC execution.
- 950.229 Expenditure of funds.
- 950.231 Project coordination.
- 950.235 Site selection criteria.
- 950.240 Types of interest in land.
- 950.245 Appraisals.
- 950.247 Environment.
- 950.250 Site approval.
- 950.255 Design criteria.
- 950.260 Construction stage development cost budget and certifications.
- 950.265 Construction and inspections.
- 950.270 Construction completion and settlement.

- 950.275 Warranty inspections and enforcement.
- 950.280 Correcting deficiencies.
- 950.285 Fiscal closeout.

##### **Subpart D—Operation**

- 950.301 Admission policies.
- 950.303 Selection preferences.
- 950.304 Federal preferences: general.
- 950.305 Federal preferences: involuntary displacement.
- 950.306 Federal preference: substandard housing.
- 950.307 Federal preference: rent burden.
- 950.308 Exemption from eligibility requirements for police officers and other security personnel.
- 950.310 Restrictions on assistance to noncitizens.
- 950.315 Initial determination, verification, and reexamination of family income and composition.
- 950.320 Determination of rents and homebuyer payments.
- 950.325 Total tenant payment—Rental and Turnkey III programs.
- 950.335 Rent and homebuyer payment collection policy.
- 950.340 Grievance procedures and leases.
- 950.345 Maintenance and improvements.
- 950.346 Fire safety.
- 950.360 IHA employment practices.

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**Authority:** 25 U.S.C. 450e(b); 42 U.S.C. 1437aa-1437ee and 3535(d).

#### Subpart A—General

##### § 950.101 Applicability and scope.

(a) *General.* (1) Under title II of the United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (42 U.S.C. 1437aa, et seq.), the Department of Housing and Urban Development (HUD) provides financial and technical assistance to Indian Housing Authorities (IHAs), for the development and operation of low-income housing projects in Indian areas. This part is applicable to such projects developed or operated by an IHA in an Indian area, as defined in § 950.102.

(2) If assistance under this part is not available to a low-income family because the family desires housing in an area within which no IHA is authorized to provide housing, or if for any other reason a family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs. (See 24 CFR part 203, chapter VIII of this title, as

well as the remainder of chapter IX of this title.)

(b) *Other HUD regulations and requirements.* The provisions of this part are a complete statement of HUD regulations affecting the development and operation of low-income housing by IHAs except as supplemented by parts in other chapters of this title that are referenced in this part.

##### § 950.102 Definitions.

*Act.* The United States Housing Act of 1937 (42 U.S.C. 1437-1440).

*Action plan.* A plan of the actions to be funded by an IHA over a period of five years (including an IHA's proposed allocation of its modernization funds to a reserve established under § 950.666(a)(3)) to make the necessary physical and management improvements identified in the IHA's comprehensive plan under subpart I of this part. The plan shall be based upon HUD's and the IHA's best estimates of the funding reasonably expected to become available over the next five-year period. The action plan is updated annually to reflect a rolling five-year base.

*Adjusted income.* Annual income less the following allowances, determined in accordance with HUD instructions:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family;
- (3) For any family that is not an elderly family but has a handicapped or disabled member other than the head of household or spouse, handicapped assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the handicapped or disabled person;
- (4) For any elderly family—
  - (i) That has no handicapped assistance expenses (as defined in paragraph 3 of this definition), an allowance for medical expenses (as defined in this section) equal to the amount by which the medical expenses exceed three percent of annual income;
  - (ii) That has handicapped assistance expenses greater than or equal to three percent of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (3) of this definition, plus an allowance for medical expenses that is equal to the family's medical expenses; and
  - (iii) That has handicapped assistance expenses that are less than three percent of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum

of these expenses exceeds three percent of annual income;

(5) Child care expenses, as defined in this section; and

(6) Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

*Administration charge.* In Mutual Help projects, the amount budgeted per-unit per-month for operating expense, exclusive of the cost of HUD-approved expenditures for which operating subsidy is being provided in accordance with § 950.434 (see § 950.427(b)).

*Allowable expense level.* In rental projects, the per-unit per-month dollar amount of expenses (excluding utilities and expenses allowed under § 950.720) computed in accordance with § 950.710, which is used to compute the amount of operating subsidy.

*Allowable utilities consumption level (AUCL).* In rental projects, the amount of utilities expected to be consumed per-unit per-month by the IHA during the requested budget year, which is equal to the average amount consumed per-unit per-month during the rolling base period.

*Annual contributions contract (ACC).* A contract under the Act between HUD and the IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC shall be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the Act, and the IHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

*Annual income.* Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of income as provided in paragraph (2) of this definition.

(1) Annual income includes, but is not limited to:

(i) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(ii) The net income from operation of a business or profession. Expenditures

for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(iii) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (1)(ii) of this definition. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(iv) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability, or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (2)(xii) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (but see paragraph (2)(iii) of this definition);

(vi) *Welfare assistance*. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (1)(vi)(B) of this definition shall be the

amount resulting from one application of the percentage;

(vii) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(viii) All regular pay, special pay, and allowances of a member of the Armed Forces (but see paragraph (2)(vii) of this definition).

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children;

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a live-in aide;

(vi) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran that is made available for subsistence is to be included in income;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii) (A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan for Achieving Self-Support (PASS);

(C) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program; or

(D) A resident stipend, but only if the resident stipend does not exceed \$200 per month per officer to resident organization officers. Stipends are intended to cover costs related to

officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment, and special clothing.

(ix) Temporary, nonrecurring, or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, tribal, or local law during the exclusion period. For purposes of paragraph (2)(xi) of this definition, the following definitions apply:

(A) Comparable Federal, State, tribal, or local law means a program providing employment training and supportive services that—

(1) Is authorized by Federal, State, tribal, or local law;

(2) Is funded by Federal, State, tribal, or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the United States Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xii) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (deferred periodic payments received in a lump sum from SSI and social security); or

(xiii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice is published from time to time in the **Federal Register** and distributed to IHAs identifying the benefits that

qualify for this exclusion. Updates will be published and distributed when necessary.

(3) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

(4) Any family receiving the reparation payments referred to in paragraph (2)(x) of this definition that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

**Annual Statement.** A work statement covering the first year of the Five-Year Action Plan and setting forth the major work categories and costs by development or IHA-wide for the current Federal Fiscal Year (FFY) grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds.

**Annual Submission.** A collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD.

**Applicable surface.** All intact and nonintact interior and exterior painted surfaces of a residential structure.

**Area Office of Native American Programs (ONAP).** The HUD Offices in Chicago (Eastern/Woodlands), Oklahoma City (Southern Plains), Denver (Northern Plains), Phoenix (Southwest), Seattle (Northwest), and Anchorage (Alaska), which have been delegated authority to administer programs under the United States Housing Act of 1937 for the areas in which the IHAs are located.

**Base year.** The IHA's fiscal year immediately preceding its first fiscal year under the performance funding system (PFS).

**Base year expense level.** The expense level (excluding utilities, audits, and certain other items) for the year, computed as provided in § 950.710(a).

**Benefit/cost analysis.** For purposes of subpart K of this part, a direct comparison of the present worth of any savings generated by a given system during the expected useful life of the system or the estimated remaining life of the project, whichever is the shortest

number of years, to the cost of the change.

**BIA.** The Bureau of Indian Affairs in the Department of the Interior.

**Checkmeter.** A device for measuring utility consumption of each individual dwelling unit where the utility service is supplied through a mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter readings and uses the checkmeters to determine whether and to what extent utility consumption of each dwelling unit is in excess of the allowance for IHA-furnished utilities, established in accordance with subpart K of this part.

**Chewable surface.** All chewable protruding painted surfaces up to five feet from the floor or ground, that are readily accessible to children under seven years of age, such as protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

**Chief executive officer (CEO).** The CEO of a unit of general local government means the elected official or the legally designated official who has the primary responsibility for the conduct of that entity's governmental affairs.

**Child.** A member of the family, other than the family head or a spouse, who is under 18 years of age.

**Child care expenses.** Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to be gainfully employed or to further his or her education only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

**Citizen.** A citizen or national of the United States.

**Common property.** The nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, that are contained in the development. It also may include common property as defined in a cooperative form of ownership, as determined by the IHA.

**Comprehensive grant number.** A grant number that is unique to each work statement (under subpart I of this part) covering the improvements to one or more existing Indian housing projects.

**Comprehensive Plan.** A plan prepared by an IHA, and approved by HUD, under the Comprehensive Grant

Program setting forth all of the physical and management improvement needs of the IHA and its Indian housing developments, indicating the relative urgency of needs, and including the IHA's action plan, cost estimates, and required local government and IHA certifications. The Comprehensive Plan may be revised, as necessary, but shall be revised at least every sixth year. (See subpart I of this part.)

**Cooperation agreement.** An agreement between an IHA and a local governing (taxing) body that assures exemption from real and personal property taxes and provides for payments in lieu of taxes by the IHA, and that provides for cooperation with respect to the development and operation of low-income housing owned by the IHA.

**Current budget year.** The IHA fiscal year in which the IHA is operating.

**Defective lead-based paint surface.** Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm<sup>2</sup>, that is cracking, scaling, chipping, peeling, or loose.

**Defective paint surface.** Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

**Demolition.** The razing in whole, or in part, of one or more permanent buildings of an Indian housing project.

**Dependent.** A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age, or is a disabled person or handicapped person, or is a full-time student.

**Deprogramming.** Removal from the IHA's inventory under the ACC, pursuant to the IHA's formal request and HUD's approval, of a dwelling unit no longer used for dwelling purposes or a nondwelling structure or a unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes.

**Development.** Any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project.

**Development grant.** The grant that provides IHAs, in response to an application for housing, funds to enable the IHA to plan and construct either rental or mutual help housing. The development grant is for a fixed amount of funding and ends when the housing development is through the warranty period (normally six years from initial development grant approval).

**Disabled person.** A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities

Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

**Displaced person.** A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

**Disposition.** The conveyance or other transfer by the IHA, by sale or other transaction, of any interest in the real estate of an Indian housing project, excluding transfers of property described in § 950.921(b)(1)(i) through (vii).

**Earned home payments account (EHPA).** In the Turnkey III program (subpart G of this part), this account is established and maintained pursuant to § 950.517 by the IHA based on a portion of the homebuyer's required monthly payment. The EHPA should equal the IHA's estimate of the monthly cost for routine maintenance of the home.

**Elderly family.** A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person, as defined in this section. It may include two or more elderly, disabled, or handicapped persons living together, or one or more of these persons living with one or more live-in aides, as defined in this section.

**Elderly person.** A person who is at least 62 years of age.

**Elevated blood lead level or EBL.** Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

**Emergency modernization (CIAP).** A type of modernization program for a development that is limited to physical work items of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, which shall be corrected within one year of CIAP funding approval.

**Emergency work.** Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which shall be completed within one year of funding. Under the Comprehensive Grant program, management improvements are not eligible as emergency work, and therefore shall be covered by the Comprehensive Plan (including the action plan), before the IHA may carry them out. (See subpart I of this part.)

**Energy audit.** A process carried out in accordance with subpart K of this part, that identifies and specifies the energy and cost savings that are estimated to result from installing or accomplishing an energy conservation measure.

**Energy conservation measures (ECMs).** Physical improvements or modifications that, if undertaken for a building or facility, or its equipment, are likely to reduce the cost of energy in an amount sufficient to recover the installation costs in a period no longer than the useful life of the measure. (See subpart K of this part.)

**Evidence of citizenship or eligible immigration status.** The documents which must be submitted to evidence citizenship or eligible immigration status (see § 950.310(e)).

**Family.** Family includes but is not limited to:

- (1) An elderly family or single person as defined in this part;
- (2) The remaining member of a tenant family; and
- (3) A displaced person.

**Family project.** Any project assisted under section 9 of the Act (42 U.S.C. 1437g) that is not an elderly project. For this purpose, an elderly project is one that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project that meets these qualifications shall, for purposes of this definition, be excluded from any family project, as shall zero bedroom units.

**Federally recognized tribe.** Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation or village as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**FFY.** Federal Fiscal Year (starting with October 1, and ending with September 30, and designated by the calendar year in which it ends).

**Force account labor.** Labor directly employed by the IHA on either a permanent or a temporary basis.

**Formula.** The formula prescribed by HUD to be used in the Performance Funding System to estimate the cost of operating an average unit in an IHA's inventory. (See subpart J of this part.)

**Formula expense level.** The per-unit per-month dollar amount of expenses (excluding utilities and audits) computed under the formula, in accordance with § 950.710.

**Full-time student.** A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the

educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

**Fungibility.** Fungibility is a concept that permits an IHA to substitute any work item from the latest approved Five-Year Action Plan to any previously approved CIAP budget or CGP Annual Statement and to move work items among approved budgets without prior HUD approval.

**Handicapped assistance expenses.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a handicapped or disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

**Hard costs.** The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook, 7510.1, as revised, that include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**High risk.** See 24 CFR 85.12 and § 950.135.

**Homebuyer.** The member or members of a low-income family who have executed a homebuyer agreement with the IHA and who have not yet achieved homeownership.

**Homebuyer agreement.** A Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

**Homebuyer Association.** In the Turnkey III program this means an incorporated organization (as defined in § 950.511) composed of all of the families who are entitled to occupancy pursuant to a Homebuyer Ownership Opportunity Agreement or who are homeowners.

**Homeowner.** A former homebuyer who has achieved ownership of his or her home and acquired title to the home.

**HUD.** The Department of Housing and Urban Development.

**IHA homeownership financing.** IHA financing for purchase of a home by an eligible homebuyer who gives the IHA

a promissory note and mortgage for the balance of the purchase price.

**IHS.** The Indian Health Service in the Department of Health and Human Services.

**Indian.** Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

**Indian area.** The area within which an Indian Housing Authority is authorized to provide low-income housing.

**Indian Housing Authority (IHA).** An entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians that is established either:

- (1) By exercise of the power of self-government of an Indian tribe independent of State law; or
- (2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

**Indian tribe.** Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

**INS.** The U.S. Immigration and Naturalization Service.

**Interdepartmental agreement.** The agreement among HUD, the Department of Health and Human Services, the Department of Interior, and other appropriate agencies, concerning assistance to projects developed and operated under the Act.

**Latent defect.** A design or construction deficiency that could not reasonably have been foreseen by the IHA or the Office of Native American Programs.

**Lead-based paint.** A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or .5 percent by weight.

**Live-in aide.** A person who resides with an elderly, disabled, or handicapped person or persons and who:

- (1) Is determined by the IHA to be essential to the care and well-being of the person(s);
- (2) Is not obligated for support of the person(s); and
- (3) Would not be living in the unit except to provide necessary supportive services. (See definition of annual income for treatment of a live-in aide's income.)

**Local inflation factor.** The weighted average percentage increase in local government wages and salaries for the area in which the IHA is located and non-wage expenses based upon the implicit price deflator for State and local government purchases of goods

and services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the local inflation factor each year.

**Low-income family.** A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

**Management improvement plan.** A document developed by the IHA in accordance with § 950.135 that specifies the actions to be taken, including timetables, to correct deficiencies identified as a result of a management assessment.

**Mastermeter system.** A utility distribution system in which an IHA is supplied utility service by a utility supplier through a meter or meters and the IHA then distributes the utility to its tenants.

**Medical expenses.** Those medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

**MH Contribution.** Land, labor, cash, materials, or equipment—or a combination of these—contributed toward the development cost of a project in accordance with a homebuyer's MHO Agreement, credit for which is to be used toward purchase of a home.

**MH Program.** The Mutual Help Homeownership Opportunity Program.

**MHO Agreement.** A Mutual Help and Occupancy Agreement between an IHA and a homebuyer.

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Modernization capability.** An IHA has modernization capability for CIAP if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, HUD will determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance. (See § 950.135.)

**Modernization funds.** Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

**Modernization program.** An IHA's program for carrying out modernization, as set forth in the approved CIAP budget for modernization funds. (See subpart I (CIAP) of this part.)

**Modernization project.** The improvement of one or more existing Indian housing developments under a new number designated for that modernization program (CIAP). For each modernization project, HUD and the IHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly Equity Payments Account (MEPA).** A homebuyer account in the Mutual Help Homeownership Opportunity program credited with the amount by which each required monthly payment exceeds the administration charge.

**Monthly income.** One twelfth of annual income.

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near elderly family.** A family whose head or spouse (or sole member) is at least 50 years of age but below the age of 62 years.

**Net family assets.** Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles are excluded, and, in the case of a family in which any member is actively engaged in a business or farming operation, the assets that are a part of the business or farming operation are excluded. In cases where a trust fund, such as individual Indian monies held by the BIA, has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. In determining net family assets, IHAs shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the

program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Nonroutine maintenance.** (1) For purposes of the Turnkey III Program (Nonroutine Maintenance Reserve), nonroutine maintenance refers to infrequent and costly items of maintenance and replacement, including dwelling equipment such as a range or refrigerator, or major components such as heating or plumbing systems or a roof. Specifically excluded are maintenance expenses attributable to homebuyer negligence or to defective materials or workmanship.

(2) For purposes of the CIAP and Comprehensive Grant Modernization Programs under subpart I of this part and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

**NMR.** The nonroutine maintenance reserve account in the Turnkey III program established and maintained in accordance with § 950.519.

**Office of Native American Programs (ONAP).** The Office of HUD that has been delegated authority to administer programs under this part.

**Operating budget.** The IHA's operating budget (HUD form 52564) and all related documents, required by HUD to be submitted pursuant to the ACC.

**Operating subsidy.** Annual contributions for IHA operations made by HUD under the authority of section 9 of the Act. (See subpart J of this part with respect to rental projects. See also § 950.434 (Mutual Help Operating Subsidy) and § 950.523 (Turnkey III Operating Subsidy).)

**Other income.** Income to the IHA other than dwelling rental income and income from investments, except that, for purposes of determining operating subsidy eligibility, the following items are excluded: Grants and gifts for operations, other than for utility expenses, received from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the IHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

**Other modernization (modernization other than emergency).** A type of modernization program under the Comprehensive Improvement Assistance Program (CIAP) for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more management work items (including planning costs), and/or testing, professional risk assessments, interim containment, and abatement of lead-based paint.

**Partnership process.** A specific and ongoing process that is designed to ensure that residents, resident groups, and the IHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or Comprehensive Grant Program. At a minimum, an IHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

**Pay-back period.** The number of years required to accumulate net savings to equal the cost of an energy conservation measure.

**Performance funding system (PFS).** The standards, policies, and procedures established by HUD for determining the amount of operating subsidy an IHA is eligible to receive for its owned rental projects, based on the costs of operating a comparable well-managed project.

**PILOT.** Payment in lieu of taxes. Includes all payments made by an IHA to the local governing body (or other taxing jurisdiction) for the provision of certain municipal services, including that portion of payments in lieu of taxes that is to be applied as a reimbursement of payments of off-site utilities. The amount charged is determined by the cooperation agreement, which is generally defined as 10 percent of shelter rent. Shelter rent is defined as dwelling rentals less total utility expenses.

**Program reservation.** A written notification by HUD to an IHA, that is

not a legal obligation, but that expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, that HUD will enter into a new or amended ACC covering the stated number of housing units, or such other number as is consistent with funding reserved by HUD for the project.

**Project.** Housing developed, acquired, or assisted by an IHA under the Act, and the improvement of this housing.

**Project for elderly families.** A rental project or portion of a rental project assisted under the United States Housing Act of 1937 that was designated for occupancy by the elderly at its inception (and that has retained that character) or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project, or for a portion of the units in the project, to elderly families.

**Project units.** All dwelling units of an IHA's projects. **Projected operating income level.** The per-unit per-month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 950.725.

**Reasonable cost.** Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed total development cost limit for a new development with the same structure type and number and size of units in the market area.

**Requested budget year.** The budget year (fiscal year) of an IHA following the current budget year.

**Resident groups.** Democratically elected resident groups such as IHA-wide resident groups, area-wide resident groups, single development resident groups, or resident management corporations (RMCs).

**Retail service.** Purchase of utility service by IHA tenants directly from the utility supplier.

**Rolling base period.** The 36-month period that ends 12 months before the beginning of the IHA requested budget year, which is used to determine the allowable utilities consumption level used to compute the utilities expense level.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

**Section 214 covered programs.** Programs to which the restrictions imposed by Section 214 apply are programs that make available financial

assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

*Single person.* A person who lives alone or intends to live alone, and who does not qualify as:

- (1) An elderly family;
- (2) A displaced person (as defined in this section); or
- (3) The remaining member of a tenant family.

*Soft costs.* The nonphysical improvement costs, that exclude any costs in development accounts 1450 through 1475.

*State.* Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

*Subsequent homebuyer.* Any homebuyer other than the homebuyer who first occupies a home pursuant to a Mutual Help and Occupancy (MHO) agreement.

*Substantial rehabilitation.* A modernization program for a project that provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure long-term physical and social viability.

*Successor homebuyer.* A person eligible to become a homebuyer who has been designated by a current homebuyer to succeed to an interest under a homeownership agreement in the event of the current homebuyer's death or mental incapacity.

*Surcharge.* The amount charged by the IHA to a tenant, in addition to the Tenant Rent, for consumption of utilities in excess of the allowance for IHA-furnished utilities or for estimated consumption attributable to tenant-owned major appliances or to optional functions of IHA-furnished equipment. Surcharges calculated pursuant to subpart K of this part, based on estimated consumption where checkmeters have not been installed, are referred to as "scheduled surcharges."

*Tenant-purchased utilities.* Utilities purchased by the tenant directly from a utility supplier.

*Tenant rent.* The amount payable monthly by the family as rent to the IHA. Where all utilities (except telephone) and other essential housing services are supplied by the IHA, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the IHA and the cost

thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

*Total development cost.* The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes off-site water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

*Total tenant payment.* The monthly amount calculated under subpart D of this part. Total tenant payment does not include any surcharge for excess utility consumption or other miscellaneous charges (see subpart K of this part).

*Unit approved for deprogramming.* (1) A dwelling unit for which HUD has approved the IHA's formal request to remove the dwelling unit from the IHA's inventory and the Annual Contributions Contract but for which removal, i.e. deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes and that HUD has approved for removal from the IHA's inventory and Annual Contributions Contract.

*Unit months available.* Project units multiplied by the number of months the project units are expected to be available for occupancy during a given IHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the end of the initial operating period for the project is established until the time it is approved by HUD for deprogramming and is vacated or approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

*Utilities.* For purposes of determining utility allowances, utilities include electricity, gas, heating fuel, water, sewerage service, septic tank pumping/maintenance, sewer system hookup charges (after development), and trash and garbage collection. Telephone service is not included as a utility. For

purposes of IHA accounting, PFS and non-PFS, trash and garbage collection and maintenance and repair of any systems are considered maintenance expenses and not utility expenses.

*Utilities expense level.* The per-unit per-month dollar amount of utilities expense used in calculation of operating subsidy, as provided in § 950.715.

*Utility allowance.* An allowance for IHA-furnished utilities represents the maximum consumption units (e.g., kilowatt hours of electricity), that may be used by a dwelling unit without a surcharge against the tenant for excess consumption. An allowance for tenant-purchased utilities is a fixed dollar amount that is deducted from the total tenant payment otherwise chargeable to a tenant who has retail service, whether the charges are more or less than the amounts of the allowance. (See §§ 950.865 and 950.870.)

*Utility reimbursement.* The amount, if any, by which the utility allowance for tenant-purchased utilities for the unit, if applicable, exceeds the family's total tenant payment.

*Very low-income family.* A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

*Welfare assistance.* Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State, or local governments.

*Work item.* Any separately identifiable unit of work constituting a part of a modernization program.

*Work Statements.* Work Statements cover the second through fifth years of the Five-Year Action Plan and set forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five.

#### **§ 950.110 Assistance from Indian Health Service and Bureau of Indian Affairs.**

Because HUD assistance under this part is not limited to IHAs of Federally recognized tribes, provisions in this part relating to assistance from BIA or IHS, or to required approvals, actions, or determinations by these agencies in connection with such assistance, are

applicable only to projects undertaken by IHAs of Federally recognized tribes or by regional housing authorities created by Alaska state law. These projects shall be developed promptly and operated in accordance with the provisions of this part and the Interdepartmental Agreement.

**§ 950.115 Applicability of civil rights requirements.**

(a) *Indian Civil Rights Act.* (1) 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 ICRA also states these equal protection and due process rights do not apply if they violate customs, traditions, and practices of the tribe. The ICRA 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 in which an IHA has been established by exercise of tribal powers of self-government.

(2) For IHAs established pursuant to State law, HUD will determine the applicability of the ICRA on a case-by-case basis. Factors considered may include the existence of recognized powers of self-government; the scope and jurisdiction of such powers; and the applicability of such powers to the area of operation of a particular IHA. Generally, determinations by HUD of the existence of recognized powers of self-government and the jurisdiction of such powers will be made in consultation with the Department of Interior-Bureau of Indian Affairs, and may be based on applicable legislation, treaties, and judicial decisions. The area of operation of an IHA may be determined by the jurisdiction of the governing body creating the IHA, any limitations within the enabling legislation, and judicial decisions.

(3) Projects of IHAs subject to the ICRA shall be developed and operated in compliance with its provisions and all HUD regulations thereunder.

(b) *Applicability of Title VI, the Fair Housing Act; and Title II of the Americans with Disabilities Act.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs; the Fair Housing Act (42 U.S.C. 3601–3619), which prohibits discrimination based on race, color,

religion, sex, or national origin in the sale or rental of housing; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131) apply to those IHAs created by State law for which HUD has determined that the ICRA is inapplicable. Actions taken by an IHA to implement the statutory admission restriction in favor of Indian families in the MH program, as set forth in § 950.416, shall not be considered a violation of any provision of either Title VI, the Fair Housing Act, or Title II of the Americans with Disabilities Act.

(c) *Indian Housing Act of 1988—Mutual Help program admissions.* For provisions generally limiting admission to the Mutual Help Homeownership Opportunity program to Indians and requiring findings of need for admission of non-Indians, see § 950.416.

(d) *Disability.* (1) Under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, HUD is required to assure that no otherwise-qualified disabled person is excluded from participation, denied benefits, or discriminated against under any program or activity receiving Federal financial assistance, solely by reason of his or her disability. IHAs shall comply with implementing instructions in 24 CFR part 8.

(2) The IHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), and HUD implementing regulations (24 CFR part 40).

(e) *Minority Business Enterprise Development and Women's Business Enterprise Policy.* Executive Orders 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1979 Comp., p. 39), respectively, apply to Indian Housing Authorities.

**§ 950.117 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, IHAs shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Residents who will not be required to move permanently, but who must relocate temporarily (e.g., to permit rehabilitation), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the housing, which may include a traditional home, to be made available for the temporary period;

(iii) The terms and conditions under which the resident may lease and occupy a suitable, decent, safe, and sanitary dwelling in the development following its completion; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) A displaced person (defined in paragraph (g) of this section) shall be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(2) A comparable Indian housing unit, project-based Section 8 housing, or a privately-owned dwelling made affordable by a Section 8 Rental Certificate or Rental Voucher, may qualify as a comparable replacement dwelling for a person displaced from an Indian housing unit.

(d) *Real property acquisition requirements.* The acquisition of real property for a development is subject to the URA and the requirements described in 49 CFR part 24, subpart B, whether the acquiring entity is organized under State law or tribal law.

(e) *Appeals.* A person who disagrees with the IHA's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the IHA. A lower-income person who is dissatisfied with the IHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(f) *Responsibility of IHA.* (1) The IHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the IHA to comply with the requirements in 49 CFR part 24.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent

as other project costs. However, such assistance also may be paid from funds available from other sources.

(3) The IHA shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, demolition, or conversion of a unit to homeownership (Mutual Help Homeownership Opportunity (MH) Program) for a project assisted under this part or as a direct result of disposition in accordance with subpart M of this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the development that is made:

(i) After notice to the person by the IHA or property owner to move permanently from the property, if the move occurs on or after:

(A) For the comprehensive improvement assistance program (CIAP) and the comprehensive grant program (CGP) under subpart I of this part, 45 calendar days from before:

(1) The IHA issues the invitation for bids for the project, or

(2) The start of force account work, whichever is applicable; or

(B) For the disposition or demolition of Indian housing under subpart M of this part, the date of HUD approval of the IHA's proposal; or

(C) For other projects subject to this section, the date HUD approves the site for the project; or, if HUD site approval is not required, the date the IHA approves the site for the project;

(ii) Before the date described in paragraph (g)(1)(i) of this section, if the IHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, demolition, or conversion for the assisted project; or

(iii) By a resident of a dwelling unit, if any one of the following three situations occurs:

(A) The resident moves after the initiation of negotiations (as defined in paragraph (h) of this section) and the move occurs before the resident is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same development, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions include a monthly

rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with § 950.325; or

(B) The resident is required to relocate temporarily, does not return to the development, and either:

(1) The resident is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The resident is required to move to another dwelling unit in the same development but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, tribal, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (g)(1)(i) of this section and, before commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she will not qualify as a displaced person (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for the project.

(3) The IHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a resident, the term "initiation of negotiations" means the following action:

(1) For the comprehensive improvement assistance program (CIAP) or comprehensive grant program (CGP)

under subpart I of this part, 45 calendar days before:

(i) The IHA's issuance of the invitation for bids for the project; or

(ii) The start of force account work, whichever is applicable;

(2) For an IHA purchase through an arm's-length transaction as described in 49 CFR 24.101(a)(1), the seller's acceptance of the IHA's written offer to purchase the property;

(3) For an IHA purchase that does not qualify as an arm's-length transaction, the delivery of the initial written purchase offer from the IHA to the Owner of the property. However, if the IHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the initiation of negotiations is the actual move of the person from the property;

(4) For disposition or demolition of Indian housing under subpart M of this part, HUD approval of the IHA's proposal; or

(5) For other programs under this part 950, the notice to the occupant that he or she shall move permanently, or, if there is no notice, the person's actual move from the property.

#### § 950.120 Compliance with other Federal requirements.

(a) *Environmental clearance.* Before obligating or expending funds for any physical improvements under a development or modernization project, the IHA will comply with the requirements of 24 CFR part 58.

(b) *Flood insurance protection.* HUD will not approve financial assistance for acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the jurisdiction, such as an Indian tribe or authorized tribal organization, an Alaska native village, or authorized native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area.

(c) *Wage rates for laborers and mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102), the IHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276a-5), to all laborers and mechanics who are employed by an IHA or its contractors for work or contracts over \$2,000.

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (2) of the definition of "nonroutine maintenance" in § 950.102) on a modernization project, the IHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (after a determination under State, tribal, or local law) by HUD pursuant to section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j), to all laborers and mechanics who are employed by an IHA or its contractors.

(3) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 950.172(b).

(d) *Professional and technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (after a determination under applicable State, tribal, or local law) by HUD.

(e) *Access to records: audits.* (1) HUD and the Comptroller General of the United States shall have access to all books, documents, papers, and other records that are pertinent to the activities carried out under this part, in order to make audit examinations, excerpts, and transcripts, in accordance with 24 CFR 85.42.

(2) IHAs that receive financial assistance under this part shall comply with the audit requirements of 24 CFR part 44. If an IHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the IHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the IHA's books and records into

auditable condition. The costs to place the IHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

(f) *Uniform administrative requirements.* The Uniform Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments, as set forth in 24 CFR part 85, are applicable to grants under this part, except as specified in this part. However, the provisions of 24 CFR 85.36 have been incorporated in the procurement regulations (subpart B of this part).

(g) *Lead-based paint poisoning prevention.* See 24 CFR part 35 and subpart H of this part.

(h) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501), no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(i) *Economic opportunities for low- and very low-income persons.* IHAs shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations in 24 CFR part 135, as provided in part 135, to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). See also 24 CFR 950.170(c).

#### § 950.125 Establishment of IHAs pursuant to State law.

An IHA may be established pursuant to a State law that provides for the establishment of IHAs with all necessary legal powers to carry out low-income housing projects for Indians.

#### § 950.126 Establishment of IHAs by tribal ordinance.

(a) *Legal capacity of tribe to establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(b) *Form of ordinance.* The form of tribal ordinance shall be determined by the tribe and reviewed by the ONAP Administrator. The IHA shall also demonstrate that it has the legal authority to develop, own, and operate a public housing project under the Act. Unless an IHA is created as part of the tribal government, ordinances shall include language that allows the IHA to sue and be sued in its corporate name.

A sample format will be provided by HUD.

(c) *Approval or review of ordinance.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD.

(d) *Submission to HUD of documents establishing IHA.* (1) The tribal ordinance shall be submitted to HUD prior to receiving financial assistance.

(2) An IHA must certify that it has enacted the ordinance pursuant to any constitutional law or practice and has the local cooperation required by law.

#### § 950.130 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or homebuyer commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he or she is a tenant or homebuyer in a housing project of the IHA. A Commissioner who is a tenant or homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a tenant or homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations, or status as a tenant or homebuyer.

(b) *Commissioner as IHA employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA, except under extremely unusual circumstances in which it is documented that no one except the commissioner is qualified for the position and where the HUD Area ONAP approves in advance of the hiring.

#### § 950.135 Administrative capability.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA, including remote reviews, on-site limited and full reviews, audits, surveys, and a formal annual review or risk analysis assessment, as may be necessary or appropriate to make the determinations required by this section, taking into consideration all available evidence. HUD will evaluate an IHA's compliance in the areas of development, modernization, and operations, including such functions as administration, financial management, occupancy, and maintenance.

(b) *Obligation to maintain.* (1) An IHA shall maintain administrative capability at all times throughout the term of the

ACC. In order to be considered administratively capable, an IHA shall administer the Indian housing program in accordance with applicable statutory requirements, HUD regulations, and contracts with no serious deficiencies. If any of the following conditions exist, it shall be considered a serious deficiency:

(i) The IHA is not financially stable, based on the most recent annual audit, technical assistance visit, or other reliable information;

(ii) An audit, conducted in accordance with 24 CFR part 44 and § 950.120, or HUD reviews (including monitoring findings) reveal deficiencies that HUD reasonably believes require corrective action and/or that corrective actions are not taken in accordance with established timeframes;

(iii) The IHA has management systems that do not meet the standards as set forth in 24 CFR part 85, and the lack of such systems may result in mismanagement or misuse of Federal funds;

(iv) The IHA has not conformed to the terms and conditions of previous awards, including for new construction, the Comprehensive Improvement Assistance Program, the Comprehensive Grant Program, or the use of Operating Subsidies;

(v) The IHA lacks properly trained and competent personnel at key management positions of the IHA; or

(vi) The IHA is in violation of the terms of applicable statutes, regulations, or Annual Contributions Contracts.

(2) If an IHA has serious deficiencies, HUD shall take any or all of the following actions:

(i) Issue a notice of deficiency;

(ii) Issue a corrective action order; or

(iii) Classify the IHA as "high risk"

(see 24 CFR part 85).

(c) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (b)(1) of this section, HUD may issue to the IHA a notice of deficiency, stating the specific program requirements that the IHA has violated and requesting the IHA to take appropriate action. The notification shall be in writing and contain the following:

(1) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(2) Recommended actions that may be taken by the IHA and a timeframe for completion;

(3) The documentation necessary for evidence that all actions have been completed.

(d) *Corrective action order.* (1) Based on HUD reviews of IHA performance

and findings of any of the deficiencies described in paragraph (b)(1) of this section, HUD may issue to the IHA a corrective action order. An order may be issued, whether or not a notice of deficiency previously has been issued with regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and by specifying the corrective actions that shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, and prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action unless HUD notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action.

(3) Any corrective action ordered by HUD shall become a condition of the ACC grant agreement.

(4) The order shall be in writing and shall contain the following:

(i) The deficiencies, i.e., the IHA actions and the statutory or regulatory or other requirements that have been violated;

(ii) The corrective action(s) that shall be taken by the IHA and the time allowed for completing the corrective action(s);

(iii) The method of requesting reconsideration of the HUD action and the documentation necessary to evidence that all corrective actions have been completed.

(e) *Management improvement plan (MIP).* (1) When an IHA receives a corrective action order, it shall respond to the determination, in writing. This response shall include a management improvement plan to correct existing deficiencies. The plan shall describe in detail the method to be used and the time schedule to be maintained, shall be approved by the IHA Board of Commissioners, and is subject to HUD approval.

(2) After receiving the response from the IHA, HUD may direct the IHA to take one or more of the following actions:

(i) Submit additional information:

(A) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for the IHA having deficiencies, as described in paragraph (b)(1) of this section;

(B) Explaining any steps the IHA is taking to correct the deficiencies;

(C) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable statutes, regulations, or program requirements;

(ii) Submit schedules for completing the work identified in the MIP;

(iii) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's MIP;

(iv) Not incur financial obligations, or to suspend payments for one or more activities;

(v) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended; or

(vi) Take such other corrective actions as HUD determines appropriate to correct the IHA deficiencies.

(3) HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the management improvement plan.

(4) If the IHA does not satisfy the terms of the plan or does not act in good faith to meet the timeframes included in its MIP, HUD may impose additional restrictions. In addition, existing projects may be terminated, or other action may be instituted, as appropriate.

(f) *High risk determination.* An IHA may be classified as "high risk" and determined ineligible for certain types of future funding related to the classification of risk, or may be determined eligible for future funding but subject to special conditions or restrictions corresponding to the high risk classification. A corrective action order listing the specific violation shall accompany the high risk designation.

(1) If an IHA is determined to be high risk, the conditions that form the basis for that determination shall be sufficiently serious to warrant a determination to exclude the IHA from future funding of a particular type. The determination of high risk shall state the cause for that finding.

(2) An IHA may continue to be eligible for funding despite a finding that it is high risk—subject to special conditions and/or restrictions corresponding to the deficiencies found—if it has submitted a management improvement plan that was approved by HUD, and it has exhibited substantial compliance with the plan or a good faith effort to comply with the plan. If HUD determines that it is necessary to impose special conditions or restrictions, it will notify the IHA in writing of the applicable conditions or restrictions. One or more

of the following special conditions or restrictions may be imposed:

- (i) Submission to HUD of additional documentation;
- (ii) Submission to HUD of additional or more detailed financial reports;
- (iii) Additional project monitoring from the HUD Area ONAP;
- (iv) Additional requirements for technical assistance, from HUD or another entity approved by HUD;
- (v) Establishing additional approvals by HUD;
- (vi) Withholding some or all of the IHA's grant;
- (vii) Declaring a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or
- (viii) Any other sanction authorized by law or regulation.

(g) *Appeals.* (1) An IHA may appeal a corrective action order or a determination of high risk status to the local HUD Administrator, Office of Native American Programs (ONAP). All appeals shall be made in writing within 30 calendar days of notice to the IHA of the HUD action and shall state clearly any justification or evidence that the action is unwarranted or too severe. If an appeal is filed concerning one or more action(s), the action(s) shall not take effect until HUD makes a final determination on the appeal or notifies the IHA that special circumstances exist that warrant giving immediate effect to the announced HUD action. The HUD Administrator shall respond to the appeal within 30 days of receipt of the appeal.

(2) An IHA may appeal a decision of the Administrator to the ONAP, Headquarters, only if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. An appeal of the Administrator's decision shall be made to ONAP, Headquarters in writing, stating the justification or evidence, and shall be received within 21 days of the date of the Administrator's decision. Decisions reviewed by Headquarters will be evaluated based on the facts as presented to the Administrator and on any aggravating or extenuating circumstances.

(3) The IHA's Board of Commissioners shall notify the tribal government of HUD's final determination to withhold or suspend funds or declare a breach of the ACC grant agreement, as well as the basis for, and consequences resulting from, such a determination.

#### Subpart B—Procurement

##### § 950.160 Procurement standards.

(a) *HUD standards.* (1) *Applicability.* This subpart sets forth Federal

requirements to be followed by IHAs in the procurement of services, supplies, and goods.

(2) *Contracting authorization.* An IHA may execute contracts without HUD approval for the procurement of work, materials, equipment, and/or professional services, in accordance with paragraph (a)(3)(ii) of this section. Before the execution of contracts, the IHA Board of Commissioners will ensure that procedures are in place to ensure all ACC, statutory, and regulatory requirements are satisfied before the execution of contracts. The IHA Board of Commissioners will periodically review compliance with these procedures.

(3) *Limitations.* (i) An IHA shall not award a contract until the prospective contractor has demonstrated, to the satisfaction of the IHA, the technical, administrative, and financial capability to perform contract work of the size and type involved and within the time provided under the contract. The IHA shall not award a contract to a person or firm on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, which is compiled, maintained, and distributed by the General Services Administration (GSA), or to a person or firm that is subject to a limited denial of participation issued by the HUD Office of Native American Programs. (See 24 CFR part 24.)

(ii) The IHA may execute or approve any agreement or contract for personnel, management, legal, or other services with any person or firm without the prior written approval of HUD, except under the following circumstances:

(A) When the term of the agreement or contract (including renewal) is in excess of two years; or

(B) When the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget, Comprehensive Grant program budget, or operating budget, or an amount specified from time to time by HUD, as the case may be; or

(C) When the agreement or contract is for legal or other services in connection with litigation; or

(D) For contracts in excess of \$100,000 in the aggregate when the IHA proposes to award a contract based upon a single bid or proposal received except when the procurement meets the requirements of 24 CFR 950.165(d).

(4) *Records.* An IHA shall maintain records sufficient to detail the significant history of a procurement. The IHA shall maintain evidence in its files:

(i) That the solicitation and award procedures were conducted in compliance with State, tribal, or local laws and Federal requirements, including requirements for Indian preference and wage rates;

(ii) That the award does not exceed the approved budget amount and is not being made on the basis of a single bid or proposal; and

(iii) That the IHA reviewed the contractor's qualifications, checked to ensure that the contractor is not listed on the *GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, and determined that the contractor has the capacity to successfully complete the work or services under the terms and conditions of the contract. This determination shall consider the contractor's record of past performance, integrity, compliance with public policy, and financial and technical resources.

(5) *Contract administration.* An IHA is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement.

(6) *Competition.* All procurement transactions must be conducted in a manner providing full and open competition.

(7) *Contract cost and price.* An IHA must perform a cost or price analysis in connection with every procurement action, including contract modifications.

(b) *IHA standards.* (1) *IHA procedures.* Each IHA shall adopt, promulgate, and comply with rules or regulations for the procurement and administration of supplies, materials, services, and equipment in connection with the development and operation of projects. Upon adoption or modification, the IHA will promptly furnish a copy of these rules or regulations to HUD. These rules or regulations shall contain provisions on at least the following subjects:

(i) Procedures to ensure that all procurement transactions are conducted in a full and open competitive manner, consistent with the standards of 24 CFR 85.36;

(ii) Identification (by position title) of IHA officials authorized to enter into and approve contracts on a noncompetitive basis as authorized by 24 CFR 85.36(d)(4);

(iii) Procedures for inventory control;

(iv) Procedures for storage and protection of goods and supplies;

(v) Procedures for issuance of, or other disposition of, supplies and equipment;

(vi) Procedures for implementing Indian preference requirements;

(vii) Procedures for handling complaints and protests regarding procurement;

(viii) Standards of conduct governing IHA directors, board members, officers, and employees; and

(ix) Conflict of interest provisions governing directors, officers, employees, contractors/developers, and others doing business with the IHA.

(2) *Contract administration system.*

An IHA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

(c) *Government-wide contract requirements.* A HUD regulation found at 24 CFR part 85 embodies government-wide administrative requirements for grants to State, local, and federally recognized Indian tribal governments (including grants received by IHAs). The contract provisions listed in 24 CFR 85.36(i) of that regulation are to be included in any IHA contracts.

**§ 950.165 Methods of procurement.**

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$100,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(b) *Procurement by sealed bids (Invitations for Bid (IFB)).* Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 950.165(b)(1) apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids shall be

solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(c) *Procurement by competitive proposals (Request for Proposals (RFP)).* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) IHAs will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) IHAs may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, when price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms, even though they are a potential source to perform the proposed effort.

(d) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or where after solicitation of a number of sources, competition is determined inadequate.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under

small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iii) HUD authorizes noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(2) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

**§ 950.170 Other requirements applicable to development contracts.**

(a) *Bonding requirements.* For construction contracts for more than \$100,000, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). In the case of a Mutual Help project, the term "total contract price" as used with respect to each of the above assurance methods includes the value of all Mutual Help contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract work. The following methods may be used to provide performance and payment assurance:

(1) Performance and payment bonds for 100 percent of the total contract price;

(2) Deposit with the IHA of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(3) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the IHA, subject to reduction during the warranty period commensurate with potential risk;

(4) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the IHA subject to reduction during the warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(b) *Executive Order 11246 (equal employment opportunity).* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (3 CFR, 1964-65 Comp., p. 339), as amended by Executive Order 11375 (3 CFR, 1966-70 Comp., p. 684), and to applicable

implementing regulations (24 CFR part 130; 41 CFR chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin. Compliance with E.O. 11246, and related regulations, Orders, and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.

(c) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135, IHAs and their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act) to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.3(1)) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

#### § 950.172 Wage rates.

(a) *Determination of prevailing wage rates.* For the applicable method of determination of the prevailing wage rates to be paid laborers and mechanics, see § 950.120(c).

(b) *Preemption of prevailing wage rates.* (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the development, maintenance, or modernization of a project whenever:

(i) The contract or the work item is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and is for a project assisted with funds for low-income housing under the Act; and

(ii) The wage rate (the basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, or modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(D) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(2) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate:

(i) When a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and

(ii) When a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(3) Whenever paragraph (b)(1)(i) of this section is applicable:

(i) Any solicitation issued by the IHA and any contract executed by the IHA for development, maintenance, or modernization of the project shall include a statement as prescribed in this paragraph, and failure to include this statement may constitute grounds for requiring re-solicitation. The statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract must be included whenever either of the following occurs:

(A) Such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) to be prevailing in the locality with respect to such trade;

(2) An applicable apprentice wage rate based thereon specified in an

apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(3) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(B) Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(ii) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section to any of its own employees who may be engaged in the development, maintenance, or modernization of the project; and

(iii) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (b)(2) of this section shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for development, maintenance, or modernization of the project.

(4) Nothing in paragraph (b) of this section shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors when such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (b)(1)(ii) of this section, nor does paragraph (b) of this section impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(5) The provisions of paragraph (b) of this section shall apply to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

#### § 950.175 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include either of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452); that is, "any Indian-owned (as defined by the Secretary of Interior) commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any Tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(8)); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in employment and training.* To the greatest extent feasible, IHAs and their contractors and subcontractors shall give preference and opportunities for training and employment in connection with the administration of grants awarded under this part and in the award of contracts funded under this part to Indians and Alaskan natives. The Indian Self-Determination Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Preference in contracting.* To the greatest extent feasible, IHAs shall give preference in the award of contracts funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each IHA shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian

organizations and Indian-owned enterprises;

(B) *Stage 2.* If responses to the solicitation of intent to bid under Stage 1, above, are received from more than one Indian organization or Indian-owned enterprise that is found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises (otherwise, bids may be solicited on an open, competitive basis); or

(iii) Develop and incorporate into their procurement policy, subject to HUD Area ONAP one-time approval, the IHA's method of providing preference. In no instance shall HUD approve a method that provides preference based upon affiliation or membership in a particular tribe or group of tribes.

(2) If the IHA-selected method of providing preference under paragraph (d)(1) of this section results in fewer than two responsible qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the IHA shall:

(i) Re-compete the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-compete the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If only one bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bid or proposal.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36(d)(1) need not follow the formal requirements for public announcement and advertising for bids or proposals as provided in paragraph (d)(1) of this section. However, an IHA small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the solicitation and the contract documents.

(5) An IHA, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. IHAs may require prospective contractors to submit information prior to submitting a bid or proposal, or at the time of submission. Information requested by the IHA may include but is not limited to the following:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the IHA that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The IHA shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* An IHA may, subject to applicable State, local, or tribal law, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the

Section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of nonperformance or longer period of performance. The additional Indian preference requirements permitted by this part do not include the imposition of geographic preferences or restrictions to the procurement process.

(f) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this subpart, including alternate methods enacted and approved in the manner described in this subpart B.

(1) Each complaint shall be in writing, signed, and filed with the IHA.

(2) A complaint must be filed with the IHA no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the IHA shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. The IHA shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of submittal of the complaint to the IHA. The decision of the IHA shall constitute final administrative action on the complaint.

#### § 950.190 Insurance.

(a) *Purpose.* This section implements policies concerning insurance coverage required under the Annual Contributions Contract (ACC) or Mutual Help Annual Contributions Contract (MHACC) between HUD and an IHA. These contracts require (in section 305 of the ACC and Article IX of the MHACC) that IHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the IHAs. The insurance coverage is required to be obtained under procedures that provide for open and competitive bidding. The HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102-368) provided that an IHA could purchase insurance coverage without regard to competitive selection procedures when it purchases it from a nonprofit insurance entity owned and controlled by IHAs approved by HUD in accordance with standards established by regulation. This section specifies the standards.

(b) *Method of selection of insurance coverage.* While 24 CFR part 85 requires that grantees solicit full and open

competition for their procurements, the HUD Appropriations Act for Fiscal Year 1992 (Pub.L. 102-368) provides an exception to this requirement. IHAs are authorized to obtain any line of insurance from a nonprofit insurance entity that is owned and controlled by IHAs and approved by HUD in accordance with this section, without regard to competitive selection procedures. Procurement of insurance from other entities is subject to competitive selection procedures.

(c) *Approval of a nonprofit insurance entity.* Under the following conditions, HUD will approve a nonprofit self-funded insurance entity created by IHAs that limits participation to IHAs (and to nonprofit entities associated with IHAs that engage in activities or perform functions only for housing authorities or housing authority residents):

(1) An insurance company (including a risk retention group);

(i) The insurance company maintains a current license or is authorized to do business in the State or tribal area by the State Insurance Commissioner or Indian tribal governing body and has submitted documentation of this authority to HUD; and

(ii) The insurance company has not been suspended from providing insurance coverage in the State or tribal area or been suspended or debarred from doing business with the Federal Government. The insurance company is obligated to send to HUD a copy of any action taken by the authorizing official to withdraw the license or authorization;

(2) An entity not organized as an insurance company.

(i) The entity has competent underwriting staff (hired directly or engaged by contract with a third party), as evidenced by professionals with an average of at least five years of experience in large risk (exceeding \$100,000 in annual premiums) commercial underwriting or at least five years of experience in the underwriting of risks for public entity risk pools. This standard may be satisfied by submission of evidence of competent underwriting staff, including copies of resumes of underwriting staff for the entity;

(ii) The entity has efficient and qualified management (hired directly or engaged by contract with a third party), as evidenced by the report submitted to HUD in accordance with paragraph (d)(3) of this section and by having at least one senior staff person who has a minimum of five years of experience:

(A) At the management level of Vice President of a property/casualty insurance entity;

(B) As a senior branch manager of a branch office with annual property/casualty premiums exceeding \$5 million; or

(C) As a senior manager of a public entity risk pool. Documentation for this standard must include copies of resumes of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(iii) The entity maintains internal controls and cost containment measures, as evidenced by an annual budget;

(iv) The entity maintains sound investments consistent with:

(A) The State insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities in the State in which the entity is organized, investing only in assets that qualify as "admitted assets"; or

(B) Any applicable provisions of Indian tribal law concerning investments, in the case of an IHA that is not subject to such State law;

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal, State, or tribal law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. Selection of entities to perform such reviews shall comply with the competitive requirements of 24 CFR 85.36. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be

submitted to HUD within 90 days after the end of the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required by GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

- (i) Efficiency of any Third Party Administrator;
- (ii) Timeliness of the claim payments and reserving practices; and
- (iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of the proposed revocation of its approval, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26.

#### **§ 950.195 Lead-based paint liability insurance coverage.**

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the IHA undertakes, in

accordance with the IHA's ACC or MHACC with HUD. The insurance coverage does not relieve the IHA of its responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall also be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than \$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an

extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the IHA or contractor and in force on the date this rule is effective, which provides coverage for the hazards involved in the testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

### **Subpart C—Development**

#### **§ 950.200 Roles and responsibilities of Federal agencies.**

HUD, IHS, BIA, and other appropriate agencies shall coordinate their functions in accordance with the Interdepartmental Agreement. HUD shall take the lead role in the coordination of the construction of Indian housing under this part.

#### **§ 950.205 Allocation.**

HUD will allocate funds to Area ONAPs using a systematic process that considers the relative need for housing in each HUD area or other geographic area, based on the most recent and reliable data available. (See 24 CFR part 791, subpart D.)

#### **§ 950.207 Eligibility.**

(a) *Basic criteria.* An IHA is eligible to submit an application for new housing development and to be considered for funding if it meets the following criteria:

(1) Has been established in accordance with the provisions of § 950.125 or § 950.126; and

(2) Has not been determined to be administratively incapable, in accordance with § 950.135; and

(3) Meets all the performance thresholds contained in paragraph (b) of this section.

(b) *Performance thresholds.* An IHA shall be in compliance with the following requirements for all projects in development or operation to be considered for additional new housing development funding. The ONAP Administrator may waive performance thresholds for good cause.

(1) Environmental Review requirements of § 950.247;

(2) Fiscal closeout requirements of § 950.285;

(3) Final site approval and site control requirements of § 950.250(c);

(4) Firm commitments from utility suppliers in accordance with § 950.235(c) prior to the execution of a construction contract, contract of sale, or start of construction; and

(5) Pre-construction certification requirements of § 950.260.

**§ 950.210 Authority for proceeding without HUD approval.**

(a) *IHA authority to proceed.* An IHA shall proceed with development functions without obtaining HUD approval except as otherwise specified in this part. An IHA shall accomplish necessary planning and administration activities to assure the timely completion of the development grant (generally six years from the initial development grant approval to development grant closeout).

(b) *Rescinding authorization.* At any time during the development process, HUD may make a determination, subject to the procedures specified under § 950.135, that an IHA shall obtain HUD approval of additional processing steps. If such a determination is made, HUD shall explain in writing the reasons for the determination and specify any processing steps that are subject to additional technical assistance and prior approval by HUD.

