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

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 273

[INS No. 1697–95]

RIN 1115–AD97

Screening Requirements of Carriers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by establishing procedures carriers must undertake for the proper screening of passengers at the ports of embarkation to become eligible for a reduction, refund, or waiver of a fine imposed under section 273 of the Immigration and Nationality Act (the Act). This rule is necessary to enable the Service to reduce, refund, or waive fines for carriers that have taken appropriate measures to properly screen passengers being transported to the United States, while continuing to impose financial penalties against those carriers that fail to properly screen passengers.

DATES: This rule is effective June 1, 1998. The supplementary information portion of this final rule requires carriers whose Performance Level (PL) is not at or better than the Acceptable Performance Level (APL), to submit evidence to the Service so that they may receive an automatic fine reduction of 25 percent, if certain conditions are met. Since this evidence is considered an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reductions Act (PRA), the evidence cannot be submitted until OMB approves the information collection requirements. The Service will publish a notice in the **Federal Register** once OMB approval of the information collection is obtained.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: The imposition of administrative fines has long been an important tool in enforcing the United States immigration laws and safeguarding its borders. Both section 273 of the Act and prior law reflect a similar Congressional purpose to compel carriers, under pain of penalties, to ensure enforcement of, and compliance with, certain provisions of the immigration laws. In enacting both section 273 of the Act of 1952 and section 16 of the Immigration Act of 1924 (the precursor to section 273(a) of the Act of 1952), Congress intended to make the carrier ensure compliance with the requirements of the law. The carriers have long sought relief from fines by having the Service consider extenuating circumstances related to the imposition of fines.

Prior to the enactment of section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, dated October 25, 1994, it was the Service's policy not to reduce, refund, or waive fines imposed under section 273 of the Act except pursuant to section 273(c) of the Act where the carrier could, to the satisfaction of the Attorney General, demonstrate that it did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

This final rule provides procedures carriers must undertake for the proper screening of aliens at the port of embarkation to become eligible for reduction, refund, or waiver of a fine imposed under section 273 of the Act. Nevertheless, it is important to note that these are voluntary procedures for carriers. This final rule further prescribes conditions the Service will consider before reducing, refunding, or waiving a fine. Of primary importance will be the carrier's performance in screening passengers. The Service will determine a carrier's performance record by analyzing statistics on the number of improperly documented nonimmigrant passengers transported to the United States by each carrier compared to the total number of documented nonimmigrant passengers transported.

This final rule will enable the Service to reduce, refund, or waive a fine imposed under section 273 of the Act for a carrier that demonstrates successful screening procedures by achieving satisfactory performance in the transportation of properly documented nonimmigrants to the United States. This will enable the Service to reduce, refund, or waive fines for carriers that have taken appropriate measures to properly screen passengers while continuing to impose financial penalties on carriers that fail to properly screen passengers. It is important to note that the final rule does not impose any additional requirements on the carriers, and that carriers are free to observe current procedures both in respect to screening their passengers and filing their defenses.

The Service wishes to maintain flexibility in assessing the success of a carrier's screening procedures. The Service has devised an initial means of measurement, as set forth in the following paragraphs, but will re-examine this strategy if such re-examination is appropriate. The Service is committed to working with the carriers and will consult with them on any contemplated changes in the method of assessment.

Under the methodology, a carrier's performance level (PL) will be determined by taking the number of each carrier's nonimmigrant violations of section 273 of the Act for a fiscal year and dividing this by the number of documented nonimmigrants transported by the carrier for the same fiscal year and multiplying the result by 1,000. A carrier's PL will be calculated annually.

The Service shall establish an Acceptable Performance Level (APL), based on statistical analysis of the performance of all carriers, as a means of evaluating whether the carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3. The APL shall be determined by taking the total number of all carrier nonimmigrant violations of section 273 of the Act for a fiscal year and dividing this by the total number of documented nonimmigrants transported by all

carriers for the same fiscal year and multiplying the result by 1,000.

The Service shall establish a Second Acceptable Performance Level (APL2), based on statistical analysis of the performance of all carriers at or better than the APL, as a means of further evaluating carrier success in screening its passengers in accordance with 8 CFR 273.3. Using carrier statistics for only those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carriers' nonimmigrant violations of section 273 of the Act for a fiscal year and dividing by the total number of documented nonimmigrants transported by these carriers for the same fiscal year and multiplying the result by 1,000.

Carriers which have achieved a PL at or better than the APL, as determined by the Service, will be eligible for a 25 percent fine reduction in the amount of any fine covered by this provision if the carrier applies for a reduction, refund, or waiver of fines according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Carriers which have achieved a PL at or better than the APL2, as determined by the Service, will be eligible for a 50 percent fine reduction in the amount of any fine covered by this provision if the carrier applies for a reduction, refund, or waiver of fines according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Additional factors the Service will consider in determining whether the Service will reduce, refund, or waive a fine under section 273 of the Act and the amount of such reduction, refund, or waiver are: (1) The carrier's history of fines violations, (2) the carriers payment record for fines, liquidated damages, and user fees, and (3) the existence of any extenuating circumstances. In the future, the Service may consider other factors in evaluating carrier performance including participation in data sharing initiatives or evaluation of a carrier's performance by particular port(s) of embarkation and/or route(s) to determine carrier fines mitigation levels.

To maintain flexibility in determining the success of a carrier's screening procedures, the Service will not include in the regulation the methodology it will use in determining a carrier's PL, the APL, or the APL2 or the fines reduction percentage levels. Both the methodology used to determine the success of a carrier's screening procedures and the fines reduction percentage will be periodically revisited by the Service to maximize carrier cooperation and vigilance in their screening procedures. The Service shall compute all carrier PLs, the APL, and the APL2 periodically but may elect to use the APL or APL2 from a previous period when determining carrier fines reduction, refunds, or waivers for a specific period(s). While the individual carrier's PL will be computed at least annually, the benchmark APL and APL2 may apply to a longer period. Initially the Service may set the benchmark criteria for 3 years. If this is done, it will be done across the board for all carriers. The Service will publish any significant adverse changes regarding fines reduction in the **Federal Register** in accordance with the Administrative Procedure Act (APA) prior to implementation. Maintaining a flexible approach allows the Service to work in partnership with the carriers toward the mutual goal of decreasing the number of improperly documented nonimmigrants transported to the United States.

Carriers may elect to sign a Memorandum of Understanding (MOU) with the Service for the broader application of the reduction, refund, or waiver of fines imposed under section 273 of the Act by agreeing to perform additional measures to intercept improperly documented aliens at ports of embarkation to the United States. The MOU is attached as an appendix to this final rule. Carriers performing these additional measures to the satisfaction of the Commissioner would be eligible for *automatic* fine reductions, refunds, or waivers as prescribed in the MOU. Carriers signatory to the MOU with the Service would be eligible for an automatic fine reduction of 25 or 50 percent depending on whether a carrier's PL is at or better than the APL or APL2 respectively, as determined by the Service. Carriers not signatory to an MOU would not be eligible for automatic fine reductions, refunds, or waivers. Nevertheless, this rule does not preclude any carrier, whether or not signatory to the MOU, from requesting fines reduction, refund, or waiver according to the procedures listed in 8 CFR 280.12 and 8 CFR 280.51. Even if the carrier's PL is not at or better than the APL, the carrier may receive an automatic fine reduction of 25 percent, if it meets certain conditions, including: (1) It is signatory to the MOU, which is predicated on the carrier submitting evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States, and; (2) it is in compliance with the MOU. This evidence shall be submitted to the Assistant Commissioner for Inspections for consideration. Evidence may include, but is not limited to, the following: (a) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other training programs, the number of employees trained, and a description of the training program; (b) information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the alien's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, and port of embarkation, unless not permitted by local law or local competent authority. In such instances, the carrier shall notify the Service of this prohibition and shall propose alternative means for meeting this objective; and, (c) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States; and, (3) it appears to the satisfaction of the Assistant Commissioner for Inspections that other Service data and information, including a carrier's PL, indicate the carrier has demonstrated improvement in the screening of its passengers. The evidence that must be submitted to the Service by a carrier whose PL is not at or better than the APL, is considered an information collection which is covered under the Paperwork Reduction Act (PRA). Accordingly, those carriers whose PL is below the APL cannot submit evidence to the Service until the information collection is approved by the Office of Management and Budget (OMB) in accordance with the PRA. Once the Service receives approval from OMB on the information collection, it will notify the public by PRA notice in the **Federal Register** that the information collection is approved.

The levels for fines mitigation are loosely based on the Canadian fines mitigation system. Based on performance levels of the carriers, the Canadian system provides for an automatic fines reduction of 25 percent upon the carrier signing an MOU with the Canadian Government. Through attaining performance standards established in the Canadian MOU, carriers can earn further reductions of 50, 75, or 100 percent of their fines.

This rule further clarifies fines imposed under section 273(d) of the Act by stating that provisions of section 273(e) of the Act do not apply to any fine imposed under section 243(c)(1)(B) of the Act, prior section 273(d) of the Act in effect until April 1, 1997, nor under any provisions other than sections 273(a)(1) and 273(b) of the Act.

On June 10, 1996, at 61 FR 29323–29327, the Service published a proposed

rule with requests for comments in the **Federal Register**, in order to comply with section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994, which permitted the Service to mitigate fines in certain cases where the carrier demonstrates that it had screened all passengers in accordance with regulations prescribed by the Attorney General or if circumstances exist that the Attorney General determines would justify such mitigation. Interested persons were invited to submit written comments on or before August 9, 1996. The following is a discussion of those comments received by the Service and the Service's response.

Discussion of Comments on the Proposed Rule

The Service received a total of 15 written responses containing comments on the proposed rule. The respondents were classified as follows:

Fourteen respondents commented that the proposed methodology by which the Service will calculate the carrier's individual performance level (PL) and the acceptable performance levels (APL and APL2) are not accurate measures of a carrier performance. Many reasons were cited as follows:

One objection to the methodology was that the carriers were seen as being ''pitted'' against one another instead of being rated on individual merit. The Service does not intend for carriers to compete against each other. The Service does intend to use the APL as a measurement of individual carrier performance. To respond to several commenters on the recalculation of the PL, APL, and APL2 figures, the PL will be calculated annually for individual carriers. The 1994 APL and APL2 will be used as the standard for the past fines being held in abeyance and for the fiscal years 1995–1997 and possibly longer, based on Service discretion. Individual carrier performance is compared against this overall average performance level of all carriers (APL and APL2). Carriers will be rewarded by the mitigation of carrier fines of 25 or 50 percent, depending on a carrier's PL as compared to this overall average. Individual statistical performance needs a baseline to measure performance. Therefore, the Service has used the overall average of all carriers to create the necessary baseline.

Some commenters objected to FY 94 being used as the baseline. The Service chose FY 94 since it was the first year in which the Service was able to obtain the total number of documented nonimmigrant passengers per carrier from the Form I–92, Aircraft/Vessel Report. Prior to FY 94, this data was discarded.

Several commenters claimed that requiring carriers to meet or exceed an ''arbitrary'' APL is inconsistent with the intent of Congress and is unrelated to the basic concept of mitigation. Commenters argued that Congress ''intended'' that section 273(e) would result in complete relief from the fine procedures, so that if a carrier satisfies the screening requirements, the Service would be required to reduce the fine to zero. These commenters believe that the proposed rule is contrary to this ''intent'' because the proposed rule permits the Service to reduce the fine by a specified amount that is less than 100 percent. The Service disagrees with the commenters' claims about Congressional ''intent.'' The intent of any statute is to be found in the text of the statute itself. *See Mallard* v. *U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 300 [1989]; *INS* v. *Phinpathya*, 464 U.S. 183, 189 [1984]. Section 273(e) of the Act provides that the Attorney General ''*may* * * * reduce[], refund[], or waive[]'' a fine under section 273(a) and (b), ''*under such regulations as the Attorney General shall prescribe*'' [emphasis added]. Thus, the statute entrusts to the Attorney General's discretion the authority to determine under what circumstances the Service should reduce, refund, or mitigate a fine under section 273(a) and (b). Nothing in section 273(e) of the Act requires the Service, in the exercise of the Attorney General's discretion, either to reduce the fine to zero in every case or to leave the fine at the full statutory amount. Nor does the existing legislative history support the commenters' claims about the ''intent'' of section 273(e) of the Act. *See* 140 Cong. Rec. S14400–S14405 [daily ed. October 6, 1994]; id., H9272–H9281 [daily ed. September 20, 1994]. The Service contends that section 273, read as a whole, provides both a ''positive'' and a ''negative'' incentive for a carrier to ensure that it permits only aliens with proper documents to board airplanes and other vessels bound for the United States. The ''negative'' incentive is the risk of incurring the statutory fine. The ''positive'' incentive is that the amount of the fine may be reduced, if the carrier has acted reasonably in its efforts to screen passengers. The carrier demonstrates that it has properly screened its passengers by having a PL at or better than the APL as determined by the Service. Measuring the performance of carriers is basic to the concept of mitigation. The policy of imposing a monetary penalty, but mitigating the amount of the penalty if a carrier has taken appropriate steps to screen passengers is a reasonable way to implement section 273 as a whole. This policy is well within the authority of the Attorney General to promulgate regulations for the administration of the immigration laws.

It must be emphasized that the Service policy of strictly enforcing the fine provisions of section 273 of the Act in appropriate cases is a continuation of a more than 70-year-old policy of carrying out Congress' intent to hold carriers responsible for passengers they have transported to the United States. The Board of Immigration Appeals (the Board) and the courts have consistently held that carriers must exercise reasonable diligence in boarding their passengers for transport to the United States and are subject to administrative fines for failure to do so, e.g., *Matter of Eastern Airlines, Inc., Flight #798*, 20 I&N Dec. 57 (BIA 1989); *Matter of M/V Guadalupe*, 13 I&N Dec. 67 (BIA 1968); *New York & Porto Rico S.S. Co.* v. *United States*, 66 F.2d 523, 525 (2d Cir. 1933).

The imposition of administrative fines in appropriate cases has long been an important tool in enforcing our immigration laws and safeguarding our borders. In enacting both section 273 of the Act of 1952 as well as section 16 of the Immigration Act of 1924, the precursor of section 273, Congress intended to make the carrier ensure compliance with the requirements of the respective statutory provisions. *See* Joint Hearings on the Revision of Immigration, Naturalization, and Nationality Laws, Senate and House Subcommittees on the Judiciary, Testimony of Stuart G. Tipton, General Counsel, Air Transport Association of America at p. 294 (March 14, 1951); *Matter of M/V ''Runaway''*, 18 I&N Dec. at 128 (citing section 273 cases). Indeed, in enacting section 273 of the Act, Congress strengthened the previous penalty provisions, which only applied to carriers unlawfully transporting immigrants to this country, to include the unlawful transport of nonimmigrants as well. *See Matter of S.S. Greystroke Castle and M/V Western Queen*, 6 I&N Dec. 112, 114–15 (BIA, AG 1954); Legal Opinion of the INS General Counsel, 56336/273a at 6 (Sept. 3, 1953). The intent of Congress embodied in sections 273(e) is to reward carriers which properly screen their passengers prior to coming to the United States. By determining a carrier's PL and rewarding carriers with a satisfactory PL through fines mitigation, the Service fulfills the intent of Congress.

One commenter requested that ''[t]he Service should expressly agree that it will not initiate legislation to increase the amount of the penalty for violation of [section 273 of the Act] for at least five years.'' As stated previously, the Service views the fines program as an important tool in enforcing our immigration laws by imposing financial penalties on those carriers which fail to properly screen passengers. The Executive Branch has a constitutional duty to recommend legislation that the Executive Branch considers necessary or appropriate. Therefore, the Service does not agree with the commenter's request. The Service does note, however, that the Service is required by statute to adjust civil administrative fines by regulation to account for the effect of inflation. Federal Civil Penalty Inflation Adjustment Act of 1990, § 4, *as amended by* Debt Collection Improvement Act of 1996, Pub. L. No. 104–134, ch. 10, § 31001(s)(1)(A), 110 Stat. 1321, _____ (1996).

Some commenters claimed that the APL structure encourages the continuance of the ''adversarial relationship'' between the carriers and the Service. On the contrary, carrier organizations and the Service have conducted extensive dialogue on the formulation of this rule. The past collaboration between the carrier organizations and the Service led to the near-completion of the Carrier Cooperative Agreement. The Agreement was the precursor to the present fine mitigation regulation language and corresponding MOU. The Agreement had the endorsement of the major carrier organizations. The Service also actively enlisted carrier participation in the writing of the fines mitigation proposed rule. Meetings were held with the carrier organizations on several occasions to discuss the fines mitigation legislation and the mutual concerns of the Service and the carriers. The Service maintains a strong customer orientation within the boundaries of its mission as evidenced by the National Performance Review (NPR) initiatives at the major Ports-of-Entry. The Service has actively involved the carriers, as major stakeholders, the re-engineering of the inspection process. The Service values its cooperative relationship with the carriers and their parent organizations. The Service believes the cooperative nature of the MOU to be signed with the carriers will lead to an even closer, mutually beneficial relationship. The ultimate customers, the American people and bona fide passengers, are better served by the carriers and the Service by preventing the transportation of improperly documented aliens to the United States. While none of these considerations eliminates the tension inherent in the relationship between a regulatory agency and the entities subject to regulation, they do bespeak as cooperative a relationship as possible.

Some commenters claimed that the variables used in calculating the PL, APL, and APL2 are not clearly defined while other variables, such as carrier size, market characteristics, risk factors at ports of embarkation, passenger nationalities, local government laws, etc., are not factored in the calculations. The Service contents the factors are clearly defined. The Service will calculate a carrier's PL by dividing the number of each carrier's violations of section 273 of the Act for a fiscal year by the number of documented nonimmigrants transported by the carrier and multiplying the result by 1,000. This calculation will include only those aliens who are documented by the completion of an I–94 and statistically recorded on Form I–92. This calculation does not include violations for improperly documented first-time immigrants or lawful permanent residents, Canadian citizens, lawful residents of Canada, and any other class of nonimmigrant aliens not required to complete the Form I–94 as enumerated in 8 CFR 231.1. In determining the number of passengers transported to the United States by each carrier, the passengers brought from contiguous territory have been omitted from the total number of passengers transported as requested by several commenters to the rule. They correctly pointed out that to include these numbers when section 273 of the Act specifically excludes fines levied for transporting improperly documented passengers from contiguous territory would unfairly alter the PL, APL, and APL2 calculations. The APL will be calculated by taking the total number of all carrier violations of section 273 of the Act for a fiscal year and dividing this by the total number of documented nonimmigrants transported by all carriers for the same fiscal year and multiplying the result by 1,000. The same groups of aliens which have been omitted from the calculation of a carrier's PL have also been omitted for the calculation of the APL. The second Acceptable Performance Level (APL2) will be based on statistical analysis of the performance of all carriers at or better than the APL. Using carrier statistics only for those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carrier violations of section 273 of the Act for a fiscal year and dividing by the total number of documented nonimmigrants transported by these carriers for the same fiscal year and multiplying the result by 1,000. Likewise, the same groups of aliens which have been omitted from the calculation of a carrier's PL and APL have also been omitted for the calculation of the APL2. Carrier size is therefore inconsequential to the determination of a carrier's PL. The three measurements show the number of violations under section 273 of the Act per 1,000 passengers transported. This enables the Service to even the playing field and determine the carrier performance of small and large carriers per 1,000 passengers. Other variables, including market characteristics, risk factors at ports of embarkation, passenger nationalities, and local government laws, have not been factored into these numbers. Nevertheless, even if a carrier's PL is not at or better than the APL, due to these variables, the carrier may receive an automatic 25 percent reduction in fines, if it meets certain conditions, including being signatory to the MOU predicated on the submission of evidence demonstrating that the carrier has taken extensive measures to prevent the transport of improperly documented passengers to the United States and remaining in compliance with the MOU. This evidence must be submitted to the Assistant Commissioner for Inspections for consideration. Evidence may include, but is not limited to, the following: (1) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other training programs, the number of employees trained, and a description of the training program; (2) information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation including, but not limited to, the alien's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, and port of embarkation; and, (3) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined to the United States. The Service will consider these variables and Service data in determining fines mitigation for carriers failing to meet the APL level. The Service has previously stated in the proposed rule summary that it may consider other factors in evaluating carrier performance, including participation in data sharing initiatives or evaluation of a carrier's performance

by particular port(s) of embarkation and/or route(s) to determine carrier fines mitigation levels at a later date as technology improves and more information is available.

Commenters calculated that only 20 percent of the carriers would be entitled to any fines mitigation under the Service's methodology. Some respondents further stated that the rule was deliberately designed to defeat Congress' intent by making a substantial degree of mitigation too difficult for a carrier to achieve.

To the contrary, the Service's calculations, upon which the PL, APL, and APL2 will be determined, show that 41 percent of the carriers (45 out of 109) will qualify for fines mitigation for fiscal year 1995 based on FY 94 violations. Nineteen (19) percent of the carriers (21 out of 109) achieved a PL at or better than the APL2 and are eligible for 50 percent fines mitigation and 24 carriers achieved a PL at or better than the APL and are eligible for 25 percent fines mitigation. This does not include those carriers which apply for fines mitigation based on the submission of evidence as described in section 4.13 of the MOU (*See* attanchment). For violations in FY 96, the Service plans to retain the APL2 and APL yardsticks from FY 94 to determine fines mitigation. Further, 53 percent of the carriers (55 our of 104) are eligible for fines mitigation in FY 96 based on violations which occurred in FY 95 using the FY 94 APL yardstick. Thirty-two percent of the carriers (33 out of 104) are eligible for 50 percent fines mitigation in FY 96 for having a PL at or better than the FY 94 APL2 yardstick. The Service envisions that cooperation in the sharing of information regarding fraudulent documents, the training of carrier agents by the Service's Ports-of Entry officers, carrier consultants, and overseas officers, and carrier dissemination of this information to their agents at the ports of embarkation, will continue to lower the number of improperly documented aliens arriving at United States Ports-of-Entry. The Service expects that the number of carriers eligible for fines mitigation to increase for FY 97 and beyond. Carrier interest in the training of its agents in the immigration laws and regulations of the United States together with invaluable Service document training has made the carrier-Service partnership a success.

Several commenters suggested that the Service should increase the levels of fines mitigation for those carriers who meet the APL and APL2, including up to 100 percent fines mitigation. Some respondents suggested having higher levels (for example, APL3 or APL4 levels). The amount of the fines mitigation, including possible increases to a higher percentage for violations of section 273 of the Act for carriers with an exceptional PL, and higher levels of fines mitigation shall be re-examined by the Service at a later date. The Service is not adverse to increasing the amount of fines mitigation or having higher levels providing it is in the interest of the American people to do so.

Several commenters suggested that the Service's methodology in determining performance levels should be entirely abandoned. They stated that, if the Service must employ such a method, the calculation should be made using the carriers' PL median ratio as the APL and giving fines mitigation to all those carriers whose PL is at or better than this average. These respondents contend that such a calculation would be a fairer representation of carrier performance and enable a significantly higher percentage of carriers to qualify for fines mitigation. This calculation simply rewards the top 50 percent of the carriers regardless of the actual performance of the carrier. The Service's methodology of using the overall PL ratio measures a carrier's performance against the average performance of all carriers in FY 94. As stated previously, the Service calculates that 41 percent of the carriers will be eligible for fines mitigation for FY 95 violations of section 273 of the Act. Fifty-three percent of the carriers are eligible for fines mitigation in FY 96 based on violation which occurred in FY 95 using the FY 94 APL. This favorably compares to the respondents suggestion that 50 percent of the carriers should be eligible for fines mitigation. The Service believes its methodology is sound but will re-examine it periodically to ensure that it sets both an appropriate benchmark by which to measure carrier performance and provides an appropriate level of relief for those carriers whose performance exceeds the norm.

Some respondents argue that the results of the calculations would be dramatically different if all passengers were considered in the methodology. Section 273 of the Act clearly specifies that the carrier can only be fined for the transportation of ''* * * (other than from foreign contiguous territory) any *alien* [emphasis added] who does not have a valid passport and an unexpired visa, if a visa is required under this Act or regulations issued thereunder.'' Therefore the Service cannot fine carriers for the transportation of United States (U.S.) citizens or for improperly documented passengers arriving from contiguous territory and maintains no records on improperly documented U.S. citizens or improperly documented passengers arriving from contiguous territory. Since these passengers cannot be fined under section 273 of the Act, they are omitted from the carrier's passenger calculations. The reason that some other groups of aliens are not counted in the passenger number statistics is due to the fact that the Service cannot collect this information because they are exempt from presentation of the Form I–94, Arrival/Departure Record. Intending and returning immigrants and nonimmigrants are not required to complete Form I–94 and are counted together with U.S. citizens of Form I–92, Aircraft/Vessel Report. Only the number of documented nonimmigrants applying for admission to the United States with a Form I–94 is recorded on Form I–92 by the Service. This information on Form I–92 is used by the Service to determine the PL, APL, and APL2.

One respondent argued that if the Service will not consider immigrants in its methodology, then any violations involving those persons who destroy their documents prior to arriving in the United States, also known as document-destroyers, should be removed from the calculations since such aliens are actually intending immigrants. As previously stated, section 273 of the Act requires valid documentation for aliens. A document-destroyer is an alien. Therefore, he or she requires valid documentation. Failure to have valid documentation requires the Service to impose a fine of $3,000 on the carrier for the violation. Every improperly documented alien may be an intending immigrant. The fact remains that the document-destroyers do not possess the necessary documentation required of immigrants or non-immigrants. Therefore, the carrier is liable for fines under section 273 of the Act for bringing an improperly documented alien to the United States. Other commenters simply requested the Service not to count carrier violations involving those aliens who destroy their documents on the aircraft. The Service cannot ignore the fact that the carrier transported a passenger to the United States without proper documents. Carriers are responsible for bringing to the United States aliens with proper documentation. It is unreasonable for the carriers to expect the Service to fail to impose fines on carriers where no documents are presented or any evidence that an apparent valid travel document had existed. Thus, the carrier is responsible for the presentation to the alien to the Service with proper

documentation. Nevertheless, the Service has, under the umbrella of prosecutorial discretion, consistently relieved the carriers of fines for document-destroyers and aliens possessing fraudulent documentation. The former group requires the carrier to present evidence that the alien had documentation whose validity was reasonably apparent at the time of boarding. The Service allows the carrier to present photocopies of the documents presented by aliens who have destroyed their documents. Fines for both groups of improperly documented aliens are only imposed when those documents are ''blatantly fraudulent.'' Through the various carrier-Service training programs, the number of document-destroyers has been significantly reduced during the last 4 years. This is evidenced by the dramatic decrease in document-destroyers at John F. Kennedy International Airport from 3,193 document-destroyers in FY 93 to only 582 document-destroyers in FY 96. According to the National Fines Office (NFO) statistics, the percentage of document-destroyer violations as compared to the total number of violations under section 273(a) of the Act dropped from 37.4 percent in FY 93 to 26.9 percent in FY 94, the last year fine statistics were available due to the pending publication of this final rule.

Some commenters requested that the Service postpone the final rule because of cases on appeal to the Board on the strict liability of section 273 of the Act. The commenters pointed out that the Service has acknowledged in a wire to field offices that the ''* * * carrier[s] cannot be held liable for the level of forensic or law enforcement expertise which is the proper province of an official immigration agency'' (*See* Service Wire # 1501217/01CE/1213.000 dated December, 1989, entitled ''Stowaways on Commercial Airline Flights''). Nevertheless, the wire also states that in instances ''[w]here a document is obviously altered, counterfeit, or expired, or where a passenger is an obvious impostor, to the extent that any reasonable person should be able to identify the deficiency, a carrier is required to refuse boarding as a matter of reasonable diligence. The photocopying of such a document does not provide protection from liability to fine.'' In cases involving fraud, the Service has not held the carrier liable for fines under section 273 of the Act unless the fraud is sufficiently obvious that a reasonable person exercising reasonable diligence could have detected the fraud. In FY 94 only six fraudulent document cases qualified for fines using this standard. The Service does not consider it proper to await the Board's decision in any particular case that might now be pending before promulgating this final rule. The Service must decide a fine case according to the law as it exists at the time of decision. To the extent that future precedent decisions of the Board or of the Federal courts continue to refine the jurisprudence of fine cases, the Service will apply these future precedents into its own decision-making.

One respondent argues that the calculations should not include violations where a nonimmigrant was admitted to the United States under a waiver in accordance with 8 CFR 212.1(g), since the granting of such a waiver negates the concept of a violation. Waiving an applicant's documentary requirements subsequent to an arrival is no defense to liability of the carrier under section 273(a) for bringing to the United States an alien without a visa, if a visa is required by law or regulation. *See The Peninsular & Occidental Steamship Company* v. *The United States*, 242 F. 2d 639 (5 Cir. 1957); *Matter of SS Florida*, 5 I&N Dec. 85 (BIA 1954); *Matter of Plane ''F–BHSQ''*, 9 I&N Dec. 595 (BIA 1962). The regulation, 8 CFR 212.1(g) also parallels the granting of a visa waiver to a lawful permanent resident found in 8 CFR 211.1(b)(3).

The regulation at 8 CFR 212.1(g) was recently amended (*See* 61 FR 11717, dated March 22, 1996) to read, in part:

Upon a nonimmigrant's application on Form I–193, a district director at a port of entry may, in an exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency.

The clarification at 8 CFR 212.1(g) gave the Service the ability to exercise discretion to admit improperly documented nonimmigrants while penalizing carriers by the imposition of fines for the bringing of these aliens to the United States in violation of section 273 of the Act. Amending the regulation clarified any ambiguity regarding carriers' liability to ensure the transportation of properly documented aliens to the United States and to impose penalties for failure to do so, whether or not a waiver of documents in granted. This is similar to the granting of individual waivers to lawful permanent residents under 8 CFR 211.1(b)(3), which also does not relieve the carrier of fine liability under section 273 of the Act. The authority to fine carriers, even when a waiver of documents is granted, has been the intent of Congress since the enactment of the Immigration Act of 1924 which established section 16, the precursor to section 273 of the Immigration Act of 1952.

Thirteen respondents commented that, although section 273(e) of the Act states that fines may be ''reduced, refunded or waived,'' the proposed rule addresses only the reduction of these fines and fails to address the manner by which fines may be refunded or waived. Respondents argue that the proposed rule offers no guarantee of an avenue of full relief form fine liability. Nine respondents commented that the proposed rule refers to mitigating circumstances and extenuating circumstances which would warrant mitigation of fines but that these circumstances are not defined. The respondents state that the National Fines Office (NFO) should specify the circumstances by which it will mitigate fines and define the degree of mitigation applicable to each circumstance.

The term *refund* as defined by *Black's Law Dictatory* means ''[t]o repay or restore; to return money in restitution or repayment.'' For the purposes of fines, this suggests that a fine has been paid by the carrier and money is refunded (repaid, restored, or returned) to the carrier. Under present fines procedures enumerated in 8 CFR 280.12 and 8 CFR 280.51 the Service is required to issue a Form I–79, Notice of Intent to Fine, and to allow the carrier to present evidence in defense of the fine and/or seek mitigation or remittance of the fine. In contested section 273 violations, no refund of money is due because the Service does not require the payment of a violation prior to the case's final disposition. If the carrier is signatory to the Service's proposed fines mitigation Memorandum of Understanding (MOU), the carrier will receive an automatic reduction of its fine prior to the Form I–79 being sent to the carrier. Signatory carriers to the MOU may, in addition, defend the fine in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51 to receive fines mitigation or remission.

The term *waived* is defined by *Black's* to mean ''[t]o abandon, throw away, renounce, repudiate, or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong. To give up right or claim voluntarily.'' The respondents fail to consider the entire section of 273(e) added by Congress. Section 273(e) of the Act reads, in its entirety:

(e) A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

The respondents omitted the line ''* * * under such regulations as the Attorney General shall prescribe * * *.''

In addition to the fines mitigation available to carriers under the Service's policy of performance levels, some mitigating circumstances will warrant a further reduction of 25 percent. Some extenuating circumstances will result in a 100 percent waiver of the fine. These circumstances will not be part of the regulation; however, some of the mitigating and extenuating circumstances under which the Service will either mitigate or waive these penalties are listed in the following paragraphs. It is recommended that carriers defend fines cases in which the carrier believes circumstances exist that would warrant further mitigation or waiver of the fine. These cases will be handled on a case-by-case basis. Due to changes in technology and unforeseen circumstances, this list is not a complete one and additions or deletions to it may become necessary. Though the Service contends that section 273(e) of the Act does not require the Service to provide full relief from fines, the Service has on occasion exercised its prosecutorial discretion to de facto ''waive'' a fine. The Service now has the statutory authority to waive fines if extenuating circumstances exist and will consider these circumstances on a case-by-case basis. Such circumstances may include, but are not limited to, the following situations:

(a) Canadian national (no visa required) not in possession of their Alien Registration Receipt Card (ARC), Form I–551;

(b) Alien who has been rescued at sea;

(c) Documented evidence of a United States Consulate or Service officer providing incorrect information to the carrier resulting in the transportation of an improperly documented alien;

(d) Lawful permanent resident (LPR) who presents self to the carrier as a Visa Waiver Pilot Program (VWPP) applicant and who is in possession of a return ticket indicating a stay of less than 90 days in the United States;

(e) Lawful permanent resident whose Alien Documentation, Identification, and Telecommunication (ADIT) stamp has no expiration date or the expiration date is placed underneath the ADIT stamp;

(f) Nonimmigrant in possession of a one-or-two entry nonimmigrant visa where the previous Service admission stamp is not on the visa or facing passport page;

(g) Alien arriving on a vessel or aircraft landing for emergent reasons and requiring an unscheduled landing in the United States;

(h) Alien arriving on a United States Government chartered aircraft or vessel;

(i) Nonimmigrant in possession of a machine-readable Canadian Border Crossing Card (BCC) without notation indicating it is valid for crossing the United States-Canadian border;

(j) Lawful permanent resident without Form I–551 and who is only in transit through the United States; and,

(k) Alien not in possession of proper documentation but where the carrier presents photocopies of reasonably apparent valid documents seen at boarding and which were subsequently destroyed or discarded en route to the United States. Waiver of the fine would not occur in this instance if the documents were blatantly fraudulent or if the carrier makes a statement to the Service that they suspected the documents to be fraudulent.

Examples of circumstances that would warrant mitigation by 25 percent may include, but are not limited to the following situations:

(a) Nonimmigrant child who is added to a passport subsequent to the issuance of the nonimmigrant visa where the ''s'' in the word ''BEARER(S)'' is crossed out;

(b) Lawful permanent resident who is not in possession of Form I–551, but possesses a Form I–797, Notice of Action, removing conditional status and indicating it is valid for travel and employment;

(c) British subject, including British overseas citizen, British dependent territories citizen, or citizen of a British commonwealth country, seeking entry under WVPP but not eligible for the WVPP because they were not a British citizen with unrestricted right of permanent abode in the United Kingdom; and

(d) A nonimmigrant who would otherwise qualify for admission under the Transit without Visa (TWOV) Program except that he or she is arriving at a non-designated TWOV Port-of-Entry.

Eleven respondents cite § 273.4(b) of the proposed regulation as an area of concern. It states: The Service may, at any time, conduct an inspection of a carrier's document screening procedures at ports of embarkation to determine compliance with the procedures listed in § 273.3. If the carrier's port of embarkation operation is found not to be in compliance, the carrier will be notified by the Service that its fines will not be eligible for refund, reduction, or waiver of fines under section 273(e) of the Act unless the carrier can establish that lack of compliance was beyond the carrier's control.

The respondents express no objection to the Service's intention to conduct an inspection of a carrier's screening procedures at a port of embarkation but question whether the Service has the authority to conduct inspections in sovereign countries. The respondents express concern that the Service might consider the carrier to be non-compliant with the screening requirements if the carrier is otherwise compliant but local authorities prevent the Service from performing an inspection. The Service does concur with the comments regarding § 273.4(b). No Service inspection of a carrier's boarding procedure shall take place if not permitted by the local competent authority. The Service never contemplated penalizing a carrier for non-compliance of its screening procedure due to the inability of the Service to inspect its operation at a port of embarkation due to the refusal of a competent authority to grant the Service inspection privileges. However, the Service does expect the carrier to use its good offices with the local competent authority to secure access for a Service inspection. This section of the regulation shall be amended to read as follows:

The Service may, at any time, conduct an inspection of a carrier's document screening procedures at ports of embarkation to determine compliance with the procedures listed in § 273.3, *to the extent permitted by the local competent authority responsible for port access or security. If necessary, the carrier shall use its good offices to obtain this permission from the local authority* [emphasis added]. If the carrier's port of embarkation * * *.

Similarly, three sections of the MOU, 1.3, 3.4, and 3.7, will also be amended with the same language. Nevertheless, if a carrier cannot comply with a section of the MOU because of local law, the carrier must notify the Assistant Commissioner of Inspections, in writing, listing the specific section of the MOU with which it is unable to be in compliance because of said local law or local competent authority. The carrier must notify the Service within ten (10) days after becoming aware of this

inability to comply in order to be deemed in compliance with the MOU. Section 3.14 has been added to the MOU. It reads as follows:

The Carrier agrees to notify the Assistant Commissioner of Inspections, in writing, if it is unable to comply with any section of the MOU because of local law or local competent authority. The Carrier shall list the specific section of the MOU with which it is unable to comply and, to be in compliance with the MOU, shall notify the Service within ten (10) days after becoming cognizant of this prohibition. Further, in such instances the Carrier shall propose alternative means for meeting the objective sought by the paragraph in question. For instance, where review of foreign boarding procedures cannot be performed by INS personnel, the Carrier could provide that an audit of their operation be performed by local authorities or by private auditors.

Additionally, if a carrier's port of embarkation operation was found not to be in compliance, the carrier's eligibility for refund, reduction, or waiver of fines would be jeopardized only for those violations from that port of embarkation. Fines originating from that specific port of embarkation would not be subject to fines mitigation unless the carrier could establish that lack of compliance was beyond the carrier's control. The carrier's entire fines mitigation could be placed in jeopardy the following year if their PL were adversely affected causing the carrier to have an PL worse than the APL or APL2 itself. The Service would be reluctant to allow a carrier with a declining PL that was lower than the APL to receive fines mitigation unless evidence was presented to suggest that the carrier planned to increase or had increased screening and vigilance procedures or that there were extenuating circumstances beyond the control of the carrier.

Six respondents state that the proposed rule, though supposedly based on the Canadian system of fines mitigation, bears little resemblance to the actual Canadian method, which allows for up-front reductions of 100 percent for eligible carriers. The proposed Service fines mitigation policy, though similar to the Canadian fines mitigation system, is significantly different because of the following: (1) Vast differences in traffic volume in the United States as compared with Canada; (2) the large number of ports of embarkation to the United States; (3) the large number of United States Ports-of-Entry; and, (4) the different statutes themselves. The United States Ports-of-Entry handle almost ten times the volume of traffic transported to Canada. The relative small scale of the air traffic to Canada enables the Canadians to screen each air route to Canada so that a standard is created for carrier screening performance from each port of embarkation. By contrast, the huge number of routes to the United States prevents the Service from performing a similar exercise. The Canadian fines system also allows for carrier fines in the transportation of aliens who destroy or discard their documents prior to arrival in Canada. On the other hand, the United States may accept carrier photocopies of these document-destroyers' apparently valid documents and may terminate the fines case upon their submission whereas the Canadians do not accept photocopies.

The respondents further claim that the Service's proposed rule offers a maximum of 50 percent up-front reduction thereby ''forcing carriers to defend themselves in every instance.'' The Service disagrees that the carriers will be forced to defend themselves in every instance if signatory to the MOU. During 8 years of fines interaction with the Service's NFO, the carriers have obtained a thorough knowledge of the fines process and what fines will be terminated by the Service and what fines will not. The examples of mitigating and extenuating circumstances listed above where the Service will waive or mitigate a fine will provide the carriers with further information to determine whether to defend or seek reduction or waiver of a fine.

Some respondents claim the Canadian method resulted in a 50 percent decrease in improperly documented arrivals in the first year of implementation and that the program resulted in enhanced cooperation between the carriers and the Canadian Government. The respondents state that, because the proposed rule does not provide incentives comparable to the Canadian method, relations between the carriers and the Service will not improve and the number of violations of section 273 of the Act will not necessarily decrease.

The Service has seen a downward trend in the transportation of improperly documented aliens nationwide since 1992. The number of violations of section 273 of the Act reached its high point in FY 91 (7,052 violations) and FY 92 (7,072). For FY 94, the last year in which statistics are available due to this final rule, there were only 4,512 violations of section 273 of the Act, a 36 percent decrease. The Service has also noticed the number of document-destroyers at John F. Kennedy International Airport (JFKIA) has decreased from 3,153 in FY 93 to only 582 in FY 96; an 80 percent decrease. The number of asylum claims in JFKIA, which include the document-destroyers and aliens arriving with fraudulent documents, decreased from 9,180 in FY 92 to only 1,213 in FY 96; an 86 percent decrease. The Service views the fines increase to the present sum of $3,000 as the catalyst which made it cost-effective for carriers to seek Service training for its agents stationed at the overseas ports of embarkation. This cooperation between the carriers and the Service has brought both closer to reaching the mutually beneficial goal of reducing the number of improperly documented aliens arriving in the United States. The fines mitigation regulation and corresponding MOU represent an extension of this partnership, where the carrier is financially rewarded for properly screening its passengers prior to embarkation to the United States.

The Service concedes that if this plan is implemented there is no guarantee that the number of violations will decrease. The Service is unsure whether, by decreasing the amount of fines imposed on carriers through this final rule, the carriers will continue to invest the time and monetary resources on the training programs now in place. With carrier turnover of overseas agents at 25 percent per year, the carriers must continue to invest in their training programs on the interception of fraudulent documents and on documentary requirements of the United States so that the number of violations does not increase. Until the effects of fines mitigation on the increase or decrease of violations is known, fines mitigation percentages are to be initiated at only 25 and 50 percent. The Service will retain the flexibility to increase, decrease, or maintain the mitigation reductions and/or the APL and APL2 yardsticks so that any overall decrease in carrier screening can be rectified through appropriate Service action.

Several respondents charged that the Service's proposed rule was deliberately designed to defeat Congressional intent by determining reductions based on payment history. Delinquent carrier fines, liquidated damages, and user fee payments have made this a necessity. Service records reflect that over $5 million of carrier fines, liquidated damages, and user fees are outstanding for more than 30 days. Existing administrative means to enforce collection of these monies are insufficient and have led to litigation. This provision in the final rule will enable the Service to collect the

outstanding obligations of commercial transportation lines in a more timely and cost-effective manner. This policy was first published in the **Federal Register** as a notice of policy regarding contracts between the Service and the carriers (*See* 61 FR 5410, February 12, 1996). In the notice, the Service informed the public of its intention to deny transportation line requests for the following contracts, if the line had an unacceptable fines, liquidated damages, or user fee payment record: (1) Form I–420, Agreement (Land Borders) Between Transportation Line and the United States; (2) Form I–425, Agreement (Preinspection) Between Transportation Line and the United States (At Places Outside of the United States); (3) progressive clearance agreement requests; (4) Form I–426, Immediate and Continuous Transit Agreement, also known as Transit Without Visa (TWOV) agreement; (5) International-to-International (ITI) agreements, also known as In-Transit Lounge (ITL) agreements; and, (6) Form I–775, Visa Waiver Pilot Program (VWPP) Carrier Agreement. An unacceptable fines payment record is one that includes fines or liquidated damages that are delinquent 30 days and have been affirmed by either a final decision or formal order. An unacceptable user fee payment record is one that includes user fees that are delinquent 30 days.

The Service also notified the public of its intention to evaluate existing carrier agreements for possible cancellation on account of a carrier's unacceptable payment record. The Service stated it will notify the affected carrier in writing of the proposed Service decision and will allow the carrier 30 days to make full payment of the debt or to show cause why the debt is not valid. The Service will issue a final determination after the close of the 30-day period. Promptness and good faith in the payment of fines are critically relevant factors in carrier performance which motivates mitigation of fines. It is clearly logical to link the mitigation of fines to the prompt and faithful payment of fines and this reasoning has been upheld in the courts (*See Amwest Surety Insurance Company* v. *Reno,* CA No. 93–56625, DC No. CV–93–03256–JSL[S]). There is no legislative history to support the respondents' claims regarding Congressional intent of section 273(e) of the Act (*See* 140 Cong. Rec. S14400–S14405 [daily ed. October 6, 1994]; id., H9272–H9281 [daily ed. September 20, 1994]).

The Service agrees with the commenter regarding prior notification to the carrier of an unsatisfactory fines, liquidated damages, or user fee payment record before termination of its fines mitigation levels (whether 25 or 50 percent). Therefore, the Service will notify the affected carrier in writing of the proposed Service decision to terminate a carrier's fines mitigation privilege. The Service will allow the carrier 30 days to make full payment of the debt or to show cause why the debt is not valid. Fines incurred during the 30-day period will be mitigated in accordance with the carrier's fines mitigation PL. The Service will issue a final determination after the close of the 30-day period. Carrier fines violations incurred from the date of an adverse determination by the Service to terminate a carrier's fines mitigation privilege will not be subject to automatic fines mitigation based on screening procedures; however, individual requests for reduction, refund, or waiver citing mitigating or extenuating circumstances will be considered.

One respondent requested that the proposed rule include a specific waiver for sanctions against a carrier for the transportation of an alien who is granted asylum or permitted to stay in the United States on humanitarian grounds. The respondent argues that sanctions against the carrier are unfounded as long as the United States has an asylum program and that inhibiting the carrier from transporting refugees to the United States would constitute a human rights violation on the part of the Service. The Service has in place procedures (*See* 8 CFR 280.12 and 280.51) whereby carriers may request mitigation or termination of a fine for extenuating circumstances.

Aliens who desire to request asylum in the United States should follow the normal overseas refugee processing procedures. The Service requires refugees to follow these procedures to obtain the proper documentation to enter the United States. To allow carriers the authority to determine admissibility of aliens not in possession of proper documentation at the port of embarkation, because they indicate a desire to apply for asylum in the United States, would seriously undermine the enforcement of the Act and the security of the United States, and would circumvent existing immigration laws and regulations.

Several commenters have noted that § 273.4(a) requires the carrier to ''provide *evidence* that it screened all passengers on the conveyance for the instant flight or voyage in accordance with the procedures listed in § 263.3'' [emphasis added]. The commenters requested that the term ''evidence'' be explained as to the Service requirement. To fulfill this requirement the carrier must certify, on carrier or its agent's letterhead, that in the particular voyage where an improperly documented alien was transported, the carrier screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3. Carriers who are not signatory to the MOU who request fines mitigation based on screening procedures must include this certification along with its application for reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51. Several commenters pointed out the typographical error in § 273.6(b) whereby the word ''not'' was mistakenly omitted form the proposed rule. The sentence is corrected to read as follows:

(b) Carriers signatory to an MOU will *not* [emphasis added] be required to apply for reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51, but will follow procedures as set forth in the MOU.

Many commenters stated that the regulation and the corresponding MOU have terms which are vague and ambiguous. The Service, during the writing of the Carrier Cooperative Agreement (CCA), the precursor to the present regulation and MOU, was requested to use general language so that the carrier, not the Service, would determine the screening procedures to utilize at the ports of embarkation, since the carrier is in the best position to decide on the amount of screening necessary at particular ports of embarkation. Some ports of embarkation require minimal amount of screening due to the low-risk nature of the passengers while at high-risk ports of embarkation a greater amount is appropriate. The carrier organizations requested that the carriers themselves determine the level of document screening necessary rather than have the Service mandate a level of screening that may not be cost-effective for the carrier.

Several commenters requested the Service to provide fines mitigation based on ''carrier compliance with INS-prescribed screening procedures.'' While the Service has set out the screening requirements carriers must undertake at the ports of embarkation in order to be eligible for fines mitigation, the Service cannot physically verify a carrier's actual screening procedures at every port of embarkation due to the limited Service personnel and the large number of carriers and ports of embarkation. As stated previously, in comparing the Canadian and United States systems for fines mitigation, the

size of the passenger transportation industry in the United States makes the individual verification of a carrier's overseas screening procedures not feasible. The Service contemplates the inspection of only a sampling of carrier screening procedures at foreign ports of embarkation each year. Therefore, the Service is forced to determine carrier screening performance based on the proposed methodology explained previously.

Several respondents claimed that the proposed rule does not ''provide carriers with sufficient certainty that fines will be reduced if specified criteria are met.'' The Service has made it emphatically clear that fines will be reduced if the carrier has effective screening procedures. Effective screening is determined by the carrier's PL and if that PL is at or better than the APL. If the carrier's PL does not meet or exceed the APL, the carrier may still submit evidence in accordance with section 4.13 of the MOU, maintain a satisfactory fines, liquidated damages, and user fee payment record to be eligible for fines mitigation. If there are additional ''extenuating circumstances,'' the carrier may be eligible for additional fines mitigation above and beyond the up-front reductions established by the PL of the carrier. Thus, carriers meeting the first two requirements enumerated in § 273.5(c) of the regulation (i.e. effective screening procedures and satisfactory fines and user fee payment record) can be certain that their fines will be reduced according to the carrier's PL. In addition, carriers not signatory to the MOU may seek mitigation or remission of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51.

One respondent incorrectly cites the case of *Linea Area Nacional de Chile S.A.* v. *Sale* to support his argument that it is unfair ''to fine a carrier where it has properly screened the passengers for the [Transit Without Visa] TWOV requirements.'' This case involved a dispute between the carriers and the Service regarding responsibility for the detention of TWOV aliens, and has nothing to do with the boarding of improperly documented TWOV or nonimmigrant aliens.

One commenter queried the significance of the MOU to a carrier whose PL did not meet or exceed the APL and if that carrier would qualify for the 25 percent automatic fines mitigation. *If* the carrier is signatory to the MOU and is *eligible* for automatic fines mitigation, the Service will *not* require the submission of evidence demonstrating the extent to which a carrier prevents the transport of improperly documented passengers for each case. Being signatory to the MOU will satisfy the requirement that the carrier has screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General as section 273(e)(1) of the Act requires. Of course, if the carrier can provide evidence that mitigating or extenuating factors should be considered as well, filing a defense for additional fines mitigation would be recommended.

If a carrier is *not signatory* to the MOU, regardless of their PL, the Service *will* require certification that the carrier properly screened its passengers if the carrier is applying for fines mitigation based on screening requirements. The Service intends to consider the evidence presented by a non-signatory carrier, including the carrier's current and past PLs, as well as other Service data and information, prior to the granting of the fines mitigation for screening procedures. In addition, the Service will consider any additional evidence that would demonstrate any mitigating or extenuating factors relevant to additional fines mitigation.