(c) *Time constraints.* The IHA shall commence project planning so that construction begins within 24 months of the initial development grant approval date. HUD shall not recapture funds reserved for the project during the 30-month period following the initial development grant approval. Excluded from the computation of the 30-month period shall be any delay caused by the failure of HUD to process such project within a reasonable period of time, any environmental review requirement

(other than the failure to initiate the environmental review process by the responsible entity), any legal action affecting the project, or any other factor beyond the control of the IHA. If an IHA fails to reach construction start for a project within 24 months of the date of initial development grant approval, HUD shall analyze the circumstances that have resulted in the failure to reach construction start and, subject to the availability of resources, shall provide assistance to the IHA to enable construction start within 30 months after the date of initial development grant approval.

**§ 950.215 Production methods.**

(a) *Choice and approval of production method.* The IHA may utilize any production method or combination of production methods as long as the production method(s) is not in conflict with the procurement requirements of 24 CFR 85.36 and subpart B of this part. The IHA shall advise HUD on its application of its choice of production methods. Prior HUD approval is required if the method selected is Force Account or if the IHA proposes to utilize a noncompetitive procurement method. If HUD disapproves the IHA's preferred development method, it shall provide a justification to the IHA. Production methods utilized in the Indian Housing program are Conventional, Turnkey, Modified Turnkey, Self-Help, Acquisition, and Force Account.

(b) *Special requirements for approval of Force Account method.* The Force Account method may be used only if approved by the Area ONAP. The IHA shall demonstrate that it has the technical and administrative capabilities to complete the project within the projected time and budget. The Area ONAP shall require that a tribe or IHA agree in writing:

(1) To cover any costs in excess of those included in the HUD-approved development cost budget;

(2) Demonstrate that it has the financial resources to meet the excess costs up to a specified amount; and

(3) Provide some form of security acceptable to HUD to cover excess costs. For this purpose, an IHA may use attachable assets including funds maintained in its reserve for replacements received from the sale of Mutual Help units. The Area ONAP may approve the Force Account method without requiring the IHA or tribe to provide security to cover excess costs if the IHA agrees to develop the project in small stages with additional HUD monitoring and oversight. Under such approval, the IHA continues to be

obligated to cover costs in excess of those included in the HUD-approved development cost budget.

**§ 950.220 Total development cost.**

(a) *Total development cost standard.* Total development cost (TDC) standards, which establish the maximum allowable cost for developing Indian housing projects, are determined as a per unit cost for various unit sizes, structure types, and geographic areas, and are published annually by HUD.

(b) *Resident training and insurance.* The total development cost of a project may include costs associated with a HUD-approved tenant or homebuyer counseling program (in accordance with the provisions of § 950.453) and the insurance premiums for the first three years of project operation with no obligation for reimbursement from operating receipts. The anticipated cost of such insurance premiums may be charged to the development and placed in escrow by the IHA to enable closeout of the development grant.

(c) *Costs excluded from TDC.* The TDC standard for a project includes all costs associated with the project except for off-site water and sanitation facilities infrastructure and donations received from any public or private source. Costs for off-site water and sanitation facilities infrastructure and any donations received shall be included in the project development cost budget but will be excluded from the calculation of the project TDC limit.

**§ 950.225 Application.**

(a) *Submission to HUD.* (1) An eligible IHA may submit an application for a project after HUD issues a notice of funding availability (NOFA).

(2) The application shall be on the form prescribed by HUD and shall be accompanied by all the legal and administrative attachments required by the form.

(3) State-created IHAs for non-Federally recognized tribes shall certify that sites selected shall be within the IHA's area of operation. For purposes of this section "area of operation" is defined as a land area with defined geographical boundaries, which has a significant concentration of Indian families who are:

(i) Not served by a PHA or tribally-created IHA; and

(ii) Have a bona fide historic presence or connection with the land, as recognized by the Federal Government or a State.

(b) *Rating process.* (1) Applications shall be rated and points shall be awarded for at least the following categories:

(i) Relative unmet need for housing;  
 (ii) Relative IHA occupancy rate compared to the occupancy rates of other eligible IHAs submitting applications;  
 (iii) Length of time since the last development grant approval date for each IHA compared to other eligible IHAs submitting applications;  
 (iv) Current IHA development pipeline activity; and  
 (v) Other factors identified in a NOFA.

(2) After the completion of the rating process, all applications shall be combined into one list to produce an ordered ranking to be used in determining applications to be funded.

**§ 950.227 Initial development grant approval and ACC execution.**

(a) *Grant approval.* (1) For those applications selected for funding, the Area ONAP shall issue a development grant approval that shall specify housing type, household type, development method, the amount of funds reserved, the minimum and maximum number of total units, and the number of units of each bedroom size to be developed. The total project development cost is limited to the funds designated in the development grant approval plus any donations to the project.

(2) As long as the total project development cost limit and the funds reserved in the development grant approval are not exceeded, the IHA may change any of the elements specified in the development grant approval it determines necessary to complete the project. If an IHA decides to change any of the elements specified in the development grant approval, it shall submit to HUD a request to amend the development grant approval, including documentation supporting the request. HUD shall either approve the request or notify the IHA of the reason the request is not approved. Amendment funds may not be used to increase the project size.

(b) *Execution of ACC.* (1) Upon issuance of the development grant approval by HUD, the IHA and HUD may execute an ACC to cover the eligible costs of the project with respect to the number of units covered by the development grant approval.

(2) The ACC must be amended, if required, upon completion of project planning to correctly identify the number of units in the development, program type, and production method.

**§ 950.229 Expenditure of funds.**

(a) *Development Cost Budgets.* The IHA shall submit for HUD review and acceptance a development cost budget

showing anticipated expenditures and any needed supporting documentation before funds can be obligated or expended.

(1) The IHA may submit a development cost budget for planning for an amount that the IHA demonstrates is required for the planning of the project. A development cost budget for planning may include costs for comprehensive planning. (See paragraph (c) of this section.)

(2) The IHA shall submit a construction stage development cost budget, in accordance with the procedures specified under § 950.260.

(b) *Limitations.* (1) An IHA shall not incur any development cost in excess of the amount identified on the ACC for that project.

(2) Obligation or expenditure of development funds is limited to the amounts reviewed and accepted by HUD in the latest development cost budget.

(3) Use of development funds of projects under ACC to cover costs for another project is strictly prohibited except as provided for under paragraph (c) of this section.

(c) *Comprehensive housing plan.* At the request of an IHA, HUD may approve up to one percent of the development grant to establish and/or update a master housing plan for the IHA's area of operation. The plan shall contain such elements as proposed housing sites, existing and proposed off-site roads, and existing and proposed water and sewer facilities. In addition, the plan shall address geographical and topographical features, as well as socio-economic and cultural factors, such as employment opportunities, schools, and services, that have an impact on the placement of residential housing. The plan shall be approved by resolution of the tribal council. The one-percent cost for the comprehensive housing plan may be charged to the development and placed in an escrow or revolving fund account by the IHA to enable closeout of the development program and/or pooling of planning resources.

**§ 950.231 Project coordination.**

(a) *Project coordination meeting.* Upon notification of a development grant approval, the IHA shall schedule a project coordination meeting to plan and schedule the steps needed to develop the project. The IHA shall invite to the project coordination meeting the project designer (if known) and any tribal, State, or Federal officials who will participate in the development of the project. At the project coordination meeting, the IHA shall establish a schedule of planning

activities with target dates for completion of key activities, including the submission to HUD of a construction stage development cost budget and other requirements contained in § 950.260. The schedule, and any amendments thereto, shall be provided to meeting participants and to HUD to be used in planning and monitoring activities.

(b) *Citizen participation.* The IHA shall hold at least one public meeting at which comments are solicited on the proposed sites and project design from potential occupants, as well as from other interested parties. The meeting may be held in conjunction with a regularly scheduled board meeting or may be held separately. In either case, adequate notice shall be provided to the public to enable full participation. The IHA shall give maximum consideration to all public comments in the design of the project. Failure to hold a public meeting or failure to consider public comments in the design of the project shall be grounds for HUD to rescind authorization, in accordance with the procedures specified in § 950.210(b).

**§ 950.235 Site selection criteria.**

(a) *Relation to tribal, local, and regional plans.* Selected sites shall comply with all applicable tribal, local, and/or regional plans.

(b) *Access roads.* Access roads up to the boundaries of multi-unit sites shall be provided by the BIA, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads up to the boundaries of individual homesites in a scattered site project shall be provided by the homebuyer, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads shall be maintained by a responsible local entity to provide safe and suitable vehicular access. No site shall be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity that roads shall be constructed before commencement of project construction.

(c) *Utilities.* Before final site approval, the IHA shall obtain firm commitments from utility suppliers that all utility services necessary for the operation of the project are available or will be available at the time of project occupancy.

(d) *Physical characteristics of site.* The physical characteristics of a site shall facilitate overall economy in site preparation, construction, and management. Only reasonable costs for surveys, planning, test borings, and test wells shall be included in the development cost of the project.

(e) *Size of sites.* An individual homesite, whether a scattered site or included in a multi-unit site, shall not exceed the size determined by the IHA or by tribal or local policy to be necessary for the use and occupancy of the dwelling unit.

(f) *Access to sites.* For a Mutual Help unit, each homesite shall be legally and practicably available for use by another homebuyer. If a site is part of other land owned by the prospective homebuyer, the lease or other conveyance to the IHA shall include the legal right of access to the site by any substitute homebuyer.

#### § 950.240 Types of interest in land.

(a) *Trust or restricted land.* Sites on tribally or individually owned trust or restricted land (as defined in 25 CFR 151.2) shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years) on a HUD-approved form of lease, which shall provide that the lease cannot be terminated before its expiration without the consent of the IHA, and while the site remains under the ACC, by HUD.

(b) *Unrestricted land.* Sites on unrestricted land shall be either conveyed to the IHA in fee or leased to the IHA on a HUD-approved form of lease for a term of not less than 50 years.

(c) *Tax exempt status.* Notwithstanding the type of interest in land, all project property shall be exempt from local or State imposed real or personal property tax in accordance with section 6(d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(d)).

#### § 950.245 Appraisals.

(a) When the cost of a site is to be charged to the IHA's development cost and the cost of the site exceeds \$1,500 per dwelling unit, an appraisal shall be made in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655). Government-wide implementing regulations are at 49 CFR part 24. The cost of donated land may be assumed to be \$1,500 per unit and no appraisal is required. An appraisal of donated land shall be performed only if the IHA determines that the value to be attributed to the site exceeds \$1,500.

(b) When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable

land in the same or competing market areas.

#### § 950.247 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law that further the purposes of that act are most effectively implemented in connection with the expenditure of Indian housing funds, the IHA shall comply with the Environmental Review Procedures specified under 24 CFR part 58. Upon completion of the environmental review, the IHA shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. Costs associated with completing the environmental review are eligible project expenses.

#### § 950.250 Site approval.

(a) *IHA certification.* Included in the IHA's certifications pursuant to § 950.260 shall be a certification to HUD that all conditions that would prevent the site from being included in the project have been satisfactorily addressed, and that there are no legal or physical reasons that would interfere with the occupancy and use of the site during the term of the ACC. Such certification shall be conditioned only upon final acquisition or execution of a lease on the property.

(b) *Tentative site approval.* (1) When a site is proposed for use, the IHA shall inspect the property to ascertain its suitability for development. When appropriate, the IHA shall request an inspection of any proposed site by utility suppliers, the BIA, the IHS, and a representative of the local governing body and shall include each agency's comments in a list of potential site approval concerns. Tentative approval of the site by the IHA occurs when the IHA determines that:

- (i) A site can be economically included in the project;
- (ii) A site does not contain any legal or physical conditions that cannot be adequately addressed that would exclude it from consideration for acquisition; and
- (iii) The environmental review of the site has been completed (see § 950.247) and a finding of no significant impact issued.

(2) Tentative site approval shall not be determined until the requirements for compliance with local governmental approval have been met. (See 24 CFR part 791.)

(c) *Final site approval.* (1) Final site approval occurs when all of the conditions stated in the tentative approval have been appropriately

addressed and, with respect to trust land or restricted land over which the BIA has authority, the BIA has given either unconditional concurrence for final site approval or concurrence conditioned only on subsequent execution of site leases or right-of-way easements. If the BIA has given final site approval conditioned on subsequent execution of site leases or right-of-way easements, the IHA shall obtain from the BIA written assurance that a valid lease or easement, executed by all the necessary parties, can be obtained within a reasonable time and before start of construction.

(2) Final site approval on all sites for the project shall occur:

- (i) Before any commitment is made to acquire or lease any site; and
- (ii) Before construction is started, except for a project developed under the acquisition method for restricted land sites, in accordance with paragraph (c)(3) of this section. In addition, leases and necessary rights-of-way shall be obtained before solicitation of construction bids or before construction may begin on any units.

(3) With respect to trust or restricted land sites, construction may start before final site approval of all sites only when the following conditions have been met:

- (i) All sites for the project have tentative site approval;
- (ii) At least 50 percent of the sites have final site approval;
- (iii) HUD is satisfied that the balance of the sites will meet the requirements for final site approval no later than one year from execution of the construction contract; and

(iv) The construction contract provides that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor/developer within one year from execution of the construction contract (or HUD-approved extension), the construction contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

#### § 950.255 Design criteria.

(a) *Building standards.* (1) The IHA shall use tribal or, if appropriate, local government building codes that meet or exceed standards of national building codes. In the absence of tribal or local government adopted building codes that meet the requirements of this section, the IHA Board of Commissioners shall specify, by Resolution, the building codes to be followed in the development of its housing.

(2) Codes used shall provide sufficient flexibility to permit the use of different designs and materials; shall include

standards for reasonable site designs; shall give proper consideration to the needs of physically handicapped persons for ready access to, and use of, housing assisted under this part (see 24 CFR part 8); and shall be sufficient to produce a decent, safe, and sanitary home.

(3) Modifications to model national building codes are authorized if a tribe or, in the absence of tribally adopted codes, an IHA determines to make special provisions in its codes for traditional and culturally oriented design features.

(b) *Fuel and energy consumption.* (1) Newly constructed housing shall meet or exceed the requirements of the latest Model Energy Code published by the Council of American Building Officials. In selecting from among design options for heating, cooking, and electrical systems, maximum attention shall be given to cost, adequacy, maintenance of the system, and the long-term reliability of fuel supplies. Where fuel is not locally available at low cost, alternate systems such as wind, solar, or coal may be used and included in the project cost.

(2) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to all new Indian housing developments under this part.

(c) *Moderate housing design.* The IHA shall select a moderate design standard taking into consideration anticipated long-term operating costs.

(d) *Water provisions for Alaska.* Alaska Native housing assisted under this part shall be designed and constructed to include water storage tanks when the housing is not served by or scheduled to be served by piped utilities. These tanks shall be no less than 100 gallons in capacity and constructed to be accessed from outside the house.

(e) *Design approval.* The IHA shall obtain the approval of project designs by all local or tribal regulatory agencies, by the BIA for on-site streets, and the IHS, where appropriate, for community water and/or sewer facilities. The IHA shall assure the design meets applicable building codes, that the project can be constructed within the amount of funds reserved for the development, and that the project is financially feasible including ongoing maintenance cost considerations.

**§ 950.260 Construction stage development cost budget and certifications.**

(a) *IHA submission.* Upon completion of project planning, an IHA shall submit to HUD a construction stage

development cost budget, certifications attesting to the completion of all preconstruction requirements, and project characteristics information. Submission of this information shall be in accordance with the schedule established at the project coordination meeting. The IHA's timely submission of the information specified in this paragraph, in the form prescribed by HUD, shall be a factor in HUD's evaluation of an IHA's administrative capability in accordance with § 950.135. The information and documentation submitted by the IHA shall demonstrate the financial feasibility of the project, the legal sufficiency to proceed with construction, and compliance with all ACC, statutory, and regulatory requirements.

(b) *HUD actions.* HUD shall review the IHA submittals and shall determine whether they meet the requirements specified in paragraph (a) of this section. If the submittals meet the requirements of this section, HUD will notify the IHA. If the submission does not meet the requirements of this section, HUD shall notify the IHA of the reasons and allow the IHA to amend and resubmit the documents.

**§ 950.265 Construction and inspections.**

(a) *Construction start.* Following HUD review and acceptance of the IHA submittals, the IHA shall commence final preconstruction activities and begin construction of the development.

(b) *Notification.* Upon award of construction contract, execution of a contract of sale, or construction start, the IHA shall notify all participating agencies. The notification to HUD shall include a revised development cost budget, if appropriate, and a statement that the IHA has met all ACC, statutory, and regulatory requirements for the applicable development method. Upon request, the IHA shall submit to HUD copies of the construction plans and specifications, the construction contract or contract of sale, detailed plans for Force Account construction management, the notice to proceed, or other applicable contracting documents.

(c) *Inspections and Monitoring.* (1) Whatever the development method used, the IHA shall be responsible for obtaining inspections throughout the construction period including the frequency of inspections and the procedures to be used to assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an architect, engineer, or other qualified person selected by the IHA.

(2) The IHA shall coordinate inspections with tribal or local regulatory agencies and, where applicable, the BIA and/or IHS, to assure that all governing codes and other requirements are met.

(3) HUD representatives or agents may visit construction sites to evaluate the IHA's contract administration. These visits are not inspections of the quality of construction and shall not be construed by the IHA as construction inspections.

**§ 950.270 Construction completion and settlement.**

(a) *Final inspection.* The IHA shall assure that all work is satisfactorily completed, in accordance with the terms of the construction contract, prior to scheduling a final inspection. The final inspection shall be made jointly by the IHA and the contractor. Where appropriate, the IHA shall notify tribal or local regulatory agencies, the BIA, the IHS, and HUD before this inspection to provide them with the opportunity to participate in the final inspection of all or part of the work. In a MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA. Maximum consideration shall be given to all homebuyer concerns.

(b) *Contract settlement.* (1) If the final inspection discloses no deficiencies other than punch list items or seasonal completion items, the IHA shall, as soon as practical, develop an interim Certificate of Completion to enable partial settlement of the contract. The interim Certificate shall detail the items remaining and set forth a schedule for their completion, and shall allow the IHA to accept the units (or stage) for occupancy. Upon completion of the interim Certificate and receipt of the contractor's Certificate and Release, the IHA shall release the monies due the contractor/developer less withholdings in accordance with the construction contract.

(2) The contractor/developer shall complete the punch list items in accordance with the time schedule contained in the interim Certificate. The IHA may pay the contractor/developer for items that are completed to the satisfaction of the IHA. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall prepare a final Certificate of Completion and release the amounts withheld to the contractor/developer.

(c) *Notification to HUD.* (1) Upon acceptance of the project or any part thereof, the IHA shall notify HUD of

such action. When all units within a project are accepted, the IHA shall provide a notification to HUD of the date the project was fully available for occupancy by residents.

(2) The IHA shall notify HUD when all units in the project are occupied.

**§ 950.275 Warranty inspections and enforcement.**

(a) The construction contract shall specify the warranty periods applicable to items completed as part of the contract. It shall also provide for assignment to the IHA of manufacturers' and suppliers' warranties covering equipment or supplies.

(b) The IHA shall conduct an inspection of each dwelling unit at least once not later than six months after the start of the contractor's warranty period. A separate or final warranty inspection shall be made in time to exercise the IHA's rights before expiration of the contractor's warranties. Each inspection shall cover all items under warranty at the time of the inspection, including items covered by manufacturers' and suppliers' warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties.

**§ 950.280 Correcting deficiencies.**

(a) *Responsibility.* The IHA shall pursue correction of any deficiencies against the responsible party (e.g., architect, contractor/developer or MH homebuyer) as soon as possible after discovering the deficiencies. Where the costs of correcting deficiencies cannot be recovered from the responsible party and/or the deficiency requires immediate correction to protect life or safety or to avoid further damage to the project unit(s), the IHA may apply to HUD for amendment of the development budget to provide the funds required. The IHA may also use operating receipts to cover such costs. The IHA shall be responsible for correction of any deficiencies that could have been detected and/or corrected during the warranty period if the IHA had inspected at the appropriate time or had pursued correction of deficiencies against the responsible parties.

(b) *Amendments.* (1) HUD may, but is not obligated to, provide additional funding to the IHA to correct deficiencies. The ACC may be amended to provide amounts needed to correct deficiencies (and any resulting damage) in design, construction, and equipment only where there is substantial evidence that it is not possible to obtain timely

correction or payment by the responsible parties, including the source of the performance bond.

(2) In the case of a MH home, the additional cost for correcting deficiencies in design, construction, or equipment (and any damage resulting therefrom) shall not result in an increase in the homebuyer's purchase price. If a homebuyer is not in compliance with the MHO Agreement, the IHA shall reach agreement with the homebuyer to correct the noncompliance before approving or beginning the corrective work.

**§ 950.285 Fiscal closeout.**

The IHA shall submit to HUD a certificate of actual development cost within 24 months of the date of full availability (see § 950.270(c)(1)), or such later date as may be approved by HUD, in a form prescribed by HUD. Audit verification of the actual development costs shall be submitted to HUD within 36 months of the date of full availability. The audit shall follow the requirements of 24 CFR part 44 (Single Audit Act of 1984). If the audit of the actual development costs indicates that excess funds have been advanced to the IHA, the IHA shall dispose of the excess as HUD directs. If the audited development cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD directs. If the IHA fails to submit a certificate of actual development cost or audit within the prescribed times, the Area ONAP may make a determination that all development activities have been completed as of a specified date, and inform the IHA that such action has been taken and that no additional costs may be incurred for the development. The Area ONAP shall then proceed with the fiscal close-out of the development.

**Subpart D—Operation**

**§ 950.301 Admission policies.**

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (i.e., Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants. (See § 950.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, residency that includes families with a broad range of incomes and that avoids concentrations of the

most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a Federal preference, ranking preference, or local preference, in accordance with §§ 950.303 through 950.307; and

(iv) To establish objective and reasonable policies for selection by the IHA among otherwise eligible applicants.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists;

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the Federal preferences (described in § 950.303) will be used;

(B) How any ranking preferences (described in § 950.303) will be used;

(C) How any local preferences (described in § 950.303) will be used;

and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant;

(iv) Policies for resident transfer between units, projects, and programs. For example, an IHA could adopt a criterion for voluntary transfer that the resident had met all obligations under the current program, including payment of charges to the IHA and completion of maintenance requirements;

(v) Policies for compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Policies for compliance with 24 CFR part 760, which requires applicants and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) These selection policies shall:

(i) Be duly adopted; and

(ii) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or residents upon request, free or at their expense, at the discretion of the IHA.

(5) Such policies shall be submitted to the HUD Area ONAP upon request from that office.

(6) "Residency preference" means a preference for admission of families

living in the jurisdiction of the IHA. Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(b) *Income limits.* (1) A family shall be a low-income family, as defined in § 950.102, to be eligible for admission. (With respect to eligibility for the Mutual Help program, see special provisions of § 950.416.)

(2) In extremely unusual circumstances, the IHA may request that HUD increase or decrease income limits for low-income families or for very low-income families in the Indian area because of unusually high or low family incomes. Such a request can be granted only by joint approval of HUD's Assistant Secretary for Housing and Assistant Secretary for Public and Indian Housing, after consultation with the Secretary of Agriculture (if the income limits are being established for a "rural area" as defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490)).

(c) *Standards for IHA tenant/homebuyer selection criteria.* (1) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant, and shall not be related to those that may be imputed to a particular group or category of persons of which an applicant may be a member. The IHA's tenant/homebuyer selection criteria shall be in accordance with HUD guidelines and submitted to the HUD Area ONAP. (With respect to the Mutual Help program, see special provisions of § 950.416.)

(2) In the event of any unfavorable information regarding an applicant, the IHA shall take into consideration the time, nature, and extent of the past occurrence and reasonable probability of future favorable performance.

(d) *Admission of single persons—priority to elderly and displaced persons.* An IHA shall extend preference to elderly families (including disabled persons and handicapped persons), displaced families, and displaced persons over single persons.

(e) *Selection preference with respect to projects for elderly families.* (1) In determining priority for admission to projects for elderly families, an IHA shall give a preference to elderly families. When selecting applicants for

admission from among elderly families, an IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307.

(2) An IHA may give a preference to near elderly families in determining priority for admission to projects for elderly families when the IHA determines that there are not enough eligible elderly families to fill all the units that are currently vacant or expected to become vacant in the next 12 months. In no event may an IHA admit a near elderly family if there are eligible elderly families on the IHA's waiting list that would be willing to accept an offer for a suitable vacant unit in that project.

(3) Before electing the discretionary preference in paragraph (e)(2) of this section, an IHA shall conduct outreach to attract eligible elderly families, including, where appropriate, elderly families residing in projects not designated as being for elderly families.

(4) If an IHA elects the discretionary preference in paragraph (e)(2) of this section, the IHA shall follow its policies and procedures for applying the Federal preferences, ranking preferences, and local preferences in accordance with §§ 950.303 through 950.307 when selecting applicants for admission from among near elderly families. Near elderly families that do not qualify for a Federal preference and that are given preference for admission under this section over other nonelderly families that qualify for such a Federal preference are not subject to the 30 percent limitation on local preference admissions. If a near elderly applicant is a single person, the near elderly single person may be given a preference for admission over other single persons to projects for the elderly.

(f) *Verification of information and notification to applicants.*

(1) *Verification.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

(2) *Notification to applicants.* (i) If an IHA determines that an applicant is ineligible for admission to a project, the IHA shall promptly notify the applicant of the basis for such determination and shall provide the applicant, upon request and within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination; and

(ii) When a determination has been made that an applicant is eligible and

satisfies all requirements for admission including the tenant selection criteria, the applicant shall be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

#### § 950.303 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by Federal law and required to be used in the selection process. See § 950.304(a).

(2) "Ranking preferences" are preferences that may be established by the IHA to use in selecting among applicants that qualify for Federal preferences. See § 950.304(b).

(3) "Local preferences" are preferences that may be established by the IHA for use in selecting among applicants without regard to their Federal preference status.

(b) *Use of preference in selection process.* (1) *Factors other than preference.* (i) *Characteristics of the unit.* The IHA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the IHA shall give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27). Also, in selection of a family for a unit in a project for elderly families, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See § 950.102.

(2) *Local preference admissions.* (i) If the IHA wants to use preferences to select among applicants without regard to their Federal preference status, it may adopt a preference system for this purpose. These local preferences may only be adopted after the IHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The IHA may only use local preferences in selection for admission if the IHA has conducted the required public hearing.

(ii) "Local preference limit" means 30 percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a Federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The IHA may not give a preference to an applicant (Federal preference, local preference, or ranking preference) if any member of the family is a person who was evicted during the

past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the IHA may give an admission preference in any of the following cases:

(i) If the IHA determines that the evicted person has successfully completed a rehabilitation program approved by the IHA;

(ii) If the IHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the IHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.* (1) The IHA shall inform all applicants about available preferences and shall give applicants an opportunity to show that they qualify for available preferences (Federal preference, ranking preference, or local preference).

(2) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. However, the IHA shall have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(ii) It is unlikely that, on the basis of the IHA's framework for applying the preferences and the Federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Nondiscrimination.* (1) Any selection preference used by an IHA shall be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives.

(2) The Indian Civil Rights Act may apply to operations of the IHA.

(3) In addition, the following nondiscrimination requirements may apply:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601-19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable.

(e) *Notice and opportunity for a meeting if preference is denied.* (1) If the IHA determines that an applicant does not qualify for a Federal preference, ranking preference, or local preference claimed by the applicant, the IHA shall promptly give the applicant written notice of the determination. The notice shall contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the IHA to review the determination. The meeting may be conducted by any person or persons designated by the IHA, who may be an officer or employee of the IHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against in violation of requirements stated in paragraph (d) of this section.

#### **§ 950.304 Federal preferences: general.**

(a) *Definition.* A Federal preference is a preference under Federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among Federal preference holders.* The IHA's admission policy may provide for the use of a ranking preference for selecting among applicants who qualify for a Federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An IHA also could give preference to graduates of, as well as active participants in, educational and training

programs that are designed to prepare individuals for the job market. An IHA also could use its local preferences for the Section 8 Certificate and Voucher programs to rank Federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the Federal preferences, through such means as:

(i) Aggregating the Federal preferences (e.g., provide that two Federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular Federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a Federal preference holder who fits a particular category of a single Federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a Federal preference.* (1) *Basis of Federal preference.* The IHA shall use the following definitions of the Federal preferences (as elaborated upon in §§ 950.305, 950.306, and 950.307) unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for Federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing (as defined in § 950.305(a)(2)), or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(ii) *Substandard housing.* An applicant qualifies for a Federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a Federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a Federal preference by certifying to the

IHA that the family qualifies for Federal preference. The IHA shall accept this certification, unless the IHA verifies that the applicant is not qualified for Federal preference.

(3) *Verification of preference.* (i) Before admitting an applicant on the basis of a Federal preference, the IHA shall require the applicant to provide information needed by the IHA to verify that the applicant qualifies for a Federal preference due to the applicant's current status. The applicant's current status shall be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the time of application and selection for admission, including a change from one Federal preference category to another.

(ii) Once the IHA has verified an applicant's qualification for a Federal preference, the IHA need not require the applicant to provide information needed by the IHA to verify such qualification again unless:

(A) The IHA determines reverification is desirable because a long time has passed since verification; or

(B) The IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a Federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit shall be considered, or the possibility of involuntary displacement resulting from domestic violence shall be evaluated.

**§ 950.305 Federal preference: involuntary displacement.**

(a) *How applicant qualifies for displacement preference.* (1) An applicant qualifies for a Federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(2) (i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to nonrental or nonresidential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant shall vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit shall be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of underoccupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The IHA shall determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant shall certify that the person who engaged in such violence will not reside with the applicant family unless the IHA has given advance written approval. If the family is admitted, the IHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The IHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The IHA shall determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

- (i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and
- (ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

**§ 950.306 Federal preference: substandard housing.**

(a) *When unit is substandard.* A unit is substandard if it:

- (1) Is dilapidated;
- (2) Does not have operable indoor plumbing;
- (3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;
- (4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;
- (5) Does not have electricity, or has inadequate or unsafe electrical service;
- (6) Does not have a safe or adequate source of heat;
- (7) Should, but does not, have a kitchen; or
- (8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.* (1) *Dilapidated unit.* A housing unit is dilapidated if:

- (i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or
- (ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect, lack of repair, or serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

- (A) Lacks a fixed, regular, and adequate nighttime residence; and also
- (B) Has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide

temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State or tribal law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for Federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

**§ 950.307 Federal preference: rent burden.**

(a) "Rent burden preference" means the Federal preference for admission of applicants that are required to pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in § 950.102.

(2) "Rent" means:

- (i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and
- (ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs; or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program shall be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been required to pay more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated due to the applicant's

refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

**§ 950.308 Exemption from eligibility requirements for police officers and other security personnel.**

(a) *Purpose and scope.* The purpose of this section is to permit the admission to Indian housing of police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures, under a plan submitted by an Indian housing authority (IHA) and approved by the Department, and to set forth standards and criteria for the approval of such plans. The Department's objective in granting the exemption allowed by this section is to permit long-term residence in Indian housing developments by police officers and security personnel, whose visible presence is expected to serve as a deterrent to criminal activity in and around Indian housing.

(b) *Definitions.* For the purposes of this section:

*Department* means the U.S. Department of Housing and Urban Development (HUD). For purposes of plan submission and approval, Department refers to the local HUD Office of Native American Programs.

*Eligible Families* means families that are eligible for residence in Indian housing assisted under the United States Housing Act of 1937.

*Officer* means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this section, "Officer" may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

*Plan* means the written plan submitted by an IHA to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in Indian housing developments and allow Officers who

are otherwise not eligible to reside in Indian housing units. An IHA may have only one plan in effect at any one time, which will govern exemptions under this section for all housing developments managed by that IHA.

(c) *Exemption from eligibility requirements*; plan submission; plan approval or disapproval.

(1) *Conditions for exemption*. The Department may exempt Officers from the eligibility requirements for admission to Indian housing, provided that:

(i) The Officers would not be eligible, under any other admission requirements or procedures, for admission to the Indian housing development without such an exemption; and

(ii) The exemption is given under a properly submitted plan that satisfies the standards and criteria set forth in § 950.308(d), and accordingly has been approved by the Department.

(2) *Plan submission*. A plan is properly submitted when it is received by the local HUD Office of Native American Programs with jurisdiction over the IHA.

(3) *Notification of plan approval or disapproval*. The Department will notify an IHA of the approval or disapproval of its plan within thirty days of its submission. Plan approval by the Department constitutes granting of the exemption for the purposes of this section.

(d) *Plan standards and criteria*. (1) *Minimum requirements*. To be approved, a plan shall satisfy the following requirements:

(i) The plan shall identify the total number of units under management by the IHA; the specific housing developments, and the number of units they contain, where the IHA intends to place Officers; and the particular units (stating number of bedrooms) within each development that would be allocated to Officers. For each unit identified, the plan shall state the amount of rent that the Officer will pay and facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of that amount, as required under § 950.308(e)(i).

(ii) The plan shall identify specifically the benefits to the community and to the IHA that will result from the presence of Officers in each affected development.

(iii) The plan shall describe the existing physical and social conditions in and around each affected development, providing specific evidence of criminal activity (such as frequency of telephone calls to local police, number of arrests and types of offenses involved, and data on drug abuse in the community) in order to permit the Department to make an informed assessment of the level of need for increased security.

(iv) The plan shall afford the Department a reasonable basis, which necessarily includes the certifications required under § 950.308(d)(2), for determining that the use by Officers of the identified dwelling units will:

(A) Increase security for other Indian housing residents;

(B) Result in a limited loss of income to the IHA; and

(C) Not result in a significant reduction of units available for residence by Eligible Families.

(2) *Certifications by IHA*. Only upon making the determination described in § 950.308(d)(1)(iv) will the Department approve a plan. Further, the Department will not make this determination unless the plan contains a written statement, signed by an authorized officer or other agent of the IHA, certifying that:

(i) The dwelling units proposed to be allocated to Officers are situated so as to place the Officers in close physical proximity to other residents;

(ii) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to Officers;

(iii) The dwelling units proposed to be allocated to Officers will be rented under a lease that contains the terms described in § 950.308(e); and

(iv) The number of dwelling units proposed to be allocated to Officers under the plan does not exceed the limits set forth in § 950.308(d)(3), or, in the alternative, any units so allocated in excess of the applicable maximum number are vacant units for which there are no Eligible Families. This certification on the part of the IHA satisfies the requirements of §§ 950.308(d)(1)(iv)(B) and (C).

(3) *Unit allocation table*. For purposes of the certification required by § 950.308(d)(2), the following table sets forth the maximum number of units to be allocated to Officers as a function of the total number of units under management by the IHA:

Total units under management	Units to be allocated
500-999 .....	5

UNIT ALLOCATION TABLE—Continued

Total units under management	Units to be allocated
1000-4999 .....	10
5000-9999 .....	15
10,000 + .....	20

The maximum number of units to be allocated by IHAs with less than 500 units under management will be determined by the Office of Native American Programs on a case by case basis.

(Approved by the Office of Management and Budget under OMB control number 2577-0185.)

(e) *Special rent requirements and other terms and conditions*. The IHA shall lease units to Officers under a lease agreement, which shall be submitted as a part of the plan, containing terms that provide as follows:

(1) *Reasonable rent*. The lease shall provide for a reasonable rent, which may be a flat amount not related to the Officer's income. The IHA should attempt to establish a rent that will provide an incentive to Officers to reside in the units but that is also consistent with the limited loss of income requirement of § 950.308(d)(1)(iv)(B). As required in § 950.308(d)(1)(i), the plan shall state facts and circumstances (such as the rent that would ordinarily be charged for the unit, the IHA's annual maintenance cost for the unit, the degree of difficulty in attracting Officers to reside in the unit, the extent of the crime problem in the development, and the anticipated benefits of the Officer's presence) that demonstrate the reasonableness of the rent amount.

(2) *Responsibility for damage and overall condition*. The Officer shall be responsible for physical damage to the interior of the leased unit, hallway, and entrance, if any, and exterior area bordering the unit. The lease also shall require the Officer to maintain the overall condition of the leased unit, including control of litter in the area of the development immediately around the unit.

(3) *Responsibility for normal facility management*. The lease shall impose on the IHA responsibility for routine facility management relating to the leased unit, including ongoing maintenance and repair of equipment, trash collection, and similar areas of responsibility.

(4) *Continued employment*. The lease shall provide that the Officer's right of occupancy is dependent on the continuation of employment as an

Officer. The lease also shall provide that the Officer will move out of the leased unit within a reasonably prompt time, to be established by the lease, after termination of employment as an Officer.

(5) *Prohibition on subletting.* The lease shall prohibit the Officer from subletting the unit, and provide that the unit shall be the Officer's primary residence.

(f) *Applicability of the annual contributions contract; effect on the performance funding system.* (1) *Annual contributions contract.* Except to the extent that an exemption from eligibility requirements is provided under § 950.308(c), Indian housing units occupied by Officers in accordance with a plan submitted and approved under this section will be subject to the terms and conditions of the annual contributions contract (ACC) between the IHA and HUD. This section does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this section.

(2) *Performance Funding System.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in subpart J of this part, dwelling units allocated to Officers in accordance with this section are excluded from the total unit months available, as defined in § 950.102. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this section is included in other income, as defined in § 950.102. IHAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An IHA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office of Native American Programs.

**§ 950.310 Restrictions on assistance to noncitizens.**

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or  
 (2) *Noncitizens* who have eligible immigration status in one of the following categories:  
 (i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), [special agricultural worker], who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A].

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined

to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written

declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.* (i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214.* (1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible

immigration status as provided by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a

covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status.* (1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required

evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status.* (1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I-94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I-94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I-688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I-688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.* (1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.* (i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.* (i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(iii) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice

described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.* (1) *Restrictions on delay, denial, or termination of assistance.*

Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph (s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph (s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA

shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G-845S is available from the local INS Office.)

(3) *Decision by INS.* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 950.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income re-examination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an IHA informal hearing; and
- (9) The final hearing decision.

(r) *Preservation of mixed families and other families.* (1) *Assistance available for mixed families.* (i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

- (A) Continued assistance (see paragraph (r)(2) of this section);
- (B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or
- (C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

- (i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;
- (ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and
- (iii) The family does not include any person (who does not have eligible

immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance.* (i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

(A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; and

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period,

that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance.* (1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 950.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could

qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students.* (1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the

student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials.* (1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

**§ 950.315 Initial determination, verification, and reexamination of family income and composition.**

(a) *Income, family composition, and eligibility.* The IHA is responsible for determination of annual income and adjusted income, for determination of eligibility for admission and total tenant payment or homebuyer required monthly payment; and for reexamination of family income and composition at least annually for all tenants and homebuyers. The "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant or homebuyer, the effective date of any change in tenant payment or required monthly payment resulting from the reexamination.

(3) If there is no change, the effective date is the date a change would have taken place if the reexamination had resulted in a change in payment.

(b) *Verification.* As a condition of admission to, or continued occupancy of, any assisted unit, the IHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form (including any release and consent as required under 24 CFR part 760) authorizing any depository or private source of income, or any Federal, State, or local agency, to furnish or release to the IHA and to HUD such information as the IHA or HUD determines to be necessary. The IHA also shall require the family to submit directly the documentation determined to be necessary, including any information required under 24 CFR part 750. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance; for determining the family's adjusted income, tenant rent, or required monthly payment; for verifying related information; or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this part or an application for assistance.

(c) *Rent and homebuyer payment adjustments.* After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or homebuyer payment amount. The tenant or homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income.

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 950.310 for determining citizenship or eligible immigration status before initial occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall

follow the requirements of § 950.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

(e) See 24 CFR part 908 for requirements for transmission of data to HUD.

**§ 950.320 Determination of rents and homebuyer payments.**

(a) *Rental and Turnkey III projects.* The amount of rent required of a tenant in a rental project or the Turnkey III homebuyer payment amount for a homebuyer in a Turnkey III project for Turnkey III contracts executed after August 1, 1982, shall be equal to the total tenant payment as determined in accordance with § 950.325. For Turnkey III contracts executed on or before August 1, 1982, the Turnkey III homebuyer payment is determined in accordance with the contract. If the utility allowance exceeds the rent or required monthly payment, the IHA will pay the utility reimbursement as provided in § 950.325(b). In the case of a Turnkey III homebuyer, payment of a utility reimbursement may affect the IHA's evaluation of the Turnkey III homebuyer's homeownership potential. (See § 950.529 regarding loss of homeownership potential and § 950.523 regarding funds to cover such reimbursements.)

(b) *MH projects.* The amount of the required monthly payment for a homebuyer in an MH project is determined in accordance with subpart E of this part.

**§ 950.325 Total tenant payment—Rental and Turnkey III programs.**

(a) *Total tenant payment.* Total tenant payment shall be the highest of the following, rounded to the nearest dollar:

- (1) 30 percent of monthly adjusted income;
- (2) 10 percent of monthly income; or
- (3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated

by such agency to meet the family's housing costs, the monthly portion of such payments that is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section shall be the amount resulting from one application of the percentage.

(b) *Utility reimbursement.* If the utility allowance exceeds the total tenant payment, the difference (the utility reimbursement) shall be due to the family. If the utility company consents, an IHA may, at its discretion, pay the utility reimbursement directly to the utility company.

**§ 950.335 Rent and homebuyer payment collection policy.**

Each IHA shall establish and adopt, and use its best efforts to obtain compliance with, written policies sufficient to assure the prompt payment and collection of rent and homebuyer payments. A copy of the written policies shall be posted prominently in the IHA office and shall be provided upon request. Such policies shall be in accordance with the ACC and HUD statutory and regulatory requirements.

**§ 950.340 Grievance procedures and leases.**

(a) *Grievance procedures.* (1) *General.* Each IHA shall adopt grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and section 6(k) of the Act, as applicable, and shall assure that tenants and homebuyers will:

- (i) Be advised of the specific grounds of any proposed adverse action by the IHA;
- (ii) Have an opportunity for a hearing before an impartial party upon timely request;
- (iii) Have a reasonable opportunity to examine any documents, records, or regulations related to the proposed action before the hearing (or trial in court);
- (iv) Be entitled to be represented by another person of their choice at any hearing;
- (v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and
- (vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) *Expedited grievance procedure.* An IHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- (i) Any criminal activity that threatens the health, safety, or right to peaceful

enjoyment of the Indian housing development by other residents or employees of the IHA; or

(ii) Any drug-related criminal activity on or near the premises.

(3) *Exclusion of certain grievances.* (i) *General.* An IHA may pursue termination of tenancy or eviction without offering a grievance procedure if the termination or eviction is based on one of the grounds stated in paragraph (a)(2) of this section, so long as applicable tribal or State law requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, and HUD has determined that the tribal or State procedures provide the basic elements of due process.

(ii) *Basic elements of due process.* The elements of due process against which the jurisdiction's procedures are measured by HUD are the following:

- (A) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
- (B) Right of the tenant to be represented by counsel;
- (C) Opportunity for the tenant to refute the evidence presented by the IHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant might have; and
- (D) A decision on the merits.

(4) *Notice to post office of certain evictions.* When an IHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the IHA shall notify the local post office serving that dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (so that the post office will terminate delivery of mail for such persons at the unit, and that such persons will not return to the unit to pick up mail).

(5) *Notice of procedures.* A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

- (1) Do not contain unreasonable terms and conditions;
- (2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;
- (3) Require the IHA to give adequate written notice of termination of the lease that shall not be less than—

- (i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;
- (ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case;  
 (4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(5) Provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or near the premises, engaged in by an Indian housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy. For purposes of this section, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

(6) Specify that with respect to any notice of termination of tenancy or eviction, notwithstanding any applicable tribal or State law, an Indian housing tenant shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, records, or regulations directly related to the termination or eviction.

#### **§ 950.345 Maintenance and improvements.**

(a) *General.* Each IHA shall adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and tenants. A copy of such policies shall be posted prominently in the IHA office, and shall be provided to an applicant or tenant upon entry into the program and upon request.

(b) *Provisions for rental projects.* For rental projects, the maintenance policies shall contain provisions on at least the following subjects:

(i) The responsibilities of tenants for normal care and maintenance of their dwelling units, and of the common property, if any;

(ii) Procedures for handling maintenance service requests from tenants;

(iii) Procedures for IHA inspections of dwelling units and common property;

(iv) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(v) Procedures for charging tenants for damages for which they are responsible.

#### **§ 950.346 Fire safety.**

(a) *Applicability.* This section applies to all IHA-owned or leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit shall be equipped

with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable State, local, or tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors shall be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section shall be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit shall be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors shall be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents shall be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors shall be replaced with hard-wired electric smoke detectors in the normal course of an IHA's planned CIAP or CGP program to meet the HUD Modernization Standards of applicable State, local, or tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents shall be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detectors in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

#### **§ 950.360 IHA employment practices.**

(a) *Indian preference.* Each IHA shall adopt written policies with respect to the IHA's own employment practices,

which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), and E.O. 11246 (3 CFR, 1964-65 comp., p. 339), as amended by E.O. 11375 (3 CFR, 1966-70 comp., p. 684), as applicable. A copy of these policies shall be posted in the IHA office. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII. See also § 950.175(c).)

(b) *Wage rates.* See § 950.120 (c) and (d) with respect to the wage rates applicable to IHA employees.

### **Subpart E—Mutual Help Homeownership Opportunity Program**

#### **§ 950.401 Scope and applicability.**

(a) *Scope.* This subpart sets forth the requirements for the Mutual Help (MH) Homeownership Opportunity Program. For any matter not covered in this subpart, see other subparts contained in this part. Projects developed under the Self-Help development method shall comply with the requirements of subparts E and F of this part.

(b) *Applicability.* The provisions of this subpart are applicable to all MH projects placed under ACC on or after March 9, 1976, and to projects converted in accordance with §§ 950.455 or 950.503.

#### **§ 950.416 Selection of MH homebuyers.**

(a) *Admission policies.* (1) *Low-income families.* An IHA's written admission policies for the MH program, adopted in accordance with § 950.301, shall limit admission to low-income families.

(i) An IHA may provide for admission of applicants whose family income exceeds the levels established for low-income families if the IHA demonstrates to HUD's satisfaction that there is a need to house such families that cannot reasonably be met except under this program.

(ii) The number of dwelling units in any project assisted under the MH program that may be occupied by or reserved for families whose incomes exceed the levels established for low-income families (i.e., applicants admitted under paragraph (a)(1)(i) of this section) may not exceed whichever of the following is higher:

(A) Ten percent of the dwelling units in the project; or

(B) Five dwelling units.

(2) An IHA may establish criteria in its Admissions and Occupancy Policy

for admission of a non-Indian applicant in circumstances where the IHA determines the presence of the family is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met except under this program.

(3) *Different standards for MH program.* The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(i) Ability to provide maintenance for the unit;

(ii) Potential for maintaining at least the current income level;

(iii) Successor to a unit at the time of an "event" ("event" should also be defined by the IHA in its policy; see § 950.449(a)); and

(iv) Initial purchase price and the purchase price for a subsequent homebuyer.

(b) *Ability to meet homebuyer obligations.* A family shall not be selected for MH housing unless, in addition to meeting the income limits and other requirements for admission (see § 950.301), the family is able and willing to meet all obligations of an Mutual Help and Occupancy (MHO) Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution, and to pay for utilities and the administration charge.

(c) *MH waiting list.* (1) Families who wish to be considered for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, shall also submit an application in order to be considered for an MH project; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and meet the admission requirements. The IHA shall maintain an MH waiting list in accordance with requirements prescribed by HUD and shall make selections in the order in which they appear on the list.

(d) *Making the selections.* Within 30 days after HUD approval of the application for a project, the IHA shall proceed with preliminary selection of as many homebuyers as there are homes in the project. Preliminary selection of homebuyers shall be made from the MH waiting list in accordance with the date of application; qualification for a Federal preferences, ranking preferences, and local preferences, in accordance with §§ 950.303 through 950.307; other pertinent factors under

the IHA's admissions policies established in accordance with § 950.301; and 24 CFR part 750. Final selection of a homebuyer will be made only after the site for that homebuyer has received final site approval, and the form of MH contribution has been determined.

(e) *Principal residence.* A condition for selection as a homebuyer is that the family agrees to use the home as their principal residence during the term of the MHO Agreement. Ownership or use of an additional residence that is decent, safe, and sanitary at the time of occupancy or acquisition during occupancy would disqualify a family from the MH program. However, there are two situations that do not violate the principal residence requirement. First, ownership or use of a secondary home that is necessary for the family's livelihood or for cultural preservation, as solely determined by the IHA and described in the IHA's admission and occupancy policy, is acceptable. Second, a family's temporary absence from its MH home, and related subleasing of it, is acceptable if it is done for reasons and time periods prescribed in the IHA's admission and occupancy policy.

(f) *Notification of applicants.* The IHA shall give families prompt written notice of selection for a MH home.

#### § 950.419 MH contribution.

(a) *Amount and form of contribution.* As a condition of occupancy, the MH homebuyer will be required to provide an MH contribution. Contributions other than labor may be made by an Indian tribe on behalf of a family.

(1) The value of the contribution shall not be less than \$1500.

(2) The MH contribution may consist of land, labor, cash, materials, equipment, or any combination thereof. Land contributed to satisfy this requirement shall be owned in fee simple by the homebuyer or shall be assigned or allotted to the homebuyer for his or her use before application for an MH unit. Contributions of land donated by another person on behalf of the homebuyer will satisfy the requirement for an MH contribution. A homebuyer may provide cash to satisfy the MH contribution requirement where the cash is used for the purchase of land, labor, materials, or equipment for the homebuyer's home.

(3) The amount of credit for an MH contribution in the case of land, labor, materials, or equipment shall be based upon the market value at the time of the contribution. In the case of labor, materials, or equipment, market value shall be determined by the contractor

and the IHA. In the case of land, market value shall be determined by the IHA. (See § 950.245.) The use of labor, materials, or equipment as MH contributions shall be reflected by a reduction in the Total Contract Price stated in the Construction Contract.

(b) *Execution of Agreements.* For projects other than Self-Help development projects, MHO Agreements should be signed for all units before execution of the construction contract for the project. Land leases for trust land shall be signed and approved by BIA before construction start.

(c) *Total contribution to be furnished before occupancy.* The homebuyer cannot occupy the unit until the entire MH contribution is provided to the IHA. If the homebuyer is unable or unwilling to provide the MH contribution before occupancy of the project, the MHO Agreement for the homebuyer shall be terminated and the IHA shall select a substitute homebuyer from its waiting list.

(d) *MH contribution in event of substitution of homebuyer.* If an MHO Agreement is terminated and a substitute homebuyer is selected, the amount of MH contribution to be provided by the substitute homebuyer shall be in accordance with paragraph (a) of this section. The substitute homebuyer may not occupy the unit until the complete MH contribution has been made.

(e) *Disposition of contribution.* If an MHO Agreement is terminated by the IHA or the homebuyer before the date of occupancy, the homebuyer may receive reimbursement of the value of the MH contribution made plus other amounts contributed by the homebuyer, in accordance with § 950.446.

#### § 950.422 Commencement of occupancy.

(a) *Notice.* (1) Upon acceptance of the home by the IHA from the contractor, the IHA shall determine whether the homebuyer has met all requirements for occupancy, including satisfaction in full of the MH contribution, and fulfillment of mandatory homebuyer counseling requirements. (See § 950.453.) The IHA shall notify the homebuyer in writing that the home is available for occupancy as of a date specified in the notice.

(2) If the IHA determines that the homebuyer has not met any of the other conditions for occupancy by the date of occupancy, the IHA shall send the homebuyer a notice in writing. This notice shall specify the date by which all requirements shall be satisfied and shall advise the homebuyer that the MHO Agreement will be terminated and a substitute homebuyer selected for the

unit if the requirements are not satisfied.

(b) *Credits to MH accounts and reserves.* Promptly after the date of occupancy, the IHA shall credit the amount of the MH contribution to the homebuyer's accounts and reserves in accordance with § 950.437 and shall give the homebuyer a statement of the amounts so credited.

**§ 950.425 Inspections, responsibility for items covered by warranty.**

(a) *Inspection before move-in and identification of warranties.* (1) To establish a record of the condition of the home on the date of occupancy, the IHA shall include the homebuyer in all inspection activities (See § 950.270).

(2) Within 30 days of commencement of occupancy of each home, the IHA shall furnish the homebuyer with a list of applicable contractors', manufacturers', and suppliers' warranties, indicating the items covered and the periods of the warranties, and stating the homebuyer's responsibility for notifying the IHA of any deficiencies that would be covered under the warranties.

(b) *Inspections during contractors' warranty periods, responsibility for items covered by contractors', manufacturers', or suppliers' warranties.* It is the responsibility of the homebuyer during the period of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the homebuyer.

(c) *Inspection upon termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home after notifying the homebuyer of the time for inspection and shall give the homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 950.446).

(d) *Homebuyer permission for inspections; participation in inspections.* The homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the period of the MHO Agreement in accordance with rules established by the IHA. The homebuyer shall be notified of the opportunity to participate in the

inspection made in accordance with this section.

**§ 950.426 Homebuyer payments before March 9, 1976.**

The amount of the required monthly payment for a homebuyer in an MH project placed under ACC before March 9, 1976 is determined in accordance with the MHO Agreement and provisions of §§ 950.315 and 950.102 concerning income. Utility reimbursements are not applicable to the Mutual Help program.

**§ 950.427 Homebuyer payments for projects under ACC on or after March 9, 1976.**

(a) *Establishment of payment.* (1) Each homebuyer shall be required to make a monthly payment (required monthly payment) as determined by the IHA. The minimum required monthly payment shall equal the administration charge.