Several commenters wanted the Service to give extra ''benefit'' to carriers employing professional security agencies. While the Service commends such actions, it would be inappropriate to further reward a carrier for the use of a professional security agency merely because it was deemed ''professional.'' The carrier's reward for the employment of such an agency is the reduction of the number of improperly documented aliens transported to the United States. The fewer number of fines violations a carrier incurs, the lower the carrier's PL. The lower the carrier's PL, the greater the amount of fines reduction. This will result in the reduction in the amount and number of fines imposed on the carriers.

Several commenters requested the source of the figures used in determining a carrier's PL, the APL, and APL2. The number of each carrier's violations is taken from the number of fines violations recorded by the National Fines Office (NFO) for each carrier for each fiscal year. This number omits all fines for lawful permanent residents and fines cases recommended from the Ports-of-Entry which are rejected by the NFO. This number does *not* omit those fines which are appealed to the Board of Immigration Appeals (BIA) by the carrier. To delete the fines appealed by the carrier from this number would decrease a carrier's PL even though the Service contends a fines violation did occur. A carrier which appealed all its fines, no matter how frivolous the appeals, would then have a PL of zero. This result would create a perverse incentive to appeal all cases, regardless of the merits of a particular case. The more prudent course, which the Service will follow, is to consider in the calculation of the PL all fines imposed, including those on appeal, but then to recalculate a carrier's PL, as necessary, to reflect those cases in which the carrier prevails on appeal to the BIA or in the courts.

The source of the number of documented nonimmigrant arrivals per carrier per fiscal year is obtained from the Forms I–92, Aircraft/Vessel reports completed at the individual Ports-of-Entry. Based on the suggestion of some commenters, the Service intends to use the same yardstick (APL and APL2) computed by using data from fiscal year 1994 (FY) for the mitigation of fines for FY 95, FY 96, and for FY 97. The Service may exercise its discretion to use the APL and APL2 FY 94 yardstick for fines mitigation for FY 98 and FY 99. The Service concurs with several commenters' observation that by re-computing the APL and APL2 annually, the Service would continually raise the fines mitigation standard, preventing carriers from ever qualifying for fines mitigation by having a ''moving bell curve.''

Some commenters have stated that carriers are eligible for fines mitigation under section 273(c) of the Act. The Service does not concur. Section 273(c) of the Act provides for fines remission or refund but not for fines mitigation. The Service has remitted or refunded fines when a carrier demonstrates that it has exercised reasonable diligence. Section 273(c), however, does not provide for fines reduction or mitigation.

Some commenters wanted the Service to ''make clear that training is not tied to attendance of such [Carrier] personnel at INS training sessions.'' The Service has no intention of dictating to the carrier the type of training it should provide its employees. However, the Service does require the carrier to have trained employees at the ports of embarkation to examine all travel documents. Further, carriers signatory to the MOU agree to participate in Service training programs and use Service Information Guides (*See* section 3.9 of the MOU).

Some respondents have stated that, due to time constraints and carrier facilitation needs, the carrier is unable to perform a thorough examination of a passenger's travel documents. In addition, several commenters claim they fear legal action if they refuse to board a passenger. Nevertheless, Congress

requires the carrier to make certain its passengers are properly documented and gives the Service the authority to impose financial penalties on carriers which bring improperly documented aliens to the United States. *See Matter of Swiss Air ''Flight 164'' 15 I&N Dec 111 (BIA 1974).*

One commenter requested that the Service determine the PL, APL, and APL2 quarterly. At the present time the Service projects a minimum 3-month lag time in the computation of a carrier's PL each fiscal year. If technological advances permit the rapid collection of this information, the Service will consider the commenter's suggestion for quarterly or semi-annual computation of a carrier's PL and/or the APL/APL2. Additionally, the Service is not opposed to future consideration of the proposal made by the commenter requesting that the Service determine carrier PLs, APLs, and APL2s for individual ports of embarkation (i.e., individual routes). As technology improves, the Service will examine the feasibility of making these calculations and presenting this approach to the carriers. Consultations with the carriers on these and other modifications, including risk assessments, route variations, past and present carrier performance history, and a general commitment to the process of proper screening of passengers, should be ongoing so that needed regulatory changes, if any, or changes to the MOU, can be incorporated in the next revision of the fines mitigation program.

The Service concurs with several commenters who suggested that the MOUs should all expire on a certain day rather than 2 years from the date of each carrier's approval by the Service. Accordingly, the MOU will expire on September 30, 2000, for all carriers.

The Service concurs with one commenter's suggestion that the Service should immediately share information with the carrier at the Port-of-Entry where the fines violation occurs and is recommended to the Service. The Service currently provides the carrier with a copy of the Form I–849, Report to National Fines Office [NFO] of Possible Violation of the INA, which gives the carrier the Service's reason(s) for recommendation of the fine to the NFO for issuance of the Form I–79, Notice of Intent to Fine. It is the issuance of Form I–79 that is the official Service notification to a carrier that a violation has occurred for which a fine may be assessed. The Form I–79 is issued by the NFO after review of the evidence submitted. If the carrier would like additional information, the NFO can answer most inquires. If carriers want a revision of the Form I–849, the Office of Inspections should be requested to consider such suggestions when the Service next modifies the Form I–849.

The Service concurs with a commenter that the Service should designate a coordinator to be the contact point for all issues arising from implementation of the MOU. Therefore, section 4.1 has been added to the MOU and subsequent sections re-numbered. Section 4.1 reads as follows:

The Director of the National Fines Office will serve as a coordinator for all issues arising from the implementation of this MOU. The INS shall provide the carrier with the coordinator's name, address, telephone, and facsimile number.

The Service has also taken into consideration suggested changes to several sections of the MOU and concurs on the following amendments to the MOU:

In section 3.2 the word ''verify'' is replaced by the phrase ''confirm, to the best of their ability'' and the word ''apparent'' is added to the last sentence. Section 3.2 is amended to read as follows:

The Carrier agrees to verify that trained personnel examine and screen passengers' travel documents to confirm, to the best of their ability, that the passport, visa (if one of required), or other travel documents presented are valid and unexpired, and that the passenger, and any accompanying passenger named in the passport, is the apparent rightful holder of the document.

In section 3.6 one commenter requested the addition of the sentence ''[f[ollowing notification by the INS, or its representative, the'' to precede the present section 3.6. The Service concurs with this suggestion. Section 3.6 is amended to read as follows:

Following notification by the INS, or its representative, the Carrier shall refuse to knowingly transport any individual who has been determined by an INS official not to be in possession of proper documentation to enter or pass through the United States. Transporting any improperly documented passenger so identified may result in a civil penalty. At locations where there is no INS presence, carriers may request State Department Consular officials to examine and advise on authenticity of passenger documentation. State Department Consular officials will act in an advisory capacity only.

The Service also concurs with the commenter regarding section 3.8 dealing with carrier security at the port of embarkation. The word ''adequate'' shall be replaced by the word ''reasonable.'' Section 3.8 is amended to read as follows:

The Carrier shall maintain a reasonable level of security designed to prevent passengers from circumventing any Carrier document checks. The Carrier shall also maintain a reasonable level of security designed to prevent stowaways from boarding the Carrier's aircraft or vessel.

The Service is committed to continuing consultations with the carrier organizations in the area of fines mitigation. The Service views the fines mitigation regulation and the corresponding carrier-Service MOU as prime examples of carrier-Service cooperation in facilitating travel for the general public and protecting the American people through the enforcement of the immigration laws and regulations. The Service views the fines mitigation final rule as a continuance of this carrier-Service interaction and welcomes all future carrier questions and issues to improve passenger facilitation and enforcement of the Act and its regulations.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule will not adversely affect carrier expenditures but will lessen carrier expenditures for certain carriers, including carriers that may qualify as ''small entities,'' which properly screen passengers being transported to the United States. The imposition of fines is a requirement of law and a valuable tool in preventing the landing of undocumented or insufficiently documented aliens in the United States. Fines for transporting improperly documented passengers are imposed by many countries, including Canada, Germany, and the United Kingdom. Currently, if carriers want to lessen the monies paid to the Service for fines violations under section 273 of the Act, the carrier trains its employees in documentary requirements for entering the United States. This training is necessary regardless of fines mitigation provisions. Any additional training required by the MOU can be provided by the Service's Carrier Consultant Program (CCP) upon carrier request. Carrier agent training is generally one to two days and can be conducted at the port of embarkation. Training materials are provided by the Service. The only

cost to the carrier will be the lost productivity of the carrier agent to attend the training sessions. However, that cost exists now so the Service anticipates little or no increase in costs to any participating carrier. The Service has also developed an Information Guide to be distributed to the carriers for use at the foreign ports of embarkation. It will function as a resource to assist carrier personnel in determining proper documentary requirements and detecting fraud. Most carriers probably do a cost-benefit analysis to determine the amount of carrier training versus fines violation costs. Likewise, each carrier will probably conduct a cost-benefit analysis prior to signing the MOU. Carriers signatory to the MOU will have *automatic* fines reduction and will save the cost of filing appeals for every case, unless further reduction or termination of the fine is sought. Smaller carriers that have high violation rates or cannot dedicate resources to training its agents are invited to contact the Service on the best way to address these problems. There is no indication that smaller carriers are fined more or less than larger carriers. Carrier size is not a factor in the determination of a carrier's performance level. With section 286 of the Act being amended by section 124 of the Illegal Immigration Reform And Immigrant Responsibility Act of 1996 (Pub. L. 104–208, Dated September 30, 1996, known as IIRIRA), the Service is mandated to provide training and technical assistance to commercial airline personnel regarding the detection of fraudulent documents at an amount not less than five percent of the Service's user fee revenue. Smaller carriers can therefore rely on the Service to fulfill many of their training requirements. However, ultimately it is up to the carrier to consider the costs and benefits of participating in the program.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly this regulation has been submitted to the Office of Management and Budget for review.

The Service has *estimated* the reduction in collections due to the implementation of this regulation as follows:

FY95 Backlogged Cases: 2033

Up to 19% of the carriers may receive 50% reduction (based on APL2); up to 22% of the carriers may receive 25% reduction (based on APL); up to 29% of the carriers may receive 25% reduction (based on MOU); and, up to 30% of the carriers may receive no reduction.

Estimated collections due from FY95 cases: $4.7 million.

Estimated collections without mitigation: $6.1 million.

Difference in collections: $1.4 million or 23% reduction.

FY96 Backlogged Cases: 3086

Up to 32% of the carriers may receive 50% reduction (based on APL2); up to 21% of the carriers may receive 25% reduction (based on APL); up to 24% of the carriers may receive 25% reduction (based on MOU); and, up to 23% of the carriers may receive no reduction.

Estimated collections due from FY96 cases: $6.8 million.

Estimated collections without mitigation: $9.3 million.

Difference in collections: $2.5 million or 27% reduction.

FY97 Backlogged Cases: 2097

Up to 37% of the carriers may receive 50% reduction (based on APL2); up to 18% of the carriers may receive 25% reduction (based on APL); up to 23% of the carriers may receive 25% reduction (based on MOU); and, up to 22% of the carriers may receive no reduction.

Estimated collections due from FY97 cases: $4.6 million.

Estimated collections without mitigation: $6.3 million.

Difference in collections: $1.7 million or 27% reduction.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995.

The supplementary information portion of this final rule requires carriers whose PL is not at or better than the APL, to submit evidence to the Service so that they may receive an automatic fine reduction of 25 percent, if certain conditions are met. The evidence is considered an information collection which is subject to review by OMB under the Paperwork Reductions Act of 1995. Therefore, the agency solicits public comments on the information collection requirements for 60 days in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 65 carriers whose PL is not at or better than the APL, will submit evidence to take advantage of the 25 percent fines reduction. The Service also estimates that it will take each carrier approximately 100 hours to comply with the evidence requirements. This amounts to 6500 total burden hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this final rule to OMB for its review of the information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Room 5307, 425 I Street NW., Washington, DC 20536. The comments or suggestions should be submitted within 60 days of publication of this rulemaking.

List of Subjects in 8 CFR Part 273

Administrative practice and procedure, Aliens, Carriers, Penalties.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended by adding a new part 273 as follows:

PART 273—CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT

Sec.
273.1 General.
273.2 Definition.
273.3 Screening procedures.
273.4 Demonstration by carrier that screening requirements were met.
273.5 General criteria used for reduction, refund, or waiver of fines.
273.6 Memorandum of Understanding.

Authority: 8 U.S.C. 1103, 1323; 8 CFR part 2.

§ 273.1 General.

In any fines case in which a fine is imposed under section 273 of the Act involving an alien brought to the United States after December 24, 1994, the carrier may seek a reduction, refund, or waiver of fine, as provided for by section 273(e) of the Act, in accordance with this part. The provisions of section 273(e) of the Act and of this part do not apply to any fine imposed under any provision other than section 273 (a)(1) and (b) of the Act.

§ 273.2 Definition.

As used in this part, the term *Carrier* means an individual or organization engaged in transporting passengers or goods for hire to the United States.

§ 273.3 Screening procedures.

(a) *Applicability*. The terms and conditions contained in paragraph (b) of this section apply to those owners, operators, or agents of carriers which transport passengers to the United States.

(b) *Procedures at ports of embarkation*. At each port of embarkation carriers shall take reasonable steps to prevent the boarding of improperly documented aliens destined to the United States by taking the following steps:

(1) Screening of passengers by carrier personnel prior to boarding and examination of their travel documents to ensure that:

(i) The passport or travel document presented is not expired and is valid for entry into the United States;

(ii) The passenger is the rightful holder; and

(iii) If the passenger requires a visa, the visa is valid for the holder and any other accompanying passengers named in the passport.

(2) Refusing to board any passenger determined to be improperly documented. Failure to refuse boarding when advised to do so by a Service or Consular Officer may be considered by the Service as a factor in its evaluation of applications under § 273.5.

(3) Implementing additional safeguards such as, but not necessarily limited to, the following:

(i) For instances in which the carrier suspects fraud, assessing the adequacy of the documents presented by asking additional, pertinent questions or by taking other appropriate steps to corroborate the identity of passengers, such as requesting secondary information.

(ii) Conducting a second check of passenger documents, when necessary at high-risk ports of embarkation, at the time of boarding to verify that all passengers are properly documented consistent with paragraph (b)(1) of this section. This includes a recheck of documents at the final foreign port of embarkation for all passengers, including those originally boarded at a prior stop or who are being transported to the United States under the Transit Without Visa (TWOV) or International-to-International (ITI) Programs.

(iii) Providing a reasonable level of security during the boarding process so that passengers are unable to circumvent any carrier document checks.

§ 273.4 Demonstration by carrier that screening requirements were met.

(a) To be eligible to apply for reduction, refund, or waiver of a fine, the carrier shall provide evidence that it screened all passengers on the conveyance for the instant flight or voyage in accordance with the procedures listed in § 273.3.

(b) The Service may, at any time, conduct an inspection of a carrier's document screening procedures at ports of embarkation to determine compliance with the procedures listed in § 273.3, to the extent permitted by the local competent authority responsible for port access or security. If necessary, the carrier shall use its good offices to obtain this permission from the local authority. If the carrier's port of embarkation operation is found not to be in compliance, the carrier will be notified by the Service that it will not be eligible for refund, reduction, or waiver of fines under section 273(e) of the Act unless the carrier can establish that lack of compliance was beyond the carrier's control.

§ 273.5 General criteria used for reduction, refund, or waiver of fines.

(a) Upon application by the carrier, the Service shall determine whether circumstances exist which would justify a reduction, refund, or waiver of fines pursuant to section 273(e) of the Act.

(b) Applications for reduction, refund, or waiver of fine under section 273(e) of the Act shall be made in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51.

(c) In determining the amount of the fine reduction, refund, or waiver, the Service shall consider:

(1) The effectiveness of the carrier's screening procedures;

(2) The carrier's history of fines violations, including fines, liquidated damages, and user fee payment records; and,

(3) The existence of any extenuating circumstances.

§ 273.6 Memorandum of Understanding.

(a) Carriers may apply to enter into a Memorandum of Understanding (MOU) with the Service for an automatic reduction, refund, or waiver of fines imposed under section 273 of the Act.

(b) Carriers signatory to an MOU will not be required to apply for reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51, but will follow procedures as set forth in the MOU.

(c) Carriers signatory to an MOU will have fines reduced, refunded, or waived according to performance standards enumerated in the MOU or as determined by the Service.

(d) Carriers signatory to an MOU are not precluded from seeking additional reduction, refund, or waiver of fines in accordance with the procedures outlined in 8 CFR 280.12 and 8 CFR 280.51.

Dated: April 24, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: Appendix A, Memorandum of Understanding, will not appear in the Code of Federal Regulations.

Appendix A—United States Immigration and Naturalization Service Section 273(E) Memorandum of Understanding

This voluntary Memorandum of Understanding (MOU) is made between _____ (hereafter referred to as the ''Carrier'') and the United States Immigration and Naturalization Service (hereafter referred to as the ''INS'').

The purpose of this MOU is to identify the responsibilities of each party to improve the performance of the Carrier with respect to its duty under section 273 of the Immigration and Nationality Act (the Act) to prevent the transport of improperly documented aliens to the United States. Based on the Carrier's Performance Level (PL) in comparison to the Acceptable Performance Level (APL) or Second APL (APL2) set by the INS, and based upon compliance with the other stipulations outlined in the MOU, the INS may refund, reduce, or waive a part of the Carrier's section 273 of the Act administrative penalties. The MOU cannot, by law, exempt the Carrier from liability for civil penalties. Although taking the steps set forth below will not relieve the Carrier of liability from penalties, the extent to which the Carrier has complied with this MOU will be considered as a factor in cases where the INS may reduce, refund, or waive a fine.

It is understood and agreed by the parties that this MOU is not intended to be legally enforceable by either party. No claims, liabilities, or rights shall arise from or with respect to this MOU except as provided for in the Act or the Code of Federal Regulations. Nothing in this MOU relieves the Carrier of any responsibilities with respect to United States laws, the Act, or the Code of Federal Regulations.

This document, once jointly endorsed, will serve as a working agreement to be utilized for all fines cases relating to section 273 of the Act, and reflects the mutual understanding of the Carrier and the INS. This MOU shall take effect immediately upon its approval by the Assistant Commissioner for Inspections and shall be a valid working document and shall expire on September 30, 2000.

The Carrier's compliance with the MOU shall be evaluated periodically. The Carrier shall be notified in writing of its PL and the overall APL for each rating period. Accordingly, the Carrier agrees to begin prompt and complete implementation of all of the terms listed in this MOU. With 30 days written notice, either party may terminate this MOU, for any reason, to include the INS' termination of this MOU for the Carrier's failure to abide by its terms. Any subsequent fines will be imposed for the full penalty amount.

Memorandum of Understanding

1. Introduction

1.1 The Assistant Commissioner for Inspections shall exercise oversight regarding the Carrier's compliance with this MOU.

1.2 The Carrier agrees to begin implementation of the provisions set forth below immediately upon signing and receipt of the MOU signed by the Assistant Commissioner for Inspections.

1.3 The Carrier agrees to permit the INS to monitor its compliance with the terms of this MOU. The Carrier shall permit the INS to conduct an inspection of the Carrier's document screening procedures at ports of embarkation before arrival in the United States, to determine compliance with the procedures listed in this MOU, to the extent permitted by competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

1.4 The Carrier agrees to designate a coordinator to be the contact point for all issues arising from the implementation of this MOU. The Carrier shall provide the INS with the coordinator's name, title, address, telephone number, and facsimile number.

1.5 The Carrier shall require that all of its employees, including its representatives, follow the provisions of this MOU, and comply with all requirements of the Act. The Carrier further agrees to cooperate with the INS in an open two-way exchange of pertinent information.

2. Prompt Payment

2.1 The INS agrees to authorize a reduction in fine penalties based on compliance with this MOU only if the Carrier has paid all administrative fines, liquidated damages, and user fees. This includes interest and penalties that have been imposed by either a formal order or final decision, except cases on appeal.

2.2 The Carrier agrees to promptly pay all administrative fines, liquidated damages, and user fees. This includes interest and penalties that are imposed by a formal order or a final decision during the time this MOU is in effect, except cases on appeal. Prompt payment for the purposes of this MOU means payments made within 30 days from the date of billing.

2.3 The INS shall periodically review the Carrier's record of prompt payment for administrative fines, liquidated damages, and user fees including interest and penalties. Failure to make prompt payment will result in the loss of benefits of the MOU.

2.4 The Carrier agrees to select a person from its organization as a contact point in the INS Office of Finance for the resolution of payment issues. The Carrier shall provide the INS with the contact person's name, title, address, telephone number, and facsimile number.

3. Carrier Agreement

3.1 The Carrier shall refuse to knowingly carry any improperly documented passenger.

3.2 The Carrier agrees to verify that trained personnel examine and screen passengers' travel documents to confirm, to the best of their ability, that the passport, visa (if one is required), or other travel documents presented are valid and unexpired, and that the passenger, and any accompanying passenger named in the passport, is the apparent rightful holder of the document.

3.3 The Carrier agrees to conduct additional document checks when deemed appropriate, to verify that all passengers, including transit passengers, are in possession of their own, and proper, travel documents as they board the aircraft, and to identify any fraudulent documents.

3.4 The Carrier agrees to permit INS and State Department Consular officials to screen passengers' travel documents before or after the Carrier has screened those passengers for boarding, to the extent permitted by the competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

3.5 In cases involving suspected fraud, the Carrier shall assess the adequacy of the documents presented by questioning individuals or by taking other appropriate steps to corroborate the identity of the passengers, such as requesting secondary identification.

3.6 Following notification by the INS, or its representative, about a particular passenger or passengers, the carrier shall refuse to knowingly transport any such individual determined by an INS official not to be in possession of proper documentation to enter or pass through the United States. Transporting any improperly documented passenger so identified may result in a civil penalty. At locations where there is no INS presence, carriers may request State Department Consular officials to examine and advise on authenticity of passenger documentation. State Department Consular officials will act in an advisory capacity only.

3.7 Where the Carrier has refused to board a passenger based on a suspicion of fraud or other lack of proper documentation, the Carrier agrees to make every effort to notify other carriers at that port of embarkation about that passenger, to the extent permitted by competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

3.8 The Carrier shall maintain a reasonable level of security designed to prevent passengers from circumventing any Carrier document checks. The Carrier shall also maintain an adequate level of security designed to prevent stowaways from boarding the Carrier's aircraft or vessel.

3.9 The Carrier agrees to participate in INS training programs and utilize INS Information Guides and other information provided by the INS to assist the Carrier in determining documentary requirements and detecting fraud.

3.10 The Carrier agrees to make the INS Information Guides and other information provided by the INS readily available for use by Carrier personnel, at every port of embarkation.

3.11 The Carrier agrees to make appropriate use of technological aids in screening documents including ultra violet lights, magnification devices, or other equipment identified by the INS to screen documents.

3.12 The Carrier agrees to expeditiously respond to written requests from the appropriate INS official(s) for information pertaining to the identity, itinerary, and seating arrangements of individual passengers. The Carrier also agrees to provide manifests and other information, required to identify passengers, information and evidence regarding the identity and method of concealment of a stowaway, and information regarding any organized alien smuggling activity.

3.13 Upon arrival at a Port-of-Entry (POE) and prior to inspection, the Carrier agrees to notify INS personnel at the POE of any unusual circumstances, incidents, or problems at the port of embarkation involving the transportation of improperly documented aliens to the United States.

3.14 The Carrier agrees to notify the Assistant Commissioner of Inspections, in writing, if it is unable to comply with any section of the MOU because of local law or local competent authority. The Carrier shall list the specific section of the MOU with which it is unable to comply and, to be in compliance with the MOU, shall notify the Service within ten (10) days after becoming cognizant of this prohibition to comply. Further, in such instances the Carrier shall propose alternative means for meeting the objective sought by the paragraph in question. For instance, where review of foreign boarding procedures cannot be performed by INS personnel, the Carrier could provide that an audit of its operation be performed by local authorities or by private auditors.

4. INS Agreement

4.1 The Director of the National Fines Office will serve as a coordinator for all issues arising from the implementation of this MOU. The INS shall provide the carrier with the coordinator's name, address, telephone number, and facsimile number.

4.2 The INS agrees to develop an Information Guide to be used by Carrier personnel at all ports of embarkation prior to boarding passengers destined to the United States. The Information Guide will function as a resource to assist Carrier personnel in determining proper documentary requirements and detecting fraud.

4.3 The INS agrees to develop a formal, continuing training program to assist carriers in their screening of passengers. Carriers may provide input to the INS concerning specific training needs that they have identified. Initial and annual refresher training will be conducted by the INS or Carrier representatives trained by the INS.

4.4 To the extent possible, INS and State Department Consular officials will consult, support, and assist the Carrier's efforts to screen passengers prior to boarding.

4.5 The INS shall determine each Carrier's Performance Level (PL) based on statistical analysis of the Carrier's performance, as a means of evaluation whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The PL is determined by taking the number of each Carrier's violations of section 273 of the Act for a fiscal year 1/ and dividing this by the number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I–94, I–94T, or I–94W) transported by the Carrier and multiplying the result by 1,000.

4.6 The INS shall establish an Acceptable Performance Level (APL), based on statistical analysis of the performance of all carriers, as a means of evaluating whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The APL shall be determined by taking the total number of all carrier violations of section 273 of the Act for a fiscal year 1/ and dividing this by the total number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I–94, I–94T, or I–94W) transported by all carriers for a fiscal year and multiplying the result by 1,000.

4.7 The INS shall establish a Second Acceptable Performance Level (APL2), based on statistical analysis of the performance of all carriers at or better than the APL, as a means of further evaluating carrier success in screening its passengers in accordance with 8 CFR 273.3 and this MOU. Using carrier statistics for only those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carrier violations of section 273 of the Act for a fiscal year [1] and dividing by the total number of documented nonimmigrants (i.e., those nonimmigrants that submit an Arrival/Departure Record, Form I–94, I–94T, or I–94W) transported by these carriers and multiplying the result by 1,000.

4.8 The PL, APL, and APL2 may be recalculated periodically as deemed necessary, based on Carrier performance during the previous period(s).

4.9 Carriers whose PL is at or better than the APL are eligible to receive an automatic 25 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the Act for periods determined by the INS.

4.10 Carriers whose PL is at or better than the APL2 are eligible to receive an automatic 50 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the Act for periods determined by the INS.

4.11 If the Carrier's PL is not at or better than the APL, the Carrier may receive an automatic 25 percent reduction in fines, if it meets certain conditions, including being signatory to and in compliance with the MOU, and the carrier submits evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Assistant Commissioner for Inspections for consideration. Evidence may include, but is not limited to, the following: (1) Information regarding the Carrier's training program, including participation of the Carrier's personnel in any INS, Department of State (DOS), or other training programs and the number of employees trained: (2) information regarding the date and number of improperly documented aliens intercepted by the Carrier at the port(s) of embarkation, including, but not limited to, the aliens' name, date of birth, passport nationality, passport number or other travel document information, and reason boarding was refused, if otherwise permitted under local law; and, (3) other evidence, including screening procedure enhancements, technological or otherwise, to demonstrate the Carrier's good faith efforts to properly screen passengers destined to the United States.

4.12 The Carrier may defend against imposition or seek further reduction of an administrative fine if the case is timely defended pursuant to 8 CFR part 280, in response to the Form I–79, Notice of Intent to Find, and the Carrier establishes that mitigating or extenuating circumstances existed at the time of the violation.

4.13 Nothing in this MOU precludes a carrier from seeking fine reduction, refund, or waiver under 8 CFR 273.4.

_____
(Representative's Signature)

_____
(Title)

_____
(Carrier Name)

Dated: _____

_____
Assistant Commissioner, Office of Inspection, United States Immigration and Naturalization Service.

Dated: _____

[FR Doc. 98–11481 Filed 4–29–98; 8:45 am]

BILLING CODE 4410–10–M

[1] The total number of carrier violations of section 273 of the Act for a fiscal year is determined by taking the total number of violations minus violations for the transportation of improperly documented lawful permanent residents and rejected cases. Rejected cases include those cases where the INS has determined that either: (1) no violation occurred; or, (2) sufficient evidence was not submitted to support the imposition of a fine.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–134–AD; Amendment 39–10505; AD 98–09–24]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries Models H–36 ''Dimona'' and HK 36 R ''Super Dimona'' Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Diamond Aircraft Industries (Diamond) Models H–36 ''Dimona'' and HK 36 R ''Super Dimona'' sailplanes. This AD requires: inspecting the elevator rib area for damage on certain Models H–36 ''Dimona'' and HK 36 R ''Super

Dimona'' sailplanes, and either immediately or eventually replacing the elevator ribs depending on the results of the inspection; replacing the M6 screws that attach the wheel axle to steel support with M8 screws on certain Model HK 36 R ''Super Dimona'' sailplanes; and inspecting the shoulder harness fittings for improper bonding on certain Diamond Model H–36 ''Dimona'' sailplanes, and repairing any harness with an improper bond. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to prevent failure of either the shoulder harness fittings, elevator rib, or the wheel axle to steel support attachment, which could result in passenger injury caused by an inadequate restraint system; reduced sailplane controllability caused by structural damage to the elevator; and/or reduced sailplane controllability during takeoff, landing, and ground operations caused by the installation of incorrect wheel axle screws.

DATES: Effective June 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–134–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Diamond Models H–36 ''Dimona'', and HK 36 R ''Super Dimona'' sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 13, 1998 (63 FR 7324). The NPRM proposed to require inspecting the elevator rib area for damage on certain Models H–36 ''Dimona'' and HK 36 R ''Super Dimona'' sailplanes, and either immediately or eventually replacing the elevator ribs depending on the results of the inspection; replacing the M6 screws that attach the wheel axle to steel support with M8 screws on all of the affected airplanes; and inspecting the shoulder harness fittings for improper bonding on certain Diamond Model H–36 ''Dimona'' sailplanes, and repairing any harness with an improper bond. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996; Hoffman Work Instruction No. 10, dated May 29, 1991, as referenced in Hoffman Service Bulletin No. 27, dated May 31, 1991; and Hoffman Service Bulletin 17, dated January 20, 1987.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA inadvertently included the Model H–36 ''Dimona'' sailplanes in the wheel to axle support screw replacement requirement of the NPRM. This requirement should only apply to certain Model HK 36 R ''Super Dimona'' airplanes. The final rule has been changed accordingly.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the applicability change in the wheel to axle support screw replacement requirement and minor editorial corrections. The FAA has determined that this change and the minor corrections will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 sailplanes in the U.S. registry will be affected by the elevator portion of this AD, that it will take approximately 10 workhours per sailplane to accomplish the elevator portion of this AD, and that the average labor rate is approximately $60 an hour. Kits cost approximately $100 per sailplane. Based on these figures, the total cost impact of the elevator portion of this AD on U.S. operators is estimated to be $10,500, or $700 per sailplane.

The FAA estimates that 2 sailplanes in the U.S. registry will be affected by the wheel axle screws portion of this AD, that it will take approximately 6 workhours per sailplane to accomplish the wheel axle screws portion of this AD, and that the average labor rate is approximately $60 an hour. Kits cost approximately $165 per sailplane. Based on these figures, the total cost impact of the wheel axle screws portion of this AD on U.S. operators is estimated to be $1,050, or $525 per sailplane.

The FAA estimates that 8 sailplanes in the U.S. registry will be affected by the shoulder harness fittings portion of this AD, that it will take approximately 6 workhours per sailplane to accomplish the shoulder harness fittings portion of this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per sailplane. Based on these figures, the total cost impact of the shoulder harness fittings portion of this AD on U.S. operators is estimated to be $2,960, or $370 per sailplane.

Regulatory Impact

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–09–24 Diamond Aircraft Industries: Amendment 39–10505; Docket No. 97–CE–134–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Model H–36 ''Dimona'' sailplanes, all serial numbers; and

Model H 36 R ''Super Dimona'' sailplanes, serial numbers 36301 through 36414.

Note 1: This AD applies to each sailplane 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 sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of either the shoulder harness fittings, elevator rib, or the wheel axle to steel support attachment, which could result in passenger injury caused by an inadequate restraint system; reduced sailplane controllability caused by structural damage to the elevator; and/or reduced sailplane controllability during takeoff, landing, and ground operations caused by the installation of incorrect wheel axle screws, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) For the Model H–36 ''Dimona'' sailplanes, all serial numbers; and the Model HK 36 R ''Super Dimona'' sailplanes, serial numbers 36301 through 36414, inspect the elevator rib area for damage. Accomplish this inspection in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(2) For the Model HK 36 R ''Super Dimona'' sailplanes, serial numbers 36301 through 36327, replace the M6 screws that attach the wheel axle to steel support with M8 screws. Accomplish this replacement in accordance with Hoffman Work Instruction No. 10, dated May 29, 1991, as referenced in Hoffman Service Bulletin No. 27, dated May 31, 1991.

(3) For the Model H–36 ''Dimona'' sailplanes, serial numbers 3501 through 3539 and 3601 through 36143, inspect the shoulder harness fittings for improper bonding. Accomplish this inspection in accordance with Hoffman Service Bulletin 17, dated January 20, 1987.

(b) Prior to further flight after the inspections required by paragraphs (a)(1) and (a)(3) of this AD, accomplish the following:

(1) If any damage is found in the elevator rib area on any sailplane affected by paragraph (a)(1) of this AD, replace the elevator ribs in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(2) If an improper bonding is found on the shoulder harness fittings on any sailplane affected by paragraph (a)(3) of this AD, repair the shoulder harness fittings in accordance with Hoffman Service Bulletin 17, dated January 20, 1987.

(c) For the Model H–36 ''Dimona'' sailplanes, all serial numbers; and the Model HK 36 R ''Super Dimona'' sailplanes, serial numbers 36301 through 36414, within the next 3,000 hours time-in-service (TIS) after the effective date of this AD, replace the elevator ribs, unless already accomplished as required by paragraph (b)(1) of this AD. Accomplish this replacement in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(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 sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to the service information referenced in this AD should be directed to Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspections, replacements, and repair required by this AD shall be done in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996; Hoffman Work Instruction No. 10, dated May 29, 1991, as referenced in Hoffman Service Bulletin No. 27, dated May 31, 1991; and Hoffman Service Bulletin 17, dated January 20, 1987. 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 Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austrian AD No. 85, dated May 29, 1996, for the elevator condition; Austrian AD No. 63, not dated, for the wheel axle screws condition; and Austrian AD No. 54, not dated, for the shoulder harness fittings condition.

(h) This amendment becomes effective on June 15, 1998.

Issued in Kansas City, Missouri, on April 21, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11162 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–130–AD; Amendment 39–10507; AD 98–09–26]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures for monitoring and properly setting the fuel booster pump pressure; and repetitive visual inspections of the fuel lines to detect fatigue cracking and fuel leakage. This action also requires a one-time inspection of the fuel lines to detect cracking, replacement of any discrepant part with a new part, and installation of new brackets between the pressure

switch and the fuel pump of the numbers 1 and 2 engines, which constitutes terminating action for the repetitive inspections and the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking of the fuel line at the pressure switch pickoff point, which could result in fuel leakage and potential engine fire.

DATES: Effective May 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that it has received several reports of leakage of fuel from the engine fuel pressure switch line on the number 1 engine. The cause of the leaking was determined to be fatigue cracks caused by excessive vibrations of the pressure switch. Such fatigue cracking, if not corrected, could result in fuel leakage and potential engine fire.

Explanation of Relevant Service Information

Dassault Aviation has issued Service Bulletin F2000–123 (F2000–28–7), dated November 14, 1997, which describes procedures for a one-time dye penetrant inspection for fatigue cracking in the fuel lines; replacement of discrepant parts with new parts; and installation of new brackets between the pressure switch and the fuel pump of the numbers 1 and 2 engines. Installation of new brackets, when accomplished, eliminates the need for the AFM revision. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified this service information as mandatory and issued French airworthiness directive 98–020–005(B), dated January 28, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking of the fuel line at the pressure switch pickoff point, which could result in fuel leakage and potential engine fire. This AD requires:

—Revising the Limitations and Abnormal Procedures Sections of the AFM to provide the flightcrew with procedures for monitoring and properly setting the fuel booster pump pressure;

—Repetitive visual inspections of the fuel lines to detect fatigue cracking and fuel leakage, in accordance with the airplane maintenance manual; and

—a one-time dye penetrant inspection of the fuel lines to detect cracking; replacement of the fuel lines, if necessary; and installation of new brackets between the pressure switch and the fuel pump of the number 1 and 2 engines; in accordance with the service bulletin described previously. Accomplishment of the installation terminates the AFM revision and repetitive inspections.

Differences Between the Rule, Service Bulletin, and French Airworthiness Directive

Operators should note that the service bulletin recommends accomplishing the one-time dye penetrant inspection and the installation ''at the first opportunity.'' The French airworthiness directive requires revising the AFM prior to further flight, and the one-time inspection and installation of brackets within 60 days. However, this AD differs from the service bulletin and French airworthiness directive in that it requires revising the AFM within 5 days, and accomplishing the one-time inspection and installation within 45 days.

In developing appropriate compliance times for this AD, the FAA considered not only the recommendations of the manufacturer and the DGAC, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the AFM revision, dye penetrant inspection, and installation. In light of all of these factors, the FAA finds a 5-day compliance time for accomplishing the AFM revision, and a 45-day compliance time for initiating the required dye penetrant inspection and installation of new brackets to be warranted, in that those times represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

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

Comments Invited

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

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–130–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–09–26 Dassault Aviation: Amendment 39–10507. Docket 98–NM–130–AD.

Applicability: Model Falcon 2000 series airplanes; serial numbers 2 through 49 inclusive, and 51; 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 request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuel line at the pressure switch pickoff point, which could result in fuel leakage and potential engine fire, accomplish the following:

(a) Within 5 days after the effective date of this AD, revise the Limitations and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will enable the flightcrew to monitor and properly set the fuel booster pump pressure. This may be accomplished by inserting a copy of this AD in the AFM.

''FILING INSTRUCTIONS

Insert this page adjacent to page 3–160–1.

FUEL—LOW BOOSTER PUMP PRESSURE

Until compliance with SB F2000–123, the paragraph ''If FUEL.. light remains on:'' is modified as follows:

_____ If FUEL.. light remains on:

- X–BP rotary switch ..... Closed
- X–BP light ..... Out-Checked
- Associated fuel quantity indicator. Monitored
- ESS/RH bus tie rotary switch. Tied
- Associated engine power lever. IDLE detent
- Associated engine FUEL ENG switch. OFF
- Associated engine FUEL SHUT–OFF switch. Actuated
- Associated ENG ANTI-ICE switch. Off
- Associated GEN switch ..... Off

_____ If engine 2 is shut-down, complete the above procedure with:

- HYDR 2 ISOL switch ..... OPEN''

Note 2: The revision of the AFM required by this paragraph may be accomplished by inserting a copy of Falcon 2000 AFM Temporary Change No. 65 in the AFM. When this temporary change has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Falcon 2000 AFM Temporary Change No. 65.

(b) Within 5 days after the effective date of this AD, perform a visual inspection of the fuel lines to detect fatigue cracking and fuel leakage, in accordance with Procedure 05.100 of Chapter 5.40 of Revision 4 of the Dassault Aviation Falcon 2000 Airplane Maintenance Manual.

(1) If no discrepancy is detected, repeat the visual inspection daily thereafter until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any discrepancy is detected, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(c) Within 45 days after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Dassault Aviation Service Bulletin F2000–123 (F2000–28–7), dated November 14, 1997.

(1) Perform a one-time dye penetrant inspection of the fuel lines to detect cracking. If any cracking is detected, prior to further flight, replace the discrepant part with a new part, in accordance with the service bulletin. And

(2) Install new brackets between the pressure switch and the fuel pump of each engine in accordance with the service bulletin. Accomplishment of this installation constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD. Following accomplishment of paragraph (c) of this AD, the AFM revision required by paragraph (a) may be removed from the AFM.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) 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.

(f) Except as required by paragraph (b) of this AD, the actions shall be done in accordance with Dassault Aviation Service Bulletin F2000–123 (F2000–28–7), dated November 14, 1997. 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. 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.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–020–005(B), dated January 28, 1998.

(g) This amendment becomes effective on May 15, 1998.

Issued in Renton, Washington, on April 22, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11315 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01 97–017]

RIN 2115–AA98

Special Anchorage Area: Special Anchorage, Hudson River, at Hyde Park, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing the special anchorage located at Hyde Park, NY. The Poughkeepsie Yacht Club requested the disestablishment of this special anchorage because it is unsuitable for its intended purpose. Any vessels seeking to anchor in this area will be required to exhibit anchorage lights in accordance with the Rules of the Road.

DATES: This final rule is effective June 1, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York, 10305, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 718–354–4195.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Alma P. Kenneally, (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 18, 1997 the Coast Guard published a notice of proposed rulemaking entitled Special Anchorage Area: Special Anchorage, Hudson River, at Hyde Park, NY in the **Federal Register** (62 FR 38511). Interested persons were requested to submit comments on or before September 16, 1997. The Coast Guard received no comments on this proposal. A public hearing was not requested and one was not held. The Coast Guard is promulgating the final rule as proposed.

Background and Purpose

The Poughkeepsie Yacht Club requested the disestablishment of the special anchorage located at mile 72.7 on the east bank of the Hudson River, at Hyde Park, NY. This special anchorage is described in 33 CFR 110.60, paragraph (p-3). Special anchorages are areas of water in which vessels of not more than 65 feet in length may anchor without exhibiting anchor lights. The Poughkeepsie Yacht Club lies adjacent to this special anchorage and is its principal user. However, the Poughkeepsie Yacht Club requested disestablishment for the following reasons:

(1) The Special anchorage is a hindrance to yacht club activities, many of which occur within the limited area available which is not encumbered by the seasonal weed bed or the shallow water depth at mean low water;

(2) The special anchorage is not used in the winter. All yacht club moorings and docks must be removed annually in this reach of the Hudson River due to the substantial ice build up; and

(3) Transient vessels anchor approximately 1500 feet north of the special anchorage to use Esopus Island as a breakwater to block wake action caused by commercial shipping which transits west of the island.

Discussion of Comments and Changes

No comments were received and therefore no changes were considered.

Regulatory Evaluation

This rule 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 not been reviewed 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecesary. The principal users of this special anchorage are the members of the Poughkeepsie Yacht Club who fully understand the impact of their request. Additionally, the Coast Guard is unaware of any boaters other than the members of the Poughkeepsie Yacht Club who anchor or use moorings in this special anchorage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under 2.B.2.b(34)(f) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

§ 110.60 [Amended]

2. In section 110.60 paragraph (p–3) is removed.

Dated: April 13, 1998.

R.M. Larrabee,

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

[FR Doc. 98–11514 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 98–002]

RIN 2115–AA97

Safety Zone; Santa Barbara Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Santa Barbara Channel, California, around the oil and gas facilities commonly known as the Seacliff Pier Complex. These piers are located in Ventura County, immediately south of Punta Gorda (Mussel Shoals) and adjacent to Highway 101. A safety zone is needed for the pier decommissioning project which will use explosive charges to demolish 21 concrete caissons that currently support the pier. The safety zone will encompass a water area extending 500 yards in all directions from the center of the pier complex, which is situated at approximately 34°–21.02′ N, 119°–25.46′ W. Entry into, transit through, or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port Los Angeles/Long Beach.

DATES: This safety zone will be in effect from 7 a.m. PDT on April 14, 1998 until 7 p.m. PST on January 3, 1999. Comments must be received on or before June 29, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying in the Port Safety Division of Coast Guard Marine Safety Office, Los Angeles-Long Beach. Normal office hours are 8 a.m. to 4 p.m., PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Clarence Rice, Marine Safety Detachment, Santa Barbara, California; (805) 962–7430.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities requiring this safety zone, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the project date.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach, CA; 98–002) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office, Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Background and Purpose

The Seacliff Pier decommissioning project requires a safety zone because explosive charges will be used to demolish 21 concrete structures that currently support the pier. These explosions pose a direct threat to the safety of surrounding vessels, persons, and property, and they create an imminent navigational hazard. This safety zone is necessary to prevent spectators, recreational and commercial craft from collecting within 500 yards of the Seacliff Pier Complex during the decommissioning project, which is not scheduled to be completed until January 3, 1999. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, Los Angeles/Long Beach.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the 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). Due to the short duration and limited scope of the safety zone, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Clarence Rice, Coast Guard Marine Safety Detachment, Santa Barbara, CA, at (805) 962–7430.

Collection of Information

This rule 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 regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1C it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES** in the preamble.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR 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.T11–052 is added to read as follows:

§ 165.T11–052 Safety Zone; Santa Barbara Channel, CA.

(a) *Location.* The safety zone will encompass a water area extending 500 yard in all directions from the center of the Seacliff pier complex in the Santa Barbara Channel, which is situated at approximately 34° – 21.02′ N, 119° – 25.46′ W. All coordinates in this paragraph use Datum: NAD 83.

(b) *Effective Date.* This section will be in effect from 7 a.m. PDT on April 14, 1998 until 7 p.m. PST on January 3, 1999.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this Part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port.

Dated: April 13, 1998.

G.P. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, CA.

[FR Doc. 98–11229 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 47

RIN 2900–AI78

Reporting Health Care Professionals to State Licensing Boards

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: It continues to be the policy of the Department of Veterans Affairs (VA) to report to State Licensing Boards any separated physician, dentist, or other licensed health care professional whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. This document provides that, in addition, VA will report to State Licensing Boards any currently employed physician, dentist, or other licensed health care professional (one who is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Some health care professionals who are VA employees also provide health care outside VA's jurisdiction. Accordingly, the reporting of currently employed licensed health care professionals who meet the standard for reporting is necessary so that State Licensing Boards can take action as appropriate to protect the public. Examples of actions that meet the criteria for reporting are set forth in the text portion of this rulemaking. Also, nonsubstantive changes are made for purposes of clarity.

DATES: Effective Date: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, Patient Care Services (11B), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, at (202) 273–8473 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on October 8, 1997 (62 FR 52519), we proposed to expand our policy of reporting to State Licensing Boards to include any currently employed physician, dentist, or other licensed health care professional (one who is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Previously, the regulations only allowed the VA to report separated employees. The comment period ended on December 8, 1997. We received one comment.

The regulations, among other things, provide that VA will report individuals to State Licensing Boards for ''substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment.'' The commenter asserted that individuals should be reported for any substance abuse that is identified, and that any reporting should include a recommendation that the individual be required to obtain assistance at a substance abuse rehabilitation program.

No changes are made based on this comment. The provisions of Section 204 of Public Law 99–166 set forth the basic authority for reporting separated individuals to State Licensing Boards. This Statutory authority to report separated individuals to State Licensing Boards is limited to reporting based on a finding concerning an individual's clinical competence. We believe the policy for reporting should be the same for separated and currently employed individuals. Therefore, the final rule provides for reporting only if the finding of substance abuse reflects a finding that the clinical practice of the individual so significantly failed to meet generally

accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Even so, it would seem that in almost every case in which substance abuse is found, we would also be able to determine that it affects the individual's ability to perform appropriately as a health care provider in the patient care environment. Further, currently employed individuals who are identified as substance abusers are always encouraged by VA to obtain rehabilitation assistance, and there is no need to make a special recommendation to State Licensing Boards since we are aware that State Licensing Boards routinely provide similar encouragement.

Executive Order 12866

This rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 47

Health professions.

Approved: April 22, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 38 CFR part 47 is amended as follows:

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

1. The authority citation for part 47 continues to read as follows:

Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.

2. The part heading for part 47 is revised to read as shown above.

3. In part 47, both subpart A and subpart B headings are removed.

4. In § 47.1, paragraph (a) is removed; paragraphs (b) through (h) are redesignated as paragraphs (a) through (g), respectively; new paragraphs (h) and (i) are added, and the authority citation is revised, to read as follows:

§ 47.1 Definitions.

* * * * *

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.

(i) *On VA rolls* means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.

(**Authority:** 38 U.S.C. 501, 7401–7405; Section 204(b) of Pub. L. 99–166, 99 Stat. 952–953; Pub. L. 99–660, 100 Stat. 3743.)

§ 47.2 [Removed]

5. Section 47.2 is removed.

§ 47.3 [Redesignated as § 47.2]

6. Section 47.3 is redesignated as § 47.2.

7. The newly redesignated § 47.2 is revised to read as follows:

§ 47.2 Reporting to State Licensing Boards.

It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;

(i) Inappropriate dispensing of drugs;

(j) Unethical behavior or moral turpitude;

(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and

(l) Violation of research ethics.

(**Authority:** 38 U.S.C. 501; 7401–7405; Section 204(b) of Pub. L. 99–166, 99 Stat. 952–953; Pub. L. 99–660, 100 Stat. 3743.)

[FR Doc. 98–11466 Filed 4–29–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY25–2–173b, FRL–5995–4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to the New York Code of Rules and Regulations. This revision was submitted to comply with the gasoline vapor recovery provisions for gasoline service stations in the Clean Air Act (the Act). The intended effect of this action is to approve a program required by the Act which will result in emission reductions that will help achieve attainment of the national ambient air quality standard (NAAQS) for ozone.

DATES: This rule is effective on June 29, 1998 unless relevant adverse comments are received by June 1, 1998. If EPA receives relevant adverse comments, a timely withdrawal will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On November 28, 1989 (54 FR 48888) EPA approved a revision to New York's State Implementation Plan (SIP) for ozone which added requirements for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations (known as Stage II) and were adopted by the State on March 2, 1988 as revisions to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, ''Gasoline Dispensing Sites and Transport Vehicles.'' On July 8, 1994, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a SIP revision for ozone consisting of amendments to Part 230. These revisions became effective on September 22, 1994. These revisions to Part 230 expand the geographic applicability of the Stage II requirements and address section 182(b)(3) of the Clean Air Act (the Act). Section 182(b)(3) mandates that states submit a revised SIP by November 15, 1992 which requires owners or operators of gasoline dispensing systems to install and operate Stage II gasoline vehicle refueling vapor recovery systems in ozone nonattainment areas designated as moderate and above.

The New York portion of the ''New Jersey, New York, Connecticut interstate metropolitan air quality control region'' (NYCMA—composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland) was previously designated nonattainment for ozone. Under the Act as amended in 1990, EPA included these areas as part of the New York-Northern New Jersey-Long Island Nonattainment Area and designated it with an ozone classification of severe nonattainment.

On November 6, 1991 (56 FR 56694), EPA extended the boundaries of the New York-Northern New Jersey-Long Island Nonattainment Area to include Putnam and Orange counties. New York, however, requested time to study the boundaries and classification pursuant to section 187(d)(4)(A)(iv) of the Act. Based on New York's study, EPA revised the designations on November 30, 1992 (57 FR 56762). EPA included part of Orange County or the Lower Orange County Metropolitan Area (LOCMA) consisting of the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury) in the New York-Northern New Jersey-Long Island Nonattainment Area. This entire area is classified as severe nonattainment.