(2) Subject to the requirement for payment of at least the administration charge, each homebuyer shall pay an amount of required monthly payment computed by:

(i) Multiplying adjusted income (determined in accordance with § 950.102) by a specified percentage. The specific percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA; and

(ii) Subtracting from that amount the utility allowance determined for the unit.

(3) The IHA shall provide that the required monthly payment may not be more than a maximum amount. The maximum shall not be less than the sum of:

(i) The administration charge; and

(ii) The monthly debt service amount shown on the homebuyer's purchase price schedule.

(4) If the required monthly payment exceeds the administration charge, the amount of the excess shall be credited to the homebuyer's monthly equity payments account (see § 950.437(b)).

(b) *Administration charge.* The administration charge may be based on differences in expenses attributable to different sizes or types of units.

(c) *Adjustments in the amount of the required monthly payment.* (1) After the initial determination of a homebuyer's required monthly payment, the IHA shall increase or decrease the amount of such payment in accordance with HUD regulations to reflect changes in adjusted income (pursuant to a reexamination by the IHA in accordance with § 950.315), adjustments in the administration charge, or in any of the other factors affecting computation of

the homebuyer's required monthly payment.

(2) In order to accommodate wide fluctuations in required monthly payments due to seasonal conditions, an IHA may agree with the homebuyer for payments to be made in accordance with a seasonally adjusted schedule that assures full payment of the required amount for each year.

(d) *Homebuyer payment collection policy.* Each IHA shall establish and adopt written policies to obtain prompt payment and collection of required homebuyer payments. A copy of the policies shall be posted prominently in the IHA office, and shall be provided to a homebuyer upon request.

**§ 950.428 Maintenance, utilities, and use of home.**

(a) *General.* Each IHA shall establish and adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and homebuyers. A copy of such written policies shall be posted prominently in the IHA office, and shall be provided to an applicant or homebuyer upon entry into the program and upon request.

(b) *Provisions for MH projects.* The written maintenance policies shall contain provisions on at least the following subjects:

(1) The responsibilities of homebuyers for maintenance and care of their dwelling units and common property;

(2) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities;

(3) Procedures for IHA inspections of homes and common property;

(4) Procedures for IHA performance of homebuyer maintenance responsibilities (if homebuyers fail to satisfy such responsibilities), including procedures for charging the homebuyer's proper account for the cost thereof;

(5) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(6) Procedures for charging homebuyers for damage for which they are responsible.

(c) *IHA responsibility in MH projects.* The IHA shall enforce the provisions of a MHO Agreement for homebuyer maintenance of the home. Failure of a homebuyer to meet the obligations for maintenance shall not relieve the IHA of responsibility in this respect. The IHA shall conduct a complete interior and exterior examination of each home on a schedule developed by the IHA that ensures that the home is maintained in decent, safe, and sanitary condition and shall furnish a copy of the inspection report to the homebuyer. The IHA shall

take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the homebuyer's obligations under the homebuyer's Agreement.

(d) *Homebuyer responsibility in MH program.* (1) The homebuyer shall be responsible for routine and nonroutine maintenance of the home, including all repairs and replacements (including those resulting from damage from any cause). The IHA shall not be obligated to pay for or provide any maintenance of the home, except as determined necessary in paragraph (d)(2) of this section.

(2) *Homebuyer's failure to perform maintenance.* (i) Failure of the homebuyer to perform maintenance obligations constitutes a breach of the MHO Agreement and grounds for its termination.

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health, or safety of the occupants, or if there is a risk of damage to the property if the condition is not corrected, the corrective work shall be done promptly by the IHA with such use of the homebuyer's accounts as the IHA may determine to be necessary, or by the homebuyer with a charge of the cost to the homebuyer's accounts in accordance with § 950.437.

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The IHA shall give the homebuyer copies of all work orders for the home.

(e) *Homebuyer's responsibility for utilities.* The homebuyer is responsible for the cost of furnishing utilities. The IHA shall have no obligation for the utilities. If the IHA determines that the homebuyer is unable to pay for the utilities for the home the IHA may pay for the utilities on behalf of the homebuyer and charge the homebuyer's accounts for the costs. When the homebuyer's accounts have been exhausted, the IHA shall pursue termination of the homebuyer Agreement and may offer the homebuyer a transfer into the rental program if a unit is available.

(f) *Obligations with respect to home and other persons and property.* (1) The homebuyer shall agree to abide by all provisions of the MHO Agreement concerning homebuyer responsibilities, occupancy, and use of the home.

(2) The homebuyer may request IHA permission to operate a small business in the unit. An IHA may determine when permission will be given.

(g) *Structural changes.* (1) A homebuyer shall not make any

structural changes in or additions to the home unless the IHA has determined that such changes are acceptable.

(2) If the homebuyer is in compliance with the terms of the MHO Agreement, the IHA may agree to allow the homebuyer to use the funds in the MEPA for betterments and additions to the MH home. The IHA shall determine whether the homebuyer will be required to replenish the MEPA or if the funds are to be loaned to the homebuyer at an interest rate determined by the IHA. The homebuyer cannot use MEPA funds for luxury items, as determined by the IHA.

#### § 950.431 Operating reserve.

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities and common property, payment of advance premiums for insurance, unanticipated project requirements, and other eligible uses as determined by the IHA. The amount of a contribution to this reserve shall be determined by the IHA and included in the administration charge. The amount of this contribution shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures, and it shall be included in the operating budget.

#### § 950.432 Operating budget submission and approval.

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and any necessary supporting documentation for operating subsidy as prescribed by HUD.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) A detailed review will be performed on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding

an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

#### § 950.434 Operating subsidy.

(a) *Scope.* This section authorizes the use of operating subsidy for Mutual Help projects and establishes eligible costs.

(b) *Eligible costs.* Operating subsidy may be paid to cover proposed expenditures approved by the Area ONAP for the following purposes:

(1) The reasonable cost of an annual independent audit;

(2) Administration charges for vacant units when the IHA submits evidence to the Area ONAP's satisfaction that it is making every reasonable effort to fill the vacancies;

(3) Collection losses due to payment delinquencies on the part of homebuyer families whose MHO Agreements have been terminated and who have vacated the home, and the cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a subsequent homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously used all available homebuyer credits;

(4) An amount for the cost of a HUD-approved counseling program;

(5) An amount for training and related travel of IHA staff and Commissioners;

(6) The costs of a HUD-approved professional management contract; and

(7) Operating costs resulting from other unusual circumstances justifying payment of operating subsidy, if approved by HUD.

(8) Subject to appropriations, and in accordance with the provisions of subpart O of this part and procedures determined by HUD, each IHA with a duly elected resident organization (RO) shall receive \$25 per unit per year for resident participation activities. Of this amount, \$15 per unit per year shall fund resident participation activities of the RO. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(c) *Ineligible costs.* No operating subsidy shall be paid for utilities, maintenance, or other items for which the homebuyer is responsible except, as necessary, to put a vacant home in condition for a subsequent family as

provided in paragraph (b)(2) of this section.

**§ 950.437 Homebuyer reserves and accounts.**

(a) *Refundable and nonrefundable MH reserves.* The IHA shall establish separate refundable and nonrefundable reserves for each homebuyer effective on the date of occupancy.

(1) The refundable MH reserve represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's cash MH contribution or the value of the labor, materials, or equipment MH contribution.

(2) The nonrefundable MH reserve also represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. The IHA shall credit this account with the amount of the homebuyer's share of any credits for land contributed to the project and the homebuyer's share of any credit for non-land contributions by a terminated homebuyer.

(b) *Equity accounts.* (1) Monthly equity payments account (MEPA). The IHA shall maintain a separate MEPA for each homebuyer. The IHA shall credit this account with the amount by which each required monthly payment exceeds the administration charge. Should the homebuyer fail to pay the required monthly payment, the IHA may elect to reduce the MEPA by the amount owed each month towards the administration charge, until the MEPA has been fully expended. The MEPA balance shall be comprised of an amount backed by cash actually received in order for any such reduction to be made.

(2) *Investment of equity funds.* (i) Funds held by the IHA in the equity accounts of all the homebuyers in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each homebuyer's equity account in proportion to the amount in each such account on the date of proration. If HUD determines that accounts are not properly managed it may ultimately remove responsibility of the IHA for managing such accounts to a HUD-approved escrow agent.

(ii) Notwithstanding other provisions of this subpart and subject to Area ONAP approval, an IHA may use a portion of the homebuyer's equity account for low-income housing purposes provided that a reserve of homebuyer's MEPA is maintained. The

reserve shall be at a percentage established by the IHA and approved by the Area ONAP. (Interest shall continue to be credited to the homebuyer's account based on the MEPA balance and the rate of interest that would have been earned if the funds were invested.)

(c) *Charges for maintenance.* (1) If the IHA has maintenance work done, the cost thereof shall be charged to the homebuyer's MEPA.

(d) *Use of reserves and accounts; nonassignability.* The homebuyer shall have no right to receive or use the funds in any reserve or account except as provided in the MHO Agreement, and the homebuyer shall not, without approval of the IHA and HUD, assign, mortgage, or pledge any rights in the MHO Agreement or to any reserve or account.

**§ 950.440 Purchase of home.**

(a) *General.* The IHA provides the family an opportunity to purchase the dwelling under the MHO Agreement (a lease with an option to purchase), under which the purchase price is amortized over the period of occupancy, in accordance with a purchase price schedule. If a homebuyer wants to acquire ownership in a shorter period than that shown on the purchase price schedule, the homebuyer may exercise his or her option to purchase the home on or after the date of occupancy, but only if the homebuyer has met all obligations under the MHO Agreement. The homebuyer may obtain financing, from the IHA or an outside source, at any time to cover the remaining purchase price.

(b) *Purchase price and purchase price schedule.* (1) *Initial purchase price.* The initial purchase price of a home for a homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Promptly after execution of the construction contract, the IHA shall furnish to the homebuyer a statement of the initial purchase price of the home, and a purchase price schedule that will apply, based on amortizing the balance (purchase price less the MH contribution) over a period, not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA. The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Purchase price schedule for subsequent homebuyer.* (1) *Initial purchase price.* When a subsequent homebuyer executes the MHO Agreement, the purchase price for the subsequent homebuyer shall be determined by the IHA.

(2) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a purchase price schedule, showing the monthly declining purchase price over a period, not less than 15 years or more than 25 years as determined by the IHA, at an interest rate determined by the IHA.

(d) [Reserved].

(e) *Conveyance of home.* (1) *Purchase procedure.* In accordance with the MHO Agreement, the IHA shall convey title to the homebuyer when the balance of the purchase price can be covered from the amount in the equity account. The homebuyer may supplement the amount in the equity account with reserves or any other funds of the homebuyer. Notwithstanding the requirement for prompt conveyance, an IHA may delay conveyance long enough for modernization of a paid-off unit in accordance with its Comprehensive Plan or CIAP application. Until title is conveyed, the homebuyer is responsible to make monthly payments to cover the monthly operating expenses for the unit.

(2) *Amounts to be paid.* The purchase price shall be the amount shown on the purchase price schedule for the month in which the settlement date falls.

(3) *Settlement costs.* Settlement costs shall be paid by the homebuyer, who may use equity accounts or reserves available for the purchase in accordance with paragraph (e)(4) of this section.

(4) *Disposition of homebuyer accounts and reserves.* When the homebuyer purchases the home, the net credit balances in the homebuyer's equity account (as described in § 950.437), supplemented by the nonrefundable MH reserve and then the refundable MH reserve, shall be applied in the following order:

(i) For the initial payment for fire and extended coverage insurance on the home after conveyance, if the IHA finances purchase of the home in accordance with § 950.443;

(ii) For settlement costs, if the homebuyer so directs;

(iii) For the purchase price; and

(iv) The balance, if any, for refund to the homebuyer.

(5) *Settlement.* A home shall not be conveyed until the homebuyer has met all the obligations under the MHO Agreement, except as provided in § 950.440(e)(8). The settlement date shall be mutually agreed upon by the parties. On the settlement date, the homebuyer shall receive the documents necessary to convey to the homebuyer the IHA's right, title, and interest in the home, subject to any applicable restrictions or covenants as expressed in such documents. The required documents shall be approved by the

attorneys representing the IHA, and by the homebuyer or the homebuyer's attorney.

(6) *IHA investment and use of purchase price payments.* After conveyance, all homebuyer funds held or received by the IHA from the sale of a unit in a project financed with grants shall be held separate from other project funds, and shall be used for purposes related to low-income housing use. Homebuyer funds held or received by the IHA from the sale to a homebuyer of a unit in a project financed by loans are subject to loan forgiveness.

(7) *Removal of home from MH program.* When a home has been conveyed to the homebuyer, whether or not with IHA financing, the unit is removed from the IHA's MH project under its ACC with HUD.

(8) *Homebuyers with delinquencies.* (i) If a homebuyer has a delinquency at the end of the amortization period, the unit is no longer available for assistance from HUD.

(ii) Notwithstanding the above requirements, an IHA may complete emergency work and modernization work required by statute or regulation on a unit that is paid off but not conveyed, during the term of the repayment schedule.

(iii) Upon repayment of the total delinquency, the IHA may, in accordance with § 950.602(b)(2), complete nonemergency modernization work on a unit prior to conveyance.

**§ 950.443 IHA homeownership financing.**

The IHA may offer a form of homeownership financing, similar to a purchase money mortgage. The IHA shall set standards for determining eligibility and developing promissory notes, mortgages, and other financial instruments necessary to carry out the transaction.

**§ 950.446 Termination of MHO Agreement.**

(a) *Termination upon breach.* (1) In the event the homebuyer fails to comply with any of the obligations under the MHO Agreement, the IHA may terminate the MHO Agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships.

(2) Misrepresentation or withholding of information when applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the homebuyer's obligations under the MHO Agreement. "Termination," as used in the MHO Agreement, does not include acquisition of ownership by the homebuyer.

(b) *Notice of termination of MHO Agreement by the IHA, right of homebuyer to respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written notice of termination. Such notice shall be in compliance with the terms of the MHO Agreement and, in all cases, shall afford a fair and reasonable opportunity to have the homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act, if applicable, and shall incorporate all the steps and provisions needed to comply with State, local, or tribal law, with the least possible delay. (See § 950.340.)

(c) *Termination of MHO Agreement by homebuyer.* The homebuyer may terminate the MHO Agreement by giving the IHA written notice in accordance with the Agreement. If the homebuyer vacates the home without notice to the IHA, the homebuyer shall remain subject to the obligations of the MHO Agreement, including the obligation to make monthly payments, until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of funds upon termination of the MHO Agreement.* If the MHO Agreement is terminated, the balances in the homebuyer accounts and reserves shall be disposed of as follows:

(1) The MEPA shall be charged with:

(i) Any maintenance and replacement cost incurred by the IHA to prepare the home for the next occupant;

(ii) Any amounts the homebuyer owes the IHA, including required monthly payments;

(iii) The required monthly payment for the period the home is vacant, not to exceed 60 days from the date of receipt of the notice of termination, or if the homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA; and

(iv) The cost of securing a vacant unit, the cost of notification and associated termination tasks, and the cost of storage and/or disposition of personal property.

(2) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a debit balance in the MEPA, the IHA shall charge that debit balance first to the refundable MH reserve, and second to the nonrefundable MH reserve, to the extent of the credit balances in these reserves and account. If the debit balance in the MEPA exceeds the sum of the credit balances in these reserves and account,

the homebuyer shall be required to pay to the IHA the amount of the excess.

(3) If, after making the charges in accordance with paragraph (d)(1) of this section, there is a credit balance in the MEPA, this amount shall be refunded.

(4) Any credit balance remaining in the refundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be refunded to the homebuyer.

(5) Any credit balance remaining in the nonrefundable MH reserve after making the charges described in paragraph (d)(2) of this section shall be retained by the IHA for use by the subsequent homebuyer.

(e) *Settlement upon termination; time for settlement.* Settlement with the homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the homebuyer a statement of such charges. The homebuyer may obtain settlement before determination of the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant, if the homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such cases, the amounts to be charged for maintenance shall be based on the IHA's estimate of the cost thereof.

(f) *Responsibility of IHA to terminate.* (1) The IHA is responsible for taking appropriate action with respect to any noncompliance with the MHO Agreement by the homebuyer. In cases of noncompliance that are not corrected as provided further in this paragraph (f), it is the responsibility of the IHA to terminate the MHO Agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible after a noncompliance comes to the attention of the IHA, the IHA shall discuss the matter with the homebuyer and give the homebuyer an opportunity to identify any extenuating circumstances or complaints that may exist. A plan of action shall be agreed upon that will specify how the homebuyer will come into compliance, as well as any actions by the IHA that may be appropriate. This plan shall be in writing and signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the homebuyer to agree to such a plan or failure by the homebuyer to comply with the plan, the IHA shall issue a notice of termination of the MHO Agreement and institute eviction procedures against the homebuyer in

accordance with the provisions of this section on the basis of the noncompliance with the MHO Agreement.

(4) A record of meetings with the homebuyer, written plans of action agreed upon, and all other related steps taken in accordance with paragraph (f) of this section shall be maintained by the IHA for inspection by HUD.

(g) *Subsequent use of unit.* After termination of a homebuyer's interest in the unit, it remains as part of the MH project under the ACC. The IHA shall follow its policies for selection of a subsequent homebuyer for the unit under the MH program. (See § 950.449(g) for use of unit if no qualified subsequent homebuyer is available.)

#### § 950.449 Succession.

(a) *Definition of "event."* "Event" means the death, mental incapacity, or other conditions as determined by the IHA, of all of the persons who have executed the MHO Agreement as homebuyers.

(b) *Designation of successor by homebuyer.* A homebuyer may designate a successor who, at the time of the event, would assume the status of homebuyer, provided that at the time of the event, the successor meets the conditions established by the IHA.

(c) *Succession by persons designated by homebuyer.* Upon occurrence of an event, the person designated as the successor shall succeed to the former homebuyer's rights and responsibilities under the MHO Agreement if the designated successor meets the criteria established by the IHA.

(d) *Designation of successor by IHA.* If at the time of the event there is no successor designated by the homebuyer, the IHA may designate another family member, in accordance with its occupancy policy.

(e) *Occupancy by appointed guardian.* If at the time of the event there is no qualified successor designated by the homebuyer or by the IHA, and a minor child or children of the homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO Agreement in their interest and behalf.

(f) *Succession and occupancy on trust land.* In the case of a home on trust land, a person who is prohibited by law from succeeding to the IHA's interest on such land may, nevertheless, continue

in occupancy with all the rights, obligations, and benefits of the MHO Agreement, modified to conform to restrictions on succession to the land.

(g) *Termination in absence of qualified successor.* If there is no qualified successor in accordance with the IHA's approved Admissions and Occupancy policy, the IHA shall terminate the MHO Agreement and select a subsequent homebuyer from the top of the waiting list to occupy the unit under a new MHO Agreement. If a new homebuyer is unavailable or if the home cannot continue to be used for low-income housing in accordance with the Mutual Help program, the IHA may submit an application to HUD to convert the unit to the rental program in accordance with § 950.458 or to approve a disposition of the home, in accordance with subpart M of this part.

#### § 950.452 Miscellaneous.

(a) *Annual statement to homebuyer.* The IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer's equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance before transfer of ownership, repair, or rebuilding.* (1) *Insurance.* The IHA shall carry all insurance prescribed by HUD, including fire and extended coverage insurance upon the home.

(2) *Repair or rebuilding.* In the event the home is damaged or destroyed by fire or other casualty, the IHA shall consult with the homebuyers as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that the home should not be repaired or rebuilt and the homebuyer disagrees, the matter shall be submitted to the Area ONAP for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the homebuyer's obligation to make required monthly payments shall be deemed to have terminated as of the date of the damage or destruction.

(3) *Suspension of payments.* In the event of termination of a MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the homebuyer. If the home must be vacated during the

repair period, required monthly payments shall be suspended during the vacancy period.

(c) *Notices.* Any notices by the IHA to the homebuyer required under the MHO Agreement or by law shall be delivered in writing to the homebuyer personally or to any adult member of the homebuyer's family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing and either delivered to an IHA employee at the office of the IHA, or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

#### § 950.453 Counseling of homebuyers.

(a) *General.* (1) The IHA shall provide counseling to homebuyers in accordance with this section. The purpose of the counseling program shall be to develop:

- (i) A full understanding by homebuyers of their responsibilities as participants in the MH Project;
- (ii) Ability on their part to carry out these responsibilities; and
- (iii) A cooperative relationship with the other homebuyers.

(2) All homebuyers shall be required to participate in and cooperate fully with all official preoccupancy and postoccupancy counseling activities. Failure without good cause to participate in the program shall constitute a breach of the MHO Agreement.

(b) The IHA shall submit to the HUD Area ONAP a copy of its counseling program with its request for funding for approval.

(c) *Progress reports.* An IHA shall submit an annual progress report to the Area ONAP within 45 days of the end of its fiscal year or such later date as may be approved by the Area ONAP.

#### § 950.455 Conversion of rental projects.

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all of the units in an existing rental project to the MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) Tenants or other applicants to be homebuyers of the proposed conversion units shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer

shall be made before the rental unit occupied by a tenant can be converted to the MH program.

(3) In the case of conversion of apartments or row houses to condominium or cooperative ownership, all units in a structure shall be converted, with all occupants at the time of the application qualified, in accordance with paragraph (b)(2) of this section. Any occupants who do not qualify or desire to convert shall be satisfactorily relocated and replaced with qualified occupants before application for conversion of the structure.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency; tribal acceptance; demonstration of family interest; evidence that units are habitable, safe, and sanitary; family qualifications as discussed in paragraph (b)(2) of this section; and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining rental units shall not be adversely affected.

**§ 950.458 Conversion of Mutual Help projects to rental program.**

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the HUD Area ONAP for approval to convert any or all Mutual Help project units to the rental program, whenever a homebuyer or homebuyers have lost the potential for ownership due to the inability to meet the cost of their homebuyer responsibilities.

(b) *Minimum requirements.* (1) The remaining balances in any reserve accounts shall be accounted for individually for each unit converted in a manner prescribed by HUD.

(2) The balance remaining in the MEPA, if any, is applied first to outstanding tenant accounts receivable, then to repair of homebuyer maintenance items, and finally returned to the homebuyer.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a project, the IHA's ability to operate the remaining units shall not be adversely affected.

**Subpart F—Self-Help Development in the Mutual Help Homeownership Opportunity Program**

**§ 950.470 Purpose and applicability.**

(a) *Purpose.* The purpose of the Self-Help (SH) program is to provide an alternate method of developing units that will be less costly than other methods of development, will engender community pride and cooperation, and will provide training in construction skills that will have lasting value to participants. If an IHA is interested in pursuing SH development, it organizes a small group of families (six to ten) to build a substantial portion of the homes for all the families in the group, with technical assistance, supervision, and materials provided by the IHA, augmented by skilled labor obtained under contract. The participants are families who qualify for participation in the Mutual Help Homeownership Opportunity (MH) program, who have the ability to furnish their share of the required labor and who agree to participate in the cooperative effort to build homes for all members of the group.

(b) *Applicability.* Any IHA eligible for development funds may submit an application for a SH MH project.

**§ 950.475 Basic requirements.**

(a) *Contracts.* A SH MH project also involves three basic contracts in a form approved by HUD: an ACC for a MH project executed by HUD and the IHA after approval of the SH project application and after HUD approval of the development program, an SH agreement executed by the participating families and the IHA before construction begins, and a Mutual Help and Occupancy Agreement executed by the participating families and the IHA after construction completion.

(b) *Family participation.* Each family shall show the desire to work with other families in building their own homes and shall have the time to contribute the labor necessary to perform a substantial number of the tasks required in the construction of the homes. Each family shall sign an SH agreement with the IHA.

(c) *IHA capacity.* The IHA shall have the capacity to provide for the financial, legal, administrative, and technical responsibilities of the program. The IHA is required to provide assurance that the project will be completed, in the form of a letter of credit or its equivalent in an amount equal to 10 percent of the estimated Total Development Cost Standard.

(d) *Funding.* The funding for technical training and supervision of participating

families will be provided through development funds, and the cost will be included in the Total Development Cost (TDC) of the project. The cost of construction supervision and technical assistance shall generally be no more than 15 percent, but may not exceed 20 percent of the TDC of these SH homes.

(e) *Applicability of Indian preference.* In the selection of contractors to perform construction supervision, skilled labor, or other work under this program, the provisions concerning preference for Indians (§ 950.175) apply. In the selection of participating families, the provisions of § 950.416 apply.

(f) *Building code.* The building code used by the IHA in accordance with § 950.255 will apply to the homes constructed under this program.

**§ 950.480 Self-Help agreement.**

(a) *Timing.* The obligations under the Self-Help agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help program, will be contingent upon HUD's approval of the development program. Each family will be obligated to be available to commence work at a time that fits the IHA's schedule for completion of prior tasks by skilled labor, but generally within 120 days of HUD's approval of the IHA's SH project development program, and to complete the work within a period not to exceed two years.

(b) *Pre-construction period.* The SH agreement will provide that, before construction begins, the participating families will be required to organize themselves, with the assistance of the IHA, and to participate in construction skills training.

(c) *Labor contribution.* (1) The SH agreement will specify the construction tasks to be performed by the participating families as their labor contribution, and the construction tasks to be performed under contract by skilled laborers. The number of tasks to be performed by the participating families shall constitute the vast majority of the tasks.

(2) The labor performed is not subject to the labor standards specified in section 12 of the United States Housing Act of 1937 (42 U.S.C. 1437j).

(3) The SH agreement will specify the circumstances under which it may be terminated.

(d) *Insurance requirements.* The SH agreement will provide that the families waive any liability claim against the IHA for any injury that might occur during the development of the project.

(e) *Standard provisions.* The SH agreement will include provisions

prohibiting kickbacks and conflicts of interest.

(f) *Completion.* The SH agreement will provide that upon successful completion of the family's obligations under it, the family and the IHA will execute a Mutual Help and Occupancy Agreement.

**§ 950.485 Application.**

(a) *General.* The application for a SH development method of Mutual Help project shall comply with the general requirements of § 950.225.

(b) *Need for Self-Help housing.* Evidence of the need for SH housing shall be submitted, including the following:

(1) The names, addresses, and number of persons in the household, and annual incomes of the families selected to participate;

(2) The SH agreement;

(3) Certification by the IHA that the participating families are believed to have the time and ability to fulfill their obligations under the SH agreement; and

(4) Such information as the incomes and sizes of other interested families who appear to be eligible.

(c) *Ability of IHA to administer SH housing.* The IHA shall demonstrate its ability to administer the program by identifying the staff members who will supervise construction and provide technical assistance, and describing their experience. If the IHA plans to contract with an outside entity to perform these functions, it shall follow the requirements concerning Indian preference. Regardless of the identity of the firm selected to perform this function, the IHA should identify the firm and briefly describe its experience. The IHA also shall demonstrate its capacity to administer the program, in accordance with § 950.475.

**§ 950.490 Development program.**

(a) In addition to complying with the requirements of § 950.260, the IHA's development program for a SH project submitted to HUD shall include the following:

(1) *IHA coordination plan.* The plan for organizing and implementing the development, including elements comparable to those covered in the standard Mutual Help construction contract, and the method of coordinating work of participating families and skilled contractors.

(2) *Difference in cost.* A description of how the development cost differs from the cost for a project constructed under a construction contract. This difference should reflect the labor contribution, after considering the construction supervision cost.

(3) *Special provisions for acquisition with rehabilitation projects.* A

description of the repair or rehabilitation work needed on each home to be acquired. The work needed on all the homes should be reasonably comparable in the amount of labor exchange that is required. The estimated number of hours of labor and a description of the work to be done shall be provided.

(4) *Certification of participation.* Certification by the IHA that the participating families have signed the SH agreement and remain able to fulfill their obligations under the SH agreement.

(5) *Changes since application stage.* Statement of any changes in the data submitted in the application.

(b) HUD will review the development program submitted by an IHA for a SH project with particular attention to the elements listed in paragraph (a) of this section.

**§ 950.495 Default of Self-Help agreement.**

(a) If the IHA determines that a participating family is failing to provide its labor contribution, as required in accordance with its SH agreement, it shall counsel the family about its obligations and encourage fulfillment of its responsibilities. If the failure of the family is jeopardizing the progress of the project, the IHA shall declare the family in default and terminate its participation in the project. Upon termination of the participation of one family, the IHA shall move expeditiously to select an alternate family to take over the responsibilities of the terminated family. If another qualified family cannot be found to assume the responsibilities of the terminated family, the unit may be converted to some other development method (e.g., force account, conventional bid, etc.) under the MH program.

(b) If the IHA determines that an entire group is unable to continue its work to completion of construction, the IHA shall first counsel the group about its obligations and encourage fulfillment of its responsibilities. If counseling is unsuccessful in bringing about satisfactory progress toward completion, the IHA shall declare the families in default and convert the project to a regular MH project. The IHA's plan for completing the project shall be submitted to HUD for review and counsel prior to terminating the Self-Help project. Availability of additional HUD funding for this purpose is not assured.

**Subpart G—Turnkey III Program**

**§ 950.501 Introduction.**

(a) *Purpose.* This subpart sets forth the requirements of the Turnkey III Homeownership Opportunities Program, which is administered by HUD as part of the Indian Housing Program under the United States Housing Act of 1937. This part covers the management, operation, conversion, and sale of existing Turnkey III homes that remain in Indian housing authority (IHA) ownership.

(b) *Program framework.* (1) All Turnkey III projects shall be operated in accordance with an executed Annual Contributions Contract (ACC), which includes the "Special Provisions for Turnkey III Homeownership Opportunity Project" and Homebuyer Ownership Opportunity Agreements (Homebuyer Agreement) between the IHA and the Homebuyer.

(2) A Turnkey III development may only include units that are to be operated for the purpose of providing homeownership opportunities for eligible low-income families pursuant to this part and the special Turnkey III provisions of the ACC, including units occupied temporarily by former homebuyers who, as a result of losing homeownership potential, have been transferred to rental status in place, pending the availability of a suitable rental unit. When a homebuyer is converted to rental status while remaining in the same unit, pending availability of a satisfactory rental unit or approval of a request to convert the unit in accordance with § 950.503, the unit remains under the Turnkey III project.

(3) An IHA may establish any policies, procedures, and requirements that are not contrary to the ACC, this part, other applicable Federal, State, and local statutes and regulations, and the rights of homebuyers under existing homebuyer agreements.

(c) *Program overview.* The Turnkey III Program provides homeownership opportunities for eligible low-income families. The program uses a lease-purchase arrangement, whereby the homebuyer family initially takes occupancy of a rental basis, under a homebuyer agreement which constitutes a lease with an option to purchase. The purchase price is set at the time of initial occupancy. During the period of rental tenancy, the homebuyer makes monthly rental payments based on a percentage of family income and is responsible for routine maintenance. A portion of the homebuyer monthly payment is used to establish an Earned Home Payments Account (EHPA) and a

Nonroutine Maintenance Reserve (NRMR). To the extent that these funds are not used by the IHA to perform maintenance relating to the home, the funds will be available to apply to the purchase price at the time the homebuyer is in a position to exercise the option to purchase. At closing, the homebuyer pays the IHA the balance of the purchase price due (or may be permitted by the IHA to finance all or a portion of that amount through a purchase money mortgage) and the IHA deeds the home to the homebuyer.

(d) *Contracts, agreements, other documents.* All contracts, agreements, and other documents referred to in this subpart shall be in a form approved by HUD, and changes shall be made with the approval of the Area ONAP.

**§ 950.503 Conversion of Turnkey III developments.**

(a) *Applicability.* Notwithstanding other provisions of this part, an IHA may apply to the Area ONAP for approval to convert any or all of the units in an existing Turnkey III development to the rental or MH program.

(b) *Minimum requirements.* (1) In order to be eligible for conversion, the units shall have individually metered utilities and be in decent, safe, and sanitary condition. If the units are not decent, safe, and sanitary, the IHA shall submit a plan to correct unit deficiencies.

(2) For conversion to MH, applicants shall qualify for the program under § 950.416(b). The entire MH contribution required of the homebuyer shall be made before the Turnkey III unit occupied by a tenant can be converted to the MH program. In determining the purchase price and term, the homebuyer may receive credit for the period of time they have been residing in a Turnkey III homeownership unit.

(c) *Application process.* The IHA shall submit a request for conversion to the HUD Area ONAP. The HUD Area ONAP shall review the application for legal sufficiency, tribal acceptance, demonstration of family interest, and financial feasibility. If the IHA does not propose to convert all units in a development, the IHA's ability to operate the remaining Turnkey III units shall not be adversely affected.

**§ 950.505 Eligibility and selection of Turnkey III homebuyers.**

(a) *Applications.* Families who wish to be considered for Turnkey III shall apply specifically for that program, and a separate list of eligible applicants for Turnkey III shall be maintained.

Applications shall be dated as received. The submission of an application for Turnkey III by a family that is also an applicant for conventional rental housing or that is an occupant of such housing shall in no way affect its status with regard to such rental housing. A family shall not lose its place on the waiting list until it is selected for Turnkey III and shall not receive any different treatment or consideration with respect to other rental housing programs due to having applied for Turnkey III. In order to be considered for selection, a family shall be determined to meet at least all of the following standards of potential for homeownership:

(1) Sufficient income to cover the EHPA, NRMR, and the estimated cost of utilities with its required monthly payment (see § 950.315); and

(2) Ability to meet all obligations under the Homebuyer Agreement.

(b) *Selection and notification of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list.

**§ 950.507 Homebuyer Ownership Opportunity Agreements (HOOA).**

(a) *General.* The HOOA shall be executed between the IHA and the homebuyer as a condition for occupancy of a Turnkey III unit.

(b) *Pre-Existing Agreements.* (1) Turnkey III Projects in operation on the effective date of this subpart shall be governed by this subpart, except to the extent that the terms of any pre-existing Homebuyer Agreements shall govern the relationship of an IHA and occupant until the termination or cancellation of such agreement(s). If the agreement establishes a maximum or a minimum monthly payment, the terms of the agreement shall govern. However, in no event will the monthly payment charged exceed the Total Tenant Payment determined in accordance with subpart D of this part.

(2) Pre-existing Homebuyer Agreements that determined the required monthly payment in accordance with a "Schedule" developed by the IHA and approved by HUD should continue to determine the monthly payment in accordance with the schedule. This schedule is determined as follows:

(i) The operating budget for the project is based on estimated expenses for a given period of time. The amount needed to operate a particular project is called the break-even amount (see § 950.513(a)). This is comprised of the Operating Expenses, the total amount

needed for EHPA, and the total amount needed for NRMR.

(ii) The aggregate of all homebuyers' incomes is determined. (If no definition of income is stated in the homebuyer's contract, the definition in subpart A of this part is used.)

(iii) The percentage of aggregated income needed to cover 110 percent of the break-even amount is determined. This percentage is the one that appears in the schedule.

**§ 950.509 Responsibilities of homebuyer.**

(a) *Repair, maintenance, and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the homebuyers' association (HBA) and the IHA.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by the homebuyer, other occupants, or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the IHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the IHA and the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the IHA and the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the IHA and the HBA.

(e) *Use of home.* (1) A homebuyer shall not:

(i) Sublet the home without the prior written approval of the IHA;

(ii) Use or occupy the home for any unlawful purpose; or

(iii) Provide accommodations (unless approved by the HBA and the IHA) to boarders or lodgers.

(2) The homebuyer shall agree to use the home primarily as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the IHA).

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any other member of the family shall interfere with the rights of other occupants of the development, damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the IHA has determined that such change would not:

(1) Impair the value of the unit, the surrounding units, or the development as a whole; or

(2) Affect the use of the home for residential purposes;

(h) *Statements of condition and repair.* When each homebuyer moves in, the IHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the IHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the IHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant. The homebuyer or the homebuyer's representative and a representative of the HBA may join in any inspections by the IHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of the home and in maintenance of common property.

(j) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, the following conditions apply:

(1) A homebuyer shall not assign any right or interest in the home or any interest under the Homebuyer Ownership Opportunity Agreement without the prior written approval of the IHA;

(2) In the event of death, mental incapacity, or other condition as determined by the IHA, the person designated as the successor in the Homebuyer Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the agreement if that person meets the conditions established by the IHA. Such person shall be designated by the homebuyer. If there is no such designation, or the designee does not meet the standards of potential for homeownership, the IHA may consider as the homebuyer any family member who meets the standards of potential for homeownership;

(3) If there is no qualified successor in accordance with paragraph (j)(2) of this section, and no minor child of the homebuyer's family is in occupancy, the IHA shall terminate the agreement and select another family. Where a minor child or children of the homebuyer's family is in occupancy, and an appropriate adult(s) who has been appointed legal guardian of the children is able and willing to perform the obligations of the Homebuyer Ownership Opportunity Agreement in their interest and on their behalf, then in order to protect continued occupancy and opportunity for acquisition of

ownership of the home, the IHA may approve the guardian(s) as occupants of the unit with a duty to fulfill the homebuyer obligations under the agreement.

**§ 950.511 Homebuyers' association (HBA).**

(a) *General.* (1) The homebuyers' association (HBA) is an incorporated organization composed of all homebuyers and homeowners. Each Turnkey III development shall have an HBA, unless the homes are on scattered sites (noncontiguous lots throughout a multi-block area with no common property), or the number of homes in the development may be too few to support an HBA. For such cases, a modified form of homebuyers association or a less formal organization may be desirable. This decision shall be made jointly by the IHA and the homebuyers.

(2) The functions of the HBA shall be set forth in its articles of incorporation and by-laws. The IHA shall assist the HBA in its organization and operation to the extent possible.

(b) *Funding.* The IHA may provide noncash contributions to the HBA, such as office space, as well as cash contributions, which shall be provided for in the annual operating budgets of the IHA. The cash contributions shall be in an amount provided for in the IHA budget and shall be subject to any HUD restrictions on funding.

**§ 950.512 Homeowner's association (HOA).**

A "homeowners' association" means an association comprised of homeowners, to which the IHA conveys ownership of common property, and which thereafter has responsibilities with respect to the common property. Only residents who have acquired title to their homes are members of the HOA.

**§ 950.513 Break-even amount and application of monthly payments.**

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the amounts budgeted for operating expenses, the EHPA, and the NRMR. A separate break-even amount is established for each size and type of dwelling unit, as well as for the project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit. Similar variations may occur for operating expenses. The break-even amount does not include the monthly allowance for utilities that the homebuyer pays directly.

(b) *Application of monthly payments.* The IHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA;

(2) To the credit of the homebuyer's NRMR; and

(3) For payment of monthly operating expense, including contributions to the operating reserve.

(c) *Excess over break-even.* When the homebuyer's required monthly payment exceeds the applicable break-even amount, the excess shall constitute additional project income and shall be deposited and used in the same manner as other project income.

(d) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable break-even amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (i.e., as a reduction of project income). In all cases, the homebuyer payment shall be sufficient to cover the EHPA and the NRMR, which shall be credited with the amount included in the break-even amount for these accounts.

**§ 950.515 Monthly operating expense.**

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, etc.;

(2) *Homebuyer services.* IHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contracts, and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the IHA as part of operating expense;

(4) *Routine maintenance of common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the IHA's responsibility for maintenance;

(5) *Protective services.* The cost of supplemental protective services paid by the IHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance of common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds,

and unanticipated items for nondwelling structures.

(b) *Monthly operating expense rate.*

(1) The monthly operating expense rate to be included in the break-even amount for each fiscal year shall be established on the basis of the IHA's operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD regulations, contracts, and handbooks.

(2) If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the differences.

(c) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating expense category shall be provided to the HBA, and copies shall be provided to homebuyers upon request.

**§ 950.517 Earned Home Payments Account (EHPA).**

(a) *Credits to the account.* The IHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of the required monthly payment equal to the IHA's estimate of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homeowner's home, shall be set aside in the EHPA. In addition, this account shall be credited with:

(1) Any voluntary payments made pursuant to paragraph (f) of this section; and

(2) Any amount earned through the performance of maintenance as provided in paragraph (c) of this section.

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance, the IHA shall arrange to have the work done in accordance with the procedures established by the IHA and the HBA, and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the IHA and HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the IHA (see § 950.519), the cost thereof shall be charged to the EHPA.

(c) *Additional equity through maintenance of common property.*

Homebuyers may earn addition EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefore only pursuant to a prior written agreement between the homebuyer and the IHA (or the homeowners' association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(d) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the IHA shall notify the HBA and shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD, and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the IHA a list of HUD-approved securities, bonds, or obligations that the association recommends for investment by the IHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2)(i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all EHPA balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and

(C) The aggregate uninvested balance of all the homebuyers' EHPAs.

(ii) This statement shall be made available to any authorized representative of the HBA.

(e) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may make payments over and above the required monthly payments. Such voluntary payments shall be credited to the homebuyer's EHPA.

(f) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the IHA, a homebuyer's EHPA may be used to pay the delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the

homebuyer agrees to cooperate in such counseling as may be made available by the IHA or the HBA.

(g) *Annual statement to homebuyer.* The IHA shall provide an annual statement to each homebuyer specifying the amounts in the EHPA and the NRMR. Any maintenance or repair done on the dwelling by the IHA that is chargeable to the EHPA or to the NRMR shall be accounted for through a work order, a copy of which shall be sent to the homebuyer.

(h) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 950.525.

(i) *Application of EHPA upon vacating of dwelling.* (1) In the event a homebuyer agreement is terminated the IHA shall charge against the homebuyer's EHPA the amounts required to pay:

(i) The amount due the IHA, including the monthly payments the homebuyer is obligated to pay up to the date the homebuyer vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 60 days from the date of notice of intention to vacate, or if the homebuyer fails to give notice of intention to vacate, 60 days from the date the home is put in good condition for the next occupant; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant.

(2) If the EHPA balance is not sufficient to cover all of these charges, the IHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined, provided that the IHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates.

**§ 950.519 Nonroutine Maintenance Reserve (NRMR).**

(a) *Purpose of reserve.* The IHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule

for the home. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the IHA, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyer Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. The IHA shall prepare this schedule and reexamine it annually.

(c) *Charges to NRMR.* (1) The IHA shall provide the nonroutine maintenance necessary for the home, and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the IHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that:

(i) To the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees; and

(ii) To the extent such maintenance is attributable to defective materials or workmanship not covered by the warranty, or even though covered by the warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the homebuyer agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent

homebuyer moves in, a credit balance in the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the IHA shall pay such balance to the homeowner at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the IHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days, the IHA shall invest the excess in Federally insured savings accounts, Federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) (i) Periodically, but not less often than annually, the IHA shall prepare a statement showing:

(A) The aggregate amount of all NRMR balances,

(B) The aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and

(C) The aggregate uninvested balance of the NRMRs.

(ii) The IHA shall make a copy of this statement available to any authorized representative of the HBA.

#### § 950.521 Operating reserve.

(a) *Purpose of the reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the project, the IHA shall establish an operating reserve in connection with its annual operating budgets for the project. The purpose of this reserve is to provide funds for:

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items that constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures;

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty;

(3) Working capital, including funds to cover a deficit in a homebuyer's NRMR until such deficit is offset by future monthly payments by the homeowner or a settlement in the event the homebuyer should purchase;

(4) A deficit in the operation of the project for a fiscal year, including any deficit resulting from monthly payments totaling less than the break-even amount for the project;

(5) Nonroutine maintenance of vacated homes with insufficient NRMR balances to put them in suitable condition for reoccupancy by subsequent homeowners; and

(6) The cost of utilities on a temporary basis for an individual unit by way of a utility reimbursement when a homebuyer has insufficient tenant income to cover even the utilities.

(b) *Nonroutine maintenance of common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year shall be determined by the IHA, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This contribution to the operating reserve shall be made only during the period the IHA is responsible for the maintenance of any common property; during such period, the amount shall be determined on the basis of the requirements of all common property in the development.

(c) *Transfer to homeowners' association.* Where a Turnkey III development includes common property, the IHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners' association. When the homeowners acquire voting control, the homeowners' association shall then assume full responsibility for management and maintenance of common property under a plan, agreed upon by the IHA and the homeowners association, and the IHA shall transfer to the homeowners' association a portion of the operating reserve then held by the IHA. This provision shall not apply when there is no common property or when there is no duly organized and functioning homeowners association.

(d) *Disposition of reserve.* Following the end of the fiscal year in which the last home has been conveyed by the IHA, the balance of the operating reserve held by the IHA shall be retained by the IHA in a replacement reserve if an ACC amendment has been executed implementing loan forgiveness, provided that the aggregate amount of payments by the IHA under this paragraph (d) shall not exceed the aggregate amount of annual

contributions paid by HUD with respect to the development.

**§ 950.523 Operating subsidy.**

HUD may pay operating subsidy, subject to the availability of funds for this purpose and at HUD's sole discretion, to cover an operating deficit in an operating budget. However, operating subsidy or project funds may not be used to establish or maintain the homebuyer reserve accounts.

**§ 950.525 Purchase price and methods of purchase.**

(a) *Purchase price.* The purchase price for the initial and subsequent homebuyer shall be determined by the IHA.

(b) *Purchase price schedule.* On the date when the homebuyer agreement is signed, the IHA shall provide the homebuyer with a Purchase Price Schedule, showing the monthly declining purchase price over the term of the HOOA agreement (a period not less than 15 years or more than 25 as determined by the IHA, at an interest rate determined by the IHA). The IHA may choose to forego charging interest and calculate the payment with an interest rate of zero.

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in the EHPA, plus such portion of the NRMR as the homebuyer wishes to use for the purchase, is equal to the unamortized balance purchase price as shown at that time on the homebuyer's purchase price schedule plus all incidental costs (the costs incidental to acquiring ownership, including but not limited to the costs for a credit report, field survey, title examination, title insurance, inspections, the fees for attorneys other than the IHA's attorney, mortgage application, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which the combined total in the EHPA and designated portion of the NRMR equals the purchase price, the balance of the purchase price shall be fixed as the amount specified for that month, and the homebuyer shall be refunded:

(i) The net additions, if any, credited to the EHPA after that month; and

(ii) Such part of the monthly payments made by the homebuyer after the balance of the purchase price has been fixed that exceeds the break-even amount attributable to the unit.

(2) Where the sum of the unamortized balance of the purchase price and incidental costs is greater than the amounts in the homebuyer's EHPA and

NRMR, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The unamortized balance of the purchase price shall be the amount shown on the homebuyer's purchase price schedule for the month in which the settlement date for the purchase occurred.

(3) Period required to achieve ownership. The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyer's income and the amount of credit the homebuyer can accumulate in the EHPA and NRMR, the period may be shortened accordingly.

(4) Residual receipts. After payment in full of the IHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the IHA shall retain all residual receipts from the operation of the development in a replacement reserve.

(5) IHA financing. The IHA may, at its discretion, provide financing for purchases by homebuyers, or assist with financing, by such methods and on such terms and conditions as may agreeable to the IHA and the homebuyer.

(6) Transfer of title to homebuyer. When the homebuyer is to obtain ownership, the parties shall mutually agree upon a closing date. On the closing date, the homebuyer shall pay the required amount of money to the IHA and receive a deed for the home.

**§ 950.529 Termination of Homebuyer Ownership Opportunity Agreement.**

(a) *Termination by IHA.* (1) In the event the homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment, by misrepresentation or withholding information in applying for admission or in connection with any subsequent reexamination of income and family composition, by failure to comply with any of the other homebuyer obligations under the agreement, by loss of homeownership potential (beyond a temporary, unforeseen change in circumstances), an income that requires outright purchase, the IHA may terminate the agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (a)(2) of this section.

(2) Notice of termination by the IHA shall be in writing. Such notice shall state:

(i) The reason for termination;

(ii) That the homebuyer may respond to the IHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination;

(iii) That in such response the homebuyer may be represented by the HBA;

(iv) That the IHA will consult the HBA concerning this termination;

(v) That unless the IHA rescinds or modifies the notices, the termination shall be effective at the end of the 30-day notice period; and

(vi) That, in the case of termination as a result of loss of homeownership potential when the homebuyer is otherwise in compliance with the agreement, the family will be offered a transfer to a rental unit (whether or not in concert with a conversion of that unit to the rental program). If a rental unit of appropriate size is available, the family will be notified of a transfer to that unit. If no other unit is then available and the homebuyer's current unit is not to be converted to rental, the family will be notified that it may remain in place until an appropriate rental unit becomes available (in which case the unit remains under the Turnkey III project). Otherwise, the notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice.

(b) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyer Ownership Opportunity Agreement by giving the IHA 30 days notice in writing of the intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the IHA, the agreement shall be terminated automatically, and the IHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(c) *Transfer to the rental program.* In the event of termination of the Homebuyer Ownership Opportunity Agreement by the IHA or by the homebuyer with adequate notice, the homebuyer may be transferred to a suitable unit in the rental program, in accordance with § 950.503 or terminated from occupancy. If the homebuyer is transferred to the rental program, the amount in the homeowner's EHPA shall be paid in accordance with § 950.517(i).

**Subpart H—Lead-Based Paint Poisoning Prevention**

**§ 950.551 Purpose and applicability.**

The purpose of this subpart is to implement the provisions of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, by establishing

procedures to eliminate as far as practicable the immediate hazards from the presence of paint which may contain lead in IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to IHA-owned low-income housing projects, including Turnkey III, Mutual Help, and conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the section 23 Leased Housing Non-Bond-Financed Program, the section 10(c) Leased Housing Program, or the section 23 and section 8 Housing Assistance Payments programs. This subpart is promulgated in accordance with the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

**§ 950.553 Testing and abatement applicable to development.**

(a) *Pre-acquisition testing.* With respect to development, all existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (as defined in subpart A of this part).

(b) *Pre-occupancy abatement.* If units containing lead-based paint are acquired, compliance with parts 35 and this subpart is required, and abatement shall be completed before occupancy.

(c) *Compliance with guidelines.* It is strongly encouraged, but not required, that all such properties be tested in accordance with the Lead-Based Paint Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (hereafter Lead-Based Paint Interim Guidelines), which were published at 55 FR 14555 and 55 FR 39874 (1990), as periodically amended or updated, and other future official departmental issuances related to lead-based paint, before any irrevocable commitment is made to acquire the property. Properties that have already been tested in accordance with the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 need not be tested again. If lead-based paint is found in a property to be acquired, the cost of testing and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

**§ 950.555 Testing and abatement applicable to modernization.**

(a) *Applicability of requirements—(1) General.* With respect to modernization, the IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR part 35 and this subpart H). The five-year funding request plan for CIAP (as described in § 950.610) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated before 1978 approved for (or applications for) comprehensive and homeownership modernization; other pre-1978 family projects not undergoing comprehensive and homeownership modernization; and special purpose modernization. Any previous testing or abatement work that was done in accordance with HUD's implementing regulations, effective June 6, 1988, or the Lead-Based Paint Poisoning Prevention Act as amended by the Housing and Community Development Act of 1987 shall not be redone to comply with the requirements of this section.

(2) *Special Purpose.* The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitation involves removal of walls, doors, and windows. The HUD Area ONAP may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for an IHA requesting special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already been randomly sampled before May 15, 1991, using the criteria found in the June 6, 1988 regulations (see paragraph (a)(1) of this section) or after May 15, 1991, using the criteria outlined in paragraph (b) of this section. If lead-based paint is found as a result of

previous random testing or current testing, it must be abated.

(b) *Which standards apply—(1) Comprehensive, special purpose, and homeownership modernization in progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint for which funds were reserved by HUD by May 15, 1991, the following standards apply:

(i) IHAs that awarded any construction contract (including architectural and engineering (A&E) contracts) before April 1, 1990, are subject to the provisions regarding random testing and abatement in effect at the time of award.

(ii) IHAs that advertise for bid or award a construction contract (including A&E contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(2) *Applications for comprehensive, special purpose, and homeownership modernization projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the Act) that may contain lead-based paint, no construction contracts awarded on or after April 1, 1990 (including A&E contracts and force account work), excluding those contracts solely for emergency work items, shall be executed until random testing as described in this section has taken place and any necessary abatement as described in this section is included in the modernization budget.

(3) *Lead-based paint modernization; other family projects not undergoing comprehensive, special purpose, or homeownership modernization.* Any pre-1978 family project (assisted under section 14 of the Act) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraphs (b)(1) and (2) of this section) including a pre-1978 family project that previously has been modernized with comprehensive, special purpose, or homeownership modernization grants under previous regulations shall be randomly tested as described in this section, and abated as described in this section if lead-based paint is found, unless testing and abatement was previously done in

accordance with paragraph (a) of this section.

(c) *Testing*—(1) *Random testing*. Random testing as described in this paragraph (c)(1) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 950.605(d). Interior common areas to be sampled include IHA-owned or operated child care facilities.

(i) *Initial random test*. IHAs shall use random testing on family projects (including homeownership units) constructed or substantially rehabilitated before 1978. It is strongly recommended, but not required, that IHAs use the random testing methodology set forth in the lead-based paint interim guidelines, as periodically amended or upgraded, and other future outstanding departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous elevated blood levels (EBLs).

(ii) *Followup*. If evidence of lead-based paint is found in units that were in the random sample, the IHA is required to:

(A) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested; or

(B) Abate all like surfaces in that universe without further testing.

(2) *Universal testing*. For scattered site family projects involving single-unit structures that are not contiguous or were built and/or rehabilitated at different times, the IHA shall cause each unit to be tested for lead-based paint.

(d) *Abatement*. Abatement shall be performed in accordance with § 950.570. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577-0090).

#### § 950.560 Notification.

(a) *General LBP Hazard Notification for all Residents*. Tenants in IHA-owned low-income public housing projects constructed before 1978 shall be notified:

(1) That the property was constructed before 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning;

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and

(6) Of the advisability and availability of blood lead level screening for children under seven years of age. Tenants shall be advised to notify the IHA if a child is identified as having an elevated lead blood level (EBL) condition.

(b) *Lead-Based Paint Hazard Notification for Applicants and prospective purchasers*. A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the IHA.