In addition, on October 6, 1994 (59 FR 50848), EPA reclassified the Poughkeepsie ozone nonattainment area (includes the counties of Dutchess, Putnam and that portion of Orange not discussed previously) to moderate nonattainment. It had been designated as marginal nonattainment. Section 182(b)(3) of the Act requires areas classified as moderate to implement Stage II controls unless and until EPA promulgates on-board vapor recovery regulations pursuant to section 202(a)(6) of the Act. However, many moderate ozone nonattainment areas may need to continue or adopt Stage II in order to satisfy other air quality requirements. The final rule for on-board vapor recovery systems has been promulgated and was published in the **Federal Register** on April 6, 1994 (59 FR 16262). However, the Stage II vapor recovery program is still required in the NYCMA and LOCMA areas since they are designated as severe nonattainment areas for ozone. Therefore, only the NYCMA and LOCMA ozone nonattainment areas are addressed in the July 8, 1994 SIP revision of Part 230 in which EPA is approving.

II. Stage II—Gasoline Vapor Recovery

Section 182(b)(3) of the Act mandates that states submit a revised SIP by November 15, 1992 that requires owners or operators of gasoline dispensing systems to install and operate Stage II gasoline vehicle refueling vapor recovery systems in ozone nonattainment areas designated as moderate and above.

Pursuant to section 182(b)(3) of the Act, EPA is required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. In addition, on April 16, 1992, EPA published the ''General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990'' (''General Preamble'') (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a state submittal needs to include to meet that requirement. These two documents are entitled ''Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities'' (EPA–450/3–91–022) and ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' The reader is referred to the General Preamble for a detailed explanation of Stage II requirements.

The Stage II vapor recovery program requires owners and operators of gasoline dispensing facilities that dispense greater than 10,000 gallons of fuel per month (50,000 gallon per month in the case of an independent small business marketer) to install and operate gasoline vehicle refueling vapor recovery systems. Vapor recovery systems control the release of volatile organic compounds, benzene, and toxics emitted during the refueling process.

States must require Stage II to be effective under a specified phase-in schedule of 6 months after the state adopts the required regulation for stations constructed after November 15, 1990; one year after the adoption date for stations dispensing at least 100,000 gallons per month, (as calculated over a 2-year period before the adoption date); and two years after the adoption date for all other facilities required to install controls.

As a separate requirement, section 184(b)(2) of the Act mandated EPA to complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 182(b)(3) of the Act, and required such measures or such vehicle refueling controls to be implemented in all areas in the Ozone Transport Region (OTR), e.g., Northeast OTR. The entire State of New York is included in the Northeast OTR. EPA completed the ''Stage II Comparability Study for the Northeast OTR'' on January 13, 1995, which requires New York to adopt and submit a SIP revision by January 13, 1996 for either Stage II or a comparable measure(s) for those areas currently not controlled by the Stage II requirements in Part 230 (i.e., all upstate areas of New York). New York is currently in the process of addressing this requirement, therefore, it was not included in the July 8, 1994 SIP revision.

III. State Submittal

Part 230—Gasoline Dispensing Sites and Transport Vehicles

A. The revisions to Part 230 expands the applicability of Stage I vapor controls (control of gasoline vapors

during storage tank filling) statewide to all gasoline facilities with an annual throughput of 120,000 gallons and includes additional requirements for gasoline transport vehicles which service these facilities located in New York State.

B. Part 230 also expands Stage II controls to smaller stations in the NYCMA and into the LOCMA. Stage II was previously not required in the LOCMA and required only for stations with annual throughputs over 250,000 gallons in the NYCMA, but the Act required this strategy in all severe nonattainment areas for stations over 120,000 gallons annual throughput. Therefore, New York revised Part 230 to accommodate this lower limit in the NYCMA and added these requirements in the LOCMA.

C. New York requires that Stage II systems be tested and approved using a testing program that is based on the California Air Resources Board program.

D. New York requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and at five year intervals or upon modification of a facility.

E. With respect to recordkeeping, New York's revisions to Part 230 address those items recommended in EPA's guidance and specifies that sources subject to Stage II must post a copy of the registration form required by Part 201, ''Permits and Certificates'' at the gasoline dispensing site in a location accessible for inspection. In addition, New York requires any gasoline dispensing site to maintain records containing the gasoline throughput of the facility.

F. New York has also established an inspection function consistent with that described in EPA's guidance. Rule 230 was amended to require daily visual inspections of the Stage II components and to prohibit the use of dispensers with defective Stage II components.

G. EPA reviewed the submittal against the requirements of sections 182(b)(3) and 182(b)(2) of the Act, as interpreted in the General Preamble for Implementation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13513 (April 16, 1992)), and the two EPA documents entitled Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities and the Enforcement Guidance for Stage II Vehicle Refueling Control Programs. EPA has determined that Part 230 is consistent with EPA guidance and meets all Act requirements for the regulated geographical area.

Conclusion

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, ''Gasoline Dispensing Sites and Transport Vehicles,'' effective September 22, 1994, meet the requirements of the Act. Therefore, EPA is approving those revisions.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 29, 1998 without further notice unless the Agency receives relevant adverse comments by June 1, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 29, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the 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 any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. § 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 1998.

William Muszynski,

Acting Regional Administrator, Region 2.

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 *et seq.*

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(92) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from Gasoline Dispensing Sites and Transport Vehicles, dated July 8, 1994, submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Amendments to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled ''Gasoline Dispensing Sites and Transport Vehicles,'' effective September 22, 1994.

(ii) Additional material:

(A) July 8, 1994, letter from Langdon Marsh, NYSDEC, to Jeanne Fox, EPA, requesting EPA approval of the amendments to Part 230.

3. In § 52.1679 the table is amended by revising the entry, for Part 230 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * * * * *			
Part 230, Gasoline Dispensing Sites and Transport Vehicles	8/22/94	April 30, 1998.	
* * * * * * *			

[FR Doc. 98–11381 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA058–4070; FRL–5997–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Disapproval of the NO_X RACT Determination for Pennsylvania Power Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The intended effect of this action is to disapprove the nitrogen oxide (NO_X) reasonably available control technology (RACT) determination submitted by the Pennsylvania Department of Environmental Protection (PADEP for Pennsylvania Power Company—New Castle plant (PPNC), located in Lawrence County, Pennsylvania.

DATES: This final rule is effective on June 1, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566–2180, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On August 18, 1997 (62 FR 43959), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed disapproval of the NO_X RACT determination for Pennsylvania Power's New Castle plant (PPNC), located in Lawrence County. The formal SIP revision was submitted by Pennsylvania Department of Environmental Resources (now the Pennsylvania Department of Environmental Protection or PADEP) on April 19, 1995. EPA is now taking final action to disapprove the RACT determination submitted by PADEP for PPNC. This action is being taken under section 110 of the Clean Air Act.

I. Background

On April 9, 1996 EPA originally published a direct final rulemaking approving this RACT determination. Opportunity for public comment was provided, however, and on May 8, 1996, the New York Department of Environmental Conservation (NYDEC) submitted a letter stating that it intended to adversely comment on EPA's proposed approval of PADEP's RACT determination for PPNC. Because of New York's letter of intent, the direct final action converted to a proposed action in accordance with established Federal rulemaking procedures. On June 11, 1996, EPA published a notice

withdrawing the effective date of the original direct final rule for Pennsylvania Power—New Castle, among other facilities. (61 FR 29483).

The NYDEC submitted adverse comments to EPA on June 28, 1996 in response to the converted proposed rulemaking notice published on April 9, 1996. The NYDEC stated that they disagreed with EPA's RACT determination for the boilers at PPNC and believe that there are technically and economically feasible controls for those boilers that should be determined to be RACT. As requested, EPA extended the comment period on its original April 9, 1996 proposed approval twice; the last time until August 2, 1996 (61 FR 29483 and 61 FR 37030). On July 15, 1996 and August 1, 1996, PPNC submitted comments to EPA addressing issues raised by NYDEC. On August 2, 1996, Pennsylvania DEP submitted comments to EPA stating that EPA should proceed with final approval of the PPNC RACT determination.

After considering all the comments submitted, EPA withdrew the proposed approval and instead, on August 18, 1997, proposed disapproval of the operating permit submitted by PADEP on April 19, 1995 intended to impose RACT for PPNC.

II. Comments Received on the August 18, 1997 Proposed Disapproval

In response to the August 18, 1997 proposed disapproval of PADEP's RACT determination for PPNC, comments were received from NYDEC and Paul, Hastings, Janofsky & Walker LLP, attorneys for PPNC. NYDEC's comments fully supported EPA's proposed rulemaking action. The comments from Paul, Hastings, Janofsky & Walker LLP are summarized below.

Comment 1—EPA has not articulated its legal standard to make RACT determinations. Case-by-case RACT is not a legal standard.

Response 1—EPA articulated its rationale and the criteria by which the PPNC submittal was being judged in the August 18, 1997 NPR. EPA's policies regarding RACT and how RACT determinations are made were discussed in the NPR. Since EPA's definition of RACT allows for the consideration of source-specific factors (i.e. case-by-case) in the determination of RACT-specific applications of policy or guidance are described in the applicable NPR.

Comment 2—By stating that the proposed PPNC RACT limits are too high, EPA has used legal standards that have yet to be defined by regulation.

Response 2—EPA used, as a basis to support its statement, the monitoring data that was available for the PPNC boilers. EPA and the Pennsylvania regulations define RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' (December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to EPA Regional Administrators and 25 Pa. Code, Subpart C Article III, Chapter 121). Since RACT is the lowest emission limit achievable considering technological and economic feasibility, it appeared to be unreasonable that the emission rates requested by PPNC for RACT were higher than those actually monitored at those boilers. It is unnecessary that a legal standard for RACT be established by regulation prior to an action on a case-by-case RACT determination proposal; the Clean Air Act contemplates establishing enforceable legal standards through notice and comment rulemaking such as that being conducted for case-by-case RACT proposals.

Comment 3—EPA has not promulgated a definition for RACT to be used in NO_X determinations and cannot rely on Pennsylvania's definition of RACT since EPA had not approved it until August 12, 1997. EPA has misapplied the RACT definition in the Strelow Memorandum to the PPNC determination since the Strelow Memorandum is guidance for SIP approvals by EPA and not to make individual RACT determinations. The Strelow Memorandum recognized that individual RACT determinations would be made using future guidance. The RACT definition contained in the Strelow Memorandum was not issued by notice and comment rulemaking and therefore is not binding. Furthermore, EPA expanded this definition of RACT without notice and without record.

Response 3—The Clean Air Act give EPA authority to define RACT for all regulated pollutants, including NO_X. EPA defined RACT in the Strelow memorandum dated December 9, 1997. In a **Federal Register** published on September 17, 1979 (44 FR 53761), EPA discussed the Clean Air Act statutory requirements including the definition of RACT and stated there that the Strelow memorandum was published in BNA Environmental Reporter, Current Developments, pp. 1210–12 (1976). EPA's definition of RACT is consistent with the statutory intent and Pennsylvania's definition of RACT is consistent with the Strelow memorandum. Congress expressly cites to EPA's RACT guidance and endorses it in section 182(a)(2)(4) as the appropriate guide for state submittals. This guidance was published and made available to the public in the House Energy and Commerce Committee Reports, Rept. 101–490 Part 1 at page 235. Therefore, EPA's statutory authority to approve RACT determinations is clear. EPA has consistently applied the definition of RACT to the PPNC RACT submittal.

Comment 4—EPA is inappropriately using 1993 as a baseline and has not provided record support to use 1993 instead of 1990 as baseline.

Response 4—The commenter concludes that EPA has used 1993 as a baseline instead of 1990 and yet does not provide a discussion of the reason for this comment. EPA has not established any baseline year but rather has used emissions data that available for 1993 to illustrate the feasibility of achieving emission rates lower than those proposed by PPNC as RACT. These emission rates were achieved without the use of low-NO_X burners or other add-on controls; leading to the conclusion that more stringent emission limitations that those proposed by the Company should be considered RACT.

Comment 5—EPA is using ad hoc reasons, such as averages of emissions data from similar sources, acid rain information, NO_X Memorandum of Understanding (MOU) status, and Ozone Transport Assessment Group (OTAG), to support its RACT determination. EPA has not defined what a ''similar boiler'' is.

Response 5—The discussion in the EPA NPR regarding average emission rates achieved for boilers similar to PPNC, requirements under the acid rain program that the PPNC boilers agreed to, etc. were included in order to provide a context for EPA's proposed disapproval of the PPNC RACT submittal. The reasonableness of the proposed PPNC emission limits must be determined in the context of what other similar sources are able to achieve and what PPNC itself agreed to achieve in order to meet its other statutory obligations. NO_X emissions are regulated by several programs but the control technology and methods to achieve NO_X emission reductions are not limited to meeting the obligations in any one program. EPA also clarified the use of the term ''similar boilers'' by stating that the comparisons with similar boilers were made by size and type (dry-bottom, wall-fired, coal burning). The data used came from the acid rain database, which only includes those boilers subject to the acid rain requirements. The boilers subject to the acid rain requirements are utility units larger than 250 mmBTU/hr, rated heart

input. EPA's determination is also based on its recognition that there may be technical similarities that would facilitate the use of similar emission controls even among boilers of different sizes and types. The NPR makes clear the bases of comparison between PPNC's boilers and other combustion units.

Comment 6—In making the PPNC RACT determination now, EPA is retroactively applying criteria that did not exist when PPNC prepared its proposal, when PADEP conducted its review, or when EPA approved the PPNC RACT proposal.

Response 6—EPA's definition of RACT has been that contained in the Strelow memo since it was issued in the late 1970s and EPA has used that definition as the basis for its RACT rulemaking actions since that time. EPA's reliance on guidance documents is clearly stated in its proposed rulemaking actions that would result in binding enforceable requirements such as those in case-by-case RACT determinations. Interested parties are welcome to comment specifically on the RACT rulemaking actions as well as on the criteria that EPA used to conduct those rulemaking actions. Binding criteria do not have to exist prior to conducting a proposed rulemaking action. The criteria that EPA applies to all RACT proposals, including the PPNC proposal, is the definition of RACT, any guidance in the form of memos or guidance documents pertinent to the source category or source that is subject to the RACT requirement, and any specific data applicable to the source category or source that is subject to the RACT requirement. This has been EPA's criteria for RACT determinations since the statutory requirement was imposed. The source category or source specific guidance documents to be used are those that are available at the time the RACT determination is being evaluated and proposed. For example, the NO_X Supplement to the Title I General Preamble published in the November 25, 1992 **Federal Register** re-states our practice for determining RACT and states that much of EPA's guidance for VOC RACT is also applicable to NO_X RACT (57 FR 55620). In the case of PPNC, PADEP prepared its RACT proposal and supporting documents in the late summer and fall of 1994. The public hearing for the PPNC RACT proposal was held on November 17, 1994. EPA submitted comments for the record on December 5, 1994. EPA's comments regarding the PPNC RACT proposal included comments questioning the cost factors and asserting that, in general, the information in the package did not support the conclusions arrived at by PPNC. The record is clear that EPA has consistently maintained its position on this RACT proposal since it was first proposed at the state level. The use of the federal definition of RACT even where such a definition has not been specifically approved into a state's SIP ensures that consistent criteria are applied in imposing RACT requirements.

Comment 7—EPA cannot use PPNC's acid rain permit limits or Pennsylvania's participation in the Ozone Transport Commission (OTC) NO_X MOU as criteria to determine whether PPNC's proposal is RACT.

Response 7—EPA did not use PPNC's acid rain permit limits or Pennsylvania's participation in the OTC NO_X MOU as criteria to determine whether PPNC's proposal is RACT. Instead, EPA applied criteria using the definition of RACT, information from available, appropriate guidance documents, and available information regarding PPNC's boilers. The test of reasonableness in the definition of RACT warrants investigating the availability of controls and the ability to meet other emission limitations among similar sources. EPA's evaluation of the PPNC RACT proposal investigated all relevant information that would indicate technical and economic feasibility of achieving lower emission limits as required by the definition of RACT. See also Response 6.

Comment 8—EPA is using different criteria documents than required to be used such as those used in the approval of three NO_X RACT determinations for sources in New York (September 23, 1997, 62 FR 49617). None of the documents referenced by EPA in the PPNC docket are listed in the March 1996 NO_X Policy Documents for the Clean Air Act of 1990 (EPA–452/R–96–005). EPA has not provided record support to explain its deviation from not using the policy documents listed in EPA–452/R–96–005.

Response 8—The criteria documents in the PPNC RACT docket are those that were determined to be relevant to the evaluation of the types of boilers at PPNC. The three NO_X RACT determinations referred to by the commenter pertained to NO_X sources unlike those at PPNC. These New York NO_X sources are the University of Rochester, with two non-utility oil-fired boilers (90 mmBTU/hr and 122 mmBUT/hr rated capacity), Morton International, Incorporated, with one gas-fired boilers smaller than 100 mmBTU/hr rated capacity and Algonquin Gas Transmission Company with four gas-fired internal combustion engines. It is to be expected that the documents used to evaluate the New York sources would be different than those used to evaluate the five coal-fired utility boilers at PPNC. As stated by PPNC, the rated capacity of the PPNC boilers are 119 mmBTU/hr (35 MW), 164 mmBTU/hr (48 MW), 335 mmBTU/hr (98MW), 335mmBTU/hr (98MW), and 468 mmBTU/hr (137 MW). The documents listed in the March 1996 EPA document (EPA–452/R–96–005) are those related to ozone policy. EPA's Introduction to the March 1996 document does not purport to exhaustively list all applicable or relevant NO_X RACT guidance. Indeed, it states that it includes, along with the NO_X Supplement to the General Preamble, ''several other guidelines and policy memorandum'' (sic). These items include primarily documents regarding SIP attainment demonstrations, section 182(f) NO_X waivers, emissions trading, fuel switching, compliance schedules, de minimis values for gas turbines and internal combustion engines, NO_X substitution in air quality plans, conformity, and new source review—issues that do not pertain to the PPNC RACT submittal. The relevant documents in the March 1996 list that pertained to PPNC were used and included in the PPNC docket along with other relevant and appropriate pieces of information. No applicable regulation, policy or guidance limits EPA's consideration in evaluating RACT submittals to only those documents that are contained in the March 1996 EPA document list. Consequently, EPA's use of criteria documents in the evaluation of the PPNC RACT submittal were appropriate.

Comment 9—The proposed action does not cite any delegation of authority to the Regional Administrator to sign SIP actions. Based on Table 1, 54 FR 2221 (Jan. 19, 1989), only the Administrator can sign SIP actions that deviate from national policy and the proposed disapproval of the PPNC SIP submittal relies on criteria that significantly deviate from national policy.

Response 9—Delegation 7–10 provides the authority for Regional Administrators ''[t]o propose or take final action on any State implementation plan under section 110 of the Clean Air Act.'' EPA's Directives System contains the definitive statements of EPA's organization * * * and delegations of authority. 40 CFR 1.5(b). The Directives System is the official statement of authority that has been delegated and EPA is not required to identify the specific delegation of

authority in each action the Agency takes. The current delegation, approved by the Administrator on May 6, 1997, places two limitations on the delegation.[1] The first limitation applies only to final actions. The second provides that the delegation does not apply where the action establishes an alternative interpretation from an established EPA policy where the alternative interpretation has not been reviewed through the Agency's consistency process. As explained above, EPA's proposed action for PPNC is not based on an alternative interpretation from an established EPA policy.

Comment 10—EPA has used a significantly different approach in the PPNC RACT proposal evaluation than used in other EPA RACT determinations. For example, the EPA approval of International Paper—Hammermill Division (Lockhaven) allowed an emission limit based on a 30 day running average that included a ''buffer'' as a way to account for the limited emission data available and did not require the installation of add-on controls.

Response 10—EPA's approach in evaluating all RACT determinations is consistent in that the same definition of RACT is used. However, under long-standing EPA policy and guidance, the determination of RACT allows for the consideration of source-specific variables and as such, can result in different conclusions as to what RACT is for different sources. The circumstances at International Paper—Hammermill Division (Lockhaven) and the information provided by PADEP and the Company in support of the RACT proposal warranted granting the particular RACT determination in that instance. The PADEP's submittal for PPNC does not contain information supporting its proposed RACT determination. Consequently, EPA approved the International Paper RACT and proposed to disapprove the PPNC RACT submittal.

Comment 11—EPA did not consider the full PPNC NO_X RACT proposal in deciding to propose disapproval. EPA did not obtain from PADEP the full proposal with its appendices that were submitted by PPNC to PADEP.

Response 11—EPA evaluated the PPNC NO_X RACT submittal using all the information submitted by PADEP and that submitted during the comment periods in June-August 1996 and in August 1997. If either PADEP or PPNC believed that EPA did not originally consider documents critical to its RACT proposal, it had an opportunity to submit any of these documents and comments in response to the proposed rulemaking notices. Furthermore, EPA expects RACT SIP submittals to include all documents relied on by the state in making its decision to propose RACT. If PADEP did not submit information to EPA, the presumption is that that information was not relied on in its decision making. Whether or not documents are submitted with each Pennsylvania RACT submittal is an issue between the source and the Commonwealth. EPA's final rulemaking action considers all information submitted with the April 19, 1995 PADEP submittal and during the relevant comment periods.

Comment 12— EPA improperly viewed the PPNC proposal as a ''no controls'' proposal. Since late 1993, PPNC has installed and experimented with two separate computerized combustion optimization systems in the PPNC unit 5 boiler resulting in a 50% emission reduction from 1990 levels. PPNC has used this information from unit 5 on units 3 and 4, resulting in comparable emission reductions.

Response 12—EPA evaluated the PPNC proposal on the basis of whether the proposal would result in a RACT level of emissions. RACT is defined by EPA and PADEP as the lowest achievable emission limit considering technical and economic feasibility. The emission limits proposed by PADEP and PPNC are higher than those that were currently monitored at the facility at the time the RACT proposal was being developed. The PADEP's April 19, 1995 submittal to EPA intended to impose RACT for PPNC did not mention a computerized combustion optimization system through an enforceable permit. Subsequent to the April 19, 1995 submittal, PADEP mentioned the use of a computerized combustion optimization system at PPNC. On further investigation, EPA found that this system was bought, installed and tested using Department of Energy funds and did not require the use of capital funds at PPNC. If the combustion optimization system is an available emission control option to reduce NO_X emissions, the PPNC submittal should have compared the sustainable emission reductions that can be achieved by such a combustion optimization system with those sustainable emission reductions that can be achieved by other more conventional controls such as low—NO_X burners or selective catalytic reduction (SCR) along with economic considerations. Even if a proper RACT evaluation were done to support a conclusion that RACT may not require add-on controls, the emission limits in the April 19, 1995 RACT submittal for PPNC would not be approval because they are substantially less stringent than the actual measured data. The PPNC cost analysis for conventional NO_X controls uses figures that appear to be unrealistic and unsupported by fact. The cost figures provided by PPNC, when compared in context with cost figures for similar boilers, appear to be significantly higher than other figures without adequate justification. Consequently, EPA has determined that the PPNC RACT proposal has not adequately demonstrated that add-on controls are economically infeasible.

Comment 13—EPA has improperly used the lack of official EPA approval of the PADEP Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions to support its proposed disapproval.

Response 13—EPA clearly stated in the August 18, 1997 NPR regarding the proposed PPNC disapproval that the PADEP Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions was not part of the April 19, 1995 submittal nor any other PADEP submittal requesting EPA approval and that, therefore, EPA was not relying on this guidance document in proposing disapproval of the PPNC RACT submittal. EPA included a discussion of this document only because PPNC made comments in response to EPA's withdrawal of its initial notice of approval (June 11, 1996) claiming that PADEP had relied on this document. However, PPNC's claims in this regard cannot be considered by EPA where PADEP has not identified this document as a basis for its submittal.

Furthermore, as stated in the NPR for EPA's action on Pennsylvania's VOC and NO_X RACT regulation, Chapter

[1] The commenter's citation to Table 1 is obsolete. Under the previous version of delegation 7–10, the Agency created three tables which identified separate processes for SIP actions. The Regional Administrators were delegated authority to sign actions on tables 2 and 3, with the Administrator retaining sole authority to sign actions on Table 1. Subject to two limitations, the Regional Administrators have been delegated authority to sign all SIP actions.

129.91 through 129.95, the Pennsylvania RACT guidance document has never been submitted to EPA for approval into the Pennsylvania SIP (62 FR 43134, August 12, 1997).

Comment 14—EPA's refusal to consider any options other than add-on controls is unsupportable. EPA regulations, guidance, relevant case law and EPA's definition of RACT contemplates and supports the use of methods other than add-on controls.

Response 14—RACT requirements do not necessarily always have to include add-on controls. EPA has made many RACT determinations that provide for control methods that do not include add-on controls. These RACT determinations were supported by technical and economic data. A RACT analysis requires that all control options be evaluated for technical and economic feasibility and the potential emission reductions from each of these options compared. Therefore, the commenter is mistaken in concluding that because EPA has proposed to disapprove the PPNC RACT proposal which does not propose any add-on controls, EPA has refused to consider other non-add-on control options. EPA's evaluation of the PPNC submittal merely analyzes the information submitted and available that are relevant to PPNC and concludes that the PPNC proposal is unsupported by the relevant information.

Comment 15—EPA has inappropriately included Ohio Edison Company in its consideration of costs on PPNC. EPA should consider only PPNC's resources and not those of other companies with which PPNC has a relationship. ''Reasonably available'' requires that cost-effectiveness is determined only on a facility basis.

Response 15—EPA's analysis of the PPNC RACT submittal did not name particular companies or parent companies as specifically responsible for the costs of PPNC. The cost figures as provided by PPNC are out-of-line with those obtained from other sources, including sources under the acid rain program, for similarly sized and typed boilers, resulting in EPA's conclusion that the PPNC RACT proposal submitted by PADEP is not adequately substantiated and supported to justify the emission requirements being requested.

Comment 16—EPA has failed to give proper deference to PADEP's decision to approve the PPNC proposal as RACT. EPA cannot substitute its judgment for the State's determination because EPA believes more stringent air quality controls are achievable.

Response 16—Although the State has the initial obligation to determine the appropriate control requirements for sources, EPA is required to review the submission and to approve or disapprove it as complying with the applicable statutory requirements. These requirements include the general requirements of section 110(a)(2) and, in this case, the statutory requirements that the control technology is ''RACT'' for PPNC. While EPA will consider the record for the State's determination, there is no statutory obligation for EPA to defer to the State. To the contrary, the statutory requirement that EPA review and take rulemaking action on the State's submission demonstrates that Congress did not intend for EPA to ''rubber stamp'' State determinations.

Comment 17—EPA has acted arbitrarily and capriciously in proposing to disapprove the PPNC RACT proposal. EPA has denied PPNC a meaningful opportunity to comment based on each of the reasons above. Consequently, until EPA can resolve the above comments, EPA should suspend this rulemaking and ultimately consider approval of the PPNC RACT proposal or re-propose the disapproval including legal and factual rationale.

Response 17—EPA's proposed rulemaking action is clear and deliberate in setting forth the legal and factual reasons supporting the proposed disapproval. PPNC and all other interested parties were given ample opportunity to submit comments and supporting information. EPA has addressed every comment made in the commenter's letter and has considered all relevant pieces of information. In conducting this rulemaking action, EPA met its obligations to consider all comments made in response to the proposed rulemaking action. Proceeding to final rulemaking is not predicated on negotiating an acceptable resolution with the parties that submitted comments. EPA concludes that it consideration and review of all submitted information and its rationale supports a disapproval of the PPNC RACT proposal submitted on April 19, 1995.

III. Final Action

EPA is disapproving the Pennsylvania Power New Castle plant NO_x RACT proposal submitted by PADEP on April 19, 1995 as a requested revision to the Pennsylvania SIP.

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

IV. Administrative Requirements

A. Executive Order 12866

This regulatory action has been submitted to the Office of Management and Budget (OMB) for E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action only affects one source, Pennsylvania Power Company—New Castle plant (PPNC). PPNC is not a small entity. Therefore, EPA certifies that this disapproval action does not have a significant impact on small entities.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA 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, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship the CAA, preparation of 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. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to Pennsylvania Power—New Castle plant, located in Lawrence County.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the disapproval of PADEP's NO_X RACT proposal for Pennsylvania Power New Castle must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 8, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

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 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2023 is amended by adding paragraph (e) to read as follows:

§ 52.2023 Approval status.

* * * * *

(e) Disapproval of the April 19, 1995 NO_X RACT proposal for Pennsylvania Power Company—New Castle plant located in Lawrence County, Pennsylvania.

* * * * *

[FR Doc. 98–11507 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6003–4]

Oklahoma: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Oklahoma has revised its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). With respect to today's document, Oklahoma has made conforming changes to make its regulations internally consistent relative to the revisions made for the above listed authorizations. Oklahoma has also changed its regulations to make them more consistent with the Federal requirements. The EPA has reviewed Oklahoma's changes to its program and has made a decision, subject to public review and comment, that Oklahoma's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period on the parallel proposed rule also in today's **Federal Register** (FR) notice, EPA's decision to approve Oklahoma's hazardous waste program revisions will take effect as provided below. Oklahoma's program revisions are available for public review and comment.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference the Oklahoma authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into CFR currently authorized State hazardous waste program in Oklahoma. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

DATES: Final authorization for Oklahoma's program revisions shall be effective July 14, 1998 without further notice unless EPA, receives relevant adverse comment on the parallel notice of proposed rulemaking. Should the agency receive such comments, it will publish a notice informing the public that this rule did not take effect. All comments on Oklahoma's program revisions must be received by close of business June 1, 1998. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of July 14, 1998 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Copies of Oklahoma's program revisions and materials EPA used in evaluating the revisions are available for copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, Phone number: (405) 271–5338; or EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Written comments referring to Docket Number OK98–1 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization

Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Authorization of State Initiated Changes

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter HSWA) allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273, and 279.

B. Oklahoma

Oklahoma initially received final authorization to implement its hazardous waste program on December 27, 1984, effective January 10, 1985 (49 FR 50362). Oklahoma received final authorization for revisions to its program on April 17, 1990, effective June 18, 1990 (55 FR 14280); on September 26, 1990, effective November 27, 1990 (55 FR 39274); on April 2, 1991, effective June 3, 1991 (56 FR 13411); on September 20, 1991, effective November 19, 1991 (56 FR 47675); on September 29, 1993, effective November 29, 1993 (58 FR 50854); on October 7, 1994, effective December 21, 1994 (59 FR 51116); on January 11, 1995, effective April 27, 1995 (60 FR 2699); and on October 9, 1996 (61 FR 52884), as corrected on March 14, 1997, effective March 14, 1997 (62 FR 12100).

The EPA has reviewed these changes and has made an immediate final decision, in accordance with 40 CFR 271.21(b)(3), that Oklahoma's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA grants final authorization for the additional program modifications to Oklahoma's hazardous waste program. As explained in the Proposed Rule section of today's FR, the public may submit written comments on EPA approval actions until June 1, 1998. Copies of Oklahoma's program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Oklahoma's program revision shall become effective in 75 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period on the parallel proposed rule in today's FR notice. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or, (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Oklahoma's base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. The EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions. The Oklahoma provisions are from The *Oklahoma Administrative Code,* Title 252, Chapter 200, 1996 Edition, unless otherwise stated.

State Requirement

252:200–1–1(b)
252:200–3–2(2) through 252:200–3–2(4), as amended May 15, 1997, effective June 2, 1997
252:200–3–2(6)&(7), as amended May, 15, 1997, effective June 2, 1997
252:200–3–2(9)&(10), as amended May 15, 1997, effective June 2, 1997
252:200–3–2(12), as amended May 15, 1997, effective June 2, 1997
252:200–3–4, as amended May 15, 1997, effective June 2, 1997
252:200–5–1 introductory paragraph, as amended May 15, 1997, effective June 2, 1997
252:200–5–1(3), as amended May 15, 1997, effective June 2, 1997
252:200–5–3
252:200–5–4, as amended May 15, 1997, effective June 2, 1997
252:200–5–6, as amended May 15, 1997, effective June 2, 1997
252:200–7–1
252:200–7–3
252:200–8–1 through 252:200–8–8 (except 252:200–8–5)
252:200–8–5, as amended May 15, 1997, effective June 2, 1997
252:200–9–2, as amended May 15, 1997, effective June 2, 1997
252:200–9–4(b)
252:200–9–8
252:200–11–1 (except the phrases ''or off-site recycling'' and ''(TSDRs)'')
252:200–11–2
252:200–11–3(a) (except the word ''recycling'')
252:200–11–4(a)(1) (except the phrases ''Except as otherwise provided in this Section'' and ''or recycling'')
252:200–11–4(a)(5) (except the phrase ''For the purposes of this section'')
252:200–11–4(b) through 252:200–11–4(e)
252:200–13–2 introductory paragraph

Oklahoma has made corresponding statutory changes which need to be authorized at this time. The Oklahoma provisions are from the Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996.

State Requirement

2–7–110(A)
2–7–111(D)(2)&(3)
2–7–113.1(A) through 2–7–113.1(C)
2–7–115
2–7–116(A)
2–7–118(A)

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Oklahoma's program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted final authorization to operate its hazardous waste program as revised.

Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under

section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

II. Incorporation by Reference

A. Background

Effective December 13, 1993 (58 FR 52679), EPA incorporated by reference Oklahoma's then authorized hazardous waste program. Effective November 29, 1993 (58 FR 50854); December 21, 1994 (59 FR 51116); April 27, 1995 (60 FR 2699); and March 14, 1997 (62 FR 12100), EPA granted authorization to Oklahoma for additional program revisions.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of HSWA, PL 98-616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the CFR whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma hazardous waste management program for which authorization approval has been granted by EPA.

B. Oklahoma Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.1851(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1851(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b)(2) lists those Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These nonauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (40 CFR 271.1(i)), and

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference in 40 CFR part 272. Section 272.1851(b)(3) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. ''Broader in scope'' provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Oklahoma has adopted but is not authorized for the following Federal rules regarding delisting wastes published on July 15, 1985 (50 FR 28702); and the Federal rules published in the **Federal Register** on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); and February 18, 1992 (57 FR 5859). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:200–3–2(2) through 252:200–3–2(10) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.1851(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not federally enforceable. Thus, notwithstanding the language in the Oklahoma hazardous waste regulations incorporated by reference at 272.1851(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in nonauthorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or

prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. The requirements being authorized and codified today are the result of Oklahoma's voluntary participation in accordance with RCRA subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action grants authorization as well as incorporating by reference an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Oklahoma's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this authorization and codification.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization and codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate treatment, storage, or disposal facilities are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's authorization and codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Oklahoma's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS AS AMENDED AS FOLLOWS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart LL is amended by revising § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization

for Base program effective January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997 and July 14, 1998.

(b) *State Statutes and Regulations.* (1) The Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, August 1997.

(ii) The EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, August 1997.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, Sections 2–2–104, 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–110(A), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–123, 2–7–126, 2–7–129, 2–7–130, 2–7–131 and 2–7–133.

(ii) The Oklahoma Administrative Code (OAC), Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: Subchapter 1, Section 252:200–1–1(b); Subchapter 11, Section 252:200–11–2; and Subchapter 13, Sections 252:200–13–1 and 252:200–13–3.

(iii) The May 15, 1997 issue of the Oklahoma Register (14 Ok Reg 1609 and 1611), effective June 2, 1997: Subchapter 3, Section 252:200–3–2(1).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, Sections 2–7–119 and 2–7–121.

(ii) The Oklahoma Administrative Code (OAC), Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: Subchapter 8; Subchapter 13, Section 252:200–13–4; Subchapter 17; and 252:200 Appendices.

(4) Unauthorized State Provisions: The State's adoption of the Federal rules listed below, while incorporated by reference at paragraph (b)(1) of this Section, is not approved by EPA and are, therefore, not enforceable:

Federal requirement	FEDERAL REGISTER Reference	Publication date
Delisting	50 FR 28702: Amendments to 260.22(a) through 260.22(e).	07/15/85
Toxicity	55 FR 40834	10/05/90
Characteristics	56 FR 3978	02/01/91
Hydrocarbon Recovery Operations	56 FR 13406	04/02/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Administrative Stay for K069 Listing	56 FR 19951	05/01/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations.	56 FR 66365	12/23/91
Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable.	57 FR 5859	02/18/92

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma signed by the EPA Regional Administrator on September 20, 1996, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization,'' signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; and March 4, 1996, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''Oklahoma'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, Sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B) (except the last sentence and the phrase '', recycling'' in the first sentence), 2–7–111(C)(2)(a) (except the phrase ''Except as provided in subparagraph b of this paragraph'' and the word ''recycling'' in the first sentence), 2–7–111(D), 2–7–111(E) (except the word ''recycling'' in the first sentence), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118(A), 2–7–124, 2–7–125 and 2–7–127.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

The Oklahoma Administrative Code (OAC), Title 252, Chapter 200, effective July 1, 1996: Subchapter 1, Sections 252:200–1–1(a) and 252:200–1–2; Subchapter 3, Sections 252:200–3–1, 252:200–3–5, 252:200–3–6; Subchapter 5, Sections 252:200–5–3, 252:200–5–5; Subchapter 7, Sections 252:200–7–1 through 252:200–7–4; Subchapter 9 (except 252:200–9–2, 252:200–9–6 and 252:200–9–7); Subchapter 11, Sections 252:200–11-1 (except the phrases ''or off-site recycling'' and ''(TSDRs)''), 252:200–11–3(a) (except the word ''recycling''), 252:200–11–3(b) through 252:200–11–3(d), 252:200–11–4(a)(1) (except the phrases ''Except as otherwise provided in this Section'' and ''or recycling''), 252:200–11–4(a)(5) (except the phrase ''For the purposes of this section''), 252:200–11–4(b) through 252:200–11–4(e); and Subchapter 13, Sections 252:200–13–2 introductory paragraph, 252:200–13–2(1) and 252:200–13–2(2) first sentence.

The May 15, 1997 issue of the Oklahoma Register (14 Ok Reg 1609 and 1611), effective June 2, 1997: Subchapter 3, Sections 252:200–3–2 (except 252:200–3–2(1)&(11))

and 252:200–3–4; Subchapter 5, Sections 252:200–5–1, 252:200–5–4 and 252:200–5–6; and Subchapter 9, Section 252:200–9–2.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

* * * * *

[FR Doc. 98–11385 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50622D; FRL–5782–5]

RIN 2070–AB27

Substituted Phenol; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as substituted phenol, which is the subject of several premanufacture notices (PMN) P–89–1125, P–91–87, P–92–41, P–92–511, P–94–1527, and P–94–1755. This rule would require persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of substituted phenol for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) of TSCA with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMNs P–89–1125, P–91–87, P–92–41, P–92–511, P–94–1527, and P–94–1755 in the **Federal Register** of August 30, 1995 (60 FR 45072) (FRL–4926–2). EPA received notice of intent to submit adverse comments following publication for this chemical substance. Therefore, as required by § 721.160, the final SNUR for P–89–1125 et al. was withdrawn on June 26, 1997 (62 FR 34414) (FRL–5723–5) and a proposed rule on the substance was issued on June 26, 1997 (62 FR 34427) (FRL–5723–6).

The background and reasons for the SNUR are set forth in the preamble to the proposed rule. EPA received comments concerning the designated significant new uses in the proposed rule. The commenter proposed alternative significant new uses that would achieve the same result of eliminating environmental releases to surface waters. EPA's response to the comments is discussed in this document and EPA is issuing a modified final rule.

The commenter stated that the recordkeeping involved to ensure compliance with the proposed SNUR would hinder the commercial development of the substance. The commenter proposed several alternatives. One was a SNUR limiting use to an ingredient in a photoresist formulation. The second was a SNUR limiting use and production volume (a 10,000 kilogram (kg) per year production volume limit was one possibility). The third alternative was a modified PMN choosing the binding box option for use in part I, section C(2)(a)(3) of the PMN form with the use designated as ''ingredient in photoresist formulation.'' The commenter also stated that TSCA section 12(b) export notification, especially for a formulated product ingredient which will probably remain confidential, is expected to become a significant commercial barrier.

EPA rejected the binding box option as the binding box on a PMN form is not a legally enforceable requirement. While the Agency prefers to issue performance based regulations that directly address the potential hazard to human health or the environment such as the release to surface water designations in the proposed SNUR, EPA can and does issue SNURs that indirectly limit

releases based on information in the PMN as well as public comment.

EPA's analysis of uses in photoresist formulations found no significant releases to surface waters. In addition, the SNUR is consistent with the existing use of the PMN substance and addresses the commenter's concerns of customer compliance with the SNUR. Based on these reasons, EPA is issuing a final SNUR limiting the use of the PMN substance to an ingredient in a photoresist formulation. Further, export notification will still apply as TSCA section 12(b) clearly states that any substance or any formulation containing that substance, subject to a rule under TSCA section 5 is subject to export notification.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on August 30, 1995, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after August 30, 1995, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this rule. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50622D).

VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50622D (including comments and data submitted electronically). A public version of the record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA NonConfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 21, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625.

2. By adding new § 721.5867 to read as follows:

§ 721.5867 Substituted phenol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically

identified as substituted phenol (PMNs P–89–1125, P–91–87, P–92–41, P–92–511, P–94–1527, and P–94–1755) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (ingredient in a photoresist formulation).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–11474 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[WO–420–1050–00–24 1A]

RIN 1004–AC97

National Forest Exchanges

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing 43 CFR subpart 2202 in its entirety, and revising section 2201.1–2(a) to include a statement about segregative effect. Subpart 2202 contains material that is substantially covered by BLM's general Exchange regulations at 43 CFR 2201. The new 43 CFR 2201.1–2(a), as revised by this final rule, will cover any additional material from the existing subpart 2202. As a result, this removal and revision action will have no impact on BLM customers or the public at large.

EFFECTIVE DATE: June 1, 1998.

ADDRESSES: You may send inquiries or suggestions to: Administrative Record (630), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick, Lands and Realty Group, Bureau of Land Management, at (202) 452–7727.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Responses to Comments
IV. Procedural Matters

I. Background

BLM is removing 43 CFR subpart 2202 because it duplicates sections contained elsewhere in BLM's regulations, at 43 CFR 2201.1–2. Subpart 2202 requires that exchange proposals for the consolidation or extension of national forests be filed with the appropriate officer of the Forest Service. It says that a request may be made to the BLM to segregate the National Forest System lands involved in the exchange from appropriation under the public land laws and the mineral laws and also that any interests of the United States in the non-Federal lands to be acquired may be segregated from the mineral laws. The period of these segregations would not exceed 5 years from the date of notation.

Similar language can be found at section 2201.1–2 (as well as in the Forest Service regulations at 36 CFR Part 254, Subpart A); with only two differences. First, section 2201.1–2 does not include the authorities section found at 2202.1(a), or the statement that proposals for exchange of National Forest System lands must be filed with the Forest Service in accordance with 36 CFR 254. However, regulations which direct people to comply with other valid regulations are redundant and unnecessary, and the authorities will be added to section 2201.1–2.

Second, section 2201.1–2 exists in a CFR part that defines *Federal lands* as those lands administered by BLM, not National Forest System lands. However, amending this section to apply its provisions to National Forest System lands as well (as the Forest Service's regulations already do) will insure that the removal of 43 CFR 2202 cannot alter any existing rights or obligations. This rule accomplishes that amendment by adding 43 CFR 2201.1–2(e) below, renders subpart 2202 completely redundant and unnecessary, and removes subpart 2202 from the Code of Federal Regulations.

The final rule published today is a stage of a rulemaking process that will complete the removal of 43 CFR subpart 2202 and the revision of 43 CFR 2201.1–2. This rule was preceded by a proposed rule which introduced this action and BLM's purpose and need. The proposed rule was published in the **Federal Register** on September 11, 1996 (61 FR 47855). This proposed rule was intended to give anyone who would be adversely affected by this action an opportunity to call their concerns to our attention. The BLM invited public comments for 30 days and received no comments.

II. Final Rule as Adopted

This rule will remove all of 43 CFR subpart 2202—Exchanges: National Forest Exchanges. In addition, it will amend 43 CFR 2201.1–2 to enable this section to perform all of the functions currently accomplished by 43 CFR subpart 2202. Therefore, this removal will not affect existing laws or the rights of the United States, BLM, or the public at large.

The new section is designed to extend the coverage of the general exchange provisions in 43 CFR section 2201.1–2 to include the National Forest exchanges conducted in nearly identical fashion by 43 CFR subpart 2202. Very few differences exist between the two sets of regulations, but some of those differences are substantive in nature and require the amendment that this rule promulgates. Therefore, a new subsection will be added at 43 CFR 2201.1–2(e) which will accomplish three important tasks. First, it will say that this section also applies to proposals to exchange lands under the National Forest System; until now this section only applied to exchanges of BLM lands. Secondly, it will direct that exchanges of National Forest System lands be conducted in accordance with the Forest Service regulations at 36 CFR part 254. Finally, it will permit the authorized Forest Service officer to request the appropriate BLM State Office to segregate the land at issue by making a notation on the public land records. Since amended 43 CFR 2201.1–2(e) will accomplish these tasks, all of subpart 2202 will be expendable, and may be removed at this same time without any substantive impact on the United States, BLM, or the public at large.

43 CFR 2202.1(a) contains the authorities' cites for the remainder of the subpart. This includes statutory citations and a reference to the regulations of the U.S. Forest Service which govern exchanges of National Forest lands. These citations, as well as the requirement that proposals shall be filed in accordance with Forest Service regulations, will be relocated to 43 CFR 2201.1–2(e) by the amendment contained in this rule. Therefore, elimination of this section will have no substantive effect.

Subsection (b) of 43 CFR 2202.1 largely duplicates the general exchange provisions found at 43 CFR 2201.1–2(a). The only substantive difference is that § 2201.1–2 applies to segregations of

''Federal lands,'' which part 2200 defines as lands administered by BLM (and therefore excluding National Forest System lands); while § 2202.1 applies to ''lands reserved * * * for National Forest System purposes.'' Again, the amendment contained in this rule will render 43 CFR section 2201.1–2 applicable to National Forest System lands as well as BLM-administered Federal lands, and ensure that removing this section will have no substantive effect.

Subsections (c) and (d) of 43 CFR 2202.1 duplicate the existing regulations at 43 CFR 2201.1–2(b) and (c), with the exception of one difference in word order. Therefore, removing 43 CFR subsections 2202.1(c) and (d) will have no substantive effect, since the corresponding sections in 43 CFR 2201.1–2 already accomplish exactly the same functions.

III. Responses to Comments

As mentioned above, BLM received no comments on this proposed rule.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule makes no substantive changes to the Code of Federal Regulations, because it is limited to removing provisions which are found in their entirety elsewhere in Title 43 of the CFR and are therefore wholly unnecessary. Therefore, this change is purely technical in nature and is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix I, Item 1.10. Furthermore, the rule does not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion contained in the preamble above, this action will not have significant impact on small entities. BLM anticipates that this final rule will not substantially burden any member of the public at large. Therefore, BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR subpart 2202 and amendment of 43 CFR section 2201.1–2 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect 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, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Ted Milesnick, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–7727 (Commercial or FTS).

List of Subjects in 43 CFR Part 2200

National forests, Public lands.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2200, Group 2200, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: April 17, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

PART 2200—[AMENDED]

1. The authority citation for part 2200 continues to read as follows:

Authority: 43 U.S.C. 1716, 1740.

2. Section 2201.1–2 is amended by adding paragraph (e) to read as follows:

§ 2201.1–2 Segregative effect.

* * * * *

(e) The provisions of this section apply equally to proposals to exchange National Forest System lands under the authority and provisions of the Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, except that if a proposal is made to exchange National Forest System lands, which proposal shall be filed in compliance with 36 CFR part 254, the authorized officer may request that the appropriate BLM State Office segregate such lands by a notation on the public land records.

Subpart 2202—[Removed]

3. Subpart 2202 is removed in its entirety.

[FR Doc. 98–11499 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 042398A]

South Atlantic Swordfish Fishery; Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of fishery.

SUMMARY: Based on projected landings, NMFS closed the south Atlantic swordfish fishery effective April 15, 1998. Actual catch reports tallied since the closure indicate that the south Atlantic swordfish quota for the period December 1, 1997, to May 31, 1998, has not been reached. NMFS therefore reopens the South Atlantic swordfish fishery to allow U.S. fishermen to harvest the remaining 1997 South Atlantic quota.

DATES: The reopening is effective on April 27, 1998, for vessels fishing Atlantic swordfish south of 5° N. Lat.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301-713-2347, or Buck Sutter, 813-570-5447.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

ICCAT has divided the Atlantic swordfish stock into northern and southern management units. The south Atlantic swordfish fishery refers to those swordfish caught in the Atlantic ocean south of 5° N latitude. ICCAT's Standing Committee on Research and Statistics estimated that the 1995 fishing mortality rate for south Atlantic swordfish was greater than the level that would produce maximum sustainable yield. To prevent further increases in fishing mortality, ICCAT recommended that contracting parties limit catch of south Atlantic swordfish to levels harvested in 1993 or 1994, whichever was greater. On October 24, 1997 (62 FR 55357), consistent with ICCAT's recommendations, NMFS established a U.S. quota for the for the South Atlantic swordfish fishery of 188 mt dressed weight(dw), and implemented the same management measures for the South Atlantic swordfish fishery as were in place for the North Atlantic swordfish fishery (i.e., logbook reporting, permitting, minimum size, transfer-at-sea, etc.).

Regulations governing the south Atlantic swordfish fishery at § 630.24 divide the annual quota into semiannual quotas of 94 mt for each of two fishing periods (June 1 through November 30 and December 1 through May 31). NMFS is required, under § 630.25(a)(1), to monitor landings statistics and, on the basis of these statistics, to project a date when the catch will equal the quota, and to announce a closure of the fishery by publication of a notice in the **Federal Register**.

In 1996, ICCAT adopted compliance measures such that member nations could be subject to trade restrictions and reduced quotas equal to a minimum of 125 percent of the excess harvest if North Atlantic swordfish quotas are repeatedly exceeded. In 1997, ICCAT extended these compliance measures to the South Atlantic swordfish fishery. Given the compliance recommendations, it is necessary for NMFS to closely monitor harvest rate in the south Atlantic swordfish fishery.

Reporting of swordfish landings by U.S.-flagged vessels in Atlantic waters south of 5° N lat. was not required until the 1997 fishing year; therefore, past fishing effort was difficult to estimate for the purpose of projecting a closure date. However, limited logbook data from 1996 and 1997 indicated that a significant increase in landings could be expected during February and March. Therefore, NMFS announced that the directed South Atlantic swordfish fishery would close at 6 p.m., local time, on April 15, 1998. The estimate was conservative to reduce the risk of exceeding U.S. swordfish quotas, which could invoke ICCAT penalties. However, actual reported landings of swordfish in the South Atlantic swordfish fishery through March 31, 1998, in the second semiannual season total 22.5 mt(49,623 lbs) dw.