(c) *Notification of Positive Lead-Based Paint Test Results*. In the event that an IHA-owned project constructed or substantially rehabilitated before 1978 is tested and the test results using an x-ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the IHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The IHA shall retain written records of the notification.

#### § 950.565 Maintenance obligation; defective paint surfaces.

In family projects constructed or substantially rehabilitated before 1978, the IHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2) shall be required. Treatment shall be completed within a reasonable period of time.

#### § 950.570 Procedures involving EBLs.

(a) *Procedures where a current resident child has an EBL*. When a child residing in an IHA-owned low-income housing project has been identified as having an EBL, the IHA shall:

(1) Test all surfaces in the unit and applicable surfaces of any IHA-owned and operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors

and interior common areas (including non-dwelling IHA facilities that are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the IHA and HUD; or

(2) Transfer the family with an EBL child to a post-1978 or to a previously tested unit that was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using an IHA-owned or operated child care facility has an EBL*. When a non-resident child using an IHA-owned or operated child care facility has been identified as having an EBL, the IHA shall test all applicable surfaces of the IHA-owned or operated child care facility and abate the surfaces found to contain lead-based paint.

(c) *Testing*. Testing shall be completed within five days after notification to the IHA of the identification of the EBL child. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local, or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm<sup>2</sup> or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using the IHA-owned or operated child care facility. Testing will be considered an eligible modernization cost under subpart I of this part only upon IHA certification that testing services are otherwise unavailable.

(d) *Hazard abatement requirements*—(1) *Abatement actions*. Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) *Unit housing a child with an EBL*. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the IHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

(ii) *IHA-owned or operated child care facility used by a child with an EBL.* Any applicable surface found to contain lead-based paint shall be treated.

(iii) *Interior common areas (including nondwelling IHA facilities that are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside.* Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* IHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint Interim Guidelines, and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in § 35.24(b)(2)(ii) of this title. Final inspection and certification after treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

(3) *Tenant protection.* The IHA shall take appropriate action to protect tenants including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint Interim Guidelines and other future official departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

(4) *Disposal of lead-based paint debris.* The IHA shall dispose of lead-based paint debris in accordance with applicable local, State, or Federal requirements. Additional information covering disposal practices is contained in the Lead-Based Paint Interim Guidelines and other future official departmental issuances relating to lead-based paint. In any event, the Environmental Protection Agency (EPA) has primary responsibility for waste disposal regulations and procedures. (see, e.g., 40 CFR parts 260 through 271.)

(e) *Records.* The IHA shall maintain records on which units, common areas, exteriors, and IHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface, or IHA child care facility. The IHA shall report information regarding such testing, in accordance with such requirements as

shall be prescribed by HUD. The IHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR part 35 and § 950.555, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, an IHA child care facility, an exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, that unit, child care facility, exterior or interior common area is not required to be re-tested or re-treated.

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2577-0090)

**§ 950.575 Compliance with tribal, State and local laws.**

(a) *IHA responsibilities.* Nothing in this subpart is intended to relieve an IHA of any responsibility for compliance with tribal, State, or local laws, ordinances, codes, or regulations governing lead-based paint testing or hazard abatement. The IHA shall maintain records evidencing compliance with applicable tribal, State, or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a tribal, State, or local law, ordinance, code, or regulation provides for lead-based paint testing or hazard abatement in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such a manner as may be appropriate to promote efficiency while ensuring such comparable level or protection.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under OMB Control Number 2577-0090).

**§ 950.580 Monitoring and enforcement.**

IHA compliance with the requirements of this subpart H will be included in the scope of HUD monitoring of IHA operations. Noncompliance with any requirement of this subpart may subject an IHA to sanctions provided under the Annual Contributions Contract or to

enforcement by other means authorized by law.

**§ 950.585 Insurance coverage.**

For the requirements concerning an IHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 950.195.

**Subpart I—Modernization Program**

**General Provisions**

**§ 950.600 Purpose and applicability.**

(a) *Purpose.* The purpose of this section is to set forth the policies and procedures for the Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs) to:

(1) Improve the physical condition and upgrade the management and operation of existing Indian housing developments;

(2) Assure that such developments continue to be available to serve low-income families;

(3) Assess the risks of lead-based paint poisoning through the use of professional risk assessments that include dust and soil sampling and laboratory analysis in all developments constructed before 1980 that are, or will be occupied by families; and

(4) Take effective interim measures to reduce and contain the risks of lead-based paint poisoning recommended in such professional risk assessments.

(b) *Applicability.* (1) The sections under the undesignated heading "General Provisions" applies to all modernization under this subpart. The sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) set forth the requirements and procedures for the CIAP for IHAs that own or operate fewer than 250 Indian housing units. An IHA that qualifies for participation in the Comprehensive Grant Program (CGP) is not eligible to participate in the CIAP. The sections under the undesignated heading "Comprehensive Grant program (CGP)" set forth the requirements and procedures for the CGP for IHAs that own or operate 250 or more Indian housing units. For purposes of the 250 or more unit threshold for participation in the CGP, and for the formula allocation under § 950.601, an existing rental, Mutual Help, or section 23 bond-financed unit under the ACC shall count as one unit; and a unit under the Turnkey III program shall count as one-fourth of a unit. An IHA that has already qualified to participate in the CGP because it owns or operates 250 or more units may elect to continue to

participate in the CGP so long as it owns or operates at least 200 units.

(2) This subpart applies to IHA-owned low-income Indian housing developments (including developments managed by a Resident Management Corporation pursuant to a contract with the IHA), and to Section 23 Leased Housing Bond-Financed developments, for which IHAs request assistance under the CIAP or CGP. This subpart also applies to the implementation of modernization programs which were approved before FFY 1992. Rental developments that are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but that have not yet been sold by an IHA, continue to qualify for assistance under this part. This subpart does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to an IHA under CIAP shall be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the IHA under the CGP, as the IHA determines to be appropriate.

(d) *Other.* See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart I.

#### **§ 950.601 Allocation of funds under section 14.**

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of IHAs and PHAs participating in the CIAP (i.e., agencies that own or operate fewer than 250 units), and to individual IHAs and PHAs participating in the CGP (i.e., agencies that own or operate 250 or more units). The program requirements governing PHA participation in the CIAP and CGP are contained in 24 CFR part 968.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, \$75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a \$75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The

requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds are set forth in § 950.667.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C.* (1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968, subpart C that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their prior designation as a mod troubled agency.

(2) *Nonapplicability to IHAs.* Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed mod troubled for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which are designed to measure the relative backlog and accrual needs of IHAs and PHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of IHAs and PHAs, as follows:

(1) *Determination of backlog need.* (i) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or the aggregate of IHAs and PHAs with fewer than 250 units not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified

under paragraph (e)(4) of this section are not available for individual IHAs and PHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(1) The average number of bedrooms in the units in a development (Weighted at 2858.7);

(2) The proportion of units in a development available for occupancy by very large families (Weighted at 7295.7);

(3) The extent to which units for families are in high-rise elevator developments (Weighted at 5555.8);

(4) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the IHA provides HUD with the actual date of construction, in which case HUD will use the age of the development (or for scattered sites, the average age of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(5) In the case of a large agency, the number of units with 2 or more bedrooms (Weighted at .433);

(6) The cost of rehabilitating property in the area (Weighted at 27544.3);

(7) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses (Weighted at 759.5); and

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section, for the Indian housing stock as of 1991.

(3) *Deduction for prior modernization.* HUD shall deduct from the estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to an IHA or PHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on an IHA-wide or PHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on

a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum 50 percent deduction of an IHA's or PHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by an IHA with major rehabilitation, with a DOFA date of October 1, 1991 or thereafter, will be considered to have a zero backlog.

(4) *Categories of backlog need.* The most recently available data to be used under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section shall pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments;

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.603, and State, local and tribal codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* If HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 250 or more units and for the aggregate of IHAs and PHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section; or

(2) *Statistically reliable data are unavailable.* If HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA,

community, and development characteristics:

(A) The average number of bedrooms in the units in a development (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families (Weighted at 356.7);

(C) The age of the developments (Weighted at 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units (Weighted at 87.1.);

(E) The cost of rehabilitating property in the area (Weighted at 679.1);

(F) The total number of units of each IHA or PHA that owns or operates 250 or more units (Weighted at .0144); and

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (f)(2) of this section shall pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments; and

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.603, and State, local, and tribal codes.

(g) *Allocation for CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 250 units shall be allocated to IHAs in accordance with the requirements under the undesignated heading of this subpart "Comprehensive Improvement Assistance Program" (CIAP) and to PHAs in accordance with the requirements of 24 CFR part 968, subpart B.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 250 or more units shall be allocated in accordance with the requirements under the undesignated heading of this subpart "Comprehensive Grant Program," and for PHAs in accordance with the requirements of 24 CFR part 968, subpart C. An IHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 950.669(b). An IHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units, is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that

the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by an IHA or PHA, and the relative modernization needs of IHAs and PHAs, HUD shall count as one unit each existing rental, Mutual Help, and section 23 Bond-Financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program. New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition, and conversion of units.* (1) *General.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, HUD shall not adjust the amount the IHA or PHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the IHA or PHA over a 3-year period to reflect removal of the units from the ACC.

(2) *Determination of one percent cap.* In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for the current year under formula funding, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units that are lost as a result of demolition, disposition, or conversion shall not be offset against units subsequently added to an IHA's or PHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as

the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units.* (i) *Reduction less than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the IHA or PHA will be funded as though no change had occurred.

(ii) *Reduction greater than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two-thirds of the difference between the initial year and the current year in the first year, plus one-third of the difference in the second year, and at the level of the current year in the third year.

(iii) *Exception.* A unit that is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count.* (i) Once an IHA's or PHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis.

(ii) A reduction in formula funding, based upon additional reductions to the number of an IHA's or PHA's units, will also be phased in over a 3-year period, as described in paragraph (k)(2) of this section.

**§ 950.602 Special requirements for Turnkey III and Mutual Help developments.**

(a) *Modernization costs.* Modernization work on a Mutual Help or Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance.* (1) *Paid-off units.* A Mutual Help or Turnkey III unit, which is paid off but has not been conveyed at the time work is included for it in the CIAP application or CGP Annual Statement, is eligible for any physical improvements provided under § 950.615 or § 950.666. However, in accordance with the provisions of § 950.440(e)(8),

an IHA may perform nonemergency work on a paid-off Mutual Help unit only after all delinquencies are repaid.

(2) *Conveyed units.* Where modernization work has been approved prior to conveyance, the IHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. An IHA shall not use funds provided under this subpart for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family shall be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for nonemergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for disabled persons, lead-based paint testing, interim containment, professional risk assessment, and abatement) and the correction of development deficiencies.

Notwithstanding the above requirement, an IHA may, with prior HUD approval, complete nonemergency physical improvements on any homeownership unit if the IHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

**§ 950.603 Modernization and energy conservation standards.**

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements, or nonroutine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section; comply with lead-based paint testing and abatement requirements in subpart H of this part; and provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated housing. All improvements funded under this part shall meet the HUD energy conservation standards for cost-effective energy conservation measures in such developments, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and development-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The development-specific standards permit

an IHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a development, which includes site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of Indian housing developments over the estimated life of the buildings shall apply to developments modernized under this subpart. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations.

**Comprehensive Improvement Assistance Program (For IHAs that Own or Operate Fewer than 250 Indian Housing Units)**

**§ 950.609 Purpose.**

The purpose of these sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) is to set forth the policies and procedures for the CIAP under which IHAs that own or operate fewer than 250 units of Indian housing may receive financial assistance for the modernization of Indian housing developments, including Emergency and Other Modernization. Funding for this program is provided under section 5(c) of the Act (42 U.S.C. 1437c(c)), pursuant to section 14(k) of the Act (42 U.S.C. 14371(k)) (see § 950.601 for the formula allocation process for the aggregate of CIAP agencies under this subpart I).

**§ 950.615 Eligible costs.**

(a) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has determined, and HUD agrees, that the completion of the improvements and replacements will reasonably ensure the long-term physical and social viability

of the development at a reasonable cost, as defined in § 950.102.

(b) *Physical improvement costs for rental and Mutual Help developments.* Eligible costs include alterations, betterments, nondwelling additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. The modernization standards include mandatory and development specific work. The mandatory standards may be exceeded only when the IHA and HUD determine that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(c) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization that are not the responsibility of the homebuyer families, and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or lead-based paint testing, interim containment, professional risk assessment, and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (c)(1) of this section, an IHA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a nonhomebuyer family. An IHA that intends to use funds under this paragraph shall identify in its CIAP application the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an IHA shall certify that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of this part, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed for Other Modernization.

(ii) Before an IHA may be approved for Other Modernization of a unit under this paragraph, it shall first deplete any Earned Home Payments Account

(EHPA), or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(d) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or nondwelling facilities, for which HUD has approved the demolition under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to nondwelling use.

(e) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or IHA-wide in nature are eligible costs if needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments, or correct management deficiencies. Management improvements and planning costs may be funded as a single modernization project.

(2) *Ineligible costs.* An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs. In addition, if an approved modernization program includes management improvements that involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. An IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(3) *Eligible costs.* Eligible costs include:

(i) *General management costs.* Eligible general management costs include, but are not limited to: management, financial, and accounting control systems of the IHA, rent collection, and maintenance.

(ii) *Economic development costs.* Economic development activities, such as job training and resident employment, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees, apprentices,

or employees to carry out the modernization program under this subpart I.

(iii) *Resident management costs.* Technical assistance to a resident council or resident management corporation (RMC), as defined in subpart O of this part, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(iv) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(f) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(g) *Administrative costs.* Administrative costs necessary for the planning (planning costs can be funded as a single modernization project), design, implementation, and monitoring of the physical and management improvements are eligible costs, and include the following:

(1) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if the scope and volume of the work are beyond that which could reasonably be expected to be accomplished by such personnel in the performance of their nonmodernization duties. An IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP or operating budget);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP; and

(3) Other administrative costs, such as telephone and facsimile, as specified by HUD.

(h) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments, and other required documents, detailed design work, assistance in the preparation of construction and bid documents, lead-based paint professional risk assessments and testing are eligible costs.

(i) *Relocation and moving costs.* Relocation and other relocation assistance for permanent and temporary relocation are eligible costs, when this assistance is required by § 950.117.

(j) *Cost limitations.* (1) *Management improvements.* Management improvement costs shall not exceed 10

percent of the CIAP funds available to an Area ONAP in a particular FFY.

(2) *Planning costs.* Planning costs are costs incurred before HUD approval of the CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and lead-based paint professional risk assessment and testing. Planning costs may be funded as a single modernization project. If an IHA incurs planning costs without prior HUD approval, an IHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed five percent of the CIAP funds available to an Area ONAP in a particular FFY.

(3) *Program benefit.* If the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(k) *Ineligible costs.* An IHA shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

**§ 950.618 Procedures for obtaining approval of a modernization program.**

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the **Federal Register** a notice of funding availability (NOFA) and the time frame for submission of applications.

(b) *IHA consultation with local officials and residents/homebuyers.* An IHA shall develop the application in consultation with local officials, residents, and homebuyers, as set forth in § 950.624.

(c) *IHA application.* An IHA shall submit to HUD an application, in a form prescribed by HUD, which shall include:

(1) A general description of IHA development(s) (including the current physical condition, for each development for which the IHA is requesting funds, or for all the IHA's developments) and physical and management improvement needs (to meet the Secretary's standards in § 950.603), general description of major work categories (e.g., kitchens, bathrooms) required to correct identified deficiencies and estimated costs, including a statement concerning consultation with local officials and residents and viability of the development(s). The application will also identify a cost estimate for the

equipment systems or structural elements that would normally be replaced over the remaining period of the annual contributions contract or during the 30-year period beginning on the date of submission of the application.

(2) For management improvements, the application shall identify the management improvement need, including a general description of the work required for correction and an estimated cost. Management areas for which needs should be identified include, but are not limited to, the following:

(i) The management, financial, and accounting control systems of the IHA;

(ii) The adequacy and qualifications of personnel employed by such IHA (in the management and operation of such developments) for each category of employment; and

(iii) The adequacy and efficacy of resident programs and services in such developments, the security of each such development and its residents, policies and procedures of the IHA for the selection and eviction of residents in such developments, and other policies and procedures of such IHA relating to such developments, as specified by the Secretary; and

(3) Any other documents, as may be required by HUD.

(d) *Completeness review.* To be eligible for selection, an application shall be received by the Area ONAP within the time period specified in the NOFA and shall be complete. In order to determine whether an application is complete, responsive to the NOFA, and acceptable for technical processing, the Area ONAP shall perform an initial completeness review upon receipt of the application. To make the above determination, the Area ONAP shall use the following criteria:

(1) The application was received by HUD at the appropriate address by the date and time specified in the NOFA and was complete and responsive (excluding exhibits that are certifications); or

(2) If an application is determined to be incomplete or to have missing certifications, the IHA shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are those such as inadvertently omitted documents, clarifications of previously submitted material, and other changes that are not of such a nature as to improve the

competitive position of the application. The IHA shall acceptably correct deficiencies (including furnishing missing certifications) within the time specified in the NOFA.

(e) *Eligibility review.* (1) *Eligibility for processing.* To be eligible for processing, based on the general description of its developments' condition and general statement of physical and management improvement needs, and the Area ONAP's knowledge of the development's conditions, the work items, particularly emergency work items, shall appear to be eligible and needed.

(2) *Eligibility review on reduced scope.* When the following conditions exist, the IHA will be reviewed on a reduced scope:

(i) Where the IHA owes funds to HUD as a result of excess development, modernization, or operating funds previously provided, and the IHA has not repaid the funds or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement, the IHA is eligible for processing for Emergency Modernization only.

(ii) Where the IHA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as set forth in § 950.115, as evidenced by an action, finding, or determination as described in paragraphs (e)(2)(ii)(A) through (E) of this section, unless the IHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the IHA is eligible for processing only for Emergency Modernization or for work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the IHA based upon a charge of discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by HUD's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the IHA, referred by HUD's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under § 950.115, or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the IHA imposed by

HUD under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and § 950.115, the Attorney General's Guidelines (28 CFR 50.3) and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 950.115 in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(3) *FHEO Division review.* The processing office shall request the appropriate FHEO Division of the Regional Office to identify any IHAs with equal opportunity-related problems. After consulting with Regional FHEO, as appropriate, and reviewing its own files, the FHEO Division shall identify each IHA by the following categories and provide any other relevant information within the requested time frame:

(i) There are no known equal opportunity-related problems;

(ii) There are known equal opportunity-related problems, as identified; or

(iii) There are circumstances as set forth in paragraph (e)(2) of this section.

(f) *Technical processing.* When an application is determined to be complete and responsive to the NOFA and eligible for processing, technical processing, consisting of the following, shall be accomplished:

(1) The Area ONAP shall categorize the eligible IHAs and their developments into two processing groups: Group 1 for Emergency Modernization, and Group 2 for Other Modernization. IHA developments may be included in both groups, and the same development may be in each group. The IHA only needs to submit one application that includes needs that the Area ONAP will process under Group 1 or Group 2. However, the IHA can submit Emergency Modernization applications whenever needed. Group 2 developments are subject to the long-term viability and reasonable cost analysis. Preference will be given to IHAs that request assistance for developments having conditions that threaten the health or safety of the residents or having a significant number of vacant, substandard units; and that have demonstrated a capability of carrying out the activities proposed. Within Group 2, the Secretary may give

priority to compliance with statutory, regulatory, and court-ordered deadlines.

(2) The Area ONAP will evaluate the Group 2 IHAs and developments to determine eligibility and acceptability based on the technical review factors in paragraph (g) of this section. Based on these factors, the Area ONAP shall determine the applications that, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (h) of this section.

(g) *Technical review factors.* The technical review factors for assistance include:

(1) Extent and urgency of need, including need to comply with statutory, regulatory, or court-ordered deadlines;

(2) Extent of vacancies;

(3) IHA's modernization capability;

(4) IHA's management capability;

(5) Degree of resident involvement in IHA operations;

(6) Degree of IHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Rating and ranking.* The Area ONAP shall rate and rank each application in Group 2 on the basis of its assessment of the application using the technical review factors set forth in paragraph (g) of this section and in the NOFA. The Area ONAP shall identify for joint review selection the highest IHA ranking applications in Group 2 in descending order and other Group 2 IHAs with lower ranking applications but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are nonemergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory, or court-ordered deadlines. All Group 1 applications would be automatically selected for joint review.

(i) *Joint review.* HUD shall notify each IHA whose application has been selected for further processing as to whether the joint review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). The purpose of the joint review is to discuss the proposed modernization program, as set forth in the application, and determine the size of the grant, if any, to be awarded. If the IHA has not included all its developments in the CIAP application, HUD may not, as a

result of joint review, consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. An IHA shall prepare for the joint review by preparing a draft CIAP budget, and reviewing the other items to be covered during the joint review, as prescribed by HUD. If conducted on-site, the joint review may include an inspection of the proposed physical work. IHAs not selected for joint review will be advised in writing of the reasons for nonselection.

(j) *HUD awards.* Upon completion of the joint review, HUD shall adjust the amounts to be awarded, as necessary, based on information obtained at Joint Review, including the information received as a result of the FHEO review and completion of the environmental review, and announce the IHAs selected for CIAP grants (subject to their submission of an approvable CIAP budget and any other required documents). HUD would request the funded IHA to submit a CIAP budget, including an implementation schedule, a resolution by the IHA Board of Commissioners (approving the CIAP budget and containing certifications required by HUD), and any other necessary documents.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the IHA shall enter into an ACC amendment in order for the IHA to requisition modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an IHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* An IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

#### § 950.624 Resident and homebuyer participation.

(a) *Resident participation.* For a rental development only, the IHA shall establish a Partnership Process, as defined in § 950.102, to develop, implement, and monitor the CIAP. Before submission of the application, an IHA shall consult with the residents, the

resident organization, or the RMC (see subpart O of this part) of the development being proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give residents a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to resident recommendations. An IHA shall respond in writing to the residents, the resident organization, or the RMC, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the residents, the resident organization, or the RMC of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the residents, the resident organization, or the RMC.

(b) *Homebuyer participation: Turnkey III and Mutual Help.* For a homeownership development only, before submission of the application, an IHA shall consult with the homebuyer families of the development proposed for modernization regarding its intent to submit an application for CIAP funds. An IHA shall give the homebuyer families a reasonable opportunity to present their views on the proposed modernization program and alternatives to it, and give full and serious consideration to their recommendations. An IHA shall respond in writing to the homebuyer families, indicating its acceptance or rejection of their recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the homebuyer families of the approved work items and its progress during implementation. If HUD does not approve the modernization program, an IHA shall so inform the homebuyer families.

**§ 950.635 Initiation of modernization activities.**

After HUD has approved the modernization program and entered into an ACC amendment with the IHA, an IHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget in a timely, efficient, and economical manner, subject to the following requirement. An IHA shall ensure that there is no duplication between the activities carried out with CIAP funds and the activities carried out with other funds.

**§ 950.639 Fund requisitions.**

An IHA shall requisition modernization funds against the approved CIAP budget in accordance with procedures prescribed by HUD.

**§ 950.642 Contracting requirements.**

An IHA shall comply with the prevailing wage rate requirements in §§ 950.120 and 950.172, as well as the Indian Preference requirements in § 950.175. In addition, an IHA shall comply with State, tribal, and local laws and Federal requirements, as set forth in 24 CFR part 85, except as follows:

(a) *Architect/engineer and other professional services contracts.* Notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) If the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) If the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with any agreements reached with HUD, and that the amount is appropriate and does not exceed the HUD-approved CIAP budget amount.

(b) *Assurance of completion.* For each construction contract over \$25,000, the contractor shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price.

(c) *Construction solicitations.* Notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) If the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) If the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* An IHA shall obtain HUD approval of the proposed award of a contract if the award exceeds the HUD-approved CIAP budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, an IHA shall

make the award without HUD approval after the IHA has certified that:

(1) The solicitation and award procedures were conducted in compliance with State, tribal, and local laws and Federal requirements;

(2) The award does not exceed the approved CIAP budget amount and does not meet the criteria in 24 CFR 85.36(g)(2) (i) through (iv) for prior HUD approval; and

(3) The contractor is not on the Lists of Parties Excluded from the Federal Procurement or Nonprocurement Programs.

(e) *Contract modifications.*

Notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, an IHA shall comply with HUD requirements to either:

(1) If the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) If the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the latest HUD-approved CIAP budget or otherwise approved by HUD.

(f) *Construction requirements.* An IHA may be required to submit to HUD periodic progress reports and construction completion documents for prior HUD approval above a HUD-specified amount.

(g) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

**§ 950.645 On-site inspections.**

It is the responsibility of the IHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor, and with or without the services of an architect/engineer, to assure work quality and progress.

**§ 950.648 Budget revisions.**

An IHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. An IHA shall submit a budget revision, in a form prescribed by HUD, if the IHA plans (within the total approved CIAP budget) to incur modernization costs in excess of the approved CIAP budget amount for any development. An IHA also shall comply with HUD requirements to either:

(a) Submit the proposed CIAP budget revision for prior HUD approval if the

IHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the HUD-established threshold; or

(b) Certify that the revisions are necessary to carry out the approved work and do not result in the approved CIAP budget amount for any development being exceeded.

**§ 950.651 Progress reports.**

For each six-month period, beginning October 1, until completion of the modernization program or expenditure of all funds, an IHA shall submit a report, in a form prescribed by HUD, to the HUD Area ONAP. Where HUD determines that an IHA is having implementation problems, HUD may require more frequent reporting. The report shall include:

(a) Modernization fund obligations and expenditures and progress against the approved implementation schedule(s); and

(b) Management improvement progress, as applicable.

**§ 950.654 HUD review of IHA performance.**

HUD shall periodically review IHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the quality of an IHA's inspections as evidenced by the quality of work, and the timeliness of the work. Where deficiencies are noted, an IHA shall take corrective action, as directed by HUD.

**§ 950.657 Fiscal closeout.**

Upon completion or termination of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. An IHA shall immediately remit any excess funds provided by HUD. The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, an IHA shall immediately remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized or ineligible expenditures, an IHA shall take such corrective actions as HUD may direct.

**Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)**

**§ 950.660 Purpose.**

(a) The purpose of the Comprehensive Grant Program (CGP) under this subpart I is:

(1) To provide modernization assistance to IHAs that own or operate a total of 250 or more units of Indian Housing on a reliable and more predictable basis; to enable them to operate, upgrade, modernize, and rehabilitate Indian housing developments; to ensure their continued availability for low-income families as decent, safe, and sanitary housing;

(2) To provide considerable discretion to IHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(3) To simplify significantly the program of Federal assistance for capital improvements in Indian housing developments;

(4) To provide increased opportunities and incentives for more efficient management of Indian housing developments; and

(5) To give IHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of Indian housing developments to benefit low-income families.

(b) The purpose of the sections under the undesignated heading "Comprehensive Grant Program" (CGP) is to set forth the policies and procedures for the CGP under which IHAs that own and operate a total of 250 or more units of Indian housing receive financial assistance on a formula grant basis in accordance with § 950.601(e) and (f) for the modernization of Indian housing developments.

**§ 950.666 Eligible costs.**

(a) *General.* An IHA may use financial assistance received under the CGP for the following eligible costs:

(1) Undertaking activities described in its approved Five-Year Plan under § 950.672(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

(3) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(4) Preparing the Comprehensive Plan and Action Plan under § 950.672, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation, and monitoring process; and

(5) Carrying out an audit, in accordance with 24 CFR part 44 and § 950.120.

(b) *Demonstration of viability.* Except in the case of emergency work, an IHA

shall only expend funds on a development for which the IHA has demonstrated that completion of the improvements and replacements identified in the Comprehensive Plan will reasonably ensure the long-term physical and social viability of the development at a reasonable cost or for essential nonroutine maintenance needed to keep the property habitable until residents are relocated.

(c) *Physical improvement costs.*

Eligible costs include alterations, betterments, additions, replacements, and nonroutine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.603. These mandatory standards may be exceeded only when the IHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. If demolition or disposition is proposed, the IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(d) *Costs for Turnkey III*

*developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, and lead-based paint testing and abatement. In addition, management improvements are eligible modernization costs for existing Turnkey III developments.

(2) *Ineligible costs.* Nonroutine maintenance or replacements, additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of paragraph (d)(1) of this section, an IHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family. An IHA that intends to use funds under this paragraph shall identify in its needs assessment the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale. In addition, an IHA shall demonstrate in its needs assessment that the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 950, Subpart G, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated;

(ii) Before an IHA may be approved for the substantial rehabilitation of a unit under this paragraph, it shall first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or nondwelling facilities approved by HUD under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes.

(f) *Replacement reserve costs.* (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the IHA in its needs assessments;

(ii) A physical improvement requires more funds than the IHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the IHA may use under its 20 percent limit for management improvements (except as provided in paragraph (m)(1) of this section), and the IHA needs to save a portion of its annual grant in order to combine it with a portion of subsequent year(s) grants, to fund the work item;

(2) The IHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate;

(3) Interest earned on funds in the replacement reserve will not be added to the IHA's income in the determination of an IHA's operating subsidy eligibility, but shall be used for eligible modernization costs;

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, an IHA shall first use its replacement reserve, if funded, to meet emergency needs, before requesting funds from the \$75 million reserve. An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* Management improvements that are needed to upgrade the operation of the

IHA's developments, sustain physical improvements at those developments, or correct management deficiencies identified by the IHA in its Comprehensive Plan are eligible costs. An IHA's ongoing operating expenses, including direct provision of social services through either contract or force account labor, are ineligible management improvement costs.

(1) *Economic development activities costs.* Economic development activities such as job training, resident employment, and resident businesses, for the purpose of carrying out activities related to the eligible management and physical improvements are eligible costs, as approved by HUD. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees or employees to carry out the modernization program under this subpart, and to contract with resident-owned businesses for modernization work.

(2) *Resident management costs.* Technical assistance to a resident organization or resident management corporation (RMC), as defined in § 950.962, in order to determine the feasibility of the resident management entity or assist in its formation is an eligible cost.

(3) *Resident homeownership costs.* The study of the feasibility of converting rental to homeownership units, as well as the preparation of an application for conversion to homeownership, is an eligible cost.

(h) *Drug elimination costs.* Drug elimination activities involving management or physical improvements are eligible costs, as specified by HUD.

(i) *Administrative costs.* Administrative costs necessary for the planning, design, implementation, and monitoring of the physical and management improvements are eligible costs and include the following:

(1) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only if the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their nonmodernization duties. The IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP, CGP, or operating budgets);

(2) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CGP; and

(3) Other administrative costs, such as telephone and facsimile, as specified by HUD.

(j) *Audit costs.*

(k) *Architectural/engineering and consultant fees.* Fees for planning, preparation of needs assessments and required documents, detailed design work, preparation of construction and bid documents, lead-based paint testing, etc., are eligible costs.

(l) *Relocation costs.* Relocation costs as a direct result of rehabilitation, demolition, or acquisition for a CGP-funded activity are eligible costs, as required by § 950.117.

(m) *Cost limitation.* (1)

Notwithstanding the full fungibility of work items in § 950.675(c), an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD.

(2) Notwithstanding the full fungibility of work items in § 950.675(c), an IHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State, tribal, or local law, unless specifically approved by HUD;

(3) When the physical or management improvement will benefit programs other than Indian Housing, such as Section 8, local renewal, etc., eligible costs are limited to the amount directly attributable to the Indian Housing Program.

(n) *Ineligible costs.* An IHA (or an RMC acting on behalf of an IHA) shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD.

#### **§ 950.667 Reserve for emergencies and disasters.**

(a) *Emergencies.* (1) *Eligibility for assistance.* An IHA (including an IHA that is determined to be high risk under § 950.135) may obtain funds at any time, for any eligible emergency work item as defined in § 950.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 950.102) (for IHAs participating in CIAP), from the reserve established under § 950.601(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 950.601(e) and (f), other unobligated modernization

funds, and its replacement reserves under § 950.666. An IHA is not required to have an approved Comprehensive Plan under § 950.672 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to an IHA participating in CIAP unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, an IHA shall submit a request, in a form to be prescribed by HUD, that demonstrates that without the requested funds from the set-aside under this section, the IHA does not have adequate funds available to correct the conditions that present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance, and if it determines that the IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* A CGP IHA that receives assistance for its emergency needs from the reserve under § 950.601(b) shall repay such assistance from its future allocations of assistance, as available. For IHAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 950.601(e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters.* (1) *Eligibility for assistance.* An IHA (including an IHA that has been determined by HUD not to be administratively capable under § 950.135) may request assistance at any time from the reserve under § 950.601(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster shall pertain to an extraordinary event affecting only one or a few IHAs, such as an earthquake or hurricane. Any disaster declared by the President (or that HUD determines would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. An IHA is not required to have an approved Comprehensive Plan under § 950.672

before it can request assistance from the reserve under § 950.601(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 950.601(b), an IHA shall submit a request, in a form prescribed by HUD, that demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance, and if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to an IHA under paragraph (b)(1) of this section for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

#### § 950.669 Allocation of assistance.

(a) *Submission of formula characteristics report.* In its first year of participation in the CGP, each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP in accordance with § 950.601(e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data that it has available concerning IHA and development characteristics for purposes of calculating the IHA's formula share. After its first year of participation in the CGP, an IHA is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or when requested by HUD. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 950.601(e) and (f) based upon the IHA, development, and community

characteristics, it shall notify the IHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 950.672(a) and 950.678;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA shall indicate what is unique, specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA shall describe the nature of the error and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 950.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 950.135, HUD may designate the IHA as high risk. If HUD designates the IHA as high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions, so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of approval. However, due to the size of the grant, complexity of the work, and other factors, the IHA may propose, and HUD may approve, a longer time period.

**§ 950.672 Comprehensive Plan (including Five-Year Action Plan).**

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their formula amount. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan, or they may wait for the annual HUD notification of formula amount under § 950.669(b)(1).

(b)(1) *Resident participation.* An IHA is required to develop, implement, monitor, and annually amend portions of its Comprehensive Plan in consultation with residents of the developments covered by the Comprehensive Plan, and with democratically elected resident groups. In addition, the IHA shall also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the Comprehensive Plan. The IHA, in partnership with the residents, shall develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall include implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The IHA, in partnership with the residents of the developments covered by the plan, and with democratically elected resident groups, shall establish a Partnership Process to develop and implement the goals, needs, strategies, and priorities identified in the Comprehensive Plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful

resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on an IHA-wide or area-wide basis, in ongoing discussions of the Comprehensive Plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents and duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations;

(4) *Advance meeting for residents and duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Comprehensive Plan/Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents, duly elected resident organizations, local government officials, and other interested parties to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* An IHA shall consult with appropriate local government officials with respect to the development of the Comprehensive Plan. In the case of an IHA with developments in multiple jurisdictions, the IHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation shall include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide, a specific description of the IHA's

process for maximizing the level of participation by residents, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, resident organizations, and other interested parties upon request.

(d) *Contents of Comprehensive Plan.* The Comprehensive Plan shall identify all of the physical and management improvements needed for an IHA and all of its developments, and that represent needs eligible for funding under § 950.666. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Each Comprehensive Plan shall contain the following elements:

(1) *Summaries.* An IHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs IHA-wide; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation, and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issue. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that an IHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act, to comply with lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The physical needs assessment is completed without regard to the availability of funds, and shall include the following information with respect to each of an IHA's developments:

(A) A brief summary of the physical improvements necessary to bring each development to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards, as required in § 950.603, to comply with the Lead-Based Testing and Abatement requirements under § 950.120(g). The IHA should also indicate the relative urgency of need. If the IHA has no physical improvement needs at a particular development at the time it completes its Comprehensive Plan, it shall so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development), it shall so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) The projected FFY in which the IHA anticipates that the development will meet the modernization and energy conservation standards;

(E) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 950.666(d)(3).

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (d)(3), and shall retain such source documents in its files.

(3) *Management needs assessment. (i) Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable development, so that decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved management improvement plan, the IHA may simply include a cross-reference to these documents):

(1) The management, financial, and accounting control systems of the IHA;

(2) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its developments, for each significant category of employment;

(3) The adequacy and efficacy of:

(i) Resident programs and services;

(ii) Resident and development security;

(iii) Resident selection and eviction;

(iv) Occupancy;

(v) Maintenance;

(vi) Resident management and resident capacity building programs;

(vii) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(viii) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through audits and HUD monitoring reviews that are not addressed under paragraph (d)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved management improvement plan, the IHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the IHA wants to address at the IHA-wide or development level;

(D) An IHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds; and

(E) The projected FFY in which the IHA anticipates that all identified management deficiencies will be corrected.

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability. (i) General.*

The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy of the development at a reasonable cost.

For cost reasonableness, the IHA may choose to use the 90 percent of Total Development Cost (TDC) approach (the preliminary estimate of hard costs for work proposed at the development is 90 percent or less of TDC) or a cost reasonableness approach related to the cost of individual work items as

indicated by National cost indices, adjusted by local conditions and the IHA's own recent procurement experience. The IHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (e.g., kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. As necessary, HUD will review the IHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.*

When an IHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential nonroutine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the nonviable development (e.g., demolition or disposition under 24 CFR part 950, subpart M).

(5) *Five-Year Action Plan. (i) General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as State, local, and tribal governments. All activities specified in an IHA's Five-Year Action Plan are contingent upon the availability of funds.

(ii) *Requirements.* Under the action plan, an IHA shall indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's developments, an IHA shall indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy

conservation standards. This would include specifying the work to be undertaken by the IHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In addition, an IHA shall estimate the FFY in which it anticipates that the development will meet the modernization and energy conservation standards. In developing its action plan, an IHA shall give priority to the following:

- (1) Activities required to correct emergency conditions;
- (2) Activities required to meet statutory (or other legally mandated) requirements;
- (3) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframes; and
- (4) Activities required to complete lead-based paint testing and abatement requirements.

(B) *Management and operations.* An IHA shall address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(1) With respect to the management and operations needs of the IHA, the IHA shall identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through audits, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need);

(2) A preliminary IHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) *Local government statement.* The Comprehensive Plan shall include a statement signed by the chief executive officer of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction), certifying as to the following:

(i) The IHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the

Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 950.672(b) and (c);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The IHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable.

(7) *IHA resolution.* The plan shall include a resolution adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the Comprehensive Plan or any amendments thereto and certifying that:

(i) The IHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) IHA has established controls to assure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;

(iii) The IHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

(iv) The proposed physical work will meet the modernization and energy conservation standards under § 950.603;

(v) The proposed activities in the Five-Year Action Plan/Annual Statement are consistent with the proposed or approved Comprehensive Plan of the IHA;

(vi) The IHA will comply with applicable civil rights requirements under § 950.115, and, when applicable, will carry out the Comprehensive Plan 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 section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(vii) The IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under § 950.175;

(viii) The IHA has provided to HUD any documentation that HUD has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in

accordance with 24 CFR 950.120(a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the IHA receives written notification from HUD indicating that HUD has complied with its responsibilities under NEPA and other related authorities;

(ix) The IHA will comply with the wage rate requirements under § 950.120(c) and (d);

(x) The IHA will comply with the relocation assistance and real property acquisition requirements under § 950.117;

(xi) The IHA will comply with the requirements for physical accessibility under § 950.115(d);

(xii) The IHA will comply with the requirements for access to records and audits under § 950.120(e);

(xiii) The IHA will comply with the uniform administrative requirements under § 950.120(f);

(xiv) The IHA will comply with lead-based paint testing and abatement requirements under § 950.120(g);

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with §§ 950.672(b), 950.678(d), and 950.684, and has given full consideration to the priorities and concerns of tribal government and residents, including comments that were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

(xvi) The IHA will comply with the special requirements of § 950.666(d) with respect to a homeownership development; and

(xvii) The IHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) *Amendments to the Comprehensive Plan.* (1) *Extension of time for performance.* An IHA shall have the right to amend its Comprehensive Plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set

forth in the Comprehensive Plan or has not provided the assistance in a timely manner.

(2) *Amendments to needs assessments.* The IHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Statement that are not reflected in its current needs assessments (except in the case of emergencies). The IHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 950.678(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 950.675;

(3) *Six-year revision of Comprehensive Plan.* Every sixth year following the initial year of participation, the IHA shall submit to HUD, with its Annual Submission, a complete update of its Comprehensive Plan. An IHA may elect to revise some or all parts of the Comprehensive Plan more frequently.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan, eliminating the previous year and adding an additional year. The IHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year Five-Year Action Plan when making this Annual Submission.

(5) *Required submissions.* Any amendments to the Comprehensive Plan under this section shall be submitted with the IHA resolution under § 950.672(d)(7).

(f) *Prerequisite for receiving assistance.* (1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 950.601(b) and 950.666(a)(2), and for modernization needs resulting from disasters under § 950.601(b), may be made available under this subpart unless HUD has approved a Comprehensive Plan submitted by the IHA that meets the requirements of § 950.672. An IHA that has failed to obtain approval of its Comprehensive Plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under § 950.601(e) and (f) in the subsequent FFY. An IHA that elects in any FFY not to participate in the CGP under this subpart may participate in the CGP in subsequent FFYs.

(2) *Requests for emergency assistance.* An IHA may receive funds from its formula allocation to address emergency modernization needs if HUD has not approved an IHA's Comprehensive Plan. To request such assistance, an IHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work," as set forth in § 950.102.

**§ 950.675 HUD review and approval of Comprehensive Plan (including action plan).**

(a) *Submission of Comprehensive Plan.* (1) Upon receipt of a Comprehensive Plan from an IHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 950.672(d); and

(ii) If applicable, the IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings.

(2) *Acceptance for review.* If the IHA has submitted a Comprehensive Plan (including the action plan) that meets the criteria specified in paragraph (a)(1) of this section, HUD shall accept the Comprehensive Plan for review, within 14 calendar days of its receipt in the Area ONAP. The IHA shall be notified in writing that the plan has been accepted by HUD, and that the 75-day review period is proceeding.

(3) *Time period for review.* A Comprehensive Plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan. HUD shall not disapprove a Comprehensive Plan on the basis that it cannot complete its review within the 75-day deadline.

(4) *Rejection of Comprehensive Plan.* If an IHA has submitted a Comprehensive Plan (including the action plan) that does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the IHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the Comprehensive Plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of Comprehensive Plan (including action plan).* (1) A Comprehensive Plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the Comprehensive Plan approvable. The IHA shall re-submit the Comprehensive Plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or the IHA fails to resubmit the plan by the deadline established by HUD, any funds that would have been allocated to the IHA shall be added to the subsequent year's appropriation of funds for grants under this subpart. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under 24 CFR 950.601 and 968.103. HUD shall not disapprove a Comprehensive Plan on the basis that HUD cannot complete its review under this section within the 75-day deadline.

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) The Comprehensive Plan is incomplete in significant matters. HUD determines that the IHA has failed to include all required information or documentation in its Comprehensive Plan, e.g. the physical needs assessment does not provide all of the information required by HUD concerning all of its developments; or the IHA has supplied incomplete data on the current condition and other characteristics of its developments;

(ii) Identified needs are plainly inconsistent with facts and data. On the basis of available significant facts and data pertaining to the physical and operational condition of the IHA's developments or the management and operations of the IHA, HUD determines that the IHA's identification of modernization needs (see § 950.672(d)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from recent HUD monitoring, audits, and resident comments and will disapprove a Comprehensive Plan based on such findings as:

(A) Identified physical improvements and replacement are inadequate. The completion of the identified physical improvements and replacements will not bring all of an IHA's developments to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 950.603 (except that a development shall meet the energy conservation standards under § 950.603 only when they are applicable to the work being performed);

(B) Identified management improvements are inadequate. The identified management and operations improvement needs do not address all of an IHA's areas of deficiency, or the completion of those improvements would not result in each area of deficiency under an IHA's management improvement plan under § 950.135 being brought up to an acceptable level of performance; and

(C) Proposed physical and management improvements fail to address identified needs. The proposed physical and management improvements in the action plan are not related to the identified needs in the needs assessments portion of the Comprehensive Plan, e.g., a heating plant renovation is in the action plan, but it was not included in the needs assessment for that development.

(iii) Action plan is plainly inappropriate to meeting identified needs. On the basis of the Comprehensive Plan, HUD determines that the action plan (see § 950.672(d)(5)) is plainly inappropriate to meet the needs identified in the Comprehensive Plan, e.g., the proposed work item will not correct the need identified in the needs assessment. HUD will take into account the availability of funds. In addition, HUD will take into account whether the action plan fails to address work items that are needed to correct known emergency conditions or that are otherwise needed to meet statutory or other legally mandated requirements, as identified by the IHA in its Comprehensive Plan.

(iv) Inadequate demonstration of long-term viability at reasonable cost. HUD determines that the IHA has failed to demonstrate that completion of improvements and replacements identified in the Comprehensive Plan, as required by § 950.672(d)(2) and (3), will reasonably ensure long-term viability of one or more Indian housing developments to which they relate at a reasonable cost, as required by § 950.672(d)(4).

(v) Contradiction of local government statement or IHA resolution. HUD has evidence that tends to challenge, in a

substantial manner, the appropriate governing body's statement or IHA resolution contained in the Comprehensive Plan, as required in § 950.672(d)(6) and (7). Such evidence may include, but is not necessarily limited to:

(A) Evidence that the IHA failed to implement the Partnership Process and to meet the requirements for resident participation, as set forth in § 950.672(b). In such cases, HUD shall review the IHA's resident participation process and any supporting documentation to determine whether the standards for participation under § 950.672(b) were met;

(B) With respect to an IHA established under State law and determined to be subject to the requirements of 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), HUD shall also consider as such evidence the following:

(1) A pending proceeding against the IHA based upon a charge of discrimination pursuant to the Fair Housing Act. (For purposes of this provision, "a charge of discrimination" means a charge, pursuant to section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the HUD General Counsel, or his or her legally authorized designee.);

(2) A pending civil rights suit against the IHA instituted by the Department of Justice;

(3) Outstanding HUD findings, under § 950.120, of IHA noncompliance with civil rights statutes and executive orders or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(4) A deferral of the processing of applications from the IHA imposed by HUD under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Attorney General's Guidelines (28 CFR 50.3), and HUD's title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's section 504 regulations (24 CFR 8.57); or

(5) An adjudication of a violation under any of the authorities under § 950.120(a) in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD

approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA is expected to undertake the work set forth in the Annual Statement. However, the IHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the IHA Annual Performance and Evaluation Report for each grant. See § 950.684. HUD encourages the IHA to inform the residents of significant changes (such as changes in scope of work or whenever it moves work items within the approved Five-Year Action Plan). The IHA shall retain documentation of that information in its files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.687. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

**§ 950.678 Annual Submission of activities and expenditures.**

(a) *General.* The Annual Submission is a collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. For planning purposes, an IHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 950.669(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set

forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 950.672(d)(5)(i). An IHA may budget up to 8 percent of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and  
(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance findings.

(2) If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications shall be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 950.672(e), in consultation with officials of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public

hearing under paragraph (d)(3) of this section, the IHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and that ensures notice to all duly elected resident organizations;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, between July 1 (i.e., after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it shall explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It shall also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount

and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year shall include, for each development or on an IHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to the size of the grant, the complexity of the work, and other factors;

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs that have been identified by the IHA in its needs assessments;

(6) Documentation supporting the IHA's actions in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 950.120(a) and (b);

(7) Other information, as specified by HUD and approved by OMB under the Paperwork Reduction Act; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 950.672(d)(7).

(f) *Additional submissions with Annual Submission.* An IHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 950.672(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 950.675(b).

(g) *HUD review and approval of Annual Submission.* (1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA

in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications shall be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that HUD cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except when:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence that tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 950.672(d)(7).

(h) *Amendments to Annual Statement.* The IHA shall advise HUD of all changes to the IHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 950.684. The IHA shall submit to HUD for prior approval any additional work categories (except for emergency work) that are not within the IHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funding and extension of time for performance.*

(1) *Failure to obligate formula funds.* If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy, which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 950.687 and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(2) *Extension of time for performance.* An IHA may extend the target dates for

fund obligation and expenditure in the approved Annual Statement whenever any delay outside the IHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 950.687(a)(2) as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements when the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* As HUD may require, the IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

#### § 950.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment with the IHA, the IHA shall undertake in a timely, efficient, and economical manner the modernization activities and expenditures set forth in its approved Annual Statement or substitute work categories from within the approved Five-Year Action Plan, subject to the following requirements:

(1) The IHA may undertake the activities using force account or contract labor, including contracting with an RMC. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by an RMC, the IHA shall not retain for any administrative or other reason, any portion of the CGP funds provided, unless the IHA and the RMC provide otherwise by contract; and

(2) All activities shall be monitored by resident groups within the framework and intent of the Partnership Process.

(b) *Fund requisitions.* To request modernization funds against the

approved Annual Statement for year one, the IHA shall comply with requirements prescribed by HUD.

(c) *Contracting requirements.* The IHA shall comply with the wage rate requirements in § 950.120. In addition, the IHA shall comply with the requirements set forth in subpart B of this part, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over \$25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price, or, notwithstanding 24 CFR 85.36(h) and § 950.170, a 20 percent cash escrow, or a 25 percent letter of credit, or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price.

(2) *Previous participation.* An IHA shall ensure that the contractor is not on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(d) *Assurance of nonduplication.* The IHA shall ensure that there is no duplication between the activities carried out pursuant to the CGP, and activities carried out with other funds.

(e) *Fiscal closeout of a comprehensive grant.* Upon expenditure by an IHA of all funds, or termination by HUD of the activities funded by each annual grant, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

#### § 950.684 IHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The IHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) *Content.* The report shall include the following:

(1) An explanation of how the IHA has used other funds, such as Community Development Block Grant program assistance, State or tribal assistance, and private funding, for the needs identified in the IHA's Comprehensive Plan and for the purposes of this subpart I;

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Statement under § 950.678(h);

(3) The results of the IHA's process for consulting with residents on the implementation of the plan;

(4) The current status of the IHA's obligations and expenditures, specifying how the IHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

(5) A summary of resident, tribal, or local government comments received on the report; and

(6) A resolution by the IHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office and to local government officials, or furnished upon their request.

**§ 950.687 HUD review of IHA performance.**

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with Comprehensive Plan.* HUD will determine whether the IHA has carried out its activities under this subpart in a timely manner and in accordance with its Comprehensive Plan.

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review an IHA's progress against the

implementation schedules for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

(ii) HUD will review an IHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 950.603, this part, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD will determine whether the IHA has a continuing capacity to carry out its Comprehensive Plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except when the IHA has not yet had comparable experience under the CGP.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (a)(3) of this section as they relate to carrying out the Comprehensive Plan. HUD generally will consider an IHA to have a continuing capacity if it determines that the IHA has:

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period as approved by HUD or as extended by the IHA for reasons outside of its control;

(B) Adequately inspected the funded modernization to assure that the physical work is being carried out in accordance with the plans and specifications and the modernization and energy conservation standards (or in the case of an IHA's performance under CIAP, whether the IHA has carried out the physical work in accordance with the HUD-approved budget and in conformance with the modernization and energy conservation standards) and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved);

(C) Established and maintained internal controls for its modernization program in accordance with HUD requirements for financial management and accounting, as determined by the fiscal audit;

(D) Administered its modernization contracts in accordance with a HUD-approved procurement policy, which

meets the requirements of 24 CFR 85.36(a) and § 950.160;

(E) Carried out its activities in accordance with its Comprehensive Plan and HUD requirements; and

(F) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program;

(ii) HUD will give particular attention to IHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) With respect to the physical condition of each development, whether the work items being carried out by the IHA are in conformity with the modernization and energy conservation standards in § 950.603, and whether the IHA has brought, or is making reasonable progress toward bringing, all of its developments to these standards, in accordance with its physical needs assessment; and

(ii) With respect to the management condition of the IHA, whether the IHA has achieved, or is making reasonable progress in implementing, the work items (specified in its Annual Statement and Five-Year Action Plan) that are designed to address deficiencies identified in its management needs assessment or through audits or HUD reviews; and

(iii) In determining whether the IHA has made reasonable progress, HUD will take into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if approved by HUD or extended by the IHA for reasons outside of its control in an implementation schedule. The IHA shall demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD-approved implementation schedule) has resulted from factors beyond the IHA's control. If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such

action after a corrective action order had been issued under this section and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a correction action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(b) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a notice of deficiency stating the specific program requirements that the IHA has violated and requesting the IHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action.

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement.

(4) If HUD orders corrective action by an IHA in accordance with this section, the IHA's Board of Commissioners shall notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under this paragraph (c), and the consequences to the IHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order an IHA to take corrective action only if HUD determines:

(1) The IHA has not submitted a performance and evaluation report, in accordance with § 950.684;

(2) The IHA has not carried out its activities under the CGP program in a

timely manner and in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(1) of this section;

(3) The IHA does not have a continuing capacity to carry out its Comprehensive Plan in a timely manner or in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(2) of this section;

(4) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44 and § 950.120, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action;

(6) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(7) The IHA has been determined to be high risk, in accordance with § 950.135.

(e) *Types of corrective action.* HUD may direct an IHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for an IHA not meeting the standards in paragraphs (a)(1), (2), or (3) of this section;

(ii) Explaining any steps the IHA is taking to correct the deficiencies;

(iii) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the IHA has a continuing capacity to carry out the Comprehensive Plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including

modifications to construction and equipment contracts, and management contracts.

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies;

(8) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 950.669(d)); and

(9) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(f) *Failure to take corrective action.* In cases in which HUD has ordered corrective action and the IHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold some or all of the IHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* If HUD has withheld for a prescribed period of time some or all of an IHA's annual grant, HUD may reallocate such amounts to other IHAs/PHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs that HUD has determined to be administratively capable under § 950.135, and to PHAs under the CGP program that are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 950.601.

(h) *Right to appeal.* Before withholding some or all of the IHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the IHA and give it an opportunity, within a prescribed period

of time, to present to ONAP Headquarters, in writing, any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The IHA's Board of Commissioners shall notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the IHA and give it an opportunity to appeal in accordance with § 950.687(h). Any reallocation of recaptured amounts will be in accordance with § 950.687(g). The IHA's board of Commissioners shall notify affected residents of HUD's final determination to recapture any funds.

#### Subpart J—Operating Subsidy

##### § 950.701 Purpose and applicability.

(a) *Implementation of section 9(a).*  
(1) The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)). Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of IHA-owned rental housing (operating subsidy).

(2) This subpart establishes standards for the cost of providing comparable services as determined in accordance with a formula representing the operations of a prototype well-managed project, taking into account the character and location of the project and the characteristics of the families served. These standards, policies, and procedures are called the Performance Funding System (PFS), as described in this subpart J. The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of federal funds to compensate for excessive costs attributable to poor or inefficient management. PFS is intended to provide the incentive and financial discipline for excessively high-cost IHAs to improve their management efficiency.

(b) *Applicability.* This subpart is applicable to all IHA-owned rental units under Annual Contributions Contracts. This subpart J is not applicable to the

Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III Homeownership Opportunity Program. Provisions regarding an operating subsidy for the homeownership programs are found in the applicable subpart of this rule (subpart E of this part for Mutual Help, and subpart G of this part for Turnkey III).

##### § 950.705 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each IHA is eligible shall be determined as follows: The projected operating income level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per-unit per-month dollar amounts, and shall be multiplied by the Unit Months Available. Transition funding, if applicable, and other costs as specified in paragraphs (b) through (e) of § 950.720 are then added to this total in order to determine the total amount of operating subsidy for the requested budget year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, an IHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the independent audit to be prorated to operations of the IHA-owned rental housing (under § 950.720(a)). (See § 950.730 regarding adjustments.)

##### § 950.710 Computation of Allowable Expense Level.

The IHA shall compute its Allowable Expense Level (AEL) using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes payments in lieu of taxes (PILOT) required by a Cooperation Agreement, even if PILOT is not included in the approved operating budget for the base year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the IHA's operating budget for the base year approved by HUD except the following:

- (1) Utilities expense;
- (2) Cost of an independent audit;
- (3) Adjustments applicable to budget years before the base year;
- (4) Expenditures supported by supplemental subsidy payments

applicable to budget years before the base year;

(5) All other expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures that were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the six exclusions set forth in paragraph (a) of this section, the IHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level, if this has not already been accomplished. If such adjustment is made in the second or some later fiscal year of the PFS, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the IHA does not make these adjustments, the HUD Area ONAP shall compute the adjustments.

(c) *Computation of "Formula Expense Level."* The IHA shall compute its Formula Expense Level (FEL) in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as the number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights and a local inflation factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus \$10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level is less than the top limit of the range shall compute its AEL for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 950.730);

(i) Any increase approved by HUD in accordance with § 950.730(a);

(ii) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level and any amounts described in paragraphs (d)(1)(i) and (ii)

of this section multiplied by the local inflation factor.

(2) *Allowable Expense Level for first budget year under PFS if Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus \$10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the base year and the Formula Expense Level or the first budget year under PFS;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the local inflation factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided in paragraph (d) of this section, the IHA may be eligible for transition funding under § 950.735.)

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new IHA or a new project of an existing IHA that the IHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the base year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project." The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Area ONAP. The IHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1986 and before April 1, 1992.* For each budget year after the first budget year under PFS that begin on or after April 1, 1986 and before April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the current budget year also shall be increased (or decreased) by either:

(A) If the IHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(4)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the current budget year and the Formula Expense Level for the requested budget year. The IHA characteristics that shall be used to compute the Formula Expense Level for the current budget year shall be the same as those that were used for the requested budget year when the last adjustment to the AEL was made based on this paragraph (d)(4)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(4)(ii)(A) of this section shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(4)(i) and (ii) of this section shall be multiplied by the local inflation factor.

*Example:*

*FY 1987.* Assume that: (1) The IHA has experienced no change in the number of its units;

(2) The AEL for the IHA's FY 1986 is \$64.00; and

(3) The applicable local inflation factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is \$68.18, computed as follows:

1. Allowable Expense Level for FY 1986 .....	\$64.00
2. Delta: Increase (or Decrease) in Formula Expense Level (\$64.00 × .5 percent) .....	.32
3. Sum (line 1 plus line 2) .....	64.32
4. Local Inflation Factor .....	1.06
5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4) ...	68.18

*FY 1988.* Assume that the IHA has deprogrammed (e.g., demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (d)(4)(ii)(B) of this section was in its FY 1985, at which time the IHA had the following characteristics for its requested budget year: average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The Formula Expense Level for the current budget year is calculated using 12 years (10 years plus two years in which the standard .5 percent adjustment was used), 5 stories, and 4 bedrooms.

Also assume that Formula Expense Level calculated based on these characteristics is \$70.00 and that the IHA average characteristics for the requested budget year are now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a Formula

Expense Level for the requested budget year of \$68.00. The Formula Expense Level for the requested budget year, therefore, decreases by \$2.00. Assuming that the local inflation factor is 4.5 percent (expressed as 1.045), the AEL for FY 1988 is \$69.16, computed as follows:

1. Allowable Expense Level for FY 1987 .....	\$68.18
2. Delta (or Decrease) in Formula Expense Level .....	(2.00)
3. Sum (line 1 plus line 2) .....	66.18
4. Local Inflation Factor .....	1.045

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant, and local inflation factor for the requested budget year applied first to the IHA characteristics for the current budget year and then to the IHA characteristics for the requested budget year, to determine the respective Formula Expense Levels. The local inflation factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on this paragraph (d)(5)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) of this section shall be added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of §§ 950.710(b) or 950.720(c).

**§ 950.715 Computation of Utilities Expense Level.**

(a) *General.* In recognition of the rapid rises that occur in utilities costs, the wide diversity among IHAs as to types of utilities services used, the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's Allowable Expense Level, and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's Utilities Expense Level for the requested budget year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(2) If an IHA takes action, such as a well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the IHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the IHA may be permitted to retain one-half the annual cost savings for an additional period not to exceed six years, if the actions continue to be cost-effective. See also paragraph (f) of this section and § 950.730(c).

(c) *Computation of "Allowable Utilities Consumption Level."* The

Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of an IHA for the requested budget year generally will be based upon the availability of consumption data. For project utilities for which consumption data are available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. If data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project for which the IHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the AUCL may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using all of the paragraphs in this paragraph (c), as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (i.e., the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) *IHA fiscal years affected.* The rolling base period shall be used to compute the AUCL submitted with the operating budgets. (ii) An example of a rolling base is as follows:

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-92 ...	12-31-92 (1st year).	1-1-88	12-31-90
1-1-93 ...	12-31-93 (2nd year).	1-1-89	12-31-91

(2) Alternative method if data is not available for the entire rolling base period:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Area ONAP for approval. If this is

not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

(ii) In those cases when an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit per-month utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A new project, for the purpose of establishing the rolling base period and the Utilities Expense Level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year; or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another, interruptible service, deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities, or a switch from IHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level (AUCL).* (i)

Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if an IHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the AUCL for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it shall be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the IHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities Expense Level when consumption data for the full rolling base period is unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Area ONAP approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD-52599 (Office of Management and Budget approval number 2577-0067), prepared for the IHA fiscal year that ended 12 months before the beginning of the IHA requested budget year (e.g., for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal

year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(e) *Adjustments.* IHAs shall request adjustments of utilities expense levels in accordance with § 950.730(c), which requires an adjustment based upon a comparison of actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If an IHA undertakes energy conservation measures (including measures to save water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the IHA may qualify for one of two possible incentives under this part. For an IHA to qualify for these incentives, it shall obtain HUD approval. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the IHA's payments to be dependent on the cost savings it realizes, the IHA shall use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the IHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 950.730(c)(2)(ii).

(2) If the contract does not allow the IHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the IHA will be able to retain part of the cost savings, in accordance with § 950.730(c)(2)(i); and the IHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 950.730(f).

#### **§ 950.720 Other costs.**

(a) *Costs of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the

cost of an independent audit if the audit has been funded by subsidy in a prior year. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, it should contact the HUD Area ONAP.

(2) An IHA that is required by the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and one or all of its operating budgets, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 950.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) *Costs attributable to units approved for deprogramming and vacant.* (1) Units approved for deprogramming are those for which the IHA's formal request has been approved by HUD but for which deprogramming has not been completed. Costs for these units may be eligible for inclusion, but shall be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for IHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by the IHA and supporting documentation regarding direct costs attributable to such units shall be included as part of the operating budget in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, it should contact the HUD Area ONAP.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to them are to be included in the operating budget. If a unit

satisfies the conditions stated in paragraphs (b)(2) (i) through (v) of this section, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than three years. Renewal of the approval to allow payments after that period may be made only if the IHA can demonstrate that no other sources for paying the nonutility operating costs of the unit are available:

(i) The unit shall be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities shall be directed toward and for the benefit of residents of the development.

(ii) The IHA shall demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that resources are committed to make the space safe and suitable.

(iii) The IHA shall demonstrate satisfactorily that other funding is not available to pay for the nonutility operating costs. All rental income generated as a result of the activity shall be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per Indian housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The IHA shall submit a certification with its Performance Funding System calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA shall maintain specific documentation of the units covered. Such documentation should include a listing of the units and project/management control numbers.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations have caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, and upon a determination that sufficient other

funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the IHA may apply for or may receive an increase in operating subsidy.

(d) *Costs beyond the control of the IHA.* Costs attributable to unique circumstances that are beyond the control of the IHA and were not reflected in the IHA's Base Year Expense Level may be considered for supplemental operating subsidy funding. When costs were reflected in the IHA's Base Year Expense Level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The IHA shall submit to the HUD Area ONAP complete documentation relating to those cost items that it claims to be beyond its control. Such documentation shall not be submitted as part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The IHA also shall show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under §§ 950.705 and 950.720 of this chapter, HUD may, in HUD's sole discretion, solicit, evaluate, and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the IHA.

(e) *Costs resulting from combination of two or more units.* When an IHA redesigns or rehabilitates a project and combines two or more units into one larger unit, and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula  $[(2 \times \text{No. of bedrooms}) \text{ minus } 1]$ , which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(f) *User fee.* Additional operating subsidy will be provided to IHAs for payment of an annual User Fee separate from the PFS. An IHA operating a rental program shall pay an annual User Fee to municipalities, which may include tribal, city, county governments or other political subdivisions that provide any

roads, water supply, sewage facilities, electrical systems, or fuel distribution systems. The annual User Fee will be paid in an amount equal to 10 percent of the applicable shelter rent, minus the utility allowance; or \$150, whichever is greater, for each rental housing unit covered by this section.

(g) *Funding for resident organization expenses.* In accordance with the provisions of 24 CFR Part 950, subpart O, and procedures determined by HUD, each IHA with a duly elected resident organization shall include in the operating subsidy eligibility calculation \$25 per unit per year (subject to appropriations) for each unit represented by a duly-elected resident organization in support of the duly elected resident organization's activities.

#### **§ 950.725 Projected operating income level.**

(a) *Policy.* PFS determines the amount of operating subsidy for a particular IHA based in part upon a projection of the actual dwelling rental income and other income for the particular IHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the IHA, and projecting this amount for the requested budget year by applying an upward trend factor (subject to updating) of three percent, and multiplying this amount by the projected occupancy percentage for the requested budget year. Nondwelling income is projected by the IHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the IHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all project units, as shown on the rent roll control and analysis of dwelling rent charges, which the IHA is required to maintain, for the first day of the month that is six months before the first day of the requested budget year, except that if a change in the total of the rent rolls has occurred in a subsequent month that is before the beginning of the requested budget year and before the submission of the requested budget year operating budget, the IHA shall use the latest changed rent roll for the purpose of the computation. This aggregate dollar amount shall be divided by the

number of occupied dwelling units as of the same date.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by three percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the requested budget year.

(3) *Projected occupancy percentage.* The IHA shall determine its projected percentage of occupancy for all project units (projected occupancy percentage) as follows:

(i) *High occupancy IHAs.* If the IHA's actual occupancy percentage (see § 950.760) is equal to or greater than 97 percent, the IHA's projected occupancy percentage is 97 percent.

(ii) *High occupancy IHAs exclusive of scheduled modernization.* If the IHA's actual occupancy percentage (see § 950.760) is less than 97 percent solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, the IHA's projected occupancy percentage is its actual occupancy percentage. An IHA may also use its actual occupancy percentage as its projected occupancy percentage if the IHA has five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section.

(iii) *Low occupancy IHAs with an approved Comprehensive Occupancy Plan (COP).* If the IHA has an actual occupancy percentage (see § 950.760) less than 97 percent and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, and if the IHA has a HUD-approved COP, the IHA's projected occupancy percentage is determined under § 950.770(g).

(iv) *Low Occupancy IHAs without an approved COP.* (A) The IHA shall use 97 percent as its projected occupancy percentage, if the IHA:

(1) Has an actual occupancy percentage (see § 950.760) less than 97 percent and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; and the IHA:

(2)(i) Has completed the term of its approved COP but has not achieved a 97 percent actual occupancy percentage or has not had five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; or

(ii) Is authorized to submit a COP but elects not to submit one; or

(iii) Submits a COP that is disapproved by HUD.

(B) Notwithstanding the requirement in paragraph (b)(3)(iv)(A) of this section that 97 percent be the projected occupancy percentage, a low occupancy IHA that satisfies all the conditions described in paragraph (b)(3)(iv)(A)(2)(i) of this section, may adjust the 97 percent projected occupancy percentage to discount units that are vacant for reasons beyond its control, as provided in § 950.770(h).

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the Comprehensive Improvement Assistance Program (subpart I of this part) or other sources; and for which:

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The IHA has a schedule for carrying out the modernization that is acceptable to HUD; and

(C) The modernization work is on schedule.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new projects.* The projected average monthly dwelling rental charge for new projects that were not available for occupancy during the budget year before the requested budget year and that will reach the end of the initial operating period (EIOP) within the first nine months of the requested budget year, shall be calculated as follows:

(1) If the IHA has another project or projects under management that are comparable in terms of elderly and nonelderly tenant composition, the IHA shall use the projected average monthly dwelling rental charge for such project or projects.

(2) If the IHA has no other projects that are comparable in terms of elderly and nonelderly tenant composition, the HUD Area ONAP will provide the projected average monthly dwelling rental charge for such project or projects, based on comparable projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken after the effective date of these regulations, which affects rent paid by

tenants of projects, each IHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income that it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect the IHA's estimate of change, or in the absence of this submission, to reflect HUD's estimate of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the IHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *IHA's estimate of income other than dwelling rental income.* (1) *Investment income.* IHAs with an estimated average cash balance of less than \$20,000, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall make a reasonable estimate of investment income for the Requested Budget Year. IHAs with an estimated average cash balance of \$20,000 or more, excluding investment income earned from a funded replacement reserve under § 950.666(f), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's Requested Budget Year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of \$10,000, plus \$10 per unit for each unit over 1,000, subject to a total maximum deduction of \$250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. (See § 950.730(b)).

(2) *Other income.* All IHAs shall estimate other income based on past experience and a reasonable projection for the requested budget year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and other income, as approved, shall be divided by the number of unit months available to obtain a per-unit per-month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the projected operating income level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

(f) *Required adjustments to estimates.* The IHA shall submit year-end adjustments of projected operating income levels in accordance with § 950.730(b), which covers investment income.

**§ 950.730 Adjustments.**

Adjustment information submitted to HUD under this section shall be accompanied by an original or revised operating budget.

(a) *Adjustment of Base Year Expense Level.* (1) *Eligibility.* An IHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing IHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only when the IHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 950.710(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the per-unit per-month amount by which the top of the range exceeds the Base Year Expense Level or \$10.31.

(2) *Procedure.* An IHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request shall be submitted to the HUD Area ONAP, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph shall include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and shall show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* An IHA that has an estimated average cash balance of at least \$20,000 shall submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the IHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a target investment income amount based on the actual average yield on 91-day Treasury bills for the IHA's fiscal year being adjusted and the actual average cash balance available for investment during the IHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the IHA with the actual average yield on 91-day Treasury bills for the IHA's fiscal year. Failure of an IHA to submit the required

adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* An IHA receiving operating subsidy under § 950.705, excluding those IHAs that receive operating subsidy solely for IPA audit (§ 950.720(a)), shall submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the IHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Area ONAP by a deadline established by HUD, which will be during the IHA fiscal year following the IHA fiscal year for which an operating subsidy was received by the IHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the IHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* (i) A decrease in the utilities expense level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, when the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the IHA, such as well-head purchase of natural gas, or administrative appeals or legal action beyond normal public participation in ratemaking proceedings, then the IHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year, and upon determination that the action was cost-effective in the first year, for up to an additional six years, as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(ii) An increase in the utilities expense level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of an IHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 950.715(f)(1), the IHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes. The savings realized shall be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of IHA employees, counseling of tenants, IHA management of the cost reduction program, and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) Fifty percent of the increase in the Utilities Expense Level attributable to increased consumption will be funded by increased operating subsidy payments, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, when an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, the IHA may submit to HUD an adjustment covering only the rate increase at any time during the IHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, the IHA shall submit this adjustment to the HUD Area ONAP by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* The IHA shall retain supporting documentation substantiating the requested adjustments pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* The IHA may make requests for adjustments to projected average monthly dwelling rental income as follows:

(1) *Criteria for granting request.* An IHA may request an adjustment to projected average monthly dwelling rental income under PFS if the IHA can establish to HUD's satisfaction that the projected amount computed under § 950.725 was not attained because of

circumstances beyond the control of the IHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the IHA's rent schedule that has been approved by HUD. The IHA shall also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part, or deny any requested adjustments to projected average monthly dwelling rental income.

(2) *Procedure.* The IHA shall submit a request for an adjustment under this subsection to the HUD Area ONAP by a deadline established by HUD, which will be within twelve months following the IHA's fiscal year being adjusted. In emergency cases, however, when an IHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, the IHA may submit a request for adjustments to HUD at an earlier time.

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 950.715(f)(2), then the IHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for the Heating Degree Days experience for the year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(ii) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the IHA's operating subsidy eligibility for the IHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if

HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or IHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(f) *Formal review process (1992).* (1) *Eligibility for consideration.* Any IHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If an IHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the IHA and its community, then the IHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the IHA's request. The revised formula expense level for the fiscal year ending during calendar year 1992 is the IHA's value of the following formula, after updating by the local inflation factors from FY 1989 to the requested budget year.

(ii) The revised formula is the sum of the following six numbers:

(A) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This Census-based statistic applies to the county of the IHA, except that, if the IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted IHA standard of 1.0. For multi-county IHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment

determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) The lesser of the current number of the IHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(D) The current ratio of the number of the IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the IHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy, averaging 35 or more units available for occupancy per building, and containing at least one building with units available for occupancy that is five or more stories high.

(E) The current ratio of the number of the IHA's three or more bedroom units available for occupancy to the number of all the IHA's units available for occupancy multiplied by a weight of 22.303.

(F) An equation calibration constant of  $-.2344$ .

(3) *Procedure.* If an IHA wants to request a revision to its AEL, it should determine whether its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the IHA's AEL and operating budget for the fiscal year ending in calendar year 1993, the IHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If an IHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the IHA shall submit a revision to its operating budget with calculations based on the new AEL. If an IHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If an IHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the IHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

(g) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the IHA's operating subsidy as result of data subsequently available to HUD that alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the IHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the IHA, the HUD Area ONAP may establish a recovery schedule that represents the minimum number of years needed for repayment.

**§ 950.735 Transition funding for excessive high-cost IHAs.**

If an IHA's Base Year Expense Level exceeds its Allowable Expense Level, computed as provided in § 950.710, for any budget year under PFS, the IHA may be eligible for transition funding. Transition funding shall be an amount not to exceed the difference between the Base Year Expense Level and the Allowable Expense Level for the requested budget year, multiplied by the number of units months available. HUD shall have the right to discontinue payment of all or part of the transition funding in the event HUD at any time determines that the IHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

**§ 950.740 Operating reserves.**

The IHA shall maintain an operating reserve in an amount sufficient for working capital purposes, estimated future nonroutine maintenance requirements for IHA-owned administrative facilities, common property and dwelling units, payment of advanced insurance premiums, unanticipated project requirements, and other eligible uses as determined by the IHA.

**§ 950.745 Operating budget submission and approval.**

(a) *Required documentation.* (1) An IHA shall prepare an operating budget each fiscal year in a manner prescribed by HUD. The board of commissioners shall review and approve the budget by resolution. Each fiscal year, the IHA shall submit to the Area ONAP the approved board resolution and the necessary HUD-required PFS calculation forms.

(2) The Area ONAP may direct an IHA to submit a complete operating budget if the IHA has been issued a corrective

action order with respect to financial management. If such action is necessary, the Area ONAP will notify the IHA prior to the beginning of the fiscal year.

(b) *HUD operating budget review.* (1) The HUD Area ONAP will perform a detailed review on IHA operating budgets that are subject to HUD review and approval. If the HUD Area ONAP finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Area ONAP may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(2) When the IHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing, HUD will notify the IHA that it no longer is required to submit an operating budget to HUD for review and approval.

**§ 950.750 Payment procedure for operating subsidy under PFS.**

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the IHA and approved by HUD, reflecting the IHA's projected cash needs. The schedule may provide for several payments per month. If an IHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of an IHA's budget year under these PFS regulations in this subpart, annual, monthly, or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the IHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to IHAs.

**§ 950.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.**

(a) *Policy.* The income and composition of each family shall be reexamined at least annually (see § 950.315). IHAs shall be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *IHAs in compliance with requirements.* Each submission of the original operating budget for a fiscal year shall be accompanied by a certification by the IHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with subpart D of this part.

(c) *IHAs not in compliance with requirements.* Any IHA not in compliance with the annual income reexamination requirement at the time of operating budget submission shall furnish to the HUD Area ONAP a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the operating budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Area ONAP Director determines that the IHA is not substantially in compliance with the annual income reexamination requirement, HUD shall withhold payments to which the IHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the IHA resulting from its failure to comply with those requirements.

**§ 950.760 Determining actual occupancy percentage.**

(a) For each requested budget year beginning on or after July 1, 1986, the IHA shall determine the percentage of occupancy for all project units included in the unit months available (actual occupancy percentage), at its option, either:

(1) For the last day of the month that ends six months before the beginning of the requested budget year; or

(2) Based on the average occupancy during the month ending six months before the beginning of the requested budget year.

(b) If the IHA elects to use an average, it shall maintain a record of its computation of its actual occupancy percentage. The actual occupancy percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy

rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition, or disposition not reflected in the adjustment, the IHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

**§ 950.770 Comprehensive Occupancy Plan (COP) requirements.**

(a) *IHAs that may submit a Comprehensive Occupancy Plan (COP).* An IHA may prepare and submit a COP to HUD in accordance with the provisions of this section:

(1) For its first requested budget year beginning on or after July 1, 1986, if the IHA has an actual occupancy percentage (§ 950.760) less than 97 percent, and has more than five vacant units, not solely because of vacant, on-schedule modernization units (as defined in § 950.725(b)(3)(v)); or

(2) For a requested budget year beginning on or after July 1, 1987, if:

(i) The IHA projects an actual occupancy percentage (§ 950.760) for the requested budget year of less than 97 percent and has more than five vacant units, other than vacant, on-schedule modernization units;

(ii) The IHA is not currently a low occupancy IHA, that is, the IHA had an actual occupancy percentage determined under § 950.760 for the current requested budget year that equalled or exceeded 97 percent or had five or fewer vacant units other than vacant, on-schedule modernization units; and

(iii) The IHA is not currently under a COP.

(b) *Comprehensive Occupancy Plan content.* A COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(1) The general IHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the IHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The project-specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97 percent.

(ii) State the project-specific actions the IHA is taking or intends to take to eliminate vacancies, such as:

- (A) Modernization;
- (B) Demolition;
- (C) Disposition;
- (D) Change in occupancy policy; or
- (E) Physical or management

improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The COP shall also include yearly IHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97 percent stated for each year until there is a projected IHA-wide occupancy rate of at least 97 percent or an estimate that the IHA will have five or fewer vacant units, excluding units that are vacant, on-schedule modernization units. These goals should reflect the average occupancy percentage for each year. The yearly occupancy goals (both IHA-wide and project specific) for the first year of a COP that is submitted with an IHA's budget for its first requested budget year beginning on or after July 1, 1986, shall take into account actions taken by the IHA from August 2, 1985, to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan.* An IHA that submits a COP to HUD for approval in accordance with paragraph (a) of this section shall submit the COP with its budget.

(d) *Maximum term of a Comprehensive Occupancy Plan.* (1) Except as provided in paragraph (d)(2) of this section, a COP:

(i) Submitted for an IHA's first requested budget year beginning on or after July 1, 1986, shall be for a period approved by HUD as reasonable, which shall not exceed five years; or

(ii) Submitted for a requested budget year beginning on or after July 1, 1987, shall be for a period of one or two years, as approved by HUD.

(2) A COP that exceeds the maximum period provided in paragraphs (d)(1)(i) or (ii) of this section may be approved only if the Assistant Secretary for Public and Indian Housing has given written authorization for such longer period before the approval of the COP.

(e) *Local governing body review.* The IHA shall have the COP reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the COP.

(f) *HUD review of Comprehensive Occupancy Plan.* If HUD fails to approve, disapprove, or otherwise substantively comment on a COP within

45 days of receipt of the plan, the IHA-wide yearly occupancy goal for the first year of the COP shall be considered approved for the purpose of determining the IHA's projected occupancy percentage under paragraph (g) of this section.

(g) *Projected Occupancy Percentage (Comprehensive Occupancy Plan).* An IHA that has a HUD-approved COP shall use as its projected occupancy percentage for computing its projected operating income level under § 950.725 the greater of its actual occupancy percentage, as determined under § 950.760, or its approved, yearly IHA-wide occupancy goal, adjusted as necessary to discount units that are vacant for reasons beyond the IHA's control, as provided in paragraph (h) of this section.

(h) *Units vacant for reasons beyond an IHA's control.* A vacant unit is considered vacant for reasons beyond an IHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The IHA has applied for modernization, HUD cannot fund the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on-schedule modernization units.

(3) The units are vacant because of natural disasters, or as a result of court-ordered, or HUD-approved, constraints relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

**§ 950.772 Financial management systems, monitoring, and reporting.**

The financial management systems, monitoring, and reporting on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40, and 85.41, except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)(1)).

**§ 950.774 Operating subsidy eligibility for projects owned by IHAs in Alaska.**

The provisions of this subpart are applicable to the development, modernization, and operation of the rental housing owned by the IHAs in the State of Alaska, excluding the formula calculation for the PFS.

## Subpart K—Energy Audits, Energy Conservation Measures and Utility Allowances

### § 950.801 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart K is to implement HUD policies in support of national energy conservation goals by reducing energy consumption through requiring that IHAs conduct energy audits and undertake certain cost-effective energy conservation measures. This subpart K also provides for the establishment of utility allowances for residents based on reasonable consumption of utilities by an energy-conscious household.

(b) *Applicability.* The provisions of this subpart K apply to all IHAs with IHA-owned housing, including Mutual Help and Turnkey III.

### Energy Audits and Energy Conservation Measures

#### § 950.805 Requirements for energy audits.

All IHAs shall complete an energy audit for each IHA-owned project under management. Standards for energy audits shall be equivalent to State or tribal standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the IHA.

#### § 950.810 Order of funding.

Within the funds available to an IHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. However, HUD Area ONAPs should permit IHAs to make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM), or a situation in which an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. Area ONAPs may not authorize installation of individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

#### § 950.812 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are

eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If an IHA finances energy conservation measures from sources other than modernization or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the IHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. (See § 950.730(e)).

#### § 950.815 Energy conservation equipment and practices.

In purchasing original or, when needed, replacement equipment, IHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, IHAs shall follow operating practices directed to maximum energy conservation.

#### § 950.822 Compliance schedule.

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

#### § 950.825 Energy performance contracts.

*Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(a) Competitive proposals (see § 950.165(c)). In identifying the evaluation factors and their relative importance, as required by § 950.165(c)(1), the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(b) If the services are available only from a single source, noncompetitive proposals (see § 950.165(d)).

### Individual Metering of Utilities

#### § 950.840 Individually metered utilities.

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the

policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the IHA shall be selected.

#### § 950.842 Benefit/cost analysis.

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 950.846.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the IHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the IHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the IHA for IHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

#### § 950.844 Funding.

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

#### § 950.845 Order of conversion.

Conversions to individually metered utility service shall be accomplished in the following order when an IHA has projects of two or more of the designated categories, unless otherwise approved by the HUD Area ONAP:

(a) In projects for which retail service is provided by the utility supplier and the IHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the IHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being

utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

#### **§ 950.846 Actions affecting residents.**

(a) Before making any conversion to retail service, the IHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the requisite changes shall be made in resident dwelling leases in accordance with subpart D of this part.

(c) To the extent practicable, IHAs should work closely with resident organizations in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, IHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include

counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

#### **§ 950.849 Waivers for similar projects.**

IHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the HUD Area ONAP to waive the requirements of this subpart for benefit/cost analysis on the remaining similar projects.

#### **§ 950.850 Reevaluations of mastermeter systems.**

Because of changes in the cost of utility services and the periodic changes in utility regulations, IHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 36 months. HUD Area ONAPs may grant waivers of this requirement upon making a finding as provided in § 950.849.

#### **Resident Utility Allowances**

##### **§ 950.860 Applicability.**

(a) Sections 950.860 through 950.876 apply to all Indian housing dwelling units, including those operated under the Mutual Help Homeownership Opportunity Program.

(b) In rental units for which utilities are furnished by the IHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption of resident-owned major appliances, or for optional functions of IHA-furnished equipment, in accordance with § 950.865(e), but no utility allowance will be established.

##### **§ 950.865 Establishment of utility allowances by IHAs.**

(a) IHAs shall establish allowances for IHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The IHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The IHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled

surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the IHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the IHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of IHA operations.

(e) The IHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

##### **§ 950.867 Categories for establishment of allowances.**

Separate allowances shall be established for each utility and for each category of dwelling units determined by the IHA to be reasonably comparable as to factors affecting utility usage. The IHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the IHA.

##### **§ 950.869 Period for which allowances are established.**

(a) *IHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer residents a uniform payment plan, the allowances established may provide for seasonal variations.

##### **§ 950.870 Standards for allowances for utilities.**

(a) The objective of an IHA in designing methods of establishing

utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both IHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the IHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the IHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the IHA, in its discretion, to achieve the foregoing objective will depend upon the data available to the IHA and the extent of the administrative resources reasonably available to the IHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the IHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three.

(2) The climatic location of the housing projects.

(3) The size of the dwelling units and the number of occupants per dwelling unit.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of IHA-supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment.

(7) The physical condition, including insulation and weatherization, of the housing project.

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(9) Temperature of domestic hot water.

**§ 950.872 Surcharges for excess consumption of IHA-furnished utilities.**

(a) For dwelling units subject to allowances for IHA-furnished utilities

where checkmeters have been installed, the IHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the IHA's average utility rate. The basis for calculating such surcharges shall be described in the IHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the IHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by IHA-furnished utilities where checkmeters have not been installed, the IHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of IHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of IHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the IHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

**§ 950.874 Review and revision of allowances.**

(a) *Annual review.* The IHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 950.870, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the IHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The IHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into

account in such revision became effective.

**§ 950.876 Individual relief.**

Requests for relief from surcharges for excess consumption of IHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the IHA on reasonable grounds, such as special needs of elderly, ill or handicapped residents, or special factors affecting utility usage not within the control of the resident, as the IHA shall deem appropriate. The IHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the IHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the IHA representative with whom initial contact may be made by residents), and the IHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 950.865(c) and in the information given to new residents upon admission.

**Subpart L—Operation of Projects After Expiration of Initial ACC Term**

**§ 950.901 Purpose and applicability.**

(a) *Purpose.* This subpart L specifies methods for extending the effective period of provisions of the ACC relating to project operation beyond the original ACC term. Such an extension provides a contractual basis for continued eligibility for operating subsidy.

(b) *Applicability.* This subpart L applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However, it does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs and the Section 10(c) and Section 23 Leased Housing Programs.

**§ 950.903 Continuing eligibility for operating subsidy; ACC extension.**

(a) *Operating subsidy.* After the initial term of the ACC, HUD will pay operating subsidy with respect to a project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation for at least ten years after the last payment of HUD assistance. The ACC amendment shall be in the form prescribed by HUD, and shall specify the particular provisions of the ACC that relate to continued project operation and, therefore, remain in effect for the extended ACC term. These

provisions shall include a requirement that the IHA execute and file, for public record, an appropriate document evidencing the IHA's covenant not to convey, encumber or make any other disposition of the project without HUD approval for a period of ten years after the receipt of the last payment of HUD assistance.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (consolidated ACC), each annual operating subsidy payable under that ACC is a lump-sum amount which is not divided into discrete amounts for the individual projects subject to the consolidated ACC (see subpart J of this part). Accordingly, if an IHA, before submitting a request for operating subsidy, determines that any project(s) under the consolidated ACC will not require operating subsidy and should not be subject to the provisions of paragraph (a) of this section, the IHA shall accompany its request with a resolution adopted by the Board of Commissioners certifying that no operating subsidy shall be used with respect to such project(s) thereafter and that all financial records and accounts shall be kept separately for such project(s). In such cases, the removal of the project(s) from the request for operating subsidy shall be reflected by the inclusion of that number of unit months available for the project(s) when making the calculations, under subpart J of this part, for determination of total amount of operating subsidy payable under the consolidated ACC. In any event no operating subsidy payable under a consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project that is ineligible or otherwise excluded from operating subsidy under paragraph (a) of this section. Even if no operating subsidy is received with respect to a project, the IHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

**§ 950.905 ACC extension in absence of current operating subsidy.**

Where no operating subsidy is being paid under an ACC, the IHA shall, at least one year before the anticipated ACC expiration date for the project, notify the Area ONAP as to whether or not the IHA desires to maintain a basis for receiving operating subsidy with respect to the project after the anticipated ACC expiration date. This notification shall be submitted to the appropriate Area ONAP in the form of a resolution by the IHA's Board of

Commissioners. If the IHA does not desire to maintain a basis for operating subsidy payments with respect to the project after the anticipated ACC expiration date, the resolution shall certify that no operating subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the IHA does desire to maintain a basis for such operating subsidy payments, the resolution shall include the IHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon the Area ONAP's receipt of the request, HUD and the IHA shall enter into an ACC amendment effecting the extension for the period requested by the IHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in subpart M of this part.

**§ 950.907 HUD approval of disposition or demolition.**

During the post-assistance service period of continued operation as low-income housing, HUD may authorize an IHA to dispose of or demolish housing units at any time, in accordance with subpart M of this part.

**Subpart M—Disposition or Demolition of Projects**

**§ 950.921 Purpose and applicability.**

(a) *Purpose.* This subpart M sets forth requirements for HUD approval of an IHA's application to dispose of or demolish (in whole or in part) IHA-owned projects assisted under the Act. The rules and procedures contained in 24 CFR part 85 are inapplicable.

(b) *Applicability.* (1) *Type of projects.* This subpart M applies to any Indian housing project that is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c), including rental, Turnkey III, or Mutual Help housing. This subpart M does not apply to:

(i) IHA-owned Section 8 housing or housing leased under section 10(c) or section 23 of the Act (42 U.S.C. 1437h(c) or 1437u);

(ii) Demolition or disposition before the end of the initial operating period (EIOP), as determined under the ACC, of property acquired incident to the development of an Indian housing project (however, this exception does not apply to units occupied or available for occupancy by Indian housing tenants before EIOP);

(iii) Conveyance of Indian housing for the purpose of providing

homeownership opportunities for low-income families under section 21 of the Act, the Turnkey III or Mutual Help Homeownership Opportunity programs, or any other homeownership programs established under sections 5(h) and 6(c)(4)(D) of the Act (42 U.S.C. 1437c(h), 1437d(c)(4)(3)) or titles II and III of the Act (42 U.S.C. 1437aa, 1437aaa).

(iv) Leasing of dwelling or nondwelling space incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(v) Easements, rights-of-way, and transfers of utility systems incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(vi) Reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without demolition; and

(vii) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain.

(2) [Reserved].

(c) *Type of actions.* Any action by an IHA to dispose of or demolish an Indian housing project or a portion of an Indian housing project is subject to the requirements of this subpart M. Until such time as HUD approval may be obtained, the IHA may not take any action to dispose of or demolish an Indian housing project or portion of an Indian housing project, and the IHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. This does not mean that HUD approval under this subpart M is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning, or comprehensive occupancy planning.

**§ 950.923 General requirements for HUD approval of disposition or demolition.**

(a) For purposes of this subpart M, the term "tenant" will also include "homebuyer" when the development involved is a homeownership project; and the term "unit of general government" will include the tribal government, when applicable.

(b) HUD will not approve an application for disposition or demolition unless:

(1) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any IHA-wide tenant organizations that will be affected by the disposition or demolition;

(2) The IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations as required under § 950.925;

(3) The application contains a certification by the chief executive officer, or designee, that the unit of general government will comply with displacement, relocation, and real property acquisition policies described in § 950.117;

(4) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in HUD's regulations at 24 CFR part 50. When the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application shall contain a certification that the applicant agrees to assist HUD to comply with 24 CFR part 50, and that the applicant shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair, or construct property, or commit HUD funds or other funds to such program activities with respect to any eligible property, until HUD approval is received.

(5) The IHA has developed a replacement housing plan, in accordance with § 950.935, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (e.g., State, tribal, or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

**§ 950.925 Resident organization opportunity to purchase.**

(a) *Applicability.* (1) This section applies to applications for demolition or disposition of a development which involve dwelling units, nondwelling spaces (e.g., administration and community buildings, maintenance facilities), and excess land.

(2) The requirements of this section do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

(i) The IHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

(ii) The tribal or local government has condemned the property proposed for demolition;

(iii) A tribal or local government agency has determined and notified the IHA that units shall be demolished to allow access to fire and emergency equipment;

(iv) The IHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long-term viability of the development or the IHA (but in no case should this be used cumulatively to avoid Section 412 requirements); or

(v) A public body has requested to acquire vacant land that is less than two acres in order to build or expand its services (e.g., a tribal or local government wishes to use the land to build or establish a police substation).

(3) In the situations listed in paragraph (a)(2) of this section, the IHA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with § 950.923(b)(1). The IHA shall submit written documentation, on official stationery, with date and signatures to justify paragraphs (a)(2)(i) through (v) of this section. Examples of such documentation include:

(i) A certification from a tribal or local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or

(ii) A copy of the condemnation order from the local health department. If, however, at some future date, the IHA proposes to sell the remaining property described in paragraphs (a)(2)(i) through (iii) of this section, the IHA will be required to comply with this section.

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident organization, resident management corporation or resident cooperative at the time of the IHA proposal to demolish or dispose of the development or a portion of the

development, the IHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of "reasonable effort" at a minimum include at least one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. HUD will not approve any application that cannot demonstrate that the IHA has allowed at least 45 days for the residents of the affected development to organize a resident organization. The IHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under § 950.923(b)(1).

(c) *Established organizations.* Where there are duly formed resident management corporations, resident organizations or resident cooperatives at the affected development, the IHA should follow the procedures beginning in paragraph (d) of this section. Where the affected development is fully or partially occupied, the residents shall be given the opportunity to form under the procedures in paragraph (b) of this section.

(d) *Offer of sale to resident organizations.* (1) The IHA shall make the formal offer for sale which shall include the information listed in this section. All contacted organizations shall have 30 days to express an interest in the offer. The IHA shall offer to sell the property proposed for demolition or disposition to the resident management corporation, the resident organization or resident cooperative of the affected development under at least as favorable terms and conditions as the IHA would offer it for sale to another purchaser. The offer shall include:

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead based paint test results), and occupancy status (e.g., percent occupancy);

(ii) In the case of disposition, a copy of the appraisal of the property and any terms of sale;

(iii) An IHA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition;

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation, resident organization or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use;

(v) Any and all terms of sale that the IHA requires for the Section 18 action; [If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer.]

(vi) A date by which the resident management corporation, resident organization or resident cooperative of the affected development shall respond to the IHA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the IHA which will be made sometime after the meeting. The response from the resident management corporation, resident organization or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the IHA's written offer.

(vii) A statement that the resident management corporation, resident organization and resident cooperative of the affected development will be given up to 60 days to develop and submit a proposal to the IHA to purchase the property and to obtain a firm financial commitment. It shall explain that the IHA shall approve the proposal from the resident management corporation, resident organization or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the IHA can consider accepting an offer from the resident management corporation, resident organization or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the IHA receives more than one proposal from a resident management corporation, resident organization or resident cooperative at the affected development, the IHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the

terms of sale, the IHA shall choose the best proposal.

(2) After the 30 day time frame for the resident management corporation, resident organization or resident cooperative of the affected development to respond to the notification letter has expired, the IHA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has up to 60 days from the date of its affirmative response to prepare and submit a proposal to the IHA that provides all the information requested in paragraph (d)(1) of this section and meets the terms of sale.

(e) *IHA review of proposals.* The IHA has up to 60 days from the date of receipt of the proposals to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident organization or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the IHA may consider accepting the offer. If the terms of sale are met, within 14 days of the IHA's final decision, the IHA shall notify the resident management corporation, resident organization or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident organization or resident cooperative of the affected development has the right to appeal the IHA's decision to the HUD Area ONAP. A written appeal shall be made within 30 days of the decision by the IHA. The appeal should include copies of the proposal and any related correspondence. The HUD Area ONAP will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the IHA and the resident management corporation, resident organization or resident cooperative of the affected development.

(g) *Contents of proposal.* (1) The proposal from the resident management corporation, resident organization or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned

acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for-profit, governmental or other entities), if any, the proposed division of responsibilities between the two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with § 950.931(h), if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the IHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of IHA approval of the proposal, or such period as the IHA may determine to be reasonable.

(2) If the proposal is to purchase the property for homeownership under section 5(h) or HOPE 1, then the requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart do not apply, and the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 24 CFR Subtitle A, App. A, or the section 5(h) regulation, as set forth in subpart P of this part. In order for the IHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the resident management corporation, organization or resident cooperative of the affected development shall meet the provisions of this subsection, including items in paragraph (g)(1) of this section.

(3) If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal shall meet all the disposition requirements of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart.

(h) *IHA Obligations.* (1) Prepare and disperse the formal offer of sale to the resident management corporation, resident organization and resident cooperative of the affected development.

(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issue letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (j)(3) of this section. The IHA shall comply with its obligations under § 950.923(b)(1) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The IHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident organization or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

(i) *IHA application submission requirements for proposed demolition or disposition.* (1) If the proposal from the resident organization is rejected by the IHA, and either there is no appeal by the organization or the appeal has been denied, the IHA shall submit its demolition or disposition application to HUD in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart. The demolition or disposition application shall include complete documentation that the requirements of this section have been met. IHAs shall submit written documentation that the resident management corporation, resident organization and resident cooperative of the affected development have been apprised of their opportunity to purchase under this section. This documentation shall include a copy of the signed and dated IHA notification letter(s) to each organization informing them of the IHA's intention to submit an application for demolition or disposition and the responses from each organization.

(2) If the IHA accepts the proposal of the resident organization, the IHA shall submit a disposition application in accordance with section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and this subpart, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(3) HUD will not process an application for demolition or disposition unless the IHA provides HUD with one of the following:

(i) Where no resident management corporation, resident organization or resident cooperative exists in the affected development and the residents of the affected development have not formed a new organization, a certification from either the executive director or the board of commissioners stating that no such organization(s)

exists and documentation that a reasonable effort to inform residents of their opportunity to organize has been made; or

(ii) Where a resident management corporation, resident organization or resident cooperative exists in the affected development one of the following, either paragraph (i)(3)(ii)(A) or (B) of this section:

(A) A board resolution or its equivalent from each resident management corporation, resident organization or resident cooperative stating that such organization has received the IHA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(B) A certification from the executive director or board of commissioners of the IHA that the thirty (30) day timeframe has expired and no response was received to its offer.

**§ 950.927 Specific criteria for HUD approval of disposition requests.**

In addition to other applicable requirements of this subpart, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the IHA, because at least one of the following criteria is met:

(a) Developmental changes in the area surrounding the project adversely affect the health or safety of the tenants or the feasible operation of the project by the IHA.

(b) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing projects, and that will preserve the total amount of low-income housing stock available to the community.

(c) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the IHA that are not inconsistent with other provisions of the Act.

(d) In the case of disposition of property other than dwelling units:

(1) The property is determined by HUD to be excess to the needs of the project (after the end of the initial operating period); or

(2) The disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

**§ 950.928 Specific criteria for HUD approval of demolition requests.**

In addition to other applicable requirements of this subpart, HUD will not approve an application for demolition unless HUD determines that at least one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or a portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes; and

(b) No reasonable program of modifications, in keeping with the provisions of subpart I of this part, is feasible to return the project or portion of the project to useful life.

**§ 950.931 IHA application for HUD approval.**

Written approval by HUD shall be required before the IHA may undertake any transaction involving demolition or disposition. To request approval, the IHA shall submit an application to the HUD Area ONAP that includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed disposition or demolition under one or more of the applicable criteria of §§ 950.927 or 950.928;

(d) If applicable, a plan that meets the requirements of § 950.117 for the relocation of tenants who would be displaced by the proposed demolition or disposition;

(e) A description of the IHA's consultations with tenants and any tenant organizations (as required under § 950.923(b)(1)), with copies of any written comments which may have been submitted to the IHA and the IHA's evaluation of the comments;

(f) A replacement housing plan, as required under § 950.935, and a resolution by the governing body of the unit of tribal or general local government in which the project is located, indicating approval of the replacement plan;

(g) Evidence that the IHA has complied with the requirement to offer the project or portion of the project proposed for demolition or disposition to the resident organizations, as required under § 950.925;

(h) The estimated balance of project debt, if any, under the ACC for development and modernization;

(i) In the case of disposition, an estimate of the fair market value of the

property, established on the basis of one independent appraisal, unless, as determined by HUD:

(1) More than one appraisal is warranted; or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(j) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 950.933;

(k) A copy of a resolution by the IHA's Board of Commissioners approving the application;

(l) If determined to be necessary by HUD, an opinion by the IHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, tribal, and local laws; and

(m) Any additional information necessary to support the application and assist HUD in making determinations under this subpart M.

#### § 950.933 Use of proceeds.

(a) *Disposition.* (1) If HUD approves the disposition of real property of a project, in whole or in part, the IHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the IHA or the Federal Government, or for sale for less than fair market value (where permitted by State, tribal, or local law), based on commensurate public benefits to the community, the IHA, or the Federal Government justifying such an exception.

(2) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows: first for the retirement of outstanding obligations, if any, issued to finance development or modernization of the project, which in the case of scattered site housing of an IHA, shall be in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition; and thereafter for the provision of housing assistance for low-income families, through such measures as modernization of low-income housing or the acquisition, development, or rehabilitation of other

properties to operate as low-income housing.

(b) *Demolition.* If HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under subpart I of this part, the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

#### § 950.935 Replacement housing plan.

(a) HUD may not approve an application or furnish assistance under this subpart unless the IHA submitting the application for disposition or demolition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit (at rents no higher than permitted under the Act) for each dwelling unit to be disposed of or demolished under the application. The plan shall include any one or a combination of the following:

(1) The acquisition or development of additional low-income housing dwelling units;

(2) The use of project-based assistance under section 8 (as provided for in 24 CFR part 882, subpart G);

(3) The use of project-based assistance under other Federal programs;

(4) The acquisition or development of dwelling units assisted under a State or local tribal government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract to assistance under section 8(b)(1) of the Act; or

(5) The use of tenant-based assistance under section 8 of the Act (excluding vouchers under section 8(o) of the Act (42 U.S.C. 1437f(o)), under the conditions described in paragraph (b) of this section.

(b) Tenant-based assistance under section 8 may be approved under the replacement plan only if:

(1) There is a finding by HUD that replacement with project-based assistance is not feasible; that the supply of private rental housing actually available to those who would receive project-based assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full term of the assistance; and

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which shall include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing

housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for housing assistance under the Act; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; and such additional data as HUD may determine to be relevant in particular circumstances.

(c) The plan shall be approved by the unit of general local government (including tribal government) in which the project is located.

(d) The plan shall include a schedule for carrying out all its terms within a period consistent with the size of the proposed disposition or demolition, except that the schedule for completing the plan shall in no event exceed six years from the date specified to begin plan implementation.

(e) The plan shall include a method that ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs.

(f) The plan shall include an assessment of the suitability of the location of proposed replacement housing based upon application of the site selection criteria established in § 950.235.

(g) The plan shall contain assurances that any replacement units acquired, newly constructed, or rehabilitated will meet the applicable accessibility requirements set forth in 24 CFR 8.25.

#### Subpart N—[Reserved]

#### Subpart O—Resident Participation and Opportunities General Provisions

##### § 950.960 Purpose.

The purpose of this subpart O is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

##### § 950.961 Applicability and scope.

(a) This subpart O applies to any Indian housing authority (IHA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the United States Housing Act of 1937.

(b) This subpart O contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

(c) This subpart O is designed to encourage increased resident participation in Indian housing.

(d) This subpart O is not intended to negate any pre-existing arrangements for resident management in Indian housing between an IHA and a resident management corporation.

(e) This subpart O includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the National Affordable Housing Act, which created a new Section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

#### § 950.962 Definitions.

*Family Investment Center.* A facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

*Management.* All activities for which the IHA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

*Management contract.* A written agreement between a resident management corporation and an IHA, as provided by § 950.969.

*Project.* For purposes of this subpart, any of the following could be the subject of a management contract:

- (1) One or more contiguous buildings.
- (2) An area of contiguous row houses.
- (3) Scattered site buildings.
- (4) Scattered site single-family units.

*Resident management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the IHA.

*Resident Management Corporation (RMC).* A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation shall have each of the following characteristics:

(1) It shall be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors.

(4) Its by-laws shall require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It shall be approved by the resident organization. If there is no organization, a majority of the households of the project or projects shall approve the establishment of such an organization.

*Resident Organization (RO).* A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it shall fairly represent residents from each development that it represents.

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis.

(4) It shall have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

*Resident-owned business.* Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

*Resident participation.* A process of consultation between residents and the IHA concerning matters affecting the management of Indian housing.

#### § 950.963 HUD's role in activities under this subpart.

(a) *General.* Subject to the requirements of this part and other requirements imposed on IHAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the IHAs.

(b) *Duty to bargain in good faith.* If an IHA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and

providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the IHA to respond with a report stating the IHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

#### § 950.964 Resident participation requirements.

(a) *IHA responsibilities.* (1) An IHA shall provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) An IHA shall consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the IHA and the residents.

(3) When requested by residents, an IHA shall provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities.

(c) *Written understanding.* At a minimum, the IHA and the RO shall put in writing their understanding concerning the elements of their relationship.

(d) *Conflict of interest.* Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the IHA.

#### § 950.965 Funding resident participation.

Funding will be provided under subpart J of this part, for the following:

(a) *Resident Organizations.* (1) Subject to appropriations, the IHA shall provide

funds to ROs for resident participation activities. Eligibility to receive operating subsidy for duly elected RO activities at \$25 per unit per year is an additional category of subsidy eligibility for units represented by a duly elected resident organization under the Performance Funding System. Of this amount, \$15 per unit per year shall fund resident participation activities of the duly elected ROs. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(2) The IHA and the duly elected resident organization at each development shall collaborate on how the funds will be distributed for resident participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the HUD Headquarters for intervention. HUD ONAP Headquarters may require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of renegotiation, Headquarters shall take appropriate actions to settle the dispute in a fair and equitable manner.

(b) *Stipends.* (1) IHAs may provide stipends to officers of the duly elected RO. The stipend, which may be up to \$200 per month per officer, shall be decided locally by the ROs and the IHA. Subject to appropriations, the stipends will be funded from the portion of the operating subsidy funding for RO expenses (\$15.00 per unit per year). (See definition of annual income in § 950.102 for exclusion for these stipends.)

(2) Funding provided by an IHA to a duly elected RO may be made only under a written agreement between the IHA and a RO, which includes a RO budget and assurance that all RO expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement shall require the local RO to account to the IHA for the use of the funds and permit the IHA to inspect and audit the resident council's financial records related to the agreement.

### Tenant Opportunities Program

#### § 950.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/

RMCs to improve living conditions and resident satisfaction in Indian housing communities.

#### § 950.967 Eligible TOP activities.

Activities to be funded and carried out by an eligible RO or resident management corporation, as defined in subpart B of this part, shall improve the living conditions and Indian housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of a RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of a RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.* (1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

- (i) Feasibility and market studies;
- (ii) Development of business plans;
- (iii) Outreach activities; and
- (iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing a resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).*

(1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(6) Training programs on health, nutrition, and safety;

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing

the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations, and resident organizations on youth initiatives and program activities; and

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas.

(e) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(f) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort shall be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts. RO/RMCs shall ensure that this training is provided by a qualified housing management specialist, a community organizer, the IHA, or other sources knowledgeable about the program.

#### § 950.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart O.

#### § 950.969 Resident management requirements.

The following requirements apply when an IHA and its residents are

interested in providing for resident performance of management functions in one or more projects under this subpart O.

(a) *Resident management corporation.* Residents interested in contracting with an IHA shall establish a RMC that meets the requirements for such a corporation, as required in this subpart O.

(b) *Management Contract.* (1) A management contract between the IHA and a RMC is required for resident management. The IHA and the corporation may agree to the performance by the corporation of any or all management functions for which the IHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract shall be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation shall meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the IHA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and shall be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the IHA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of an IHA to contract with a RMC.