The ICCAT quota recommendation for the 1997 fishing year, and the U.S. regulations to implement it, did not provide for carryover to the 1998 fishing year of any unharvested fish. To provide U.S. vessels additional fishing opportunity, NMFS reopens the fishery for Atlantic swordfish south of 5° N. latitude effective Monday, April 27, 1998. This reopening announcement provides ample time for vessels to travel to the south Atlantic fishing areas and to fish for swordfish prior to the end of the 1997 season on May 31, 1998.

Vessel operators who resume fishing for swordfish in the south Atlantic fishery are reminded that the closure for the north Atlantic swordfish fishery (63 FR 12687, March 16, 1998) remains in effect through June 1, 1998. During a closure of the north Atlantic swordfish fishery, any vessels north of 5° N latitude are limited to an incidental catch of no more than 15 swordfish per trip. Thus, vessels fishing in the south Atlantic may not transit north of 5° N. lat. with more than the incidental catch limit aboard. Vessels harvesting more than 15 swordfish in the south Atlantic must offload in a port south of 5° N. lat. or offload in the north after June 1, 1998. However, swordfish offloaded after June 1 will be counted against the 1998 fishing year. Swordfish offloaded north of 5° N. lat., must be sold to a permitted swordfish dealer, regardless of ocean area of catch.

Classification

This action is taken under 50 CFR 630.24 and 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 24, 1998

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11470 Filed 4–24–98; 5:10 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 83
Thursday, April 30, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–3]

Importation of Rhododendron Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period on a proposal to allow the importation of *Rhododendron* established in growing media. Final action on that proposal had been deferred to allow consultation regarding the action with the United States Fish and Wildlife Service, in accordance with the Endangered Species Act. That consultation has been completed, and, as a result, the proposed action has been limited to *Rhododendron* imported only from Europe. This reopening of the comment period will allow interested parties an opportunity to comment on this change to the original proposal.

DATES: Consideration will be given only to comments received on or before June 1, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 89–154–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 89–154–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, PIMT, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, we published in the **Federal Register** a proposed rule (58 FR 47074–47084, Docket No. 89–154–1) to allow the importation of five genera of plants established in growing media. That proposal is referred to below as ''the proposed rule.'' We accepted comments on the proposed rule for a period of 90 days, ending December 6, 1993.

In a final rule published in the **Federal Register** on January 13, 1995, and effective on February 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2), the Animal and Plant Health Inspection Service (APHIS) finalized provisions for importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium*. The final rule postponed action on *Rhododendron* established in growing media.

Based on comments submitted on the proposed rule, it was determined that before taking final action with regard to importing *Rhododendron*, APHIS should consult with the United States Fish and Wildlife Service regarding potential endangered species impacts associated with importation of *Rhododendron*. This consultation was necessary due to the presence in the United States of species of *Rhododendron* that are listed, and are proposed for listing, as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). Several commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced on imported *Rhododendron*.

We have now completed that consultation, in compliance with Section 7 of the Endangered Species Act (16 U.S.C. 1537). That consultation [1] revealed that if *Rhododendron* in growing media is imported from Europe in accordance with the requirements proposed by APHIS, such importation is not likely to adversely affect endangered or threatened species or their habitats. However, the consultation also revealed that insufficient data has been assembled to conclusively demonstrate that importing *Rhododendron* in growing media from areas other than Europe would not adversely affect endangered or threatened species or their habitats.

Therefore, we are modifying the provisions of the proposed rule that apply to *Rhododendron*, to apply only to *Rhododendron* from Europe. We propose to add the phrase ''*Rhododendron* from Europe'' to the list in § 319.37–8(e) of plants that may be imported established in approved growing media. Compliance with Section 7 of the Endangered Species Act has been completed for the importation of *Rhododendron* in growing media from European countries. Should others propose to initiate importation of *Rhododendron* in growing media, that proposed action would be reviewed with the Fish and Wildlife Service under the provisions of the Endangered Species Act at the time of the review.

We are not modifying the provisions of the proposed rule pertaining to three mitigation measures specific to *Rhododendron*. These mitigation measures appeared in the original proposal on September 7, 1993 (58 FR at 47079–80), and, for easy reference, are repeated here. With regard to the first mitigation measure, we propose that the greenhouse screen openings, in facilities which grow and import *Rhododendron* in accordance with § 319.37–8(e), shall not be greater than 0.2 mm. This differs from the current requirement of no greater than 0.6 mm screen openings for all other genera. As indicated in the original proposal, we had identified 10 significant pests of *Rhododendron* that could enter greenhouses through openings greater than 0.2 mm. These *Rhododendron* pests are geometrid and tortricid moths of the genera *Acleris, Arichanna, Cacoecimorpha,* and *Olethreutes,* the mites *Tarsonemus* and *Phyllocoptes,* the whitefly *Dialeurodes chittendenu,* the leafhopper *Phiogotettis cyclops,* the lace bug *Stephanitis caucasia,* and the scale insect *Eulecanium*. This first mitigation measure specific to *Rhododendron* appears as a proposed amendment to § 319.37–8(e)(2)(ii).

Secondly, we propose to require that the mother stock of *Rhododendron* spp. grown in accordance with the

[1] The letters documenting the consultation are available for viewing in the comment reading room (see ADDRESSES) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

regulations be visually inspected for signs of specified diseases that could cause substantial damage if introduced into the United States. Visual inspection of *Rhododendron* would be required for evidence of diseases caused by *Chrysomyxa ledi* var. *rhododendri, Erysiphe cruciferarum, Erysiphe rhododendri, Exobasidium vaccinum* and *E. vaccinum* var. *japonicum,* and *Phomopsis theae.* This second mitigation measure specific to *Rhododendron* appears in proposed § 319.37–8(e)(2)(ix).

Lastly, we propose that *Rhododendron* species must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly, and that have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii). Treating the mother plants for these pests and growing them in a controlled greenhouse for 6 months makes it very unlikely the mother plants will harbor pests. Allowing the mother plants to be propagated only through tissue culture or rootless stem cuttings makes it probable that, even if the mother plant somehow became infested with these pests, they would not be included in the tissue used to establish new plants for export to the United States. This third mitigation measure specific to *Rhododendron* appears in proposed § 319.37–8(e)(2)(x).

Reopening and Extension of Comment Period

We are reopening the comment period on that portion of Docket No. 89–154–1 that concerns the importation of *Rhododendron* established in growing media. We will accept comments for 30 days on the proposal to allow importation of *Rhododendron* in growing media from Europe only. This action will provide interested persons with additional time in which to prepare comments on the importation of *Rhododendron* in growing media from Europe.

Comments already received concerning the proposed importation of *Rhododendron* will remain under consideration and need not be resubmitted.

Executive Order 12866 and Regulatory Flexibility Act

The proposed rule (58 FR 47074–47084, Docket No. 89–154–1) has been determined to be economically significant, and was reviewed by OMB under Executive Order 12866.

The composite effect of this rulemaking and several anticipated related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of economically significant in Executive Order 12866.

At the time we published the proposal to allow importation of *Rhododendron* in growing media on September 7, 1993 (58 FR 47074–47084, Docket No. 89–154–1), we prepared a preliminary Regulatory Impact Analysis (RIA) and a initial Regulatory Flexibility Analysis (RFA) concerning the proposal and future rules allowing the importation of additional plants in growing media. The RIA and RFA took a broad approach and made certain necessary assumptions in order to form an estimate of economic effects. The RIA and RFA assumed that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and made generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. As announced in the proposed rule, the RIA and RFA will be continually updated and refined as choices are made and rulemaking advances, to incorporate more precise information on the costs, benefits, and other economic effects associated with rulemaking decisions.

The preliminary RIA and RFA addressed the importation of all requested genera, including *Rhododendron.* The preliminary RIA and RFA were updated in a final RIA and RFA in the final rule, which allowed importation of four genera in growing media (but not *Rhododendron*). The final RIA and RFA did not address *Rhododendron.* A cost-benefit analysis and final RFA addressing *Rhododendron*, including any data obtained as a result of comments, will be available when a final rule is published for importing *Rhododendron* from Europe in growing media. Copies of the preliminary RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule would allow *Rhododendron* established in growing media to be imported into the United States from any country in Europe that meets the requirements of Sec. 319.37–8(e). If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule. Some nursery stock is imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to the rule, and the rule will not require administrative proceedings before parties may file suit in court challenging the rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.37–8 [Amended]

2. Section 319.37–8 would be amended as follows:

a. In paragraph (e) introductory text, by adding the phrase ''*Rhododendron* from Europe,'' immediately before the phrase ''and *Saintpaulia*.''

b. In the second sentence in paragraph (e)(2)(ii), by adding the phrase ''(0.2 mm for greenhouses growing *Rhododendron* spp.)'' immediately after the phrase ''0.6 mm''.

c. In paragraph (e)(2)(vii), by removing the word ''and,'' immediately after the word ''pests;''.

d. In paragraph (e)(2)(viii), by removing the period at the end of the paragraph and adding a semi-colon in its place.

e. By adding new paragraphs (e)(2)(ix) and (e)(2)(x) to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) * * *

(2) * * *

(ix) If *Rhododendron* species, propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the plant protection service of the exporting country, and found free of evidence of diseases caused by the following pathogens: *Chrysomyxa ledi* var. *rhododendri, Erysiphe cruciferarum, Erysiphe rhododendri, Exobasidium vaccinum* and *vaccinum* var. *japonicum,* and *Phomopsis theae;* and

(x) If *Rhododendron* species, introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that:

(A) Have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly; and

(B) Have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii).

* * * * *

Done in Washington, DC, this 23rd day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–11497 Filed 4–29–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Model AMT–200 Powered Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Model AMT–200 powered gliders. The proposed AD would require replacing certain flexible hoses in the engine oil system with flexible hoses with a larger internal diameter. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Brazil. The actions specified by the proposed AD are intended to prevent inefficiency of the engine lubricating system because of ineffective flexible hoses, which could result in an in-flight engine shutdown with consequent loss of powered glider controllability.

DATES: Comments must be received on or before June 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6083; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–27–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain Aeromot Model AMT–200 powered gliders. The CTA reports that the steel piping in the engine oil system on the above-referenced powered gliders was replaced with flexible hoses that have a smaller internal diameter. These smaller diameter hoses lead to inefficiency of the engine lubricating system.

This condition, if not corrected in a timely manner, could result in an in-flight engine shutdown with consequent loss of powered glider controllability.

Relevant Service Information

Aeromot has issued Service Bulletin (SB) B.S. No. 200–79–036, Issue Date: January 30, 1997, which specifies procedures for replacing any engine oil system hose, part number 10702, 10703, or 10704; with a hose with a larger internal diameter, part number 10706, 10707, or 10708.

The CTA classified this service bulletin as mandatory and issued Brazilian AD 97–04–02, dated April 8, 1997, in order to assure the continued airworthiness of these gliders in Brazil.

The FAA's Determination

This powered glider model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CTA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CTA; reviewed all available information, including the service information referenced above; and

determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aeromot Model AMT–200 powered gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing any engine oil system hose, part number 10702, 10703, or 10704; with a hose with a larger internal diameter, part number 10706, 10707, or 10708. Accomplishment of the proposed installation would be in accordance with Aeromot SB B.S. No. 200–79–036, Issue Date: January 30, 1997.

Cost Impact

The FAA estimates that 18 powered gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per powered glider to accomplish the proposed replacements, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,560, or $420 per powered glider.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aeromot-Industria Mecanico Metalurgica Ltda.: Docket No. 98–CE–27–AD.

Applicability: Model AMT–200 powered gliders, serial numbers 200.046 through 200.066, certificated in any category.

Note 1: This AD applies to each powered glider 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 powered gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent inefficiency of the engine lubricating system because of ineffective flexible hoses, which could result in an in-flight engine shutdown with consequent loss of powered glider controllability, accomplish the following:

(a) *For powered gliders with a serial number in the range of 200.046 through 200.058:* Replace any engine oil system hose, part number 10702; with a hose with a larger internal diameter, part number 10706. Accomplish the replacement in accordance with Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997.

(b) *For powered gliders with a serial number in the range of 200.059 through 200.066:* Replace any engine oil system hose, part number 10702, 10703, or 10704; with a hose with a larger diameter, part number 10706, 10707, or 10708. Accomplish the replacement in accordance with Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997.

(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 glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(e) Questions or technical information related to Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997, Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Brazilian AD 97–04–02, dated April 8, 1997.

Issued in Kansas City, Missouri, on April 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11439 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace Jetstream Models 3101 and 3201 airplanes that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B). The proposed AD would require removing the ground inhibit time delay and the ground test relay from the stall warning and protection system. This proposed AD

also requires rewiring part of the stall warning and protection system to assure that system reliance is maintained after relay removal. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent failure of the ground inhibit relay while it is in the energized position caused by the current design, which could result in failure of the stall warning system and possible loss of control of the airplane in certain situations if the crew was not aware that the system had failed.

DATES: Comments must be received on or before June 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Jetstream Models 3101 and 3201 airplanes that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B). These modifications incorporate a ground inhibit relay and a ground test relay to prevent operations of the stall warning system until the aircraft is airborne for three seconds. The CAA reports that failure of the ground inhibit relay in the energized positioned could occur.

This condition, if not corrected in a timely manner, could result in loss of control of the airplane in certain situations if the crew was not aware that the stall warning system had failed.

Relevant Service Information

British Aerospace has issued Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997, which specifies procedures for the following:

—removing the ground inhibit time delay and the ground test relay from the stall warning and protection system; and

—rewiring part of the stall warning and protection system to assure that system reliance is maintained after relay removal.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Models 3101 and 3102 airplanes of the same type design that are registered in the United States and are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B), the FAA is proposing AD action. The proposed AD would require removing the ground inhibit time delay and the ground test relay from the stall warning and protection system. This proposed AD also requires rewiring part of the stall warning and protection system to assure that system reliance is maintained after relay removal. Accomplishment of the proposed actions would be in accordance with British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997.

Cost Impact

The FAA estimates that 301 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $108,360, or $360 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–28–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category, that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B).

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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the ground inhibit relay while it is in the energized position caused by the current design, which could result in failure of the stall warning system and possible loss of control of the airplane in certain situations if the crew was not aware that the system had failed, accomplish the following:

(a) Remove the ground inhibit time delay and the ground test relay from the stall warning and protection system, and rewire part of the stall warning and protection system to assure that system reliance is maintained after relay removal. Accomplish these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on April 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11438 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–06–AD]

Airworthiness Directives; Rolls-Royce, plc Viper Series Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc Viper series turbojet engines. This proposal would require a one-time visual inspection of the barometric flow control unit (BFCU) augmentor and bypass valve joint washer for joint washer integrity, and replacement, if necessary, with serviceable parts. This proposal is prompted by a report of a high pressure fuel leak at the BFCU augmentor and bypass valve assembly joint, washer interface. The actions specified by the proposed AD are intended to prevent a high pressure fuel leak, which could result in an engine nacelle fire and damage to the aircraft.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ad-engineprop@faa.dot.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce, plc, Technical Publications Department CLS–4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117–979–1234, fax 117–979–7575. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–06–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R-R) Viper Mk. 521, 522, 526 and 601 series turbojet engines. The CAA advises that they have received a report of an accident following an outbreak of fire on a military Viper variant due to a barometric flow control unit (BFCU) augmentor and bypass valve assembly interface joint failure. The failure is attributed to inadequate interface torque loads and manufacturing defects with the interface washer. The civil version of the Viper is sufficiently similar to the military variant that experienced the failure to warrant this AD action against the civil version. This condition, if not corrected, could result in a high pressure fuel leak, which could result in an engine nacelle fire and damage to the aircraft.

R–R has issued Service Bulletins (SBs) Nos. 73–A120, 73–A121, 73–A68, 73–A69, 73–A35, and 73–A36, dated November 1997, that specify procedures for a one-time inspection of BFCU augmentor and bypass valve joint washer for joint washer integrity, and replacement, if necessary, with serviceable parts. The CAA classified these SBs as mandatory in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require a one-time inspection of BFCU augmentor and bypass valve joint washer for joint washer integrity, and replacement, if necessary, with serviceable parts. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 140 engines of the affected design in the worldwide fleet. The FAA estimates that 52 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 98–ANE–06–AD.

Applicability: Rolls-Royce plc (R–R) Viper Mk. 521, 522, 526 and 601 series turbojet engines, installed on but not limited to Raytheon (formerly British Aerospace, Hawker Siddeley) Models BH.125 and DH.125 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure fuel leak, which could result in an engine nacelle fire and damage to the aircraft, accomplish the following:

(a) For R–R Viper Mk. 521, and 522 series engines, perform a one-time inspection of the barometric flow control unit (BFCU) augmentor and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R–R Service Bulletins (SBs) Nos. 73–A120 and 73–A121, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours time in service (TIS) since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

(b) For R–R Viper Mk. 526 series engines, perform a one-time inspection of the barometric flow control unit (BFCU) augment or and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R–R Service Bulletins (SBs) Nos. 73–A68 and 73–A69, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours time in service (TIS) since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

(c) For R–R Viper Mk. 601 series engines, perform a one-time inspection of the BFCU augmentor and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R–R SBs Nos. 73–A35 and 73–A36, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours TIS since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) 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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 23, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–11436 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–310–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that currently requires, among other things, repetitive inspections to ensure correct synchronization of the hydraulic control valves of the trimmable horizontal stabilizer (THS) actuator; replacement of the horizontal stabilizer actuator motors with new or serviceable motors and resynchronization of the valves, or adjustment of the synchronization, if necessary; and a functional test of the THS. This proposed AD would add a requirement to replace the hydraulic motor of the THS with an improved motor, which would constitute terminating action for the repetitive inspections. This proposal also would expand the applicability to include additional airplanes. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent desynchronization of the hydraulic control valves, which could result in runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and potential pitch upset.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–310-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97-NM–310-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–310-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 12, 1996, the FAA issued AD 96–01–52, amendment 39–9491 (61

FR 2697, January 29, 1996), applicable to certain Airbus Model A310 and A300–600 series airplanes. That AD requires, among other things, repetitive inspections to ensure correct synchronization of the hydraulic control valves of the trimmable horizontal stabilizer (THS) actuator; replacement of the horizontal stabilizer actuator motors with new or serviceable motors and resynchronization of the valves, or adjustment of the synchronization, if necessary; and a functional test of the THS. That action was prompted by a report of desynchronization of the hydraulic control valves that direct fluid to the horizontal stabilizer actuator motors, which resulted in uncommanded movement of the THS. The actions specified by that AD are intended to prevent such desynchronization, which could lead to runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and potential pitch upset.

Actions Since Issuance of Previous Rule

In the preamble to AD 96–01–52, the FAA specified that the actions required by that AD were considered ''interim action.'' The FAA indicated that it might consider further rulemaking action once a final action was identified. The manufacturer now has developed a modification of the hydraulic motor of the THS that includes an improved camplate retention device and pin. The FAA has determined that further rulemaking action is indeed necessary in order to address the unsafe condition and ensure the continued safe operation of the affected airplanes; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A310–27–2081 (for Model A310 series airplanes) and A300–27–6035 (for Model A300–600 series airplanes), both dated November 26, 1996. These service bulletins describe procedures for the installation of a modified hydraulic motor that includes an improved camplate retention device and pin. The effectivity of these service bulletins includes the airplanes affected by the service bulletins that are required by the existing AD, and includes additional airplanes. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 97–081–217(B), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–01–52 to continue to require, among other things, repetitive inspections to ensure correct synchronization of the hydraulic control valves of the THS actuator; replacement of the motors of the horizontal stabilizer actuator with new or serviceable motors and resynchronization of the valves, or adjustment of the synchronization, if necessary; and a functional test of the THS. This proposed AD would add a requirement to replace the THS actuator hydraulic motor with an improved motor. Accomplishment of this replacement would constitute terminating action for the repetitive inspection requirements. This proposed AD also would expand the applicability of the existing AD to include additional airplanes. The replacement of the motor with an improved motor would be required to be accomplished in accordance with the service bulletins described previously.

Difference Between the Proposed Rule and the French AD

Operators should note that, although the parallel French airworthiness directive recommends accomplishing the modification by August 31, 1998 (providing a compliance time of approximately 17 months), the FAA has determined that a 17-month compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the recommendations by the DGAC, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to accomplish the modification. In light of all of these factors, the FAA finds a 12-month compliance time for accomplishment of the modification to be warranted.

Cost Impact

There are approximately 88 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection currently required by AD 96–01–52, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of the existing AD on U.S. operators is estimated to be $5,280, or $60 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the new actions proposed by this AD on U.S. operators is estimated to be $21,120, or $240 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9491 (61 FR 2697, anuary 29, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 97–NM–310–AD. Supersedes AD 96–01–52, Amendment 39–9491.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 11607 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 otherwise 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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent desynchronization of the hydraulic control valves, which could result in runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and potential pitch upset, accomplish the following:

RESTATEMENT OF REQUIREMENTS OF AD 96–01–52:

(a) Within 12 days after February 5, 1996 (the effective date of AD 96–01–52, amendment 39–9491), perform an inspection to ensure correct synchronization of the hydraulic control valves of the trimmable horizontal stabilizer (THS) actuator, in accordance with paragraph 4.2.2.1 of Airbus All Operators Telex (AOT) 27–21, Revision 1, dated January 5, 1996.

(1) If the actuator is synchronized correctly, prior to further flight, perform a functional test of the THS in accordance with paragraph 4.2.2.1 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(2) If the actuator is desynchronized slightly, as specified in the AOT, prior to further flight, adjust the synchronization, and perform a functional test of the THS, in accordance with paragraph 4.2.2.2 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(3) If the actuator is desynchronized significantly, as specified in the AOT, prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD. Prior to further flight following the accomplishment of either of those paragraphs, adjust the synchronization, and perform a functional test of the THS, in accordance with paragraph 4.2.2.3 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(i) Remove and replace the hydraulic motors of the horizontal stabilizer actuator (HSA) with new or serviceable motors in accordance with procedures specified in the Airplane Maintenance Manual. Or

(ii) Remove the hydraulic motors of the HSA and perform the various follow-on actions specified in paragraph 4.2.2.4 of the AOT, in accordance with that paragraph. (The follow-on actions include checking the motors and the cam seats, assembling the motors, and metal stamping the modification plate of the motors.) If any discrepancy is found during the check, prior to further flight, repair in accordance with paragraph 4.2.2.4 of the AOT.

(b) For airplanes on which any maintenance action relating to a hydraulic motor or a hydraulic valve block of the HSA has occurred since the airplane was new: Within 12 days after February 5, 1996, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace both hydraulic motors of the HSA with new or serviceable motors in accordance with the procedures specified in the Airplane Maintenance Manual. Adjust the synchronization, and perform a functional test of the THS in accordance with paragraph 4.2.2.3 of Airbus AOT 27–21, Revision 1, dated January 5, 1996. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service. Or

(2) Remove the hydraulic motors of the HSA and perform the various follow-on actions specified in paragraph 4.2.2.4 of the AOT, in accordance with that paragraph of the AOT. Adjust the synchronization, and perform a functional test of the THS in accordance with paragraph 4.2.2.3 of the AOT. (The follow-on actions include checking the motors and the cam seats, assembling the motors, and metal stamping the modification plate of the motors.) If any discrepancy is found during the check, prior to further flight, repair in accordance with paragraph 4.2.2.4 of the AOT. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

NEW REQUIREMENTS OF THIS AD:

(c) Within 1 year after the effective date of this AD, replace the hydraulic motors of the THS actuator with improved motors, in accordance with Airbus Service Bulletin A310–27–2081 (for Model A310 series airplanes) or A300–27–6035 (for Model A300–600 series airplanes), both dated November 26, 1996, as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD.

(d) As of the effective date of this AD, no person shall install on any airplane a THS actuator having part number 47142–201/–203.

(e)(1) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(e)(2) Alternative methods of compliance, approved previously in accordance with AD 96–01–52, amendment 39–9491, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–081–217(B), dated March 12, 1997.

Issued in Renton, Washington, on April 23, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11435 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011, 4022, 4041A, 4044, 4050, 4281

RIN 1212–AA88

Valuation and Payment of Lump Sum Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulations to increase the maximum value of benefits that the PBGC may pay in lump sum form, and certain other lump sum thresholds, from $3,500 to $5,000. The proposed amendments do not affect lump sum benefits paid by ongoing plans.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 203(e) of ERISA specifies the maximum value that a plan may provide it will pay in a lump sum (*i.e.*, single installment) to a participant or surviving spouse without consent. The Taxpayer Relief Act of 1997 increased the section 203(e) maximum from $3,500 to $5,000 effective for plan years beginning after August 5, 1997.

The PBGC proposes to amend its regulations to increase various $3,500 thresholds to $5,000 and to make other changes relating to lump sum payments:

- Under the amendment, the PBGC may make a lump sum payment of a benefit that has a value of $5,000 or less as of the plan's termination date. The amendment provides rules for applying the lump sum threshold where the PBGC issues a determination on title IV benefits before it issues a determination on benefits payable under ERISA section 4022(c). Consistent with its current practice, the PBGC will give the participant the option to receive the benefit in the form of an annuity if the monthly benefit (at normal retirement age in the normal form for an unmarried participant) is equal to or greater than $25.

Applicability: The amendment will apply to any initial determination issued on or after the amendment's effective date. For any initial determination issued before the amendment's effective date, the PBGC may make a lump sum payment of a benefit with a value of $5,000 or less, provided (1) the benefit is not yet in pay status, and (2) the participant (with spousal consent) or beneficiary elects the lump sum payment.