(c) *Prohibited activities.* An IHA may not contract for assumption by the RMC of the IHA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC shall provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the IHA) to protect HUD and the IHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

**§ 950.970 Management specialist.**

The RO shall select, in consultation with the IHA, a qualified Indian housing

management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the IHA or a consultant.

**§ 950.971 Operating subsidy, preparation of operating budget, operating reserves, and retention of excess revenues.**

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the IHA in accordance with subpart J of this part, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart O. These expenditures will include the project's share of any expenses which are overhead or centralized IHA expenditures. The expenses shall represent a normal year's expenditures for the project, and shall exclude all expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level shall be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart O, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA shall not affect the subsidy calculation

for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget. No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by an IHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the IHA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the IHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the IHA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host IHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the IHA operating reserve, exclusive of all inventories, prepaids, and receivables (at the end of the IHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's subaccount.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of

funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the IHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart O:

(i) Any reduction in the total income of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA; or

(ii) Any change in the total income of an IHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart O.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved shall be excluded in subsequent years in calculating:

(1) The operating subsidy provided to an IHA under subpart J of this part; and

(2) The funds provided by the IHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

**§ 950.972 TOP Audit and administrative requirements.**

(a) *Annual audit of financial statements.* The financial statements of a RMC managing a project under this subpart shall be audited annually by a

licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit shall be forwarded to HUD and the IHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of financial statements of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs shall comply with the requirements of OMB Circulars A-110 and A-122, as applicable.

**Family Investment Centers (FIC) Program**

**§ 950.980 General.**

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) developing facilities in or near Indian housing for training and support services;

(2) mobilizing public and private resources to expand and improve the delivery of such services;

(3) providing funding for such essential training and support services that cannot otherwise be funded; and

(4) improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. IHAs applying for funds to provide supportive services shall demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to

receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) Monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

**§ 950.982 Eligibility.**

An IHA may apply to establish one or more FICs for more than one Indian housing development. An IHA shall demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

**§ 950.983 FIC activities.**

Activities that may be funded and carried out by an eligible IHA may include:

(a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The acquisition, construction, or renovation of facilities located near the premises of one or more IHA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive

services (which may be provided directly to eligible residents by the IHA or by contract or lease through other appropriate agencies or providers), but only if the IHA demonstrates that:

- (1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and
- (2) The IHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and
- (e) The employment of service coordinators.

**§ 950.984 IHA role in activities under this part.**

An IHA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The IHA shall give full and fair consideration to the comments and concerns of the residents.

**§ 950.985 HUD Policy on training, employment, contracting, and subcontracting of Indian housing residents.**

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, IHAs, their contractors, and subcontractors shall use best efforts, consistent with existing Federal, State, tribal, and local laws and regulations (including Section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

**§ 950.986 Grant set-aside assistance.**

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to IHAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

**§ 950.987 Resident compensation.**

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

- (a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938

(FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

- (b) The State, local, or tribal minimum wage for the most nearly comparable covered employment; or

- (c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

**§ 950.988 Administrative requirements.**

Each IHA receiving a grant shall submit to the Area ONAP annual progress report describing and evaluating the use of grant amounts received under this program.

**Subpart P—Section 5(h) Homeownership Program**

**§ 950.1001 Purpose.**

This part codifies the provisions of the Section 5(h) Homeownership Program for Indian housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (the Act) and administered by the Department of Housing and Urban Development (HUD).

**§ 950.1002 Applicability.**

- (a) *General applicability.* This subpart P applies to low-income housing owned by Indian Housing Authorities (IHAs), subject to Annual Contributions Contracts (ACCs) under the Act. The terms "housing" or "low-income housing," as used in this subpart P, refer to the types of properties described in the preceding sentence, except as indicated by the particular context. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant," as the latter term is used in the Act, including Mutual Help and Turnkey III homebuyers, as well as rental tenants of low-income housing and Section 8 residents, and references to sale, purchase, conveyance, and ownership include the types of interests and transactions that are incident to cooperative ownership.

- (b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD before October 21, 1991, no modifications or additional requirements will be imposed, except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved after October 20, 1991, but before December 12, 1994, no modifications or additional requirements will be imposed, except for such reasonable administrative procedures.

**§ 950.1003 General authority for sale.**

An IHA may sell all or a portion of a development to eligible residents, as defined under § 950.1008, for purposes of homeownership, according to a homeownership plan approved by HUD under this subpart P. Upon sale in accordance with the HUD-approved homeownership plan, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for further HUD funding for operating subsidies or modernization under the Act upon conveyance of title by the IHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, tribal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative homeownership, if authorized by the Section 8 regulations.)

**§ 950.1004 Fundamental criteria for HUD approval.**

HUD will approve an IHA's homeownership plan if it meets all three of the following criteria:

- (a) *Workability.* The plan shall be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

- (b) *Legality.* The plan shall be consistent with law, including the requirements of this part and any other applicable Federal, tribal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the plan, at the discretion of the IHA, whether or not expressly authorized in this subpart P.

- (c) *Documentation.* The plan shall be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

**§ 950.1005 Resident consultation and involvement.**

- (a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. If

the plan contemplates sale of units in an entirely vacant development, the IHA shall consult with the IHA-wide resident organization, if any. While the Act gives the IHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the IHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a resident management corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the IHA shall negotiate with them in good faith. Joint development and submission of the plan by the IHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged. (Approved by the Office of Management and Budget under control number 2577-0201).

#### § 950.1006 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 950.1004(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more housing developments. A plan may provide for conversion of existing housing to homeownership or for homeownership sale of newly-developed housing. (However, for low-income housing units developed as replacement housing for units demolished or disposed of pursuant to subpart M of this part, that subpart requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy (or Mutual Help occupancy, if applicable), without reference to any additional homeownership eligibility or selection requirements under this subpart P.) Mutual Help or Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Mutual Help or Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property shall meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8

Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective purchaser with disabilities requests accessible features, the features shall be added in accordance with 24 CFR parts 8 and 9. Further, the property shall be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. This standard shall be met as a condition for conveyance of a dwelling to an individual purchaser, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (e.g., as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

#### § 950.1007 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* An IHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the IHA's low-income housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan.

(2) The respective rights and obligations of the IHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the IHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the IHA, and that the property will not be encumbered by the other entity without the written consent of the IHA;

(iii) Protection against fraud or misuse of funds or other property on the part of the other entity, its employees and agents;

(iv) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership plan;

(v) Limitation of the other entity's administrative and overhead costs, and of any compensation or profit that may be realized by the entity, to amounts that are reasonable in relation to its responsibilities and risks;

(vi) Accountability to the IHA and residents for the recordkeeping, reporting and audit requirements of § 950.1017;

(vii) Assurances that the other entity will administer its responsibilities under the plan in accordance with applicable civil rights statutes and implementing regulations, as described in § 950.115; and

(viii) Adequate legal remedies for the IHA and residents, in the event of the other entity's failure to perform in accordance with the agreement.

#### § 950.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase shall submit applications for that specific purpose, and those applications shall be handled separately from applications for other IHA programs. For vacant units, applications shall be dated as received by the IHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt.

Application for homeownership shall not affect an applicant's place on any other IHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of low-income housing owned or leased by the seller IHA (including Mutual Help and Turnkey III homebuyers, who may elect to terminate their existing homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be

purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the Indian housing unit. If the family is to meet part or all of the minimum occupancy requirement in the Indian housing unit, the Section 8 assistance shall be terminated before the family moves into the Indian housing unit. Indian housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under the ACC as Indian housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.* (1) A homeownership plan, at IHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. A plan may thus allow satisfaction of the threshold requirements for eligibility by:

- (i) Existing low-income housing or Section 8 residents with less than the minimum period of residency;
- (ii) Families who are already on the IHA's waiting lists; and
- (iii) Other low-income families who are neither low-income housing nor Section 8 residents at the time of application or selection.

(2) Applicants who are not already low-income housing residents, however, shall also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited, however, to residents who have been current in all of their lease obligations (in the case of Mutual Help or Turnkey III homebuyers, obligations under their homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of low-income housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges and reporting of all income that is pertinent to determination of rents (or homebuyer's monthly payments). At the IHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to low-income housing or for

Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be further limited to residents who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of operating subsidies and modernization funds after conveyance of the property by the IHA. A homeownership plan may, however, take account of any available subsidy from other sources (e.g., in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant shall meet the following requirements:

(1) On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly-recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of 35 percent of the applicant's adjusted income, as defined in this part.

(2) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

(f) *Option to restrict eligibility.* A homeownership plan may, at the IHA's discretion, restrict eligibility to one or more residency-based categories (e.g., for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to low-income housing residents only, or to low-income housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories provided that the residency-based preferences mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of

the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other low-income housing units owned or leased by the seller IHA (over any other residency-based categories that may be established by a homeownership plan for Section 8 residents or for nonresident applicants).

(h) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards for eligibility or preference, or both, at the discretion of the IHA, that are not contrary to law. (Approved by the Office of Management and Budget under control number 2577-0201).

#### **§ 950.1009 Counseling, training, and technical assistance.**

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention shall be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

#### **§ 950.1010 Nonpurchasing residents.**

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move), in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conveyance of the property, the homeownership plan shall include provision for any rental subsidy required (e.g., Section 8 assistance, if available and authorized by the Section

8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, including timely information, counseling, and explanation of the resident's rights under applicable civil rights statutes and implementing regulations, as specified in § 950.115, and referrals to suitable, safe, sanitary, and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, in accordance with applicable civil rights statutes and implementing regulations, as specified in § 950.115. This requirement will be met if the applicant is offered the opportunity to relocate to another suitable unit in other low-income housing, under any of the housing assistance programs under Section 8 of the Act, or any other Federal, tribal, State, or local program that is comparable, as to standards of housing quality, admission, and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe, and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

**§ 950.1011 Nonroutine maintenance reserve.**

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the IHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

**§ 950.1012 Purchase prices and financing.**

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under § 906.8(e) of this chapter, a homeownership plan may provide for below-market purchase prices or below-market financing, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (e.g., uniform prices for a group of comparable dwellings, within a range of affordability by a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (e.g., conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a tribal, State, or local program). An IHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

**§ 950.1013 Protection against fraud and abuse.**

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, or collusive sale that would circumvent the resale profit limitation of § 950.1014.

**§ 950.1014 Limitation on resale profit.**

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market

value at date of purchase from the IHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(b) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the IHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

(A) The discounted purchase price;

(B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the IHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require an IHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the IHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the IHA, to be based solely on the IHA's determination that the resale price represents fair market value or a lesser amount that will result in

payment to the IHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the IHA shall be obligated to approve the resale.

(4) The IHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the IHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (e.g., according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale, by an independent appraiser to be selected by the IHA.

#### **§ 950.1015 Use of sale proceeds.**

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the IHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (e.g., earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under § 950.1014, and interest earned on all

such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the IHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the IHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under § 950.1011, a reserve for loans to homeowners to prevent or cure default or for other emergency housing needs; a reserve for any contingent liabilities of the IHA under the homeownership plan (such as IHA guaranty of mortgage loans); and a reserve for IHA repurchase, repair, and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a tribal, State, or local homeownership program for low-income families, as described in the homeownership plan, for assistance to purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the IHA's other low-income housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the IHA for its other low-income housing.

(5) In connection with any other type of Federal, tribal, State, or local housing program for low-income families, as described in the homeownership plan.

#### **§ 950.1016 Replacement housing.**

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the IHA shall obtain a funding

commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the IHA of additional low-income housing under this part (by new construction or acquisition).

(2) Rehabilitation of vacant low-income housing owned by the IHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the IHA for sale to residents through an RMC, resident organization, or cooperative association that is otherwise eligible to participate under this subpart, acquisition of non-publicly-owned housing units, that the RMC, resident organization, or cooperative association will operate as rental housing, comparable to IHA-owned low-income housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, tribal, State, or local housing program that is comparable, as to housing standards, eligibility, and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a tribal, State, or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (e.g., rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the IHA-HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the homeownership plan, as to unit sizes or family or elderly occupancy, if the IHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

**§ 950.1017 Records, reports, and audits.**

The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. Until all planned sales of individual dwellings have been completed, the IHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the IHA's housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 950.1007(b), the IHA shall ensure that the entity's responsibilities include proper recordkeeping and accountability to the IHA, sufficient to enable the IHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO). (Approved by the Office of Management and Budget under control number 2577-0201).

**§ 950.1018 Submission and review of homeownership plan.**

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each IHA. An IHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the IHA shall consult informally with the appropriate HUD Area ONAP to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The IHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Area ONAP.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, when HUD determines that

to be justified. For example, conditional HUD approval might be a necessary precondition for the IHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing. (Approved by the Office of Management and Budget under control number 2577-0201)

**§ 950.1019 HUD approval and IHA-HUD implementing agreement.**

Upon HUD notification to the IHA that the homeownership plan is approvable (in final form that satisfies all applicable requirements of this part), the IHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The plan itself, as approved by HUD, shall be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the IHA and HUD. The IHA shall be obligated to carry out the approved provisions of the implementing agreement without modification, except with written approval by HUD.

(Approved by the Office of Management and Budget under control number 2577-0201).

**§ 950.1020 Content of homeownership plan.**

The homeownership plan shall address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 950.1006, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 950.1008.

(d) *Sale and financing.* Terms and conditions of sale and financing (see particularly §§ 950.1011 through 950.1014).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 950.1005). If appropriate, this may be combined with the plan for counseling

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 950.1009.

(g) *Sale via other entity.* If the plan contemplates sale to residents via an entity other than the IHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 950.1007 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 950.1010.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 950.1015.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 950.1016.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Recordkeeping, accounting and reporting.* A description of the recordkeeping, accounting, and reporting procedures to be used, including those required by § 950.1017.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

(n) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

(Approved by the Office of Management and Budget under control number 2577-0201).

**§ 950.1021 Supporting documentation.**

The following supporting documentation shall be submitted to HUD with the proposed homeownership plan, as appropriate for the particular plan:

(a) *Estimate of value.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this information is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse, pursuant to § 950.1013, and windfall profit on resale, pursuant to § 950.1014. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 950.1006.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs

of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 950.1004(a).)

(d) *IHA commitment and capability.* Information to substantiate the commitment and capability of the IHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 950.1005 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been submitted to the IHA by individual residents and resident organizations, and any other individuals and organizations.

(f) *Nondiscrimination certification.* The IHA's certification that it will administer the plan on a nondiscriminatory basis, in accordance with applicable civil rights laws and implementing regulations, as described in § 950.115, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the plan.

(g) *Legal opinion.* An opinion by legal counsel to the IHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, tribal, State, and local law, including regulations as well as statutes. In addition, counsel shall identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

(h) *Board resolution.* A resolution by the IHA's Board of Commissioners, evidencing its approval of the plan.

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the IHA-HUD implementing agreement under § 950.1019, HUD approval is not required for documents to be prepared and used by the IHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation.

(Approved by the Office of Management

and Budget under control number 2577-0201).

#### Subpart Q—[Reserved]

#### Subpart R—Family Self-Sufficiency

##### § 950.3001 Purpose, scope, and applicability.

(a) *Purpose.* The purpose of the Family Self-Sufficiency (FSS) program is to develop local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(b) *Applicability.* This subpart applies to Indian housing authorities (IHA) that elect to operate a local FSS program, and when such an election is made, to Indian housing assisted under the United States Housing Act of 1937, and developed or operated by an IHA in an Indian area, as defined in § 950.102. This subpart does not apply to the Mutual Help Homeownership Program or the Turnkey III Program. IHAs that elect to participate in the FSS program are not subject to minimum program size requirements. Additionally, IHAs that received Indian housing units under the FSS incentive award competitions are not subject to the minimum program size requirements.

##### § 950.3002 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance, on section 8, public, or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. The FSS program provides low-income families opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as this term is defined in § 950.3003. HUD will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist

the family in obtaining economic independence.

##### § 950.3003 Definitions.

As used in this subpart R:

*Certification* means a written assertion based on supporting evidence, provided by the FSS family or the IHA, as may be required under this subpart R, and that:

(1) Shall be maintained by the IHA in the case of the family's certification, or by HUD in the case of the IHA's certification;

(2) Shall be made available for inspection by HUD, the IHA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this subpart R, unless the Secretary or the IHA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

*Contract of participation* means a contract in a form approved by HUD, entered into between a participating family and an IHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans, attached to the contract as exhibits, entered into between the IHA and all members of the family who will participate in the FSS program. For additional details, see § 950.3022.

*Earned income* means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See § 950.102.) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by an IHA on behalf of a participating family.

*Effective date of contract of participation* means the first day of the month following the month in which the FSS family and the IHA entered into the contract of participation.

*Eligible families* mean current residents of Indian housing.

*Enrollment* means the date that the FSS family entered into the contract of participation with the IHA.

*Family Self-Sufficiency program or FSS program* means the program established by an IHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u).

*FSS account* means the FSS escrow account authorized by section 23 of the Act, and as provided by § 950.3025.

*FSS credit* means the amount credited by the IHA to the participating family's FSS account.

*FSS family or participating family* means a family that resides in Indian housing, that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

*FSS related service program* means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in this section.

*FSS slots* means the total number of Indian housing units that comprise the minimum size of an IHA's Indian housing FSS program.

*Head of FSS family* means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

*Housing subsidies* means assistance to meet the costs and expenses of temporary shelter, rental housing, or homeownership, including rent, mortgage, or utility payments.

*Individual training and services plan* means:

(1) A written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the IHA in consultation with the family member, and that sets forth:

- (i) The supportive services to be provided to the family member;
- (ii) The activities to be completed by that family member; and
- (iii) The agreed upon completion dates for the services and activities.

(2) Each individual training and services plan shall be signed by the IHA and the participating family member, and is attached to and incorporated as part of the contract of participation. An individual training and services plan shall be prepared for the head of the FSS family.

*JOBS Program* means the Job Opportunities and Basic Skills Training Program authorized under part F, title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

*JTPA* means the Job Training Partnership Act (29 U.S.C. 1579(a)).

*Program Coordinating Committee or PCC* means the committee described in § 950.3012.

*Secretary* means the Secretary of Housing and Urban Development.

*Self-sufficiency* means that an FSS family is no longer receiving section 8, public, or Indian housing assistance, or any Federal, State, or local rent or

homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 950.3025).

*Supportive services* means those appropriate services that an IHA will make available, or cause to be made available, to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable participating family members to receive available services, or to commute to their places of employment;

(3) *Education*—remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

- (i) The responsibilities of homeownership;
- (ii) Opportunities available for affordable rental and homeownership in the private housing market; and
- (iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the IHA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

*Unit size or size of unit* refers to the number of bedrooms in a dwelling unit.

#### § 950.3004 Basic requirements of the FSS program.

(a) *Compliance with program regulations.* An FSS program established under this subpart shall be operated in conformity with the regulations of this part.

(b) *Compliance with Action Plan.* An FSS program established under this subpart shall be operated in compliance with an Action Plan, as described in § 950.3011, and provide comprehensive supportive services as defined in § 950.3003.

(c) *Compliance with equal opportunity requirements.* An FSS program established under this subpart shall be operated in compliance with all applicable Indian housing regulations and all applicable civil rights authorities, including: the Indian Civil Rights Act of 1968 (25 U.S.C. 1301–1303); title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Executive Order 11063 (3 CFR, 1959–1963 Comp., p. 652), as amended by Executive Order 12259 (3 CFR, 1980 Comp., p. 307); section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); and the regulations implementing these authorities. (The Indian Civil Rights Act applies to IHAs organized pursuant to tribal laws; and Title VI of the Civil Rights Act of 1964 and the Fair Housing Act applies to State authorized IHAs.)

#### § 950.3011 Action Plan.

(a) *General.* To participate in the FSS program, an IHA shall have a HUD-approved Action Plan that complies with the requirements of this section.

(b) *Development of Action Plan.* The Action Plan shall be developed by the IHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Initial submission and revisions.* (1) *Initial submission.* Unless the dates set forth in this paragraph are extended by HUD for good cause, an IHA that is establishing its first FSS program shall submit an Action Plan to HUD for approval within 90 days of notification by HUD of approval of the IHA's first application for new housing units.

(2) *Revision.* Following initial approval of the Action Plan by HUD, no further approval of the Action Plan is required unless the IHA proposes to make policy changes to the Action Plan, or HUD requires changes. Any changes to the Action Plan shall be submitted to and approved by HUD.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the IHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics*—a description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the

families expected to participate in the FSS program;

(2) *Estimate of participating families*—an estimate of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency programs*—if applicable, the number of eligible families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation;

(4) *FSS family selection procedures*—a statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 950.3013.

(5) *Incentives to encourage participation*—a description of the incentives that the IHA's intends to offer eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 950.3025, and other incentives, if any, designed by the IHA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts*—a description of:

(i) The IHA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The IHA's actions to be taken to assure that both minority and nonminority groups are informed about the FSS program, and how the IHA will make this information known (e.g., through door-to-door flyers, posters in any common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups).

(7) *FSS activities and supportive services*—a description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources that are expected to provide the supportive services.

(8) *Method for identification of family support needs*—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination, withholding of services, and grievance procedures*—a description of the IHA's policies

concerning: termination of participation in the FSS program, withholding of supportive services on the basis of a family's failure to comply with the requirements of the contract of participation, and the grievance and hearing procedures available to FSS families.

(10) *Assurances of noninterference with rights of nonparticipating families*—an assurance that a family's election not to participate in the FSS program will not affect the family's admission to Indian housing or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation*—a timetable for implementation of the FSS program, as provided in § 950.3020(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 950.3013;

(12) *Certification of coordination*—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information*—such other information that would help HUD determine the soundness of the IHA's proposed FSS program.

(e) *Eligibility of a combined program.* An IHA that wishes to operate a joint FSS program with other IHAs may combine its resources with one or more IHAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this subpart.

(f) *Single action plan.* IHAs implementing both a section 8 FSS program and an Indian housing FSS program may submit one Action Plan.

#### § 950.3012 Program Coordinating Committee (PCC).

(a) *General.* Each participating IHA shall establish a PCC whose functions will be to assist the IHA in securing commitments of public and private resources for the operation of the FSS program within the IHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(b) *Membership.* (1) The PCC may consist of representatives of the IHA and of residents of Indian housing.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the IHA, local agencies (if any) responsible for carrying out JOBS training programs or programs under the JTPA, and other organizations, such as other State, local, or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The IHA may, in consultation with the chief executive officer of the unit of general local government served by the IHA, utilize an existing entity as the PCC if the membership of the existing entity consists or will consist of the individuals identified in paragraph (b)(1) of this section, and also includes individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

#### § 950.3013 FSS family selection procedures.

(a) *Preference in the FSS selection process.* An IHA has the option of giving a selection preference for up to 50 percent of its FSS slots to eligible families, as defined in § 950.3003, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The IHA may limit the selection preference given to participants in and applicants for FSS-related service programs to one or more eligible FSS-related service programs. An IHA that chooses to exercise the selection preference option shall include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

(b) *FSS selection without preference.* For those FSS slots for which the IHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots shall be filled with eligible families in accordance with an objective selection system, such

as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the IHA shall be described in the IHA's Action Plan.

(c) *Motivation as a selection factor.* (1) *General.* An IHA may screen families for interest and motivation to participate in the FSS program, provided that the factors utilized by the IHA are those which solely measure the family's interest and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks that indicate the family's willingness to undertake the obligations that may be imposed by the FSS contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those that may be readily accomplishable by the family, based on the family members' educational level and disabilities, if any. Reasonable accommodations shall be made for individuals with mobility, manual, sensory, speech impairments, mental, or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors that may result in discriminatory practices or treatment toward individuals with disabilities or minority or nonminority groups.

#### **§ 950.3014 On-site facilities.**

Each IHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied units in Indian housing projects to provide supportive services under an FSS program.

#### **§ 950.3020 Program implementation.**

(a) *Program implementation deadline.* (1) *Program start-up.* Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but shall occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of services.* Except as provided in paragraph (a)(3) of this section, the IHA shall have completed enrollment of the

total number of families to be served under the FSS program and shall have begun delivery of the supportive services within two years from the date of notification of approval of the application for new Indian housing units.

(3) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the IHA requests an extension, and the HUD Area ONAP determines that, despite best efforts on the part of the IHA, the development of new Indian housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances that the HUD Area ONAP determines warrants an extension of the deadlines set forth in paragraph (a) of this section.

(b) *Program administration.* An IHA may employ appropriate staff, including a service coordinator or program coordinator, to administer its FSS program, and may contract with an appropriate organization to establish and administer the FSS program, including the FSS account, as provided by § 950.3025.

#### **§ 950.3021 Administrative fees.**

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and administrative costs incurred by IHAs in carrying out the local FSS programs. These costs are subject to appropriations by the Congress.

#### **§ 950.3022 Contract of participation.**

(a) *General.* Each family that is selected to participate in an FSS program shall enter into a contract of participation with the IHA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract.* (1) *General.* The contract of participation, which incorporates the individual training and services plan, shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the IHA, the services to be provided to, and the activities to be completed by, the head of the FSS family, and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the IHA and the family may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the IHA shall establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance for at least one year before expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the Indian housing lease.

(4) *Employment obligation.* (i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the IHA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the IHA.

(5) *Consequences of noncompliance with contract.* The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of participation, the IHA may:

(i) Withhold the supportive services; or

(ii) Terminate the family's participation in the FSS program.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) *Contract extension.* The IHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the IHA finds that good cause exists for granting the extension. The family's written request for an extension shall include a description of the need for the extension. As used in this paragraph (d) of this section, "good cause" means circumstances beyond the control of the FSS family, as determined by the IHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 950.3025.

(e) *Unavailability of supportive services.* (1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the IHA shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the IHA is unable to obtain the services from another agency, the IHA shall reassess the family members' needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the IHA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the IHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the IHA shall declare the contract of participation null and void.

(f) *Modification.* The IHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plan, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded, when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) Thirty (30) percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the IHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans, have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) By operation of law.

(i) *Transitional supportive service assistance.* An IHA may continue to offer to a former FSS family who has completed its contract of participation and whose head of the family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in Indian housing), or in remaining self-sufficient (if the family no longer resides in Indian or other assisted housing).

**§ 950.3024 Total tenant payment and increases in family income.**

(a) *Calculation of total tenant payment.* Total tenant payment for a family participating in the FSS program is determined in accordance with the regulations set forth in §§ 950.315 through 950.325.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable

to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

**§ 950.3025 FSS account.**

(a) *Establishment of FSS account.* (1) *General.* The IHA shall deposit the FSS account funds of all families participating in the IHA's FSS program into a single depository account. The IHA shall deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds.*

(i) *Accounting records.* The total of the FSS account funds will be supported in the IHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the IHA shall credit monthly, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the Indian housing lease, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each IHA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;

(iii) Any deductions made from the account for amounts due the IHA before interest is distributed;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit.* (1) *Computation of amount.* For purposes of determining the FSS credit, "family rent" means the

total tenant payment as defined in this part 950. The FSS credit shall be computed as follows:

(i) For FSS families that are very low-income families, the FSS credit shall be the amount that is the lesser of:

(A) Thirty (30) percent of the family's current monthly adjusted income less the family rent, which is obtained by disregarding any increase in earned income (as defined in § 950.3003) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families that are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but that shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families that are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The IHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 950.3022(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds.* (1) *General.* The amount in an FSS account, in excess of any amount owed to the IHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 950.3022(g), and if at the time of contract completion, the head of FSS family submits to the IHA a certification, as defined in § 950.3003, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the IHA determines that the FSS family has fulfilled its obligations under the contract of

participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the IHA by the FSS family as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the IHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the IHA may, at the IHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family to meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the IHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents that may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the FSS family ceases to reside with other family members in the Indian housing unit, the remaining members of the FSS family, after consultation with the IHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (d) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* An FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs, unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS account funds.* (1) *Conditions for forfeiture.* Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in §§ 950.3022(e) or 950.3022(h); or

(ii) The contract of participation is completed by the family, as provided in § 950.3022(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) *Treatment of forfeited FSS account funds.* FSS account funds forfeited by the FSS family will be credited to the IHA's operating reserves and counted as other income in the calculation of the FSS operating subsidy eligibility for the next budget year.

#### § 950.3030 Reporting.

Each IHA that carries out an FSS program under this subpart shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the IHA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

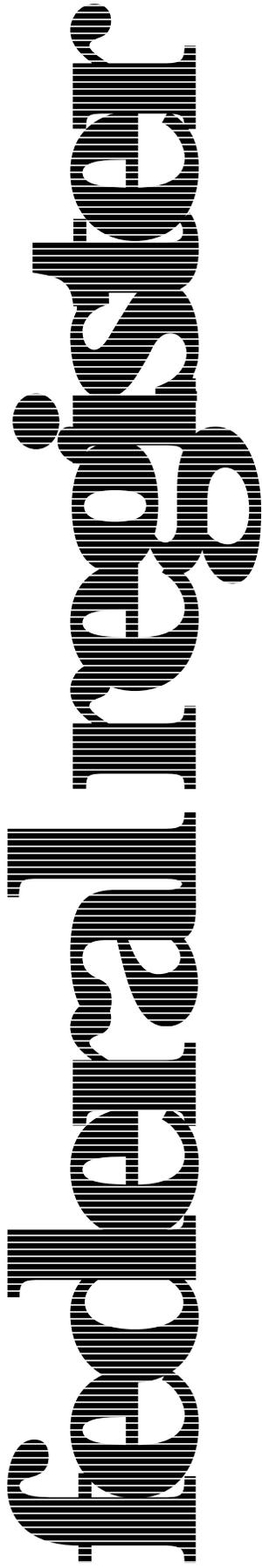
Dated: March 30, 1995.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 95-8346 Filed 4-7-95; 8:45 am]

BILLING CODE 4210-33-P



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Monday  
April 10, 1995

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**Part III**

**Department of  
Education**

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**National Diffusion Network—Private  
School Facilitator Project; Notice Inviting  
Applications for a New Award for Fiscal  
Year 1995; Notice**

## DEPARTMENT OF EDUCATION

[CFDA NO.: 84.073F]

**National Diffusion Network—Private School Facilitator Project; Notice Inviting Applications for a New Award for Fiscal Year 1995**

*Purpose of Program:* To award a grant to support a National Diffusion Network (NDN) Private School Facilitator project. Using a network of facilitators who assist education service providers, the NDN supports nationwide dissemination of validated effective educational programs and promising practices. On a nationwide basis, the Private School Facilitator project assists interested private schools in gaining access to the dissemination system offered by the NDN.

*Eligible Applicants:* Any public or private nonprofit agency, organization, or institution with demonstrated expertise in the areas of applied education research and program dissemination.

*Deadline for Transmittal of Applications:* May 26, 1995.

*Deadline for Intergovernmental Review:* July 25, 1995.

*Applications Available:* April 10, 1995.

*Estimated Available Funds:* \$186,400.

*Estimated Range of Awards:* \$175,000 to \$186,400.

*Estimated Average Size of Awards:* \$186,400.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 9 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing) and 34 CFR part 99 (Family Educational Rights and Privacy); and (c) The regulations for this program in 34 CFR parts 785 and 789.

**Priorities***Competitive Preference Priority*

In accordance with 20 U.S.C. 8651(g)(2) and 34 CFR 75.105(c)(2)(ii), the Secretary gives preference to Private School Facilitator projects that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Private School Facilitator projects that propose to disseminate effective schoolwide projects, programs addressing the needs of high poverty schools (to the extent that such nonpublic schools exist), and programs with the capacity to offer high-quality, sustained technical assistance.

*Invitational Priority*

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following

invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary encourages projects that respond to the needs of private schools that serve disadvantaged students.

*To Request an Application:* Voice Mail: (202) 219-2133; Facsimile machine: (202) 219-1407; Mail: NDN/PSF Application, 555 New Jersey Avenue, NW., Room 506c, Washington, DC 20208-5643. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 8651.

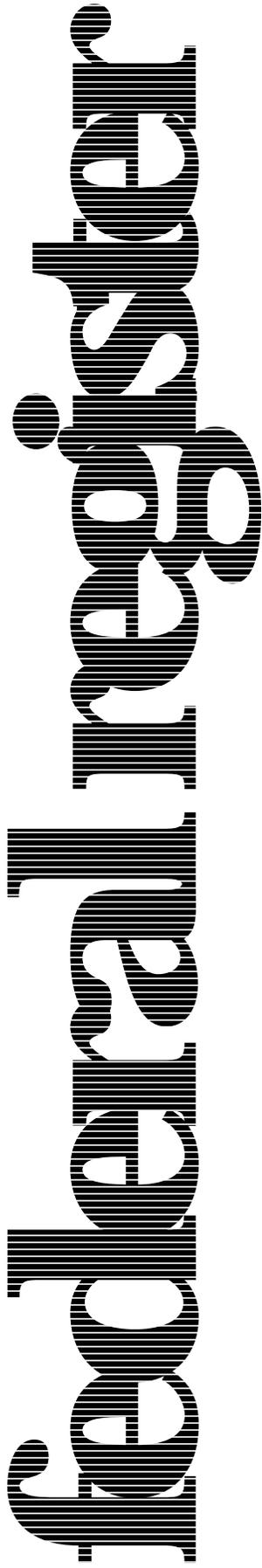
Dated: April 4, 1995.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-8659 Filed 4-7-95; 8:45 am]

BILLING CODE 4000-01-P



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Monday  
April 10, 1995

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**Part IV**

**Department of  
Education**

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**National Diffusion Network (NDN)—  
Developer Demonstrators; New Awards;  
Notice Inviting Applications**

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.073A-1]

**National Diffusion Network (NDN)—  
Developer Demonstrators Notice  
Inviting Applications for New Awards  
for Fiscal Year (FY) 1995**

Purpose of Program: To award grants to support nationwide dissemination of exemplary educational programs that have been previously approved by the Department of Education's Program Effectiveness Panel (PEP).

Eligible Applicants: Public or private nonprofit agencies, organizations, or institutions (1) that have demonstrated expertise in the areas of applied education research and program dissemination and (2) that have developed programs, products, or practices (a) that the PEP has approved and (b) that are in use in sites that can be visited.

Deadline for Transmittal of Applications: May 26, 1995.

Deadline for Intergovernmental Review: July 25, 1995.

Applications Available: April 10, 1995.

Available Funds: \$2,222,000.  
Estimated Range of Awards:  
\$75,000—\$180,000.

Estimated Average Size of Awards:  
\$125,000.

Estimated Number of Awards: 18.

**Note:** The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Budget Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing) and 34 CFR part 99 (Family Educational Rights and Privacy); and (c) The regulations for this program in 34 CFR part 785 and 786.

Supplementary Information: This notice announces a competition for the

FY 1995 new Developer Demonstrator competition under the National Diffusion Network (NDN) program. The NDN program is authorized by Title XIII, Part B of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 8651). The Secretary has established a competitive preference priority for this competition to respond to mandates contained in the new statute for the National Diffusion Network. These mandates require the Secretary to give priority to identifying, validating, and disseminating effective schoolwide projects, programs addressing the needs of high poverty schools, and programs with the capacity to offer high quality, sustained technical assistance.

The Secretary is concerned that American educators understand and learn from the effects of projects funded under this priority and suggests that such projects provide documentation of their impact on improving teaching and learning in one or more education sites. The Secretary also suggests that schoolwide projects aim to upgrade the entire educational program in a school.

**Priorities***Competitive Preference Priority*

Under 34 CFR 75.105(c)(2)(i) and 20 U.S.C. 8651(g)(2) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 25 points to an application that carries out in a particularly effective way all three activities cited in the priority, or up to 15 points to an application that executes in a particularly effective way two activities cited in the priority, or up to 5 points to an application that carries out in a particularly effective way one activity cited in the priority. These points are in addition to any points the application earns under the selection criteria for the program:

The Secretary gives priority to projects that propose nationwide dissemination of validated educational projects that incorporate one or more of

the following activities: (1) Effective schoolwide approaches, (2) approaches that address the needs of high poverty schools, (3) approaches with the capacity to offer high-quality, sustained technical assistance.

*Invitational Priority*

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that provide documentation of the project's impact on improving teaching and learning in one or more education sites.

To Request an Application: *Voice Mail:* (202) 219-2133; *Facsimile machine:* (202) 219-1407; *Mail:* NDN/DD Application, 555 New Jersey Avenue, N.W., Room 506c, Washington, DC 20208-5643. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 8651.

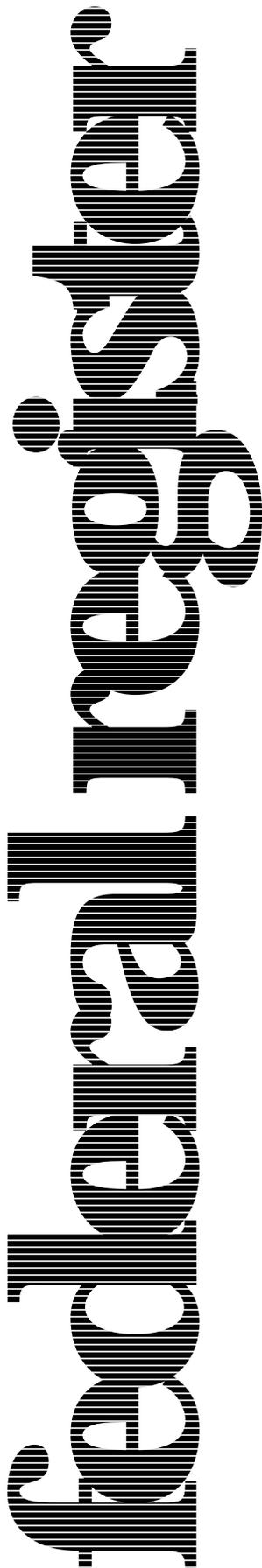
Dated: April 4, 1995.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-8660 Filed 4-7-95; 8:45 am]

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Monday  
April 10, 1995

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**Part V**

**Department of  
Education**

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**Eisenhower Regional Mathematics and  
Science Education Consortium; Notice  
Inviting Applications for New Awards for  
Fiscal Year (FY) 1995; Notice**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.168R]

**Eisenhower Regional Mathematics and Science Education Consortium; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995**

*Purpose of Program:* To award grants to support the establishment and operation of regional mathematics and science consortia.

*Eligible Applicants:* Private nonprofit organizations, institutions of higher education, elementary or secondary schools, State or local education agencies, regional educational laboratories in consortium with federally-supported research and development centers established under section 931(c)(1)(B)(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 ("Act"), (20 U.S.C. 6031)(c)(1)(B)(i), or any combination of these entities.

*Deadline for Transmittal of Applications:* June 16, 1995.

*Deadline for Intergovernmental Review:* August 15, 1995.

*Applications Available:* April 17, 1995.

*Available Funds:* \$15,000,000.

*Estimated Range of Awards:* \$1,000,000–\$1,500,000.

*Estimated Average Size of Awards:* \$1,500,000.

*Estimated Number of Awards:* 10–12.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Budget Period:* 12 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

*Supplementary Information:* Congress first authorized the establishment of ten regional consortia in 1988 in order to support improvement of mathematics and science education throughout the nation. The purposes of these regional consortia are to coordinate mathematics and science resources within the region, disseminate exemplary mathematics and science educational instructional materials, and provide technical assistance for the implementation of teaching methods and assessment tools for use by elementary and secondary school students, teachers, and administrators. The regional consortia have been reauthorized under the *Improving America's Schools Act of 1994* (20 U.S.C. 8671–8677) to continue this work.

The new legislation stipulates that the regions are the same as those for the

currently-funded regional educational laboratories supported by the Office of Educational Research and Improvement. The statutory list of eligible entities includes: (a) A private nonprofit organization of demonstrated effectiveness; (b) an institution of higher education; (c) an elementary or secondary school; (d) a state or local education agency; (e) a Regional Educational Laboratory in consortium with the Research and Development Center established under Section 931(c)(1)(B)(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994, or (f) any combination of these entities. All eligible entities shall have demonstrated expertise in mathematics and science education. The project periods for the current research and development centers will expire in early December, 1995. Awards for new research and development centers under Section 931(c)(1)(B)(i) of the Act will not be made when the applicants for the regional consortia submit their proposals for review. Therefore, each Regional Education Laboratory applicant must provide an assurance that it will form a consortium with a research and development center with demonstrated expertise in mathematics or science education if such centers are reestablished under section 931(c)(1)(B)(i).

The Secretary believes that the regional consortia supported through this grant competition should play an important role in coordinating mathematics and science education resources for the States and local education agencies in their regions. In particular, he believes the regional consortia should work cooperatively with other organizations committed to improving mathematics and science education in schools, including those funded by the Department of Education (ED) and the National Science Foundation (NSF). The Secretary believes that cooperative efforts with the Eisenhower National Clearinghouse for Science and Mathematics should be continued and enhanced.

*Invitational Priority:* Under 34 CFR 75.105(c)(1), the Secretary is interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

**Development and Operation of Regional Consortia to Support Systemic Reform in Mathematics and Science at the Elementary and Secondary Grades**

The authorizing statute establishes many activities that the Regional Consortia may undertake. However, the Secretary believes that the consortia should focus their activities to achieve maximum impact. The Secretary therefore urges the applicants to focus on the following activities:

(A) Collaborate with others within the region involved in systemic reform of mathematics and science education.

(B) Develop a plan that establishes priorities for what services will be provided by the consortium to schools and teachers in each state in the region, including criteria the consortium will use to determine who receives direct services from the regional consortium.

(C) Provide training and assistance to classroom teachers, administrators, and other educators to enable them to instruct other teachers, administrators, and educators, particularly those working with at-risk students, in the use of instructional materials, teaching methods and assessment tools for mathematics and science education that will help students achieve challenging State content and student performance standards. This should include assistance in using new forms of technology, including on-line electronic systems, in schools and classrooms.

(D) Promote the increased use of informal education entities (such as science technology centers, museums, libraries, Saturday academies, and 4H programs) to expand student knowledge and understanding of mathematics and science.

(E) Collaborate with the Eisenhower National Clearinghouse for Mathematics and Science Education in identifying instructional resources for inclusion in the Clearinghouse data base and disseminating information about that data base, and by providing feedback to the Clearinghouse on the quality and effectiveness of its products and operations.

(F) Collect data on consortium activities, especially data on outcomes and impact, that will be useful in evaluating the effectiveness of these activities.

*Selection Criteria:* The Secretary evaluates an application on the basis of selection criteria under 34 CFR 75.210. Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

*Plan of Operation.* (34 CFR 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

*Evaluation Plan.* (34 CFR 75.210(b)(6)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

*For Applications or Information Contact:* Liz Barnes at (202) 219-2210 or Jim Clemmens at (202) 219-2068, or fax (202) 219-2106, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 500, Washington, DC

20208-5572. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server

at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 8671-8677.

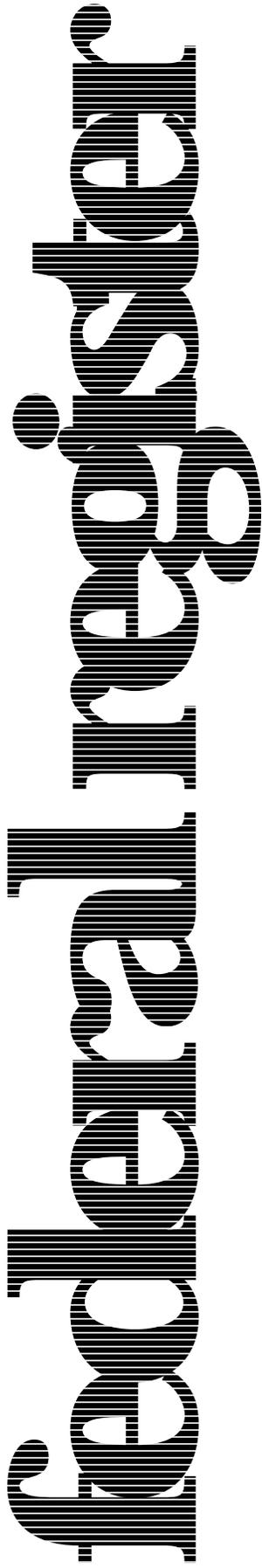
Dated: April 5, 1995.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-8744 Filed 4-7-95; 8:45 am]

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Monday  
April 10, 1995

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**Part VI**

**Department of  
Health and Human  
Services**

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**Administration for Children and Families**

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**Fiscal Year 1995 Family Violence  
Prevention and Services Discretionary  
Funds Program; Availability of Funds and  
Request for Applications; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. OCS 94-11]

#### Fiscal Year 1995 Family Violence Prevention and Services Discretionary Funds Program; Availability of Funds and Request for Applications

**AGENCY:** Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services.

**ACTION:** Announcement of the availability of funds and request for applications under the Office of Community Services Family Violence Prevention and Services Discretionary Funds Program.

**SUMMARY:** The Office of Community Services (OCS) announces its Family Violence Prevention and Services discretionary funds program for fiscal year (FY) 1995. Funding for grants under this announcement is authorized by the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992, Public Law 102-295, as amended, governing discretionary programs for family violence prevention and services. This announcement contains all forms and instructions for submitting an application.

**DATES:** The closing date for submission of applications is June 9, 1995.

**ADDRESSES:** Applications may be mailed to Department of Health and Human Services, Administration for Children and Families/Division of Discretionary Grants, (OCS-95-11) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D. Street SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone (202) 401-9233.

This Announcement, and future program announcements, will be accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1-800-627-8886. For assistance in

accessing the Bulletin Board, *A Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401-5309.

**SUPPLEMENTARY INFORMATION:** The Office of Community Services, Administration for Children and Families, announces that applications are being accepted for funding for FY 1995 projects on Public Information/Community Awareness for the Prevention of Domestic Violence; Historically Black Colleges and Universities (HBCUs) Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities (Outreach and Prevention); and Domestic Violence/Child Protective Services Collaboration.

This program announcement consists of four parts. Part I provides information on the family violence program and the statutory funding authority applicable to this announcement.

Part II describes the priority areas under which applications for FY 1995 family violence funding are being requested.

Part III describes the review process.

Part IV provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. *No additional application materials are available or needed to submit an application.*

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

#### Part I. Instruction

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98-457, 42 U.S.C. 10401, et seq.) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102-295, and was reauthorized and amended for fiscal years 1996 through 2000 by Pub. L. 103-322, the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), and signed into law on September 13, 1994.

The purpose of this legislation is to assist States in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and provide immediate shelter and related assistance for victims of family violence and their dependents. Through the family violence prevention discretionary program, OCS has continued to support the National

Resource Center for Domestic Violence (NRC) and three Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project; the Resource Center on Child Custody and Protection; and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other individuals in the field of family violence.

During FY 1994 OCS awarded several family violence prevention discretionary grants for public information/community awareness activities; discretionary grant awards were also made to Historically Black Colleges and Universities (Central State University, Wilberforce, Ohio; Delaware State University, Dover, Delaware; and Southern University, Baton Rouge, Louisiana) to assist in the development of family-focused interventions; and five awards were made for domestic violence and child protective services collaboration. Two of the five awards for the domestic violence-child protection collaborative projects were made by the National Center for Child Abuse and Neglect (NCCAN).

Grants for enhancing the collaboration between domestic violence advocates and child protective services were made to the Minnesota Program Development, Inc., Duluth, Minnesota; Colorado Department of Human Services, Denver, Colorado; Oregon Department of Human Resources, Salem, Oregon; Ohio Department of Human Services, Columbus, Ohio; and the Artemis Center for Alternatives to Domestic Violence, Dayton, Ohio.

Because of the responsiveness to and the interest displayed for the FY 1994 priority areas for family violence prevention, OCS will again make available discretionary grants awards in the areas of Public Information/Community Awareness; Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities; and Domestic Violence/Child Protective Services Collaboration.

To encourage increased collaboration and coordination among existing programs and related initiatives, OCS will give additional consideration to applications from organizations and/or agencies that are documented participants in Empowerment Zones and/or Enterprise Community plans and applications. Applicants citing participation with Empowerment Zones and/or Enterprise Communities should document that they were involved in

the preparation and planned implementation of the plan and how their proposed project supports the goal of the Empowerment or Enterprise plans (0-5 points).

Moreover, to encourage the continuation of the FY 1994 funded efforts of the Historically Black Colleges and Universities in the prevention of family violence, and to maintain the momentum of the collaboration projects between domestic violence and the Child Protective Services, OCS also will provide additional consideration to projects that were funded in these areas under the FY 1994 family violence discretionary program (0-5 points).

## Part II. Fiscal Year 1995 Family Violence Projects

### 1. Priority Area Number FV01-95: Public Information/Community Awareness Campaign Projects for the Prevention of Family Violence

**Purpose:** To assist in the continual development of public information and community awareness campaign projects and activities that provide information for the prevention of family violence. These projects should provide information on resources, facilities, and service alternatives available to family violence victims and their dependents, community organizations, local school districts, and other individuals seeking assistance.

**Eligible Applicants:** State and local public agencies, Territories, and Native American Tribes and Tribal Organizations who are, or have been, recipients of Family Violence Prevention and Services Act grants; State and local private non-profit agencies experienced in the field of family violence prevention; and public and private non-profit educational institutions, community organizations and community-based coalitions, and other entities that have designed and implemented family violence prevention information activities or community awareness strategies.

**Background:** Based on the encouraging response to the announcement for public information and community awareness grants for family violence prevention in Federal fiscal years 1992, 1993, and 1994, ACF will again make these grants available in FY 1995.

The public information/community grant awards have spawned very effective informational activities at the local levels. These grants have assisted community organizations to focus on and emphasize prevention, helped to make available public service announcements and legal brochures in

several different languages, including Russian and Vietnamese, and have assisted in the implementation of conflict resolution activities in elementary, middle and high school curricula.

The goal of this priority area is to continue to add credible and persuasive information to the arsenal of weapons necessary and available to community organizations to help break the so-called "cycle of family violence." The continuation of these efforts will help assure that individuals, particularly within minority communities, are aware of available resources and alternative responses for the resolution and the prevention of violence.

This priority area requires the development and implementation of an effective public information campaign that may be used, for example, by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. The continuation of OCS support for the increase of information on services and other alternatives for the prevention of family violence underscores the notion that violent behavior is unacceptable. We must continue to provide the victims, their dependents, and perpetrators, with knowledge of the remedial and service options for their particular situations.

Accurate information is critical to any community awareness strategy and activity. How information is communicated must be modified where communication barriers may exist because of perceived or real language differences and cultural insensitivities.

**Minimum Requirements for Project Design:** In order to successfully compete under the priority area, the applicant should:

- Present a plan for community awareness and public information activities that clearly reflects how the applicant will target the populations at risk, including pregnant women; coordinate its implementation efforts with public agencies and other community organizations; and communicate with institutions active in the field of family violence prevention.

- Describe the proposed approach to the development of a public information campaign and identify the specific audience(s), community(ies), and groups with the highest prevalence of domestic violence that will be educated in the prevention of family violence.

- Include, as critical elements in the plan:

- A set of achievable objectives and a description of the population groups, relevant geographic area, and the indicators to be used to measure

progress and the overall effectiveness of the campaign;

- The intended strategies for test marketing their development plans and give assurances that effectiveness criteria will be implemented prior to finalizing the plan;

- The development and use of non-traditional sources as information providers (applicants should present specific plans for the use of local organizations, businesses and individuals in the distribution of information and materials);

- The identification of the media to be used in the campaign and the geographic limits of the campaign;

- How the applicant would be responsive to and demonstrate its sensitivity towards minority communities and their cultural perspectives; and

- Provide a description of the kind, volume, distribution, and timing of the proposed information with assurances that the public information campaign activities will not supplant or lower the current frequency of public service announcements.

**Project Duration:** The length of the project should not exceed 12 months.

**Federal Share of the Project:** The maximum Federal share of the project is not to exceed \$35,000 for the 1-year project period. Applications for lesser amounts also will be considered under this priority area.

**Matching Requirement:** GRANTEES MUST PROVIDE AT LEAST 25 PERCENT OF THE TOTAL COST OF THE PROJECT. THE TOTAL COST OF THE PROJECT IS THE SUM OF THE OCS SHARE AND THE NON-FEDERAL SHARE. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$35,000 in Federal funds must include a match of at least \$11,666 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

**Anticipated Number of Projects to be Funded:** It is anticipated that three projects will be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

**2. Priority Area Number FV02-95: Historically Black Colleges and Universities (HBCUs) Institutional Outreach Activities in Support of Comprehensive Family Violence Prevention Activities (Outreach and Prevention)**

**Purpose:** To assist in the development of public information materials, educational strategies, and community activities for families as a part of a comprehensive approach to improve and enable family-focused interventions. It is expected that these interventions which are directed toward families will increase the awareness of violence and decrease its incidence and impact in minority communities. In these efforts the responding institutions should enlist the energy and cooperation of significant community institutions, community organizations, and individuals to serve as models and to provide information on resources, services, facilities, and alternatives to violence in the family.

**Eligible Applicants:** The Office of Community Services, Administration for Children and Families invites Historically Black Colleges and Universities to submit applications for projects that will provide for the development, implementation and operation of comprehensive family violence prevention strategies and for the dissemination of informational and resource materials for the prevention of family violence in our minority communities. Previous applicants for this priority area who have received grant awards are not precluded from applying for funding under this announcement.

**Background:** The goal of this priority area is to provide support for the inclusion of "family violence prevention" in a comprehensive approach which considers environmental and cultural factors in plans for intervention and violence prevention strategies in minority communities. Historically Black Colleges and Universities, because of their relationships with minority communities and its residents offer an opportunity for the exchange and development of innovative ideas and approaches to the prevention of violence in general. This effort will make it possible to capture, consider, and utilize the ideas for violence prevention that exist in the minority communities, particularly in response to problems of racism and poverty. The utilization of HBCUs in this effort will make available the considerable expertise, experience, and resources to be found in these institutions.

Family violence prevention activities encompass a wide range of activities that include the teaching of conflict resolution skills, the implementation of intervention strategies, and the development of informational materials on available resources and services. Family violence prevention may be viewed as the sum of activities which are guides to acceptable behavior. Activities that may be a part of the family violence prevention equation provide, for example, parenting skills and techniques, emphasize self-esteem for our youth, stress the importance of higher education as a conduit to a better lifestyle, and identify the means of avoiding negative health consequences such as AIDS and other sexually transmitted diseases.

Family violence prevention needs to be considered as a part of an overall violence prevention strategy. With this particular perspective OCS is interested in applications that address:

Overall strategies for violence prevention activities that focus on educational and training efforts, outreach activities and supportive services, and the role and impact of community institutions;

Cooperative networks collaborative approaches within the minority communities for the prevention of anti-social and violent behavior and that facilitate the implementation of family violence preventive efforts;

Intervention approaches concerned with the "minority family structure;"

Institutional intervention strategies utilizing resources such as alumni, fraternities and sororities, the African American religious community, and volunteers from the community in general; and

The identification of data gathering, and informational and research activities that are needed to identify, support, and implement the long-term strategic interventions to reduce "Black on Black" crime in general and family violence in the African American community in particular.

**Minimum Requirements for Project Design**

In order to successfully compete under this priority area, the applicant should:

- Prepare and submit an application that clearly reflects how the applicant will target the populations at risk, including pregnant women; coordinate with other community organizations, agencies, institutions, and individuals active in the field of family violence prevention;

- Describe, as a major element in the application, the significant prevention

efforts that are a part of the educational and training, outreach, and supportive service strategies;

- Describe, as an element of the plan, the proposed approach to a public information/community awareness strategy and identify the specific audiences, groups with the highest prevalence of domestic violence, community(s), and target group(s) on which the efforts will be focused; and
- Include as critical elements in the plan:

- The development and use of non-traditional sources as information providers and in outreach efforts;
- The intended strategies for test marketing their development plans and give assurances that effectiveness criteria will be implemented prior to finalizing the plan;
- The specific interventions to be modeled and their responsiveness and sensitivity to the general violence in the African American community;
- A set of achievable objectives and the evaluation components that are to be used to measure the degree of success in achieving the objectives as well as the assessment of the program' impact.

**Project Duration:** The length of the project should not exceed 12 months.

**Federal Share of the Project:** The maximum Federal share of the project is not to exceed \$40,000 for the 12-month project period. Applications for lesser amounts also will be considered under this priority area.

**Matching Requirement:** GRANTEES MUST PROVIDE AT LEAST 25 PERCENT OF THE TOTAL COST OF THE PROJECT. THE TOTAL COST OF THE PROJECT IS THE SUM OF THE FEDERAL SHARE AND THE NON-FEDERAL SHARE. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$40,000 in Federal funds (based on an award of \$40,000 per budget period) must include a match of at least \$13,333 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

**Anticipated number of Projects to be Funded:** It is anticipated that three projects may be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

**3. Priority Area Number FV03-95: Domestic Violence/Child Protective Services Collaboration**

**Eligible Applicants:** State and local public agencies, Territories, and Native American Tribes and Tribal Organizations who are recipients, or have been recipients, of Family Violence Prevention and Services Act grants; State and local child protection agencies; private nonprofit child welfare agencies; domestic violence advocacy organizations; and domestic violence State coalitions. Applicants must submit a signed Letter of Agreement between the public agency representing the child welfare/child protection responsibilities and the organization or coalition representing domestic violence advocacy organizations and their concerns. Either signatory to the Agreement may be the principal grantee. Previously successful applicants in this priority area for fiscal year 1994 are not precluded from participating in this announcement.

The Agreement to be submitted will specifically indicate the role each participant organization has in the implementation of the proposed project. Because the successful implementation of a proposed project would have implications for systemic/procedural change in the child welfare and/or the domestic violence community, the Letter of Agreement is mandatory.

**Purpose:** To develop effective strategies for domestic violence services integration into child protection systems and strategies. To offer the applicant organizations an opportunity to design, develop, and collaborate on one of several issues or areas of concern between the child protection system and the domestic violence community. Efforts are to be focused on the development of curricula and materials and the implementation of training to be available. The training of child protection representatives and domestic violence advocates will be to enable the most efficient and effective response when encountering partner abuse in the course of child abuse and neglect investigations. Protocols for effective strategies of intervention need to be designed, developed and put in place to allow the child protection system to assist and utilize the non-offending parent to protect his/her children.

Applicants may propose to do one or more of the following: Plan and implement the training of child protection service workers, supervisors

and social services providers on the relationship of domestic violence and child abuse and neglect; develop and implement domestic violence responsive policies to be adopted by the Statewide child protection services system; develop and implement through the child protection system a domestic violence specific curriculum which will become part of a mandatory training program; develop and implement Memoranda of Understanding between the child protection system and the domestic violence statewide system; and gather and submit data correlating spouse abuse and child abuse and neglect.

**Background:** Based on a recent review of the literature, it has become evident that the correlation of spouse abuse and child abuse and neglect is no longer anecdotal but an established fact. Domestic violence is surfacing as one of the highest risks to children. Domestic violence represents physical endangerment to the child as well as the possibility for developmental delay.

In 1985, there were an estimated 795,000 abused children between the ages of 3 and 17 living in two-parent households (Gelles, Strauss, 1987). According to these studies, men are the main perpetrators of domestic violence and commit 95 percent of all assaults on spouses. In 70 percent of households in which women are abused, the men also commit child abuse (Schechter, 1982). Also, in 70 percent of child abuse cases treated at Boston Children's Hospital in 1991, the mother was abused as well.

In an attempt to establish the actual relationship between child abuse and battering in families, 116 mothers of children "darted" or flagged in a single year for abuse or neglect at a metropolitan hospital were studied by Stark and Flitcraft (1984). These examinations revealed that 45 percent of the abused children had mothers who themselves were being physically abused and another 5 percent had mothers whose relationships were "full of conflict," although abuse was not verified. Bowker, Arbitell and McFerron (1988) reported that children whose mothers had been battered were more likely to be physically abused and less likely to be "neglected" than children whose mothers had not been battered. In Hilberman and Munson's (1987) research, they found evidence of physical and/or sexual abuse of children in 20 of the 60 cases they studied. They concluded: "There seems to be two styles of abuse: the husband beats the wife who beats the children, and/or the husband beats both his wife and children."

**Project Duration:** The length of the project should not exceed 17 months.

**Federal Share of the Project:** The maximum Federal share of the project is not to exceed \$50,000 for the 17 month project period. Applications for lesser amounts also will be considered for this project.

**Matching Requirement:** Grantees must provide at least 25 percent of the total cost of the project. The total cost of the project is the sum of the federal share and the non-federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$50,000 in Federal funds (based on an award of \$50,000 per budget period) must include a match of at least \$16,666 (25% of total project cost). If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

**Anticipated Number of Projects To Be funded:** It is anticipated that three project may be funded at the maximum level; more than three projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

**Part III—The Review Process**

**A. Eligible Applicants**

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Only agencies and organizations, *not individuals*, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one

organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any nonprofit agency submitting an application must submit proof of nonprofit status with its grant application. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. OCS cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

### *B. Review Process and Funding Decisions*

Applications that are postmarked by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

OCS reserves the option of discussing applications with, or referring them to, other Federal or nonfederal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by OCS in making funding decisions.

In making decisions on awards, OCS may give preference to applications which focus on or feature: Minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and nonfederal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or

substantial involvement in the proposed project by national or community foundations.

To the extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, OCS may also take into account the need to avoid unnecessary duplication of effort.

### *C. Evaluation Criteria*

Using the appropriate evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review each application. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

### **Review Criteria for All Priority Areas**

Applications under all priority areas will be evaluated against the following criteria:

#### *1. Objectives and Need for the Project (20 Points)*

State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance, its applicability to policy and practice. Provide a detailed discussion of the "state-of-the-art relative to the problem or area addressed by the application and indicate how the proposed effort will impact on it. State the goals or service objectives of the application. Provide supporting documentation or other testimonies from concerned interests other than the applicant. Summarize, evaluate and relate relevant data, based on planning or demonstration studies to the proposed project. The application must identify the specific topics or program areas to be served by the proposed project. Maps and other graphic aids may be attached.

#### *2. Results or Benefits Expected (20 Points)*

The extent to which the application identifies the results and benefits to be derived, the extent to which they are

consistent with the objectives of the application, the extent to which the application indicates the anticipated contributions to policy, practice, and theory, and the extent to which the proposed project costs are reasonable in view of the expected results. Identify, in specific terms, the results and benefits, for target groups and human service providers, to be derived from implementing the proposed project. Describe how the expected results and benefits will relate to previous demonstration efforts. Describe in detail evaluation plans and procedures which are capable of measuring the degree to which the project objectives have been accomplished.

#### *3. Approach (35 Points)*

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; relates each task to the objectives and identifies the key staff member who will be the lead person; provides a chart indicating the timetable for completing each task, the lead person, and the time committed; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved.

The extent to which, when applicable, the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

#### *4. Level of Effort: (25 Points)*

*Staffing pattern*—Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff.

*Competence of staff*—Describe the qualifications of the project team including any experiences working on similar projects. Also, describe the variety of skills to be used, relevant educational background and the demonstrated ability to produce final results that are comprehensible and usable. One or two pertinent paragraphs

on each key member are preferred to resumes. However, resumes may be included in the ten pages allowed for attachments/appendices.

**Adequacy of resources**—Specify the adequacy of the available facilities, resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical and other resources to be provided by other profit and nonprofit organizations. Explain how these organizations will participate in the day to day operations of the project.

**Budget**—Relate the proposed budget to the level of effort required to obtain project objectives and provide a cost/benefit analysis. Demonstrate that the project's costs are reasonable in view of the anticipated results.

**Collaborative efforts**—Discuss in detail and provide documentation for any collaborative or coordinated efforts with other agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations discussing the specifics of their commitment must be included in the application.

**Authorship**—The authors of the application must be clearly identified together with their current relationship to the applicant organization and any future project role they may have if the project is funded.

Applicants should note that non-responsiveness to the section "*Minimum Requirements for Project Design*" will result in a low evaluation score by the panel of expert reviewers (Priority area FV03-95 is excepted from this requirement). Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

#### D. Available Funds

OCS intends to award grants resulting from this announcement during the fourth quarter of FY 1995. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 or 17 months) into which a multi-year period

of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

#### E. Grantee Share of Project Costs

Federal fund will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every \$3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least \$1.

For example, the cost breakout for a project with a total cost of \$56,666 to implement would be:

Federal request	Non-Federal share	Total cost
\$50,000 75%	\$16,666 25%	\$66,666 100%

### Part IV—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

#### A. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, (E.O.) "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas,

Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau, have elected to participate in the E.O. process and have established a Single Point of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from application deadline to comment on proposed new or competing continuation awards.

SPOC are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between more advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS-95-11) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447.

A list of the Single Point of Contact for each State and Territory is included at the end of this announcement.

#### B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this program announcement under **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

- Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS-95-11) 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC. 20447, or

2. Sent on or before the deadline date and received by OCS in time for the independent review under DHHS/GAM Chapter 1 62. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.

3. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D. Street, SW., Washington, DC 20447.

*Late applications:* Applications which do not meet the criteria stated above under "Deadlines" are considered late applications. The OCS shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* The ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; if OCS determines a deadline extension to be in the best interest of the Government. However, if OCS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

### C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A SF 424A, Page 2 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, instructions for these forms have been included at the end of Part IV of this announcement.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

*Please prepare your application in accordance with the following instructions:*

#### 1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

*Top of Page.* Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

*Item 1.* "Type of Submission"—Preprinted on the form.

*Item 2.* "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

*Item 3.* "Date Received By State"—State use only (if applicable).

*Item 4.* "Date Received by Federal Agency"—Leave blank.

*Item 5.* "Applicant Information" "Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

*Item 6.* "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

*Item 7.* "Type of Application"—Self-Explanatory.

*Item 8.* "Type of Application"—Preprinted on the form.

*Item 9.* "Name of Federal Agency"—Preprinted on the form.

*Item 10.* "Catalog of Federal Domestic Assistance Number and Title"—Enter

the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

*Item 11.* "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

*Item 12.* "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

*Item 13.* "Proposed Project"—Enter the desired start date for the project and projected completion date.

*Item 14.* "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

*Items 15.* "Estimated Funding Levels"—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested.

*Item 15a.* Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

*Items 15b-e.* Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

*Item 15f.* Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add to or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

*Item 15q.* Enter the sum of items 15a-15e.

*Item 16a.* "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the

SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 30, 1995.

*Item 16b.* "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

*Item 17.* "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

*Item 18.* "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

*Item 18a-c.* "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

*Item 18d.* "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

*Item 18e.* "Date Signed"—Enter the date the application was signed by the authorized representative.

## 2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

*Section A—Budget Summary.* This section includes a summary of the budget. On line 5, enter total Federal

costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

*Section B—Budget Categories.* This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the total project period of 17 months or less. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

*Justification:* Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

*Fringe Benefits—Line 6b.* Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Travel—6c.* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

*Justification:* Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Equipment—Line 6d.* Enter the total costs of all equipment to be acquired by the project. For State and local governments, including federally recognized Indian Tribes, "equipment" is nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of \$5,000 or more per unit. For all other applicants, the threshold for equipment

is \$500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

*Justification:* Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

*Supplies—Line 6e.* Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

*Justification:* Specify general categories of supplies and their costs.

*Contractual—Line 6f.* Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

*Justification:* Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

*Construction—Line 6g.* Not applicable. New construction is not allowable.

*Other—Line 6h.* Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and

staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

*Justification:* Specify the costs included.

*Total Direct Charges—Line 6i.* Enter the total of Lines 6a through 6h.

*Indirect Charges—6j.* Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a\*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b\*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b\*) from (a\*). The remainder is what the applicant can claim as part of its matching cost contribution.

*Justification:* Enclose a copy of the indirect cost rate agreement if it was negotiated with a Federal agency other than DHHS. Applicants subject to the

limitation on the Federal reimbursement of indirect costs for training grants should specify this.

*Total—Line 6k.* Enter the total amounts of lines 6i and 6j.

*Program Income—Line 7.* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

*Justification:* Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

*Section C—Non-Federal Resources.* This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, § 74.2, as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

*Justification:* Describe third party in-kind contributions, if included.

*Section D—Forecasted Cash Needs.* Not applicable.

*Section E—Budget Estimate of Federal Funds Needed For Balance of the Project.* Not applicable.

*Total—Line 20.* For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

*Section F—Other Budget Information.*

*Direct Charges—Line 21.* Not applicable.

*Indirect Charges—Line 22.* Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

*Remarks—Line 23.* If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

### 3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

### 4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

- (a) *Objectives and Need for the Project;*
- (b) *Results and Benefits Expected;*
- (c) *Approach;* and
- (d) *Level of Effort.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" × 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

#### 5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

#### 6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

#### D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

\_\_\_\_\_ One original, signed and dated application, plus two copies.

Applications for different priority areas are packaged separately;

\_\_\_\_\_ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

\_\_\_\_\_ Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

\_\_\_\_\_ A complete application consists of the following items in this order:

\_\_\_\_\_ Application for Federal Assistance (SF 424, REV 4-88);

\_\_\_\_\_ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

\_\_\_\_\_ Budget Information—Non-Construction Programs (SF 424A, REV 4-88);

\_\_\_\_\_ Budget justification for Section B—Budget Categories;

\_\_\_\_\_ Table of Contents;

\_\_\_\_\_ Letter from the Internal Revenue Service to prove non-profit status, if necessary;

\_\_\_\_\_ Copy of the applicant's approved indirect cost rate agreement, if appropriate;

\_\_\_\_\_ Project summary description and listing of key words;

\_\_\_\_\_ Program Narrative Statement (See Part III, Section C);

\_\_\_\_\_ Organizational capability statement, including an organization chart;

\_\_\_\_\_ Any appendices/ attachments;

\_\_\_\_\_ Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88);

\_\_\_\_\_ Certification Regarding Lobbying; and

\_\_\_\_\_ Certification of Protection of Human Subjects, if necessary.

#### E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to

facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles incorporation. Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgement of receipt of your application is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 401-5529.

#### F. Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total required financial grantee participation.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR part 74 or 92.

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental), 92 (governmental), OMB Circular A-133 and OMB Circular A-128. If an applicant does not request indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Pub. L. 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier

contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) the law requires recipients and their subtier contractors

and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purposes of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or *nonappropriated* funds on or after December 22, 1989 and (3) to file

quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

Dated: March 28, 1995.

**Donald Sykes,**

*Director, Office of Community Services.*

**BILLING CODE 4184-01-M**



**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

**Item and Entry**

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

- “New” means a new assistance award.
- “Continuation” means an extension for an additional funding/budget period for a project with a projected completion date.
- “Revision” means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by

each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

**BILLING CODE 4184-01-M**

OMB Approval No. 0348-0044

**BUDGET INFORMATION — Non-Construction Programs**

**SECTION A — BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

**SECTION B — BUDGET CATEGORIES**

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$	\$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
B.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	FUTURE FUNDING PERIODS (Years)			4th Quarter
		1st Quarter	2nd Quarter	3rd Quarter	
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16 - 19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

SF 424A (4-88) Page 2  
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**Instructions for the SF-424A***General Instructions*

This form is designed so that application can be made for fund from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

*Section A. Budget Summary*

Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds

need for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal Resources*

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e)

should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) related to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination

statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of

underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

\_\_\_\_\_  
Signature of authorized certifying official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Applicant organization

\_\_\_\_\_  
Date submitted

BILLING CODE 4184-01-M

**U.S. Department of Health and Human Services**  
**Certification Regarding Drug-Free Workplace Requirements**  
**Grantees Other Than Individuals**

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) \_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall

disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and

contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Date

BILLING CODE 4184-01-M

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial filing  <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b>  year _____ quarter _____  date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity:</b></p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee  Tier _____, if known:</p> <p>Congressional District, if known: _____</p>		<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known: _____</p>
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p> <p>\$ _____</p>	
<p><b>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</b></p>		<p><b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b></p>
<p><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p><b>11. Amount of Payment (check all that apply):</b></p> <p>\$ _____      <input type="checkbox"/> actual      <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other; specify: _____</p>	
<p><b>12. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____  value _____</p>		
<p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b></p> <p><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p><b>15. Continuation Sheet(s) SF-LLL-A attached:</b>      <input type="checkbox"/> Yes      <input type="checkbox"/> No</p>		
<p><b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>	<p><b>Signature:</b> _____  <b>Print Name:</b> _____  <b>Title:</b> _____  <b>Telephone No.:</b> _____      <b>Date:</b> _____</p>	
<p><b>Federal Use Only:</b></p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

**Executive Order 12372—State Single Points of Contact***Arizona*

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

*Arkansas*

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682-1074

*California*

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

*Delaware*

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

*District of Columbia*

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727-6551

*Florida*

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8441

*Georgia*

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

*Illinois*

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782-1671

*Indiana*

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

*Iowa*

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

*Kentucky*

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564-2382

*Maine*

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

*Maryland*

Ms Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

*Massachusetts*

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

*Michigan*

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373-7356

*Mississippi*

Ms Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960-2174

*Missouri*

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687-4065, Attention: Ron Sparks, Clearinghouse Coordinator

*New Hampshire*

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

*New Jersey*

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613  
Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025

*New Mexico*

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

*North Carolina*

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603-8003, Telephone (919) 733-7232

*North Dakota*

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505-0170, Telephone (701) 224-2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

*Rhode Island*

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656  
Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

*South Carolina*

Omegaia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0494

*Tennessee*

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

*Texas*

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

*Utah*

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

*Vermont*

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

*Wisconsin*

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of

Administration, 101 South Webster Street,  
P.O. Box 7864, Madison, Wisconsin 53707,  
Telephone (608) 266-0267

*Wyoming*

Sheryl Jeffries, State Single Point of Contact,  
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**Certification Regarding Environmental  
Tobacco Smoke**

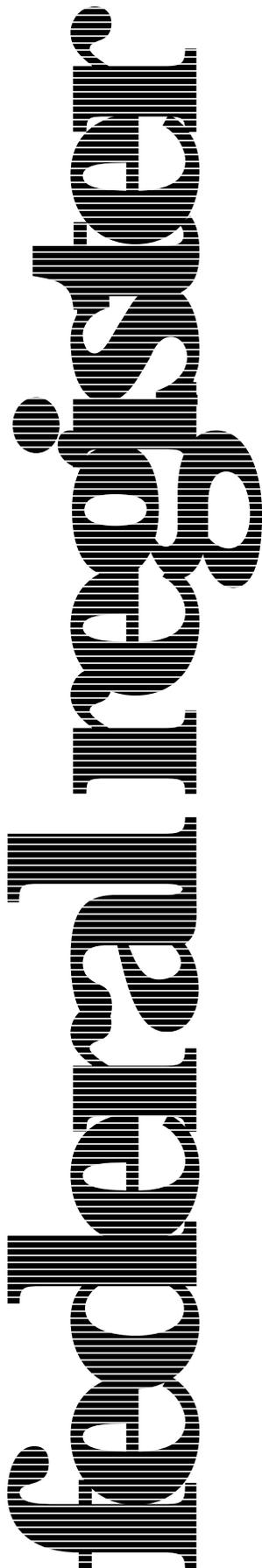
Public Law 103-227, Part C—  
Environmental Tobacco Smoke, also known  
as the Pro-Children Act of 1994 (Act),  
requires that smoking not be permitted in any  
portion of any indoor facility owned or  
leased or contracted for by an entity and used  
routinely or regularly for the provision of  
health, day care, education, or library  
services to children under the age of 18, if  
the services are funded by Federal programs

either directly or through State or local  
governments, by Federal grant, contract, loan,  
or loan guarantee. The law does not apply to  
children's services provided in private  
residences, facilities funded solely by  
Medicare or Medicaid funds, and portions of  
facilities used for inpatient drug or alcohol  
treatment. Failure to comply with the  
provisions of the law may result in the  
imposition of a civil monetary penalty of up  
to \$1000 per day and/or the imposition of an  
administrative compliance order on the  
responsible entity.

By signing and submitting this application  
the applicant/grantee certifies that it will  
comply with the requirements of the Act. The  
applicant/grantee further agrees that it will  
require the language of this certification to be  
included in any subawards which contain  
provisions for children's services and that all  
subgrantees shall certify accordingly.

[FR Doc. 95-8755 Filed 4-7-95; 8:45 am]

BILLING CODE 4184-01-M



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Monday  
April 10, 1995

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**Part VII**

**Department of  
Energy**

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**Office of Energy Efficiency and  
Renewable Energy**

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**10 CFR Part 436  
Federal Energy Management and  
Planning Programs, Energy Savings  
Performance Contract Procedures and  
Methods; Final Rule**

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy****10 CFR Part 436**

[Docket No. EE-RM-94-201]

RIN 1904-AA62

**Federal Energy Management and Planning Programs; Energy Savings Performance Contract Procedures and Methods**

AGENCY: Department of Energy.

ACTION: Final Rule.

**SUMMARY:** The Department of Energy gives notice of final rules establishing a five-year pilot program of energy savings performance contracts designed to accelerate investment in cost effective energy conservation measures in existing Federal buildings and thereby save taxpayer dollars. Such contracts typically provide for installation of energy conservation measures financed with private sector funds which are repaid out of the resulting energy cost savings over time. This notice covers the following topics as required by section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287): qualified contractor lists; procedures and methods to select, monitor, and terminate contracts; and substitute regulations for certain provisions in the Federal Acquisition Regulation which are inconsistent with section 801 and which can be varied consistent with their authorizing legislation.

**EFFECTIVE DATE:** These rules become effective May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joan G. Stone, EE-92, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5772 (regarding the regulations) and the FEMP Help Desk (for a copy of the revised model solicitations) (800) 566-2877.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Department of Energy (Department or DOE) today publishes a notice of final rulemaking which will inaugurate a Congressionally mandated experiment in procurement reform. This experiment involves a pilot program to test for five years the concept of accelerating installation of energy conservation measures in existing Federally owned buildings through energy saving performance contracts. This type of contracting calls for Federal

agencies to contract for energy conservation services with performance guarantees and pay for them in the future from the resulting cost savings. If successful, this program will boost the level of energy efficiency investment significantly beyond what can be purchased with appropriated funds. It will also make a contribution to achieving ambitious national energy efficiency goals and to reducing greenhouse gas emissions.

Today DOE is also releasing revised versions of the model solicitations which were made available for public comment. These solicitations provide guidance to implementing Federal agencies on conducting procurement actions consistent with the rules in this notice. DOE will use these model solicitations in training workshops for agency procurement professionals.

On March 10, 1994, the President issued Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (59 FR 11463). Section 401 of the Executive Order requires agencies to utilize energy savings performance contracts to meet the goals and requirements of the Act. With the issuance of today's regulations and the model solicitations, Federal agencies have the regulatory flexibility to comply with the President's management directions. What is necessary now is action by senior agency officials, an appropriate agency priority on employing energy savings performance contracts, development and maintenance of a trained cadre of dedicated procurement personnel, and accountability for results.

**Background**

On April 11, 1994, (59 FR 17204) DOE published a notice of proposed rulemaking under section 155 of the Energy Policy Act of 1992 (Pub. L. 102-486). Section 155 revised the legislatively mandated policies with regard to energy saving performance contracts originally set forth in sections 801-804 of National Energy Conservation Policy Act (Act). Section 801 specifically authorizes Federal agencies to enter into such a contract for a term not to exceed 25 years. It also provides that such a contract contain provisions requiring the contractor to "incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract" (42 U.S.C. 8287(a)(1)). In addition, the Act

specifically authorizes payment of amounts required by an energy savings performance contract "only from funds appropriated or otherwise made available to the agency . . . for the payment of energy expenses (and related operation and maintenance expenses)" (42 U.S.C. 8287a). Periodic reporting on progress by Federal agencies in modifying contract practices and in achieving energy savings under contracts is mandated by section 803 of the Act (42 U.S.C. 8287b). Definitions pertinent to sections 801-803 are set forth in section 804 of the Act (42 U.S.C. 8287c).

Section 155 of the Energy Policy Act inserted in section 801 a requirement for DOE to issue appropriate rules containing: (1) Methods and procedures for selecting, monitoring, and terminating energy savings performance contracts; and (2) "substitute regulations" for provisions of the Federal Acquisition Regulation (FAR) which are inconsistent with the intent of section 801 as amended and which may be revised consistent with generally applicable procurement statutes. Energy savings performance contracts are designed to reduce the cost of energy in Federal buildings without capital investment by the building owner. Typically, the terms of such a contract provide for contractor purchase, installation, and maintenance of energy conservation measures with a guarantee of annual energy cost savings in consideration for a share of such savings. "Under these contracts, the contractor is expected to bear the risk of performance, make a significant initial capital investment, guarantee significant energy savings to the government agency, and from these savings, the agency, in effect, makes payment to the contractor." H.R. Conf. Rep. No. 102-1018, 102d Cong., 2d Sess., 385, reprinted in 1992, U.S. Code Congressional and Administrative News 2476.

The Act requires that DOE obtain the concurrence of the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421) in the issuance of the final rule. The Federal Acquisition Regulatory Council has reviewed this notice and has no objection to the issuance of the final rule.

The model solicitations, referred to earlier in this Supplementary Information, provide uniform formats and standardized contract provisions recommended for Federal agency use in energy savings performance contracts. The model or generic solicitations include some provisions that have been

determined necessary to accommodate the unique nature of energy conservation services which often require third-party financing.

## II. Discussion of Comments and Other Changes

DOE held a public hearing on June 1, 1994, and the closing date for receipt of written comments was June 10, 1994. Nineteen interested persons filed written comments of which 13 presented oral comments at the public hearing. DOE appreciated all comments and suggestions submitted in response to the proposed rule. DOE was especially appreciative of certain of those written comments that addressed the proposed guidance in the draft model solicitations in addition to the proposed regulations. DOE fully considered all of the suggestions and arguments made in the comments in revising the proposed regulations and the draft model solicitations. In this Supplementary Information section, DOE explains significant changes from the proposed regulations. Included in the explanation are responses to the major policy issues distilled from comments directed at the proposed regulations, as well as from comments directed at the draft model solicitations that had implications for the proposed regulations.

DOE has chosen not to respond to comments that request actions beyond its legal authority to issue regulations. For example, there is no need to respond to policy arguments in comments criticizing DOE's legal conclusions rejecting suggested substitute provisions for the Federal Acquisition Regulation. DOE hereby reaffirms its previously expressed views in this regard.

DOE has sent to each of the commenters a copy of the revised model solicitations and will be scheduling a public meeting at which time there can be a dialog on issues that relate solely to those solicitations. Interested persons who did not comment on the proposed regulations may obtain a copy of the revised model solicitations by calling the FEMP Help Desk at 1-800-566-2877. Any such person may attend the public meeting which will be noticed in the **Federal Register**.

### A. Section 436.30 Purpose and Scope

As proposed, 10 CFR § 436.30(c) would encourage competition in utility incentive programs under section 546(c) of the Act. 42 U.S.C. 8256(c). A commenter recommended that language be added to proposed § 436.30(b) which would prohibit agencies from participating in utility incentive

programs when the services could be provided by energy service contractors through energy savings performance contracts. Another commenter seeking to maximize competition suggested that the language in § 436.30(c) be revised to "require" instead of encourage utilities to select their contractors in a competitive manner. DOE did not accept either of these suggestions because it does not have the authority to regulate agency activities or contractual agreements with regard to utility incentive programs as authorized under section 546 of the Act.

DOE has added a paragraph (d) containing language to ensure that the rules published today are broadly construed when the regulatory language is not restrictive. Permissive language in the regulations ("may" rather than "shall") ordinarily should not be read to limit agency discretion. For example, the express authority to accept unsolicited proposals if certain conditions are satisfied does not preclude agencies from rejecting such a proposal because it prefers competitive solicitations or concludes that the proposal is too narrowly focused on one or two energy conservation measures.

### B. Section 436.31 Definitions

#### Energy Audit

Regarding the definition of "energy audit," commenters generally agreed with the Department's position that specific energy audit requirements should not be prescribed in mandatory regulations. Apart from regulatory provisions requiring there to be energy audits at certain times, the specifics with regard to energy audits appear in the revised model solicitations.

Numerous comments on the model solicitations were received relating to the applicability, rigor, and timing of energy audits which may be conducted by a Federal agency or an energy service company, before or during a contract. Detailed responses to these comments appear later in this Supplementary Information section in the discussion of comments with regard to § 436.33. However, at this point, DOE notes that, in order to promote clarity, the definition of "energy audit" has been limited to "annual energy audits" that take place during the course of a contract to verify savings and to determine whether to adjust the energy baseline for changes in conditions beyond the contractor's control. This limitation is consistent with the statutory text which uses the term "energy audit" only in connection with post award, annual energy audits. DOE has also added definitions for two new

terms: "preliminary energy survey" and "detailed energy survey." These two terms refer to audit-type procedures which may precede contractor selection and contract award, respectively.

#### Energy Conservation Measures

One commenter recommended that the definition of "energy conservation measures" include language which addresses "other environmental improvements" to encompass technological breakthroughs. DOE did not incorporate this comment into the rule because DOE has no authority under 42 U.S.C. 8287c to include the additional language.

#### Energy Cost Savings and Energy Savings

One commenter suggested that the statutory definition of "energy savings" in section 804 of the Act be included in the rule instead of the proposed "Energy Cost Savings" definition. Further, the commenter suggested that the proposed definition of the term "Energy Savings" be changed to "Energy Unit Savings."

DOE has accepted the latter suggestion because it implies in plain English that the measure of savings is in physical units. However, DOE has decided to retain "energy cost savings" as the defined term for savings measured in dollars. In general, DOE prefers to use defined terms which have definitions close to normal usage.

Some of the comments indicated uncertainty about the extent to which energy-related operation and maintenance cost savings are included in the definition of "energy cost savings." DOE recognizes that the law allows a contractor to be paid from savings in related operation and maintenance costs, if the contractor assumes responsibility for operations or maintenance of equipment it has retrofitted or replaced and which is currently covered in an operation and maintenance service contract.

One commenter recommended that DOE consider how "soft savings" should be defined and considered. Examples of soft savings are increased worker productivity and extended equipment life. DOE has decided not to address soft savings in the final rule because it is too subjective and difficult to measure accurately.

#### Energy Savings Performance Contracts

A commenter asked DOE to clarify whether the procedures in the rule for energy savings performance contracts apply to water conservation projects. DOE did not include water conservation in the definition for "energy savings performance contracts" in the rule because water conservation was not

included in the definition in 42 U.S.C. 8287c.

*C. Section 436.32 Qualified Contractor List*

Paragraph (a) of 436.32 provides for annual notices in the Commerce Business Daily inviting submission of new statements of qualification and requiring submission by listed firms of updates to their statements as appropriate. This provision differs from the proposed rule only to the extent that the wording has been altered to make clear that submission of updated information is required.

One of the commenters on proposed § 436.32(a) argued that an annual update of the qualified list may unnecessarily restrict competition. Furthermore, the commenter argued that the usefulness of any such list may be limited by the age of the information provided by contractors. This commenter recommended that the list should be open continuously to add qualified contractors. Although an annual notice will be published, DOE will allow potential contractors that are not on a qualified list to submit a statement of qualifications at any time. DOE agrees that this will assist in increasing competition among firms.

The proposed rule provided for updating statements of qualifications, but did not make explicit that a firm could be delisted for failure to respond or because new information warranted disqualification. Paragraph (c) of § 436.32 remedies that omission.

The preamble to the proposed rule set forth two questionnaires which would be used to establish the qualified list of firms as provided under paragraph (a) of § 436.32. In response to DOE's request for public comments on the adequacy of the questionnaires, a number of firms submitted comments. The most significant of these are addressed below. These questionnaires have been revised based on public comments as discussed below. A copy of them is set forth after a discussion of public comments.

DOE agrees with commenters that it would be difficult for firms to identify all associates and subcontractors without the knowledge of specific projects and its location. The questionnaire was revised by deleting the requirement for the identification of subcontractors.

A commenter recommended that the table under "EXPERIENCE," seeking a five year summary of contract values for energy-related services, be clarified. It was noted that the total project cost had little bearing on technical ability or project management expertise. Based on this comment, the table was deleted,

and a question was added to "Financial Status" requesting the largest capital investment for an energy savings performance contract for which the firm acquired financing.

Some of the commenters criticized the request for all legal or administrative proceedings pending or concluded adversely against firms within the last five years relating to procurement or performance of construction contracts. The commenter argued that: (1) Responding to the request would be too burdensome; (2) adverse judgments may not have an impact on a firm's financial status; and (3) the information would be sought and reviewed by a contracting officer in any event prior to award. DOE has accepted these comments and has deleted the request.

A commenter was concerned about the disclosure of proprietary information provided on their statements of qualifications. In the Department's view, information in a firm's statement of qualifications will be subject to the same restrictions on disclosure of proprietary and business sensitive information as other proposals and documents submitted to the Federal government by private firms. The Department does not believe any additional restrictions are necessary or advisable.

One of the comments suggested that the questionnaire should include questions about potential performance guarantors, and argued that the best interests of the government would be served if the qualified list did not include a firm that would rely on a legally separate guarantor in which the firm has an indirect financial interest. Contrary to this comment, DOE has concluded that the questionnaire should not include questions about potential performance guarantors because a firm's decision to seek insurance, regardless of source, is not relevant to determining whether a firm has the minimum qualifications to provide energy savings performance services.

Comments received on the experience criteria were divided. Some comments argued that new firms may have difficulty meeting the two year experience requirements, even if they have experienced personnel, and that reputable firms would have difficulty qualifying if they have no performance contracting experience. Another commenter stated that two successful contracts with two clients should be sufficient for qualification. To broaden the list of qualified firms and increase competition, paragraph (b)(1) of § 436.32 has been revised to allow contractors to qualify if they provide two contracts for installation of energy conservation

measures, regardless of whether they are energy savings performance contracts, and if they otherwise have appropriate project experience showing success in using energy conservation technologies.

In response to comments that the draft experience criteria should remain unchanged because firms without a proven track record may not generate energy savings, DOE observes that the qualified list is an initial screening, and agencies will independently review a firm's qualifications through their source selection process and determine whether or not a firm has the ability to generate savings.

A question was asked by one commenter as to the effect a decision by DOE with respect to inclusion on the qualified contractors list would have on a contracting officer's obligation to refer nonresponsibility determinations to the Small Business Administration under FAR 19.602. Section 801(b)(2) of the Act authorizes the Department to establish a list of qualified contractors and requires agencies to use this list, or one developed in the same manner by the agency itself. Furthermore, agencies are authorized by the Act to select firms from the list to conduct discussions concerning a particular project. While this rule establishes certain criteria for inclusion of a firm on the list, the contracting officer is still required to make a responsibility determination on a procurement-specific basis. A decision that a particular small business is not "qualified" and, therefore, not eligible to be included on the qualified contractors list is not a determination of non-responsibility and has no effect on a contracting officer's obligation to make responsibility determinations.

Under paragraph (b)(2) of proposed § 436.32, a firm would have to be rated fair or better by its project clients to meet the minimum criteria. Commenters argued that the minimum criteria be raised to a rating above "fair." DOE decided not to accept this comment. Instead the client questionnaire was revised to add "recommend contractor" to the rating of "fair" to make it clear that even though there was room for improved quality and performance, the client would still give the firm a positive recommendation because the firm met the project objective. With this modification of the questionnaire, DOE believes that a client rating of fair or better is sufficient to consider a firm for the qualified list. During the actual source selection process, agencies will independently make the determination whether a firm meets the minimum requirements to accomplish a specific project.

Commenters recommended that paragraph (b)(4) of proposed § 436.32 be changed by adding a statement related to the financial strength of the firm to provide adequate bonding. This was not included in the qualification process because agencies will address a firm's bonding capabilities prior to the award of a specific contract.

A commenter recommended that paragraph (c) of proposed § 436.32 should be revised to allow any Federal agency to enter into sole source contracts with firms competitively selected by local utilities. This recommendation was not incorporated in the final rule because DOE has no authority under 42 U.S.C. § 8287 to implement it.

One commenter recommended that firms not selected for inclusion on the qualified contractors list be given an opportunity to comment on adverse information short of filing an appeal to the General Services Administration Board of Contract Appeals. Section 436.32(d) of the rule provides firms found not to be qualified the opportunity for a debriefing from a DOE official. In the Department's view, this should provide an efficient informal method for advising a disappointed firm of the basis for the Department's decision. Furthermore, since the list will be updated on a continual basis rather than annually, firms will be able to provide corrected or supplemented statements of qualifications for consideration by the Department at any time.

Following are questionnaires the Department plans to use for establishing the qualified list:

#### 1. General Information

(a) Name and address of firm:

(b) Telephone No.:

Fax No.:

(c) Indicate type of firm:

\_\_\_\_\_ Partnership

\_\_\_\_\_ Corporation

\_\_\_\_\_ Sole proprietor

\_\_\_\_\_ Branch Office of

\_\_\_\_\_ Joint Venture (List venture partners)

\_\_\_\_\_ Other (Explain) \_\_\_\_\_

(d) This submittal applies to:

Parent Company

Subsidiary

Division

Branch Office

Other

List the names of any of the above marked entities which are to be considered in the prequalification

process, and describe their functions, responsibilities, and interrelationships.

(e) Names and titles of two people authorized to represent the firm

(f) Federal Employer Identification Number

(g) Year firm was established

(h) Name and address of parent company (if applicable)

(i) Indicate previous names of firm:

(j) Has your firm been competitively selected by a Utility Company under a Demand-Side Management Bidding program to provide conservation services for commercial and industrial customers? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please designate the utility and provide pertinent information.

(k) Indicate the largest dollar value of investment your firm would consider for a Federal Government energy savings performance contract (ESPC)

(l) Indicate the regions of the country your firm would consider providing Federal ESPC services

Region 1 (CT, ME, NH, VT, MA, RI)

Region 2 (NY, NJ)

Region 3 (MD, DE, VA, WV, DC, PA)

Region 4 (FL, GA, KY, MS, NC, SC, TN, AL)

Region 5 (IL, IN, MI, MN, OH, WI)

Region 6 (AR, LA, NM, OK, TX)

Region 7 (IA, KS, MO, NE)

Region 8 (CO, MT, ND, SD, UT, WY)

Region 9 (CA, AZ, NV, HI)

Region 10 (WA, OR, AK, ID)

All Regions

Territories

Overseas Facilities

Exceptions (specify) \_\_\_\_\_

#### 2. Experience

(a) List and briefly describe two projects completed by your firm that have been operating and saving energy or reducing utility costs and that best illustrate your range of experience relative to energy savings performance contracting or energy management expertise (e.g., type of technologies implemented). If your firm does not possess ESPC experience with the technologies for which you want to be qualified, provide the experience of your firm in implementing other technologies. One project should represent the largest project completed, and the other should represent a recently completed project. For each project, provide information on the following items:

1) Project title and location.

2) Client to contact regarding the project, his or her position, address, and telephone number.

3) Whether the project was for public or private sector.

4) Briefly describe the facility including function, number of buildings, and size in square feet.

5) Total contract amount.

6) Type of financing arranged by your firm.

7) Type and term of contract.

8) Starting and ending dates.

9) Whether the project was completed on schedule. If not, explain.

10) Projected annual energy savings and/or demand reduction.

11) Performance guarantees, if performance-based energy service contract.

12) Actual annual energy savings and/or demand reduction achieved for each project.

13) Notes, explanations, or any other information relating to the project. (Optional)

(b) Indicate the number of years in business as an Energy Management Contractor: \_\_\_\_\_ years. Indicate all other names for your firm and the length of time your firm had that name.

#### 3. Technical Capability

List the technologies (e.g., lighting; HVAC systems) which your firm may propose to apply to a building or facility to implement energy conservation measures under an energy savings performance contract.

#### 4. Available Staff

(a) Indicate the experience in energy management and energy conservation services of the personnel in your firm that you are intending to utilize on projects.

(b) List all professional and skilled trades which your firm customarily performs with your own employees.

#### 5. Financial Status

(a) For each year in the last five years, identify the largest capital investment for an ESPC in which your firm acquired financing.

(b) State whether your firm (or predecessors, if any) or any principal of the firm has been insolvent or declared to be in bankruptcy within the past 5 years.

(c) Indicate whether your firm or any principal of the firm has been debarred by the Federal Government and provide explanation.

The following is the revised questionnaire that the firm will send to two of its clients:

1. Was the project completed on schedule?

2. Did contract involve energy savings performance guarantees? If so, describe performance guarantees (e.g., annual energy or cost savings).

3. Did the installed project achieve energy savings and/or demand reduction projected or guaranteed by contractor?

4. Was the method(s) used by the contractor to determine annual energy savings and/or demand reduction acceptable for the type of energy conservation measures installed?

5. Did the contractor provide satisfactory operations, maintenance, and repair services, if any?

6. Were rebates from the utility in your area available to you? If yes, did the contractor arrange satisfactory utility supplier rebates or other financial incentives?

7. Did the contractor provide or arrange satisfactory project financing?

8. What was your total compensation under the contract?

9. Provide a rating, using the categories identified below, of your overall satisfaction with the services provided by the contractor. Please briefly explain your reasons for giving a rating of "Fair" or "Poor," as applicable.

[ ] *Excellent*—Exceeded expectations, highly recommend contractor.

[ ] *Good*—Met all requirements, recommend contractor.

[ ] *Fair*—Achieved project objective, room for improved quality and performance, recommend contractor.

[ ] *Poor*—Significant shortfall in meeting contractual requirements, would not recommend.

If an accreditation process by a professional association effectively covers some or all of the information requested through this survey, evidence of accreditation could be submitted in lieu of the relevant portion(s) of this questionnaire.

#### *D. Section 436.33 Procedures and Methods for Contractor Selection*

The proposed contractor selection methods and procedures in the proposed rule and in the model solicitations attracted substantial comment. Several commenters provided detailed critiques of the method for competitive selection of contractors. In their view, the Department's proposed method of contract award would be more expensive for prospective contractors and expose them to more risk than the usual method under which such contracts are awarded in the private sector. Under the draft model solicitations, all potential contractors

would conduct "investment-grade" audits before submitting a proposal. This is an expensive undertaking which, the commenters argued, would discourage firms from competing and from offering a comprehensive package of energy conservation measures.

The foregoing comments led the Department to rethink the method for competitive selection of contractors. Both the proposed regulations and the draft model solicitations have been revised to provide Federal agencies the option to use a two stage proposal process instead of the more conventional selection process. In the first stage, the Federal agency would solicit initial proposals. In the solicitation, the Federal agency could release whatever data it had about a building, indicate what energy conservation measures should be included in a proposal, and allow potential proposers the opportunity to conduct a "preliminary energy survey." Upon receipt of proposals, the Federal agency would preliminarily select a proposer and announce an intent to make an award. However, prior to award, the Federal agency would have the option to require a selectee to conduct a "detailed energy survey" to confirm or modify its proposal, subject to the condition that the confirmed or modified proposal would include a performance guarantee that does not reduce the energy cost savings estimated in the initial proposal more than a fixed percentage set forth in the solicitation. If this condition is not met, the Federal agency may select another firm from among those submitting initial proposals. On the other hand, as the model solicitation provides, if the detailed energy survey revealed previously unsuspected potential savings, the contract award could include the additional energy conservation measures.

DOE decided to describe pre-award energy auditing procedures as energy surveys because section 801 of the Act only refers to "annual energy audits." The difference between a "preliminary energy survey" and a "detailed energy survey" is the degree of rigor in the survey. The former would be in the nature of what some of the comments described as a "scoping audit," and the latter could resemble what some of the comments described as "investment grade audits." There would be no obligation on a Federal agency to require a "preliminary energy survey," and if existing data were sufficient, then there would be no functional purpose to such survey. The degree of rigor in a "detailed energy survey" would be a function of how much information a

proposer who has been selected for award needs to confirm or modify a proposed performance guarantee. The Department is of the view that selection for award should be enough of an inducement for a proposer to undertake the risk of conducting a "detailed energy survey" that might not lead to an award. The Department believes that this change in the method of selecting a contractor will reduce cost and risk for potential contractors and, thereby, increase competition in energy savings performance contracting for the Federal Government.

One commenter objected to the provision in proposed § 436.33(a)(1) that agencies "request the submission of 'intent to propose' statements from all firms on the list who may be interested in proposing" and that selection of the contractor be from those firms submitting "intent to propose" statements. The commenter considered this provision inconsistent with the statutorily-based requirement in 48 CFR subpart 5.2 that proposed contract actions be synopsisized in the Commerce Business Daily. The Department agrees with this comment and has revised § 436.33(a) of the rule to provide for issuance of a CBD notice to inform interested firms of a planned energy savings performance contract. DOE has decided that the proposed rule requirement for submission of an "intent to propose" statement for firms on the qualified list is unnecessary in light of the decision to use a CBD notice to inform firms of a performance contract action.

Section 436.33(a)(4) of the proposed rule stated that a contractor may be competitively selected based on proposals for a representative sample of buildings at a large facility. The agency may then request further proposals from the contractor for all or some of the remaining buildings at the site. One commenter suggested the addition of language to this section clarifying that the agency is not obligated to award a contract or contracts to the selected contractor based on such further proposals. The agency is free to conduct additional competitions covering the other buildings. The Department agrees that agencies should be free to conduct such a competition, but does not agree that this clarification is necessary because the regulatory provision is worded permissively. It states what an agency "may" do and not what it must do.

Some commenters expressed concern about the protection of proprietary and confidential information that may be contained in unsolicited proposals.

Section 801(b)(2)(C)(iii) of the Act requires Federal agencies to publish a notice in the Commerce Business Daily regarding the receipt of an unsolicited proposal and inviting other qualified firms to submit competing proposals. In the Department's view, the content of such notices, as well as unsolicited proposals themselves, will be subject to the same restrictions on disclosure of proprietary and business sensitive information as other proposals and documents submitted to the Federal government by private firms. The Department does not believe any additional restrictions are necessary or advisable.

One commenter recommended that the proposed rule be revised to permit the submission of unsolicited proposals from any firm, not just those on the qualified contractors list. The commenter contended that this provision in the proposed rule is an unnecessary limitation which is inconsistent with section 801 of the Act. The Department does not agree with this comment. Section 801(b) of the Act permits receipt of unsolicited proposals from those companies that are "qualified." The word "qualified" is used in connection to the statutory provisions governing the qualified contractor's list. As used in context, "qualified" appears to apply only to companies on the qualified contractors list. Firms will be able, under the final rule, to submit statements of qualifications at any time and may be added to the list if found to be qualified. Thus the limitation in section 801 of the Act on unsolicited proposals should not act as an impediment to firms wishing to submit such a proposal.

One commenter suggested the deletion from § 436.33(b) of the reference to the statutory provisions (10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5)) which permit other than full and open competition when "authorized or required by law." The commenter argued that the procedures and methods established pursuant to section 801(b)(2) of the Act constitute "competitive" procedures for the selection of energy savings performance contractors. In considering this comment, the Department examined the applicability of the Competition in Contracting Act provisions to the "procedures and methods" which the Energy Policy Act requires the Secretary of Energy to establish for the selection, monitoring and termination of contracts with energy savings performance contractors. The Department has concluded that, under 41 U.S.C. 253(a)(1), the procedures and methods required by the Act are "procurement

procedures otherwise expressly authorized by statute," and, as a consequence, are exempt from the Competition in Contracting Act's requirement for full and open competition. Accordingly, the reference to 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5) has been deleted in the final rule.

The Department has added language to § 436.33(b) to clarify that, with respect to the receipt of unsolicited proposals for energy savings performance contracts, the provisions contained in § 436.33 apply instead of the following Federal Acquisition Regulation provisions which relate to the treatment of unsolicited proposals: 48 CFR 15.503(a) and (c); 48 CFR 15.506-2(a)(1); 48 CFR 15.507(a), (b)(2), (b)(3), (b)(4) and (b)(5). These provisions have been made inapplicable because they relate to the requirement in the Federal Acquisition Regulation that unsolicited proposals must be unique and innovative. This requirement does not apply to the selection and award of energy savings performance contracts.

One commenter objected to the prohibition in proposed § 436.33(b)(2) against an award of an energy savings performance contract based on an unsolicited proposal "if there are other energy conservation measures which reasonably could be implemented in the existing Federally owned building or facility." This proposed prohibition, in the commenter's view, is overly broad and vague and could make the award of energy savings performance contracts on the basis of unsolicited proposals difficult if not impossible. The Department agrees that the proposed limitation is unnecessarily restrictive and is not required by the Act. Thus the Department has deleted it.

The proposed rule did not purport to restrict agency awards based on unsolicited proposals where no response is received to a Commerce Business Daily notice. However, there was concern expressed in the comments about acceptance of such an unsolicited proposal if it focused exclusively on a small number of energy conservation measures and ignored other significant opportunities to increase energy efficiency. Although refusal to accept an unsolicited proposal could be predicated on an excessively narrow focus, DOE is not prepared to require that agencies reject all unsolicited proposals with only one or two energy conservation measures. The facts and circumstances may warrant agency acceptance of such a proposal. Accordingly, DOE has restructured paragraph (b) of § 436.33 into three paragraphs to make the policies on

unsolicited proposals easier to read, and paragraph (b)(2) makes explicit that an agency may reject an unsolicited proposal because it is too narrow in scope.

One of the commenters expressed an interest in clarification of paragraph (c) of proposed § 436.33 which purported to recognize the authority of the Department of Defense under other law, 10 U.S.C. 2865, to negotiate "energy savings performance contracts" with contractors selected competitively by utilities. Another commenter argued for deletion of paragraph (c) because it could be a source of potential confusion. DOE has opted to delete the paragraph because construction and application of 10 U.S.C. 2865 is the responsibility of the Department of Defense.

Almost all commenters agreed with the Department's preliminary determination that the requirement for submission of certified cost or pricing data should be waived. These commenters provided additional support for the conclusion that this requirement is inconsistent with the intent of section 801 of the Act. They pointed out that, under energy savings performance contracts: (1) The government makes no up-front payments to the contractor; (2) the risk of performance is entirely with the contractor; and (3) the government only pays the contractor out of verified savings that result from the services performed by the contractor. They emphasized the expense and administrative burden that submission of certified cost or pricing data and compliance with cost accounting standards represent to energy service companies. A number of commenters noted that, for smaller companies, compliance with these requirements might pose a significant impediment to competing for government contracts.

Two commenters questioned DOE's authority to waive the requirement for submission of certified cost or pricing data for other Federal agencies. They also pointed out that the Truth in Negotiations Act, which requires the certification, was designed to assist the government in negotiating fair and reasonable prices and that energy savings performance contracts must be awarded at fair and reasonable prices.

The Department agrees that in most cases the waiver authority provided by law appropriately resides with the head of the procuring activity awarding the contract (§ 304A(b)(1)(B) of the Federal Property and Administrative Services Act of 1949). In the case of energy savings performance contracts, however, the Energy Policy Act expressly directs the Secretary of Energy to establish

methods and procedures for selecting, monitoring and terminating such contracts. Other agencies are required to follow these procedures if they wish to enter into an energy savings performance contract. Consequently, the Department has concluded that it has the necessary authority to find that energy savings performance contracts as a class are "an exceptional case" and to direct the heads of procuring activities to waive the requirement for the submission of certified cost or pricing data for such contracts.

It should be noted, however, that waiver of the requirement for certified cost or pricing data is not intended to preclude contracting officers from requesting information considered necessary to determine whether a contractor's prices are fair and reasonable. Language has been added to § 436.33(c) to provide that the waiver does not preclude agencies from requesting the submission of pricing and related financial information as part of contract proposals.

One commenter suggested that the rule itself, rather than merely the preamble, contain a provision stating that energy savings performance contracts are firm fixed-price contracts. The Department agrees with this comment and has added appropriate language which appears in § 436.33(c) of the final rule.

#### *E. Section 436.34 Multi-year Contracts*

In editing the proposed rules, DOE decided to reorganize some of the provisions by redesignating proposed § 436.35(e) as § 436.34. Paragraph (a)(2) has been reworded to make it clearer that the funding condition prerequisite for a multiyear contract only requires that appropriations for the costs of the first fiscal year (not the total contract term) must be available and adequate. DOE has also added a new paragraph (b) to § 436.34 designed to prevent misunderstanding of paragraph (a)(2). The new paragraph reinforces the plain meaning of paragraph (a)(2) because some agency officials, on the basis of an inappropriate excess of caution, may be inclined to construe paragraph (a)(2) or other provisions of the Act or the regulations to require that agencies have adequate and available appropriated funds to pay for contract costs of the entire multiyear term of the contract. Such a requirement would amount to a crippling interpretation of the Act and these regulations, and would be inconsistent with the literal meaning of relevant statutory and regulatory provisions and with the underlying Congressional intent.

DOE has redesignated proposed paragraph (b) as paragraph (a)(4) and has added language to clarify that the establishment of a cancellation ceiling is required in the case of a multiyear energy savings performance contract under this part.

#### *F. Section 436.35 Standard Terms and Conditions*

Proposed § 436.34 has been redesignated as § 436.35(a). It is not an exclusive list of contractual terms and conditions. The items covered involve subjects not specifically addressed by the Act (e.g., financing agreements and disposition of title) or statutory requirements that need some interpretation (e.g., provision for conduct of the annual energy audits). A phrase has been added to paragraph (a)(1) to make clear that a clause pertinent to the risk of default on financing would be unnecessary if there is no third party financing. Language has also been added to paragraph (a)(1) to require contracting officers to consider any expected change in the performance of equipment which the contractor is proposing to modify or replace.

Paragraph (c) of proposed § 436.34, which has been redesignated as paragraph (a)(3) of § 436.35, indicated that a contract should contain a clause on "final" disposition of title to systems and equipment. DOE deleted the word "final" to avoid any ambiguity with regard to whether an agency may negotiate a clause delaying the disposition decision until some future point in time during the contract term.

Comments were received concerning the need for a lender to acquire a security interest in installed energy conservation measures. DOE added language in a new paragraph (b) to clarify that energy savings performance contracts may permit a financing source to acquire a security interest in the installed systems and equipment. DOE also shifted proposed § 436.34(a) to § 436.35(b) so that the regulatory policy on third party financing is located in a single paragraph and stated permissively.

#### *G. Section 436.36 Conditions of Payment*

Section 436.36 was proposed as § 435.35. The section title has been changed from "Funding" to "Conditions of Payment" in order to make it easier to identify the subject matter covered by the text.

#### *H. Section 436.37 Annual Energy Audits*

Section 436.37 was proposed as § 436.36. In order to identify the subject

matter more clearly, the section title was changed from "Procedures and methods to monitor contracts" to "Annual energy audits."

As discussed above, the term "energy audit" used in the proposed rule in § 436.36 will be changed in the final rule to "annual energy audit" to clarify that the procedures for monitoring contracts refer only to annual energy audits used to verify post-installation energy savings performance annually as required by section 801 of the Act. The "annual energy audit" refers to an energy savings measurement and verification procedure or method agreed to in the contract and occurs after energy conservation measures are installed and operational and annually thereafter throughout the contract term. The Department recognizes that it is common industry practice to monitor the energy savings performance of contractor installed measures on a monthly basis. However, the final rule incorporates an annual energy audit requirement, which at the Federal agency's discretion, may be an annual review and confirmation of cumulative monthly energy savings reports submitted by the contractor over a year.

A few commenters suggested that the hiring of an independent consultant by the contractor to conduct annual verification of savings guarantees created the appearance of a conflict of interest. Commenters recommended that the Federal agency verify the annual energy savings performance itself, or if it lacked the in-house expertise, pay for an independent consultant to perform the annual energy audits. One commenter suggested that if the agency could not perform annual savings verification and paying for consultant services for the same was not practicable, it could consider utilizing a consultant hired by the contractor and approved by the government. The Department recognizes that the Federal agency has an obligation to verify energy savings performance which is the basis of payment and to confirm that the government has received contracted annual energy savings. The Department therefore agrees with the suggestion that the federal agency is ultimately responsible for verifying annual energy savings. This may involve an in-house review of monthly energy savings reports generated by measurement and verification protocols incorporated in the contract, or may involve use of a consultant as needed. The Department has modified the proposed regulatory provisions applicable to annual energy audits, and § 436.37 reflects these modifications.

Extensive public comment was received on the issue of annual energy audits, energy baselines, and energy savings measurement and verification protocols generally. Many comments supported DOE's proposal to avoid the use of a prescriptive method for developing energy baselines or conducting post installation or annual energy audits. Other commenters suggested, however, the adoption of standardized measurement and verification protocols such as those used in utility Demand Side Management programs in New Jersey and California which were developed collaboratively by members of the energy services and utility industries. The Department recognizes the value that standardizing methods or protocols would have on streamlining or improving government evaluations of performance contract proposals, particularly for proposals with various energy conservation measures. However, the Department will not regulate the methods or procedures for establishing energy savings performance, as there are currently no recognized national standards or protocols available for energy savings measurement and verification. The Department, however, plans to use the existing measurement and verification protocols recommended by several commenters in Federal agency energy savings performance contracting training materials to expose federal personnel to various techniques, methods and procedures used in the energy services and utility industries to validate energy savings performance. The Department is actively participating in a collaborative process with the private sector to develop a national consensus protocol for monitoring and verification of energy service performance contracts. That protocol is expected to be available in early 1996. In the near term, the Department plans to provide direct technical assistance to agencies relating to negotiation of contracts which include mechanisms to verify energy savings performance.

One commenter suggested that two factors should be added to the list of factors contributing to energy baseline adjustments in § 436.36(b). The recommended additional factors were "Utility rates" and "Major change of use." The Department agrees with the suggestion of adding "(7) Utility rates," but "Major change of use" is considered too ambiguous to be included in the final rule.

#### *I. Section 436.38 Terminating Contracts*

Section 436.38 was proposed as § 436.37. The section title has been

shortened from "Procedures and methods to terminate contracts."

Comments were provided with respect to the appropriate provisions and methods for terminating an energy savings performance contract in the event of a termination for the convenience of the government or a termination for default. One commenter provided a very detailed discussion of this subject, asserting that, even when the Federal agency is receiving the guaranteed energy cost savings, a termination for convenience could result in the contractor incurring a loss on the contract. The commenter argues further that, because the termination for convenience provisions of the Federal Acquisition Regulation focus on costs incurred by the contractor in performing the work, many of the standard provisions are inappropriate for contracts based solely on the energy cost savings realized by the Federal agency.

Although DOE agrees that contractor compensation under an energy savings performance contract is not tied to costs incurred, the Department is not persuaded that the use of the standard termination for convenience clause would result in a financial loss for the contractor. In the Department's view, if an energy savings performance contract is terminated for the convenience of the government, the contractor could expect to recover its capital investment, any incurred maintenance and repair costs (services), financing costs (including any prepayment penalty) and a reasonable profit. As provided in § 436.35(a)(6) of the rule, "financial charges" are appropriate costs which are to be reflected in payment schedules under energy savings performance contracts.

In the example provided by the commenter in which the realized energy savings fall considerably short of the guaranteed savings amount, the commenter argued for special termination provisions on the theory that there is little incentive for the agency to terminate the contract, since the contractor is required to continue paying the agency the guaranteed amount whether or not that amount of savings is realized. DOE is not persuaded by this argument because it is based on the faulty premise that a contractor would have no right to a baseline adjustment. Section 436.37 provides for such an adjustment in appropriate circumstances and anticipates that the details will be negotiated as part of the contract.

The Department recognizes that, unlike contract termination under the Federal Acquisition Regulation, termination of an energy savings

performance contract in the private sector is usually governed by a schedule of termination amounts for each year of the contract, which is negotiated and agreed to between the parties at the time of entering into the contract. While the Department is not persuaded that this termination method should be "substituted" for the standard termination provisions in the Federal Acquisition Regulation, agencies may consider such an approach on a contract-specific basis.

The provisions of the proposed rule on termination were consistent with the Federal Acquisition Regulation. To clarify this, a new paragraph (a) has been added to reference the applicable part of the Federal Acquisition Regulation, 48 CFR part 49. Proposed paragraph (a) has been retained as paragraph (b) to reinforce the requirement that the termination liability of the Federal agency may not exceed the cancellation ceiling set forth in the contract. Proposed paragraph (b) has been deleted as unnecessary.

### **III. Procedural Requirements**

#### *A. Review Under Executive Order 12866*

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, it was subject to review by the Office of Information and Regulatory Affairs (OIRA). OIRA completed its review without requesting any substantive changes.

#### *B. Review Under the Regulatory Flexibility Act*

The rules were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that these rules will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

#### *C. Review Under the Paperwork Reduction Act*

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. Earlier in this notice, DOE described two

questionnaires for use under the rule. The first involved a contractor's qualifications for inclusion on the qualified contractors list. The second would be directed at clients of a contractor applicant for inclusion on the list in order to obtain project specific information with regard to the client's experience with the contractor.

The information DOE proposes to collect on the above-described questionnaires is necessary to determine whether a contractor is adequately experienced and reliable to be placed on the qualified contractors list. DOE believes that in the typical case the frequency of response will be once every 12 months. After the initial application is filed, a successful contractor would only have to update information which might have changed during the interim. The public reporting burden is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the questionnaire.

On August 8, 1994, OMB approved the collection of information through August 1997 and assigned approval number 1910-0067.

#### *D. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that these rules are categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

#### *E. Review Under Executive Order 12612*

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and

implementing a policy action. These rules will revise certain policy and procedural requirements applicable only to Federal contracts. Therefore, the Department of Energy has determined that these rules will not have a substantial direct effect on the institutional interests or traditional functions of States.

#### *F. Review Under Executive Order 12778*

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that these rules meet the requirements of section 2(a) and (b) of Executive Order 12778.

#### **List of Subjects in 10 CFR Part 436**

Energy conservation; Federal buildings and facilities; Reporting and recordkeeping requirements; Solar energy.

Issued in Washington, D.C. on this 31st day of March 1995.

**Peter S. Fox-Penner,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, Part 436 of Title 10, Subchapter D of the Code of Federal Regulations is amended as set forth below:

#### **PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS**

1. The authority citation for Part 436 is revised to read as follows:

42 U.S.C. § 6361; 42 U.S.C. 8251-8263; 42 U.S.C. 8287-8287c.

2. Section 436.2 is amended by removing the word "and" after the semicolon at the end of paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) as follows:

#### **§ 436.2 General objectives.**

\* \* \* \* \*

(c) To promote the use of energy savings performance contracts by Federal agencies for implementation of privately financed investment in building and facility energy conservation measures for existing Federally owned buildings; and

\* \* \* \* \*

3. New Subpart B, consisting of sections 436.30 through 436.38, is added to read as follows:

#### **Subpart B—Methods and Procedures for Energy Savings Performance Contracting**

Sec.

436.30 Purpose and scope.

436.31 Definitions.

436.32 Qualified contractors lists.

436.33 Procedures and methods for contractor selection.

436.34 Multiyear contracts.

436.35 Standard terms and conditions.

436.36 Conditions of payment.

436.37 Annual energy audits.

436.38 Terminating contracts.

#### **Subpart B—Methods and Procedures for Energy Savings Performance Contracting**

##### **§ 436.30 Purpose and scope.**

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts awarded within five years of May 10, 1995. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

(b) *Utility incentive programs.*

Nothing in this subpart shall preclude a Federal agency from—

(1) Participating in programs to increase energy efficiency, conserve water, or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities;

(2) Accepting financial incentives, goods, or services generally available from any such utility to increase energy efficiency or to conserve water or manage electricity demand; or

(3) Entering into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of each Federal agency.

(c) *Promoting competition.* To the extent allowed by law, Federal agencies

should encourage utilities to select contractors for the conduct of utility incentive programs in a competitive manner to the maximum extent practicable.

(d) *Interpretations.* The permissive provisions of this subpart shall be liberally construed to effectuate the objectives of Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287-8287c.

#### § 436.31 Definitions.

As used in this subpart—

*Act* means Title VIII of the National Energy Conservation Policy Act.

*Annual energy audit* means a procedure including, but not limited to, verification of the achievement of energy cost savings and energy unit savings guaranteed resulting from implementation of energy conservation measures and determination of whether an adjustment to the energy baseline is justified by conditions beyond the contractor's control.

*Building* means any closed structure primarily intended for human occupancy in which energy is consumed, produced, or distributed.

*Detailed energy survey* means a procedure which may include, but is not limited to, a detailed analysis of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy for the purpose of confirming or revising technical and price proposals based on the preliminary energy survey.

*DOE* means Department of Energy.

*Energy baseline* means the amount of energy that would be consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, submetering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or some combination of these methods.

*Energy conservation measures* means measures that are applied to an existing Federally owned building or facility that improves energy efficiency, are life-cycle cost-effective under subpart A of this part, and involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

*Energy cost savings* means a reduction in the cost of energy and related operation and maintenance expenses, from a base cost established through a methodology set forth in an energy savings performance contract, utilized in an existing federally owned building

or buildings or other federally owned facilities as a result of—

(1) The lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

(2) The increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

*Energy savings performance contract* means a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more locations.

*Energy unit savings* means the determination, in electrical or thermal units (e.g., kilowatt hour (kwh), kilowatt (kw), or British thermal units (Btu)), of the reduction in energy use or demand by comparing consumption or demand, after completion of contractor-installed energy conservation measures, to an energy baseline established in the contract.

*Facility* means any structure not primarily intended for human occupancy, or any contiguous group of structures and related systems, either of which produces, distributes, or consumes energy.

*Federal agency* has the meaning given such term in section 551(1) of Title 5, United States Code.

*Preliminary energy survey* means a procedure which may include, but is not limited to, an evaluation of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy, for the purpose of developing technical and price proposals prior to selection.

*Secretary* means the Secretary of Energy.

#### § 436.32 Qualified contractors lists.

(a) DOE shall prepare a list, to be updated annually, or more often as necessary, of firms qualified to provide energy cost savings performance services and grouped by technology. The list shall be prepared from statements of qualifications by or about firms engaged in providing energy savings performance contract services on questionnaires obtained from DOE. Such statements shall, at a minimum, include prior experience and capabilities of firms to perform the proposed energy cost savings services by technology and financial and performance information. DOE shall issue a notice annually, for publication

in the Commerce Business Daily, inviting submission of new statements of qualifications and requiring listed firms to update their statements of qualifications for changes in the information previously provided.

(b) On the basis of statements of qualifications received under paragraph (a) of this section and any other relevant information, DOE shall select a firm for inclusion on the qualified list if—

(1) It has provided energy savings performance contract services or services that save energy or reduce utility costs for not less than two clients, and the firm possesses the appropriate project experience to successfully implement the technologies which it proposes to provide;

(2) Previous project clients provide ratings which are "fair" or better;

(3) The firm or any principal of the firm has neither been insolvent nor declared bankruptcy within the last five years;

(4) The firm or any principal of the firm is not on the list of parties excluded from procurement programs under 48 CFR part 9, subpart 9.4; and

(5) There is no other adverse information which warrants the conclusion that the firm is not qualified to perform energy savings performance contracts.

(c) DOE may remove a firm from DOE's list of qualified contractors after notice and an opportunity for comment if—

(1) There is a failure to update its statement of qualifications;

(2) There is credible information warranting disqualification; or

(3) There is other good cause.

(d) A Federal agency shall use DOE's list unless it elects to develop its own list of qualified firms consistent with the procedures in paragraphs (a) and (b) of this section.

(e) A firm not designated by DOE or a Federal agency pursuant to the procedures in paragraphs (a) and (b) of this section as qualified to provide energy cost savings performance services shall receive a written decision and may request a debriefing.

(f) Any firm receiving an adverse final decision under this section shall apply to the Board of Contract Appeals of the General Services Administration in order to exhaust administrative remedies.

#### § 436.33 Procedures and methods for contractor selection.

(a) *Competitive selection.* Competitive selections based on solicitation of firms are subject to the following procedures—

(1) With respect to a particular proposed energy cost savings

performance project, Federal agencies shall publish a Commerce Business Daily notice which synthesizes the proposed contract action.

(2) Each competitive solicitation—

(i) Shall request technical and price proposals and the text of any third-party financing agreement from interested firms;

(ii) Shall consider DOE model solicitations and should use them to the maximum extent practicable;

(iii) May provide for a two-step selection process which allows Federal agencies to make an initial selection based, in part, on proposals containing estimated energy cost savings and energy unit savings, with contract award conditioned on confirmation through a detailed energy survey that the guaranteed energy cost savings are within a certain percentage (specified in the solicitation) of the estimated amount; and

(iv) May state that if the Federal agency requires a detailed energy survey which identifies life cycle cost effective energy conservation measures not in the initial proposal, the contract may include such measures.

(3) Based on its evaluation of the technical and price proposals submitted, any applicable financing agreement (including lease-acquisitions, if any), statements of qualifications submitted under § 436.32 of this subpart, and any other information determines to be relevant, the Federal agency may select a firm on a qualified list to conduct the project.

(4) If a proposed energy cost savings project involves a large facility with too many contiguous related buildings and other structures at one site for proposing firms to assume the costs of a preliminary energy survey of all such structures, the Federal agency—

(i) May request technical and price proposals for a representative sample of buildings and other structures and may select a firm to conduct the proposed project; and

(ii) After selection of a firm, but prior to award of an energy savings performance contract, may request the selected firm to submit technical and price proposals for all or some of the remaining buildings and other structures at the site and may include in the award for all or some of the remaining buildings and other structures.

(5) After selection under paragraph (a)(3) or (a)(4) of this section, but prior to award, a Federal agency may require the selectee to conduct a detailed energy survey to confirm that guaranteed energy cost savings are within a certain percentage (specified in the solicitation)

of estimated energy cost savings in the selectee's proposal. If the detailed energy survey does not confirm that guaranteed energy savings are within the fixed percentage of estimated savings, the Federal agency may select another firm from those within the competitive range.

(b) *Unsolicited proposals.* Federal agencies may—

(1) Consider unsolicited energy savings performance contract proposals from firms on a qualified contractor list under this subpart which include technical and price proposals and the text of any financing agreement (including a lease-acquisition) without regard to the requirements of 48 CFR 15.503 (a) and (c); 48 CFR 15.506–2(a)(1); and 48 CFR 15.507(a), (b)(2), (b)(3), (b)(4) and (b)(5).

(2) Reject an unsolicited proposal that is too narrow because it does not address the potential for significant energy conservation measures from other than those measures in the proposal.

(3) After requiring a detailed energy survey, if appropriate, and determining that technical and price proposals are adequate, award a contract to a firm on a qualified contractor list under this subpart on the basis of an unsolicited proposal, provided that the Federal agency complies with the following procedures—

(i) An award may not be made to the firm submitting the unsolicited proposal unless the Federal agency first publishes a notice in the Commerce Business Daily acknowledging receipt of the proposal and inviting other firms on the qualified list to submit competing proposals.

(ii) Except for unsolicited proposals submitted in response to a published general statement of agency needs, no award based on such an unsolicited proposal may be made in instances in which the Federal agency is planning the acquisition of an energy conservation measure through an energy savings performance contract.

(c) *Certified cost or pricing data.*

(1) Energy savings performance contracts under this part are firm fixed-price contracts.

(2) Pursuant to the authority provided under section 304A(b)(1)(B) of the Federal Property and Administrative Services Act of 1049, the heads of procuring activities shall waive the requirement for submission of certified cost or pricing data. However, this does not exempt offerors from submitting information (including pricing information) required by the Federal agency to ensure the impartial and comprehensive evaluation of proposals.

#### § 436.34 Multiyear contracts.

(a) Subject to paragraph (b) of this section, Federal agencies may enter into a multiyear energy savings performance contract for a period not to exceed 25 years, as authorized by 42 U.S.C. 8287, without funding of cancellation charges, if:

(1) The multiyear energy savings performance contract was awarded in a competitive manner using the procedures and methods established by this subpart;

(2) Funds are available and adequate for payment of the scheduled energy cost for the first fiscal year of the multiyear energy savings performance contract;

(3) Thirty days before the award of any multiyear energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of \$750,000, the head of the awarding Federal agency gives written notification of the proposed contract and the proposed cancellation ceiling for the contract to the appropriate authorizing and appropriating committees of the Congress; and

(4) Except as otherwise provided in this section, the multiyear energy savings performance contract is subject to 48 CFR part 17, subpart 17.1, including the requirement that the contracting officer establish a cancellation ceiling.

(b) Neither this subpart nor any provision of the Act requires, prior to contract award or as a condition of a contract award, that a Federal agency have appropriated funds available and adequate to pay for the total costs of an energy savings performance contract for the term of such contract.

#### § 436.35 Standard terms and conditions.

(a) *Mandatory requirements.* In addition to contractual provisions otherwise required by the Act or this subpart, any energy savings performance contract shall contain clauses—

(1) Authorizing modification, replacement, or changes of equipment, at no cost to the Federal agency, with the prior approval of the contracting officer who shall consider the expected level of performance after such modification, replacement or change;

(2) Providing for the disposition of title to systems and equipment;

(3) Requiring prior approval by the contracting officer of any financing agreements (including lease-acquisitions) and amendments to such an agreement entered into after contract award for the purpose of financing the

acquisition of energy conservation measures;

(4) Providing for an annual energy audit and identifying who shall conduct such an audit, consistent with § 436.37 of this subpart; and

(5) Providing for a guarantee of energy cost savings to the Federal agency, and establishing payment schedules reflecting such guarantee.

(b) *Third party financing.* If there is third party financing, then an energy savings performance contract may contain a clause:

(1) Permitting the financing source to perfect a security interest in the installed energy conservation measures, subject to and subordinate to the rights of the Federal agency; and

(2) Protecting the interests of a Federal agency and a financing source, by authorizing a contracting officer in appropriate circumstances to require a contractor who defaults on an energy savings performance contract or who does not cure the failure to make timely payments, to assign to the financing source, if willing and able, the contractor's rights and responsibilities under an energy savings performance contract;

**§ 436.36 Conditions of payment.**

(a) Any amount paid by a Federal agency pursuant to any energy savings performance contract entered into under this subpart may be paid only from

funds appropriated or otherwise made available to the agency for the payment of energy expenses and related operation and maintenance expenses which would have been incurred without an energy savings performance contract. The amount the agency would have paid is equal to:

(1) The energy baseline under the energy savings performance contract (adjusted if appropriate under § 436.37), multiplied by the unit energy cost; and

(2) Any related operations and maintenance cost prior to implementation of energy conservation measures, adjusted for increases in labor and material price indices.

(b) Federal agencies may incur obligations pursuant to energy savings performance contracts to finance energy conservation measures provided guaranteed energy cost savings exceed the contractor's debt service requirements.

**§ 436.37 Annual energy audits.**

(a) After contractor implementation of energy conservation measures and annually thereafter during the contract term, an annual energy audit shall be conducted by the Federal agency or the contractor as determined by the contract. The annual energy audit shall verify the achievement of annual energy cost savings performance guarantees provided by the contractor.

(b) The energy baseline is subject to adjustment due to changes beyond the contractor's control, such as—

- (1) Physical changes to building;
- (2) Hours of use or occupancy;
- (3) Area of conditioned space;
- (4) Addition or removal of energy consuming equipment or systems;
- (5) Energy consuming equipment operating conditions;
- (6) Weather (i.e., cooling and heating degree days); and
- (7) Utility rates.

(c) In the solicitation or in the contract, Federal agencies shall specify requirements for annual energy audits, the energy baseline, and baseline adjustment procedures.

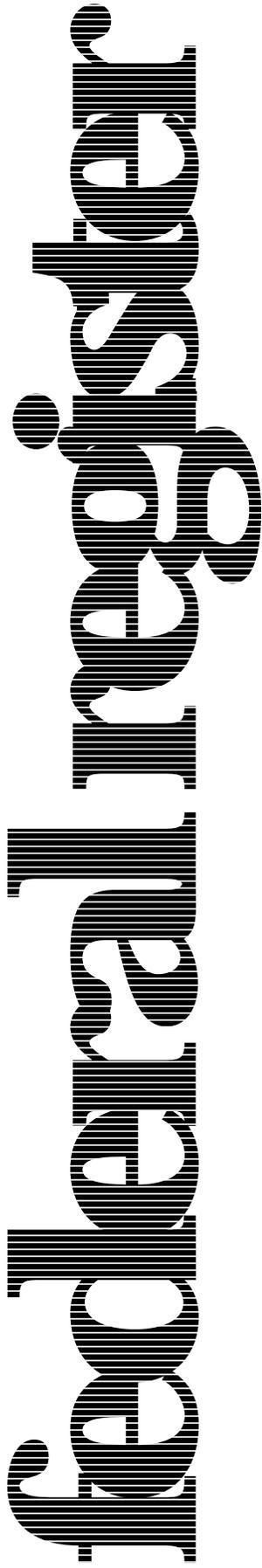
**§ 436.38 Terminating contracts.**

(a) Except as otherwise provided by this subpart, termination of energy savings performance contracts shall be subject to the termination procedures of the Federal Acquisition Regulation in 48 CFR part 49.

(b) In the event an energy savings performance contract is terminated for the convenience of a Federal agency, the termination liability of the Federal agency shall not exceed the cancellation ceiling set forth in the contract, for the year in which the contract is terminated.

[FR Doc. 95-8750 Filed 4-7-95; 8:45 am]

BILLING CODE 6450-01-P



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Monday  
April 10, 1995

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**Part VIII**

**Department of  
Education**

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Office of Educational Research and  
Improvement (OERI); Educational  
Research and Development Centers  
Program; Notice

**DEPARTMENT OF EDUCATION****Office of Educational Research and Improvement (OERI); Educational Research and Development Centers Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priorities.

**SUMMARY:** The Secretary proposes priorities for seven national educational research and development centers that would carry out sustained research and development to address nationally significant problems and issues in education.

**DATES:** Comments must be received on or before May 25, 1995.

**ADDRESSES:** All comments concerning these proposed priorities should be addressed to Jacqueline Jenkins, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510G, Washington, DC 20208-5573. Comments can be faxed to Jacqueline Jenkins at (202) 219-2030. Comments can be sent electronically to Jackie \_\_\_ Jenkins@ed.gov.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Jenkins, telephone: (202) 219-2079. 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:** Title IX of Public Law 103-227, which authorizes the Office of Educational Research and Improvement, establishes five new national research institutes to carry out coordinated and comprehensive programs of research, development, evaluation, and dissemination designed to provide research-based leadership for the improvement of education. The five institutes are—

- (1) The National Institute on Student Achievement, Curriculum, and Assessment;
- (2) The National Institute on the Education of At-Risk Students;
- (3) The National Institute on Educational Governance, Finance, Policy-Making, and Management;
- (4) The National Institute on Early Childhood Development and Education; and
- (5) The National Institute on Postsecondary Education, Libraries, and Lifelong Learning.

The institutes support sustained research and development focused on significant national problems and issues in education conducted by national research and development centers. Institutions eligible to receive center

awards include institutions of higher education, institutions of higher education in consort with public agencies or non-profit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary education research and development.

The Secretary invites comments on the seven priority topics included in this announcement. Comments may address individual center priorities or the priorities as a whole. In addition to centers addressing the proposed priorities, OERI will continue to support a Center for Research on the Education of Students Placed At-Risk, a National Reading Research Center, and a National Research Center on Gifted and Talented Children and Youth.

Through a series of meetings, regional hearings, and **Federal Register** Notices, OERI solicited advice from parents, teachers, administrators, policy-makers, business people, researchers, and others to identify the most needed research and development activities. After reviewing this advice, OERI identified the priorities proposed in this Notice. The final research and development center priorities will be published following review of the public comment and consideration of the priorities by OERI's National Educational Research Policy and Priorities Board.

**Proposed Absolute Priorities**

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the general priority and one of the individual priorities listed below. Funding of any individual priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received.

**Proposed General Absolute Priority:** Each national research and development center must—

- (a) Conduct a coherent, sustained program of research and development to address problems and issues of national significance in its individual priority area, using a well-conceptualized and theoretically sound framework;
- (b) Contribute to the development and advancement of theory in the area of its individual priority;
- (c) Conduct scientifically rigorous studies capable of generating findings that contribute substantially to understanding in the field;
- (d) Conduct work of sufficient size, scope, and duration to produce definitive guidance for improvement efforts and future research;
- (e) Address issues of both equity and excellence in education in its individual priority area; and

(f) Document, report, and disseminate information about its research findings and other accomplishments in ways that will allow others to use that information.

**Proposed Absolute Priority 1: Promoting the Cognitive and Social-Emotional Development of Young Children**

Under this priority, a national research and development center must—

- (a) Conduct research and development on promoting the cognitive and social-emotional development and achievement of young children, beginning at birth, especially children who are placed at risk of educational failure because of community, economic, linguistic, family, or disability factors, and the general well-being of their families; and
- (b) Include in its work research or development related to the following topics:

- (1) The skills, knowledge, and expectations that enable families, educators, and others in the community to help young children come to school prepared to learn.

- (2) Effective models and strategies that families, educators, and others can use to foster young children's learning.

- (3) How various early childhood supports and services within the community can be designed and implemented to maximize young children's cognitive and social-emotional development, success in preschool, and achievement in elementary grades.

**Proposed Absolute Priority 2: Improving Student Learning and Achievement**

Under this priority, a national research and development center must—

- (a) Conduct research and development on improving student learning and achievement; and
- (b) Include in its work research or development related to the following topics:

- (1) How students acquire knowledge and develop cognitive skills.

- (2) The social context of learning, including the social organization of classrooms and schools.

- (3) The integration of curriculum changes with other efforts to improve student learning and achievement.

- (4) Effective teaching in the core academic content areas.

- (5) The role of student motivation and student responsibility in creating safe schools and environments conducive to learning.

- (6) Effective professional development for educators.

*Proposed Absolute Priority 3: Improving Student Assessment*

Under this priority, a national research and development center must—

(a) Conduct research and development on improving student assessment; and

(b) Include in its work research or development related to the following topics:

(1) The development of assessments that are aligned with curriculum and instruction and can be used to improve teaching and learning.

(2) The use of assessments to improve instruction in the core content areas, particularly English language arts and mathematics, and to promote educational accountability.

(3) The technical quality (validity, reliability, fairness, and content coverage) of different types of assessments.

*Proposed Absolute Priority 4: Meeting the Educational Needs of a Diverse Student Population*

Under this priority, a national research and development center must—

(a) Conduct research and development on meeting the educational needs of an increasingly diverse student population, including students who are at risk of educational failure because of limited English proficiency, poverty, race, ethnicity, culture, or geographical location; and

(b) Include in its work research or development related to the following topics:

(1) Recognizing and building on the strengths of students from diverse backgrounds to help all students achieve to high academic standards.

(2) Professional development that enhances the abilities of teachers and other school personnel to help language minority students and other students at risk of educational failure achieve to high academic standards.

(3) Structuring out-of-school experiences to help students at risk of educational failure overcome obstacles and achieve school success.

(4) Working with families and community-based organizations to help students at risk of educational failure achieve to high academic standards.

(5) Ways that federal, state, and community reform efforts can be designed so that language minority students and other students at risk of educational failure learn to high standards.

*Proposed Absolute Priority 5: Increasing the Effectiveness of State and Local Education Reform Efforts*

Under this priority, a national research and development center must—

(a) Conduct research and development on improving the effectiveness of state and local efforts to reform elementary and secondary education; and

(b) Include in its work research or development related to the following topics:

(1) The role of challenging academic standards in efforts to reform elementary and secondary education.

(2) The role of education policy and financing in improving learning opportunities for all students.

(3) The coherence of state, district and school-level reforms and their effects on the learning of all students.

(4) The role of incentives in the reform of elementary and secondary education.

(5) School-level strategies for improving education within the context of state and district reforms.

(6) Reforms to improve children's learning by strengthening the connections between schools and communities.

(7) Factors that influence the success of state, district, and school-level reforms, from initiation through implementation to "scaling up."

*Proposed Absolute Priority 6: Improving Postsecondary Education and the Preparation of Adults for Work*

Under this priority, a national research and development center must—

(a) Conduct research and development on improving postsecondary education and the preparation of adults for work and lifelong learning; and

(b) Include in its work research or development related the following topics:

(1) Effective transitions from school to work for secondary and postsecondary students.

(2) The relationships among students' access to and participation and progress in postsecondary education, their academic achievement, and their later work force participation.

(3) The improvement of postsecondary student learning and assessment.

(4) Containing costs and improving the productivity and accountability of postsecondary institutions.

(5) Articulation between secondary and postsecondary education.

*Proposed Absolute Priority 7: Improving Adult Learning and Literacy*

Under this priority, a national research and development center must—

(a) Conduct research and development on improving adult learning and literacy, including the acquisition of skills needed for workforce participation and responsible citizenship; and

(b) Include in its work research or development related to the following topics:

(1) Adult acquisition of knowledge and development of cognitive skills.

(2) Effective methods and instructional strategies to improve adult learning, including effective use of educational technology.

(3) Effective methods for professional development of instructional staff in adult literacy.

(4) The assessment of adult learning.

**Proposed Post-Award Requirements**

The Secretary proposes the following post-award requirements consistent with the Educational Research, Development, Dissemination, and Improvement Act of 1994. A grantee receiving a center award must—

(a) Provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Conduct and evaluate research projects in conformity with the highest professional standards of research practice;

(c) Reserve five percent of each budget period's funds to support activities that fall within the center's priority area, are designed and mutually agreed to by the center and OERI, and enhance OERI's ability to carry out its mission. Such activities may include developing research agendas, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities; and

(d) At the end of the award period, synthesize the findings and advances in knowledge that resulted from the Center's program of work and describe the potential impact on the improvement of American education, including any observable impact to date.

**Note:** This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register**

concurrent with or following publication of the notice of final priorities.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public

inspection, during and after the comment period, in Room 510G, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

**Program Authority:** P.L. 103-227, Title IX. (Catalog of Federal Domestic Assistance Numbers 84.305, 84.306, 84.307, 84.308, and

84.309 Educational Research and Development Centers Program)

Dated: April 4, 1995.

**Sharon Porter Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-8749 Filed 4-7-95; 8:45 am]

**BILLING CODE 4000-01-P**

# Reader Aids

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Vol. 60, No. 68

Monday, April 10, 1995

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**NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT.** Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301-713-6905**

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**CFR CHECKLIST**

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$883.00 domestic, \$220.75 additional for foreign mailing.

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<b>3 (1993 Compilation and Parts 100 and 101)</b> .....	(869-022-00002-1) .....	33.00	<sup>1</sup> Jan. 1, 1994
<b>4</b> .....	(869-026-00003-4) .....	5.50	Jan. 1, 1995
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<b>7 Parts:</b>			
*0-26 .....	(869-026-00007-7) .....	21.00	Jan. 1, 1995
27-45 .....	(869-026-00008-5) .....	14.00	Jan. 1, 1995
46-51 .....	(869-026-00009-3) .....	21.00	Jan. 1, 1995
*52 .....	(869-026-00010-7) .....	30.00	Jan. 1, 1995
53-209 .....	(869-022-00011-0) .....	23.00	Jan. 1, 1994
210-299 .....	(869-026-00012-3) .....	34.00	Jan. 1, 1995
*300-399 .....	(869-026-00013-1) .....	16.00	Jan. 1, 1995
*400-699 .....	(869-026-00014-0) .....	21.00	Jan. 1, 1995
700-899 .....	(869-022-00015-2) .....	22.00	Jan. 1, 1994
900-999 .....	(869-022-00016-1) .....	34.00	Jan. 1, 1994
*1000-1059 .....	(869-026-00017-4) .....	23.00	Jan. 1, 1995
1060-1119 .....	(869-026-00018-2) .....	15.00	Jan. 1, 1995
1120-1199 .....	(869-026-00019-1) .....	12.00	Jan. 1, 1995
*1200-1499 .....	(869-026-00020-4) .....	32.00	Jan. 1, 1995
1500-1899 .....	(869-026-00021-2) .....	35.00	Jan. 1, 1995
*1900-1939 .....	(869-026-00022-1) .....	16.00	Jan. 1, 1995
1940-1949 .....	(869-026-00023-9) .....	30.00	Jan. 1, 1995
1950-1999 .....	(869-026-00024-7) .....	40.00	Jan. 1, 1995
2000-End .....	(869-026-00025-5) .....	14.00	Jan. 1, 1995
<b>8</b> .....	(869-022-00026-8) .....	22.00	Jan. 1, 1994
<b>9 Parts:</b>			
1-199 .....	(869-022-00027-6) .....	29.00	Jan. 1, 1994
200-End .....	(869-026-00028-0) .....	23.00	Jan. 1, 1995
<b>10 Parts:</b>			
0-50 .....	(869-026-00029-8) .....	30.00	Jan. 1, 1995
51-199 .....	(869-022-00030-6) .....	22.00	Jan. 1, 1994
200-399 .....	(869-026-00031-0) .....	15.00	<sup>6</sup> Jan. 1, 1993
400-499 .....	(869-026-00032-8) .....	21.00	Jan. 1, 1995
*500-End .....	(869-026-00033-6) .....	39.00	Jan. 1, 1995
<b>11</b> .....	(869-026-00034-4) .....	14.00	Jan. 1, 1995
<b>12 Parts:</b>			
1-199 .....	(869-026-00035-2) .....	12.00	Jan. 1, 1995
200-219 .....	(869-026-00036-1) .....	16.00	Jan. 1, 1995
*220-299 .....	(869-026-00037-9) .....	28.00	Jan. 1, 1995
300-499 .....	(869-022-00038-1) .....	22.00	Jan. 1, 1994
500-599 .....	(869-022-00039-0) .....	20.00	Jan. 1, 1994
600-End .....	(869-026-00040-9) .....	35.00	Jan. 1, 1995
<b>13</b> .....	(869-026-00041-7) .....	32.00	Jan. 1, 1995

Title	Stock Number	Price	Revision Date
<b>14 Parts:</b>			
1-59 .....	(869-022-00042-0) .....	32.00	Jan. 1, 1994
60-139 .....	(869-022-00043-8) .....	26.00	Jan. 1, 1994
140-199 .....	(869-026-00044-1) .....	13.00	Jan. 1, 1995
200-1199 .....	(869-026-00045-0) .....	23.00	Jan. 1, 1995
1200-End .....	(869-026-00046-8) .....	16.00	Jan. 1, 1995
<b>15 Parts:</b>			
0-299 .....	(869-022-00047-1) .....	15.00	Jan. 1, 1994
300-799 .....	(869-022-00048-9) .....	26.00	Jan. 1, 1994
800-End .....	(869-026-00049-2) .....	21.00	Jan. 1, 1995
<b>16 Parts:</b>			
0-149 .....	(869-026-00050-6) .....	7.00	Jan. 1, 1995
150-999 .....	(869-022-00051-9) .....	18.00	Jan. 1, 1994
*1000-End .....	(869-026-00052-2) .....	25.00	Jan. 1, 1995
<b>17 Parts:</b>			
1-199 .....	(869-022-00054-3) .....	20.00	Apr. 1, 1994
200-239 .....	(869-022-00055-1) .....	23.00	Apr. 1, 1994
240-End .....	(869-022-00056-0) .....	30.00	Apr. 1, 1994
<b>18 Parts:</b>			
1-149 .....	(869-022-00057-8) .....	16.00	Apr. 1, 1994
150-279 .....	(869-022-00058-6) .....	19.00	Apr. 1, 1994
280-399 .....	(869-022-00059-4) .....	13.00	Apr. 1, 1994
400-End .....	(869-022-00060-8) .....	11.00	Apr. 1, 1994
<b>19 Parts:</b>			
1-199 .....	(869-022-00061-6) .....	39.00	Apr. 1, 1994
200-End .....	(869-022-00062-4) .....	12.00	Apr. 1, 1994
<b>20 Parts:</b>			
1-399 .....	(869-022-00063-2) .....	20.00	Apr. 1, 1994
400-499 .....	(869-022-00064-1) .....	34.00	Apr. 1, 1994
500-End .....	(869-022-00065-9) .....	31.00	Apr. 1, 1994
<b>21 Parts:</b>			
1-99 .....	(869-022-00066-7) .....	16.00	Apr. 1, 1994
100-169 .....	(869-022-00067-5) .....	21.00	Apr. 1, 1994
170-199 .....	(869-022-00068-3) .....	21.00	Apr. 1, 1994
200-299 .....	(869-022-00069-1) .....	7.00	Apr. 1, 1994
300-499 .....	(869-022-00070-5) .....	36.00	Apr. 1, 1994
500-599 .....	(869-022-00071-3) .....	16.00	Apr. 1, 1994
600-799 .....	(869-022-00072-1) .....	8.50	Apr. 1, 1994
800-1299 .....	(869-022-00073-0) .....	22.00	Apr. 1, 1994
1300-End .....	(869-022-00074-8) .....	13.00	Apr. 1, 1994
<b>22 Parts:</b>			
1-299 .....	(869-022-00075-6) .....	32.00	Apr. 1, 1994
300-End .....	(869-022-00076-4) .....	23.00	Apr. 1, 1994
<b>23</b> .....	(869-022-00077-2) .....	21.00	Apr. 1, 1994
<b>24 Parts:</b>			
0-199 .....	(869-022-00078-1) .....	36.00	Apr. 1, 1994
200-499 .....	(869-022-00079-9) .....	38.00	Apr. 1, 1994
500-699 .....	(869-022-00080-2) .....	20.00	Apr. 1, 1994
700-1699 .....	(869-022-00081-1) .....	39.00	Apr. 1, 1994
1700-End .....	(869-022-00082-9) .....	17.00	Apr. 1, 1994
<b>25</b> .....	(869-022-00083-7) .....	32.00	Apr. 1, 1994
<b>26 Parts:</b>			
§§ 1.0-1-1.60 .....	(869-022-00084-5) .....	20.00	Apr. 1, 1994
§§ 1.61-1.169 .....	(869-022-00085-3) .....	33.00	Apr. 1, 1994
§§ 1.170-1.300 .....	(869-022-00086-1) .....	24.00	Apr. 1, 1994
§§ 1.301-1.400 .....	(869-022-00087-0) .....	17.00	Apr. 1, 1994
§§ 1.401-1.440 .....	(869-022-00088-8) .....	30.00	Apr. 1, 1994
§§ 1.441-1.500 .....	(869-022-00089-6) .....	22.00	Apr. 1, 1994
§§ 1.501-1.640 .....	(869-022-00090-0) .....	21.00	Apr. 1, 1994
§§ 1.641-1.850 .....	(869-022-00091-8) .....	24.00	Apr. 1, 1994
§§ 1.851-1.907 .....	(869-022-00092-6) .....	26.00	Apr. 1, 1994
§§ 1.908-1.1000 .....	(869-022-00093-4) .....	27.00	Apr. 1, 1994
§§ 1.1001-1.1400 .....	(869-022-00094-2) .....	24.00	Apr. 1, 1994
§§ 1.1401-End .....	(869-022-00095-1) .....	32.00	Apr. 1, 1994
2-29 .....	(869-022-00096-9) .....	24.00	Apr. 1, 1994
30-39 .....	(869-022-00097-7) .....	18.00	Apr. 1, 1994
40-49 .....	(869-022-00098-4) .....	14.00	Apr. 1, 1994
50-299 .....	(869-022-00099-3) .....	14.00	Apr. 1, 1994
300-499 .....	(869-022-00100-1) .....	24.00	Apr. 1, 1994
500-599 .....	(869-022-00101-9) .....	6.00	<sup>4</sup> Apr. 1, 1990

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
600-End .....	(869-022-00102-7) .....	8.00	Apr. 1, 1994	790-End .....	(869-022-00155-8) .....	27.00	July 1, 1994
<b>27 Parts:</b>				<b>41 Chapters:</b>			
1-199 .....	(869-022-00103-5) .....	36.00	Apr. 1, 1994	1, 1-1 to 1-10 .....	13.00	<sup>3</sup> July 1, 1984	
200-End .....	(869-022-00104-3) .....	13.00	Apr. 1, 1994	1, 1-11 to Appendix, 2 (2 Reserved) .....	13.00	<sup>3</sup> July 1, 1984	
<b>28 Parts:</b>				3-6 .....	14.00	<sup>3</sup> July 1, 1984	
1-42 .....	(869-022-00105-1) .....	27.00	July 1, 1994	7 .....	6.00	<sup>3</sup> July 1, 1984	
43-end .....	(869-022-00106-0) .....	21.00	July 1, 1994	8 .....	4.50	<sup>3</sup> July 1, 1984	
<b>29 Parts:</b>				9 .....	13.00	<sup>3</sup> July 1, 1984	
0-99 .....	(869-022-00107-8) .....	21.00	July 1, 1994	10-17 .....	9.50	<sup>3</sup> July 1, 1984	
100-499 .....	(869-022-00108-6) .....	9.50	July 1, 1994	18, Vol. I, Parts 1-5 .....	13.00	<sup>3</sup> July 1, 1984	
500-899 .....	(869-022-00109-4) .....	35.00	July 1, 1994	18, Vol. II, Parts 6-19 .....	13.00	<sup>3</sup> July 1, 1984	
900-1899 .....	(869-022-00110-8) .....	17.00	July 1, 1994	18, Vol. III, Parts 20-52 .....	13.00	<sup>3</sup> July 1, 1984	
1900-1910 (§§ 1901.1 to 1910.999) .....	(869-022-00111-6) .....	33.00	July 1, 1994	19-100 .....	13.00	<sup>3</sup> July 1, 1984	
1910 (§§ 1910.1000 to end) .....	(869-022-00112-4) .....	21.00	July 1, 1994	1-100 .....	(869-022-00156-6) .....	9.50	July 1, 1994
1911-1925 .....	(869-022-00113-2) .....	26.00	July 1, 1994	101 .....	(869-022-00157-4) .....	29.00	July 1, 1994
1926 .....	(869-022-00114-1) .....	33.00	July 1, 1994	102-200 .....	(869-022-00158-2) .....	15.00	July 1, 1994
1927-End .....	(869-022-00115-9) .....	36.00	July 1, 1994	201-End .....	(869-022-00159-1) .....	13.00	July 1, 1994
<b>30 Parts:</b>				<b>42 Parts:</b>			
1-199 .....	(869-022-00116-7) .....	27.00	July 1, 1994	1-399 .....	(869-022-00160-4) .....	24.00	Oct. 1, 1994
200-699 .....	(869-022-00117-5) .....	19.00	July 1, 1994	400-429 .....	(869-022-00161-2) .....	26.00	Oct. 1, 1994
700-End .....	(869-022-00118-3) .....	27.00	July 1, 1994	430-End .....	(869-022-00162-1) .....	36.00	Oct. 1, 1994
<b>31 Parts:</b>				<b>43 Parts:</b>			
0-199 .....	(869-022-00119-1) .....	18.00	July 1, 1994	1-999 .....	(869-022-00163-9) .....	23.00	Oct. 1, 1994
200-End .....	(869-022-00120-5) .....	30.00	July 1, 1994	1000-3999 .....	(869-022-00164-7) .....	31.00	Oct. 1, 1994
<b>32 Parts:</b>				4000-End .....	(869-022-00165-5) .....	14.00	Oct. 1, 1994
1-39, Vol. I .....		15.00	<sup>2</sup> July 1, 1984	<b>44</b> .....	(869-022-00166-3) .....	27.00	Oct. 1, 1994
1-39, Vol. II .....		19.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-39, Vol. III .....		18.00	<sup>2</sup> July 1, 1984	1-199 .....	(869-022-00167-1) .....	22.00	Oct. 1, 1994
1-190 .....	(869-022-00121-3) .....	31.00	July 1, 1994	200-499 .....	(869-022-00168-0) .....	15.00	Oct. 1, 1994
191-399 .....	(869-022-00122-1) .....	36.00	July 1, 1994	500-1199 .....	(869-022-00169-8) .....	32.00	Oct. 1, 1994
400-629 .....	(869-022-00123-0) .....	26.00	July 1, 1994	1200-End .....	(869-022-00170-1) .....	26.00	Oct. 1, 1994
630-699 .....	(869-022-00124-8) .....	14.00	<sup>5</sup> July 1, 1991	<b>46 Parts:</b>			
700-799 .....	(869-022-00125-6) .....	21.00	July 1, 1994	1-40 .....	(869-022-00171-0) .....	20.00	Oct. 1, 1994
800-End .....	(869-022-00126-4) .....	22.00	July 1, 1994	41-69 .....	(869-022-00172-8) .....	16.00	Oct. 1, 1994
<b>33 Parts:</b>				70-89 .....	(869-022-00173-6) .....	8.50	Oct. 1, 1994
1-124 .....	(869-022-00127-2) .....	20.00	July 1, 1994	90-139 .....	(869-022-00174-4) .....	15.00	Oct. 1, 1994
125-199 .....	(869-022-00128-1) .....	26.00	July 1, 1994	140-155 .....	(869-022-00175-2) .....	12.00	Oct. 1, 1994
200-End .....	(869-022-00129-9) .....	24.00	July 1, 1994	156-165 .....	(869-022-00176-1) .....	17.00	<sup>7</sup> Oct. 1, 1993
<b>34 Parts:</b>				166-199 .....	(869-022-00177-9) .....	17.00	Oct. 1, 1994
1-299 .....	(869-022-00130-2) .....	28.00	July 1, 1994	200-499 .....	(869-022-00178-7) .....	21.00	Oct. 1, 1994
300-399 .....	(869-022-00131-1) .....	21.00	July 1, 1994	500-End .....	(869-022-00179-5) .....	15.00	Oct. 1, 1994
400-End .....	(869-022-00132-9) .....	40.00	July 1, 1994	<b>47 Parts:</b>			
<b>35</b> .....	(869-022-00133-7) .....	12.00	July 1, 1994	0-19 .....	(869-022-00180-9) .....	25.00	Oct. 1, 1994
<b>36 Parts:</b>				20-39 .....	(869-022-00181-7) .....	20.00	Oct. 1, 1994
1-199 .....	(869-022-00134-5) .....	15.00	July 1, 1994	40-69 .....	(869-022-00182-5) .....	14.00	Oct. 1, 1994
200-End .....	(869-022-00135-3) .....	37.00	July 1, 1994	70-79 .....	(869-022-00183-3) .....	24.00	Oct. 1, 1994
<b>37</b> .....	(869-022-00136-1) .....	20.00	July 1, 1994	80-End .....	(869-022-00184-1) .....	26.00	Oct. 1, 1994
<b>38 Parts:</b>				<b>48 Chapters:</b>			
0-17 .....	(869-022-00137-0) .....	30.00	July 1, 1994	1 (Parts 1-51) .....	(869-022-00185-0) .....	36.00	Oct. 1, 1994
18-End .....	(869-022-00138-8) .....	29.00	July 1, 1994	1 (Parts 52-99) .....	(869-022-00186-8) .....	23.00	Oct. 1, 1994
<b>39</b> .....	(869-022-00139-6) .....	16.00	July 1, 1994	2 (Parts 201-251) .....	(869-022-00187-6) .....	16.00	Oct. 1, 1994
<b>40 Parts:</b>				2 (Parts 252-299) .....	(869-022-00188-4) .....	13.00	Oct. 1, 1994
1-51 .....	(869-022-00140-0) .....	39.00	July 1, 1994	3-6 .....	(869-022-00189-2) .....	23.00	Oct. 1, 1994
52 .....	(869-022-00141-8) .....	39.00	July 1, 1994	7-14 .....	(869-022-00190-6) .....	30.00	Oct. 1, 1994
53-59 .....	(869-022-00142-6) .....	11.00	July 1, 1994	15-28 .....	(869-022-00191-4) .....	32.00	Oct. 1, 1994
60 .....	(869-022-00143-4) .....	36.00	July 1, 1994	29-End .....	(869-022-00192-2) .....	17.00	Oct. 1, 1994
61-80 .....	(869-022-00144-2) .....	41.00	July 1, 1994	<b>49 Parts:</b>			
81-85 .....	(869-022-00145-1) .....	23.00	July 1, 1994	1-99 .....	(869-022-00193-1) .....	24.00	Oct. 1, 1994
86-99 .....	(869-022-00146-9) .....	41.00	July 1, 1994	100-177 .....	(869-022-00194-9) .....	30.00	Oct. 1, 1994
100-149 .....	(869-022-00147-7) .....	39.00	July 1, 1994	178-199 .....	(869-022-00195-7) .....	21.00	Oct. 1, 1994
150-189 .....	(869-022-00148-5) .....	24.00	July 1, 1994	200-399 .....	(869-022-00196-5) .....	30.00	Oct. 1, 1994
190-259 .....	(869-022-00149-3) .....	18.00	July 1, 1994	400-999 .....	(869-022-00197-3) .....	35.00	Oct. 1, 1994
260-299 .....	(869-022-00150-7) .....	36.00	July 1, 1994	1000-1199 .....	(869-022-00198-1) .....	19.00	Oct. 1, 1994
300-399 .....	(869-022-00151-5) .....	18.00	July 1, 1994	1200-End .....	(869-022-00199-0) .....	15.00	Oct. 1, 1994
400-424 .....	(869-022-00152-3) .....	27.00	July 1, 1994	<b>50 Parts:</b>			
425-699 .....	(869-022-00153-1) .....	30.00	July 1, 1994	1-199 .....	(869-022-00200-7) .....	25.00	Oct. 1, 1994
700-789 .....	(869-022-00154-0) .....	28.00	July 1, 1994	200-599 .....	(869-022-00201-5) .....	22.00	Oct. 1, 1994
				600-End .....	(869-022-00202-3) .....	27.00	Oct. 1, 1994
				CFR Index and Findings Aids .....	(869-022-00053-5) .....	38.00	Jan. 1, 1994

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Complete set (one-time mailing) .....		223.00	1993			
Complete set (one-time mailing) .....		244.00	1994			

<sup>1</sup>Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup>The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup>No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup>No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

<sup>6</sup>No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

<sup>7</sup>No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.