- Under the amendment, the lump sum threshold under § 4044.52(b), which is used for determining whether lump sum or annuity assumptions are used to value benefits for purposes of allocating assets to benefits under ERISA section 4044, is $5,000.

Applicability: The amendment will apply to any plan with a termination date on or after the amendment's effective date.

- The reference to the lump sum threshold in the PBGC's Model Participant Notice (29 CFR part 4011) is changed from $3,500 to $5,000.

Applicability: This amendment will apply to any Participant Notice issued on or after the amendment's effective date. However, for a reasonable time period, the PBGC will not treat a Participant Notice as failing to satisfy the Participant Notice requirements merely because it refers to the $3,500 threshold.

- The dollar thresholds in the Missing Participants regulation are increased from $3,500 to $5,000. *See* §§ 4050.2 (definition of *missing participant annuity assumptions*) and 4050.5(a)(2) (*de minimis* lump sum).

Applicability: This amendment will apply to missing participants for whom the deemed distribution date is on or after the amendment's effective date.

- The dollar threshold up to which the plan sponsor of a terminated multiemployer plan that is closing out may make a lump sum payment of nonforfeitable benefits is increased from $3,500 to $5,000.

Applicability: This amendment will apply to any distribution made on or after the amendment's effective date.

- In the case of participant deaths after the termination date, the amendment allows the PBGC to make a lump sum payment of a qualified preretirement survivor annuity with a value of $5,000 or less if the surviving spouse elects a lump sum.

Applicability: This amendment will apply to any lump sum payment made on or after the amendment's effective date.

- The amendment allows the PBGC to make a lump sum payment, without regard to amount, of any benefits due to an estate (*e.g.*, under a certain and continuous benefit where the designated beneficiary predeceases the participant) if the estate elects a lump sum.

Applicability: This amendment will apply to any payment made on or after the amendment's effective date.

Finally, the amendment (1) eliminates, as unnecessary, two provisions in its multiemployer valuation regulation that refer to the $3,500 limit, and (2) makes clear that the lump sum value of a benefit is calculated by valuing the monthly annuity benefit (which excludes the value of certain preretirement death benefits, such as a qualified preretirement survivor annuity).

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866. The PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. The amendments will affect only *de minimis* benefits and will have an immaterial effect on liabilities associated with plan termination. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4022, 4041A

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

29 CFR Part 4011, 4050, 4281

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4011, 4022, 4041A, 4044, 4050, and 4281 of 29 CFR chapter XL as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1311.

Appendix A to Part 4011 [Amended]

2. Appendix A to Part 4011 is amended by removing the sentence ''The PBGC does not pay lump sums exceeding $3,500.'' which immediately precedes the heading ''WHERE TO GET MORE INFORMATION'', and adding in its place the sentence ''The PBGC generally does not pay lump sums exceeding $5,000.''

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302 and 1322.

4. In § 4022.7, paragraph (b)(1) is revised, and new paragraph (d) is added, to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit may be paid in a lump sum. In determining whether the lump sum value of a benefit is $5,000 or less, the value of any amounts returned under paragraph (b)(2) of this section is disregarded. If the PBGC determines a title IV benefit before it determines the benefit payable under section 4022(c) of ERISA, the $5,000 threshold shall apply separately to the title IV benefit. The section 4022(c) benefit shall be paid in annuity form if the title IV benefit is paid in annuity form, and otherwise shall be separately subject to the $5,000 threshold.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraph (b)(1)(i) of this section and the monthly benefit is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC shall provide the participant (or the beneficiary of a participant who is deceased as of the termination date) the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a qualified preretirement survivor annuity is $5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Certain and continuous payments to estates.* The PBGC may pay any benefits payable to an estate (*e.g.*, in the case of benefits under a certain and continuous annuity where the designated beneficiary predeceases the participant) in a lump sum without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The payments shall be discounted using the immediate interest rate that would be applicable to the plan under § 4044.52(b) if the termination date had been the date of death (or, if later, [effective date of final rule]).

* * * * *

(d) *Determination of lump sum amount.* The lump sum value of a benefit shall be determined in accordance with § 4044.52(b).

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

5. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

§ 4041A.43 [Amended]

6. In § 4041A.43, paragraph (b)(1) is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

7. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.52 [Amended]

8. In section 4044.52, the introductory text to paragraph (b) is revised to read as follows:

§ 4044.52 Valuation of benefits.

* * * * *

(b) *Benefits payable as lump sums.* For valuing benefits payable as lump sums (including the return of accumulated employee contributions upon death), and for determining whether the lump sum value of a benefit exceeds $5,000, the plan administrator shall determine the lump sum value of a benefit by valuing, in accordance with paragraph (a) of this section, the monthly annuity benefits payable in the form determined under § 4044.51(a) and commencing at the time determined under § 4044.51(b), except that—

* * * * *

§ 4044.54 [Amended]

9. Section 4044.54 is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4050—MISSING PARTICIPANTS

10. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 4050.2 [Amended]

11. In § 4050.2, paragraph (5) of the definition of *Missing participant annuity assumptions* is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

§ 4050.5 [Amended]

12. In § 4050.5, paragraph (a)(2) is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

Appendix A to Part 4050 [Amended]

13. In Appendix A, the heading is amended by adding at the end, the words ''in Plans With Deemed Distribution Dates on and After [effective date of final rule]''; the introductory text to Example 1 is amended by removing ''$1,750'' and adding, in its place, ''$3,500''; paragraph (1) to Example 1 is amended by removing ''$1,700'' each time it appears and adding, in each place, ''$3,000''; paragraph (2) to Example 1 is amended by removing ''$3,700'' and adding, in its place, ''$5,200'' and removing ''$3,200'' each time it appears and adding, in each place, ''$4,700''; paragraph (3) to Example 1 is amended by removing ''$3,400'' and adding, in its place, ''$4,900'' and removing ''$3,450'' each time it appears and adding, in each place, ''$4,950''; and paragraph (1) of Example 2 is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

14. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

§ 4281.13 [Amended]

15. In section 4281.13, paragraph (b) is removed, the introductory text to paragraph (a) is amended by removing the paragraph designation, the heading, and the words ''paragraph (b) of this section (regarding the valuations of benefits payable as lump sums under trusteed plans) and'', and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a) through (e).

§ 4281.14 [Amended]

16. In section 4281.14, the section heading is amended by removing the phrase ''—in general'', and paragraph (a) is amended by removing the words

''Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trusteed plans), and subject'' and adding, in their place, the word ''Subject''.

§ 4281.15 [Removed and Reserved]

17. Section 4281.15 is removed and reserved.

Issued in Washington, D.C. this 24th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–11519 Filed 4–29–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 317, 351, 353, and 370

Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury hereby publishes a proposed rule governing the issue and offering of United States Savings Bonds. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

DATES: Submit comments on or before June 1, 1998.

ADDRESSES: Comments should be sent to the attention of Wallace L. Earnest, Director, Division of Staff Services, Room 507, Bureau of the Public Debt, 200 3rd St., Parkersburg, WV 26106–1328. Additionally, comments may be sent by e-mail to the following address: <Savbonds@bpd.treas.gov>. When sending comments by e-mail, please provide your full name and mailing address, and send the comments in ASCII format. Comments received will be available for public inspection and copying at the Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220. Individuals wishing to visit the library should call (202) 622–0990 for an appointment. Copies of this proposed rule can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <http://www.savingsbonds.gov>.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Director, Division of Staff Services, at (304) 480–6319 or by e-mail at <wearnest@bpd.treas.gov>; Troy D. Martin, Senior Program Analyst, Division of Staff Services, at (304) 480–6545 or by e-mail at <tmartin@bpd.treas.gov>; Edward C. Gronseth, Deputy Chief Counsel, at (304) 480–5192 or by e-mail at <egronset@bpd.treas.gov>; or Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, at (202) 219–3320 or by e-mail at <gtill@bpd.treas.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

The growth of electronic commerce and the World Wide Web have led to a flourishing of financial service providers and new payment methods. However, the Bureau of the Public Debt has been unable to take full advantage of these developments in the sale of United States Savings Bonds because of apparent restrictions in existing regulations. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

The most important proposed changes are directed at four areas in title 31 of the Code of Federal Regulations. First, changes in §§ 317.2 and 317.3 would amend the rules used to determine which organizations may serve as issuing agents and the procedures used to qualify these organizations as issuing agents. Second, changes to § 351.5 would expand the means by which issuing agents may sell savings bonds. Third, a new subpart in part 370 would address the use of Automated Clearing House debit entries for the sale of bonds issued through the Bureau of the Public Debt. Fourth, another new subpart in part 370 would address the electronic submission of purchase applications and remittances for the sale of bonds issued through the Bureau of the Public Debt. This second new subpart in part 370 would facilitate Treasury's intention to sell savings bonds through remittances by credit cards at the World Wide Web site of the Bureau of the Public Debt.

II. Summary of Amendments

A. Regulations Governing Agencies for Issue of Savings Bonds (31 CFR Part 317)

(1) Definitions (§ 317.1)

The revised definition of ''issuing agent'' would note the authority of the Commissioner of the Public Debt or the Commissioner's designee to qualify issuing agents, as explained in § 317.2. The definition also would clarify that an issuing agent acts as an agent of the purchaser in handling the remittance. The proposed language addressing the handling of the remittance is consistent with current practice. The Secretary of the Treasury collects purchase funds from issuing agents, not the public. If an issuing agent discovers that the remittance is uncollectible or must be returned after the issuance of a bond, the Secretary is nonetheless entitled to payment from the issuing agent. The issuing agent bears the risk of loss for non-collection or return of the remittance.

(2) Organizations Eligible to Serve as Issuing Agents (§ 317.2)

Currently, issuing agent eligibility is limited to financial institutions (such as banks and credit unions), agencies of the United States and state and local governments, and employers operating payroll savings plans. This document proposes to expand the types of organizations that are eligible to serve as issuing agents.

One proposed change, in § 317.2(c), would allow organizations that operate payroll savings plans on behalf of employers to serve as issuing agents. The proposed change is designed to bolster payroll savings plan sales from small businesses, which often do not have the resources to maintain such plans themselves. As is the case with employer organizations, an organization operating a payroll service plan on behalf of an employer organization would be eligible for issuing agent fees under the proposed rule only if it inscribes savings bonds.

Another proposed addition, set out in § 317.2(d), would give the Commissioner of the Bureau of the Public Debt or the Commissioner's designee the authority to qualify issuing agents when to do so would be in the public interest. The Commissioner or the Commissioner's designee could use such process as deemed to be appropriate in selecting the issuing agent. The selected issuing agent would also be subject to such conditions as deemed to be appropriate.

The new § 317.2(d) would be used for the selection of entities to sell bonds in unique ways as new methods of sales emerge. In particular, this provision would facilitate the qualification of issuing agents to sell savings bonds through electronic methods, such as those offered by financial services providers through World Wide Web access.

In qualifying issuing agents under this provision, the Commissioner or the Commissioner's designee would balance the convenience and cost-effectiveness of using new purchase methods against the need to insure the security and reliability of those methods.

(3) Procedures for Qualifying and Serving as an Issuing Agent (§ 317.3)

All organizations currently must apply to a designated Federal Reserve Bank to receive issuing agent qualification. The section would be amended to state that an organization that seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c) would be approved by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee, though application still would be made through a designated Federal Reserve Bank.

(4) Issuance of Bonds (§ 317.6)

The issuing agent fee provision would be simplified and continue to emphasize that fee schedules are set out not in the regulations, but through a separate publication in the **Federal Register**. The proposed changes would have no effect on the current fee structure, though the Bureau of the Public Debt would reserve the right to create new categories of fees as new ways of selling bonds develop.

(5) Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4–67 (Third Revision), Fiscal Service, Bureau of the Public Debt

The appendix would be revised, primarily for changes in terminology. For instance, the definition of ''issuing agent'' would be redefined to reflect the changes to that term in § 317.2. The term ''over-the-counter'' would be redefined to reflect the expanded meaning given to that term in § 351.5 of this chapter. Among other minor changes, paragraph (3) of subpart B would be removed because that provision no longer has application.

B. Offering of United States Savings Bonds, Series EE (31 CFR Part 351)

(1) Governing Regulations for Series EE Bonds (§ 351.1)

This section would state that the regulations governing the transfer of funds by electronic means on account of United States securities in part 370 of this chapter would apply only to transactions for the purchase of bonds issued through the Bureau of the Public Debt. The regulations in part 370 would have no application to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

(2) Purchase of Bonds (§ 351.5)

Currently, this section provides for four categories of savings bond sales: (1) ''payroll plans''; (2) ''over-the-counter/mail''; (3) ''bond-a-month plan''; and (4) ''employee thrift, savings, vacation, and similar plans.'' Because some of these categories are limited and outdated, they may actually inhibit sales rather than facilitate them.

Furthermore, a comparison with the appendix to § 317.8 of this chapter (which discusses the remittance of sales proceeds and registration records by issuing agents) shows a lack of consistency in the categories and terminology used to define bond sales. In discussing bond sales, the appendix does not mirror § 351.5 but rather combines the four categories of sales described in § 351.5 into two categories: (1) ''payroll sale''; and (2) ''over-the-counter sale.'' The term ''payroll sale'' is not used in § 351.5, which means that different terminology is used in the two provisions despite the fact that both provisions address bond sales. Also, the term ''over-the-counter'' has an expanded meaning in the appendix to § 317.8 as compared to its use in § 351.5, making the regulations more difficult to understand.

The proposed rule would revise § 351.5 (as well as the appendix to § 317.8), using the two categories in the appendix to § 317.8: (1) ''payroll sales''; and (2) ''over-the-counter sales.'' The proposed payroll sales category would include sales through ''payroll savings plans'' and ''employee thrift, savings, vacation, and similar plans,'' the provisions of which are already described in the substance of the current § 351.5. The proposed rule also states that employers and the organizations operating payroll savings plans on behalf of employers would be able to sell bonds only pursuant to payroll savings plans. These types of issuing agents would not be allowed to sell bonds over-the-counter.

Over-the-counter sales would be all sales that are not payroll sales. For over-the-counter sales, the proposed rule would provide that ''the purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent.'' This broad provision would ensure that issuing agents have the flexibility to sell bonds through channels in addition to those currently set out in § 351.5. For instance, the proposed rule would authorize issuing agents to sell savings bonds through electronic means such as the World Wide Web. Both the application and remittance could be submitted and signed through electronic methods agreed upon by the parties.

The regulation would not impose limitations on the types of remittances which an issuing agent may accept. As always, however, the issuing agent would bear the burden of collection and risk of non-collection for remittances it accepts. The Secretary of the Treasury takes payment from the issuing agent, not the purchaser. The Secretary of the Treasury has no obligation to return funds received from an issuing agent after issuance of a bond if the issuing agent cannot collect or must return the remittance.

Finally, although the proposed changes would have no effect on the current issuing agent fee structure, the Bureau of the Public Debt would reserve the right to make changes to the fee structure as new ways of selling bonds develop.

C. Regulations Governing United States Savings Bonds, Series EE and HH (31 CFR Part 353)

(1) Application for Relief—Non-Receipt of Bond (§ 353.27)

The regulations currently provide little guidance as to the status of bond purchases if the Secretary of the Treasury does not receive payment. While not likely, an issuing agent may fail after receiving the remittance from a purchaser but before the Secretary collects the sales proceeds from the issuing agent.

If an issuing agent has inscribed a bond, the Secretary will honor the bond even if the Secretary cannot collect the sales proceeds from the issuing agent. This policy is consistent with existing regulations, which note that the registration of an issued bond is generally conclusive of ownership. If a bond has not been inscribed, the proposed rule states that the Secretary is authorized to issue bonds to preserve the public's confidence in dealing with issuing agents, even if the Secretary cannot collect the sales proceeds from the issuing agent.

D. Regulations Governing the Transfer of Funds by Electronic Means on Account of United States Securities (31 CFR Part 370)

(1) Scope (§ 370.0)

This section would be amended to clarify that to the extent that the rules

in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the rules in this part 370 would apply in the event of any inconsistencies.

(2) Definitions (§ 370.1)

Several definitions would be added to or changed in this section. The definition of ''Automated Clearing House (ACH) entry'' would refer to transactions accomplished in accordance with the applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

Other terms would be drawn from several authorities. The definition of ''deposit account'' would be taken principally from Regulation E of the Board of Governors of the Federal Reserve (12 CFR part 205). The definition of ''financial institution'' would be the same as included in a proposed rule to amend part 208 of this title, ''Management of Federal Agency Disbursement,'' published in the **Federal Register** on September 16, 1997, beginning at page 48714. The definition of ''originator'' would be derived from the Operating Rules and Operating Guidelines of the National Automated Clearing House Association.

(3) Definition (§ 370.4)

The definition of ''payment'' would be removed from the general definitional section in subpart A and placed into a specific definitional section applying only to subpart B. The limited definition of a payment as a deposit from the Department to the account of the owner only has application in subpart B and may cause confusion by its application throughout part 370.

(4) Governing Law (§ 370.30)

Subpart D would establish rules and the exclusive liability of the Bureau of the Public Debt for debit entries to a purchaser's account to buy bonds from the Bureau of the Public Debt. As set out in § 351.1, part 370 would apply only to transactions for the purchase of bonds issued through the Bureau of the Public Debt. These rules would not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt or the Commissioner's designee deems otherwise.

It is anticipated that a purchaser would authorize an entity named on an approved authorization form to be the originator for the debit entries. This entity would forward collected funds to Treasury in exchange for a fee (unless the Bureau of the Public Debt chooses to name itself as the originator). The Bureau of the Public Debt would then issue the bonds through a Federal Reserve Bank acting as a fiscal agent for the United States.

(5) Authorization of Purchaser (§ 370.31)

This section would state that all debit authorizations must be accomplished through a procedure approved by the Bureau of the Public Debt. An authorization would have to be signed. The authorization would allow for recurring debit entries. The section would also provide that except to the extent required by the Bureau of the Public Debt, the originator will not be required to take additional steps to verify the identity of the purchaser or the authenticity of the signature.

The Bureau of the Public Debt would retain the right to name a successor to the originator without additional notice to the purchaser, though it may ask the successor to provide such notice as a customer service. This provision is drawn from the official staff interpretation to § 205.10(b) of Regulation E of the Board of Governors of the Federal Reserve (12 CFR part 205), which allows ''successor institutions'' to assume a originator's role without notice or a new authorization.

Finally, a purchaser's subsequent authorization would cancel a previous authorization only if so noted by the purchaser on the subsequent authorization form. This provision would allow a purchaser to make additional recurring purchases of savings bonds through debit entries without having to list anew all the recurring purchases on a single form.

(6) Cancellation or Suspension by the Bureau of the Public Debt (§ 370.32)

This section would state that the Bureau of the Public Debt could terminate or suspend the availability of debit entries at any time, and its decision to do so would be final.

(7) Cancellation or Suspension by Purchaser (§ 370.33)

Under this section, a purchaser would be able to cancel or suspend debit ACH entries for the purchase of bonds by providing written notice to the originator.

(8) Changes and Error Resolution (§ 370.34)

This section would provide that if a person gives an oral notice relating to the correctness of bond purchase information or a debit entry to the person's account, the originator could require a written notice from the person, which must be received within thirty days. In addition, the originator would be allowed to ignore the oral notice if written notice is not received within thirty days. Finally, the originator would be able to suspend further debit entries during a resolution to any notice, written or oral.

(9) Prenotification (§ 370.35)

The section would leave the requirement of a prenotification, as well as the length of the period during which the originator must wait after sending a prenotification before sending a live debit entry, up to the discretion of the Bureau of the Public Debt.

(10) Liability (§ 370.36)

This section would state that the Bureau of the Public Debt would not be liable in disputes arising out of debit entries, unless the Bureau of the Public Debt names itself as an originator. Disputes arising out of debit entries would be the responsibility of the originator. Also, unless the Bureau of the Public Debt designates itself or a fiscal or financial agent as the originator, the originator would serve as the agent of the purchaser in handling the remittance.

In any case, the Bureau of the Public Debt's liability would be limited to the amount of the improper debit, less any losses caused due to the failure of a claimant to exercise due diligence. The Bureau of the Public Debt's responsibility would be to replace lost, stolen, destroyed, mutilated, and defaced bonds, as well as to issue or replace bonds not received, under the rules set out in subpart F of part 353 of this chapter, as proposed to be amended.

(11) Governing Law (§ 370.50)

Subpart E would establish rules for the electronic submission of purchase applications and remittances for the purchase of savings bonds issued through the Bureau of the Public Debt. The subpart explicitly would enable the Bureau of the Public Debt's acceptance of electronic signatures, establish the rules of contract formation accomplished by electronic means, address the admissibility of digital signatures, and set out the exclusive liability of the Bureau of the Public Debt for these transactions.

The first use of these provisions would be to facilitate the sale of savings bonds over the World Wide Web through remittances paid for by credit cards. On April 30, 1997, the Secretary of the Treasury announced his support of this goal, stating:

I am pleased to announce a number of steps we are taking to make savings bonds more attractive investments for American savers. * * *

[W]e are using technology in an effort to make information about the savings bond program more available to all Americans * * *. [W]e will take another step to make savings bonds more available by introducing credit card purchasing on-line.

The bonds will be available at World Wide Web site of the Bureau of the Public Debt, at <http://www.savingsbonds.gov>. These sales will utilize the latest in technology (including the issuance of digital certificates to credit card holders and the use of the Secure Electronic Transactions protocol), which may hamper the initial availability of bonds sold in this fashion but which will help insure the security of these sales for the Government and purchasers.

It is important to note the limited scope and extent of these proposed regulations. As would be stated in § 351.1 of this chapter, these rules would apply only to savings bond transactions accomplished through the Bureau of the Public Debt. These regulations would not apply to savings bond sales accomplished through issuing agents such as banks and employers offering payroll savings plans. Furthermore, the regulations are relatively brief, at least in comparison to work done by the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, and the United Nations Commission on International Trade Law, among others. Also, many states have passed or are contemplating comprehensive legislation in this area.

Given the rapidly changing nature of the technology, its narrow initial use by the Bureau of the Public Debt, and a desire to avoid even the appearance of encroaching upon the right of states to pursue their own legislative approaches, these electronic and digital signature regulations must be drawn in a limited fashion. The regulations would leave unchanged the right of states to determine their own rules for electronic and digital signatures and would not address any issues related to certification authorities. Some brief federal contract law provisions addressing electronic and digital signatures are necessary to facilitate the sale of savings bonds over the Internet by the Bureau of the Public Debt, and that is what these regulations seek to implement.

(12) Definitions (§ 370.51)

The section would list five definitions. The most fundamental would be a definition of ''signature.'' A signature would be ''any symbol or method executed or adopted by a party with present intention to be bound,'' which is a traditional legal definition of a signature. The definition would encompass electronic signatures. Case law on signatures indicates that almost anything can constitute a signature, from printed and typewritten names to account numbers, if executed with an intent to be bound. Electronic signatures are no different from other forms of signatures in this regard. To retain some control over a new and uncertain process, an electronic signature submitted to the Bureau of the Public Debt would have to be of a type approved by the Bureau of the Public Debt.

In addition, the section would include a definition of ''digital signature,'' which is a special type of electronic signature. Treasury will use digital signatures in the sale of savings bonds over the Internet. A digital signature uses ''public-key encryption'' and a ''message digest function'' in transforming an electronic ''record.'' The definitions of these terms largely are taken from model, proposed, or existing authorities.

Public-key encryption is a process that relies upon an algorithm to produce two mathematically related but different keys. If public-key encryption is implemented securely, it is computationally infeasible to derive one key from the other. The keys can be used for several purposes, including the creation and verification of digital signatures. One key (the private key) is kept private and can be used to create a digital signature, while the other key (the public key) may be distributed to anyone and may be used by a relying party to verify a digital signature. The association of a public key (and by implication, its corresponding private key) to the identity of a particular person is accomplished through the use of digital certificates, issued by certification authorities.

The use of a message digest function (also known as a hash function) is an essential element in the creation and verification of digital signatures. A message digest function is an algorithm that typically provides a shortened, mathematical version of a longer electronic record. Even a small change to an electronic record can result in a dramatic change to a message digest, aiding in the verification of a digital signature and any electronic record to which the signature is attached. The signer uses the signer's private key to encrypt the short message digest, rather than the entire electronic record. This digital signature (the message digest, encrypted by the signer's private key) is sent to the recipient, along with a copy of the electronic record.

Upon receipt of the digital signature and electronic record, the recipient uses the signer's public key to decrypt the digital signature and recover the message digest. The recipient then runs the received copy of the electronic record through the same message digest function used to create the received message digest. If the two results are identical, the recipient knows that the electronic record was encrypted by the signer's private key and that the electronic record was not tampered with from the time the signer created the digital signature.

(13) Contract Formation (§ 370.52)

The ''mailbox rule'' would be adopted for the acceptance of purchase applications submitted electronically to the Bureau of the Public Debt. An application for a purchase of a bond submitted by electronic means would be an offer to create a bond contract. Acceptance of the offer by the Bureau of the Public Debt would be effective and a contract formed upon the transmittal of the message of acceptance by the Bureau of the Public Debt, not upon receipt of that message by the purchaser.

(14) Point of Sale (§ 370.53)

The point of sale for a bond issued as a result of a purchase application submitted electronically under this subpart would be Parkersburg, West Virginia.

(15) Effect of Electronic Signature (§ 370.54)

This section would overcome challenges to the legal effect of an electronically signed record that are based upon the electronic form of the record or signature. Some provisions of law, such as the Statute of Frauds, require evidence of an agreement to be in writing. Other provisions of law can require that an original record be produced in court, rather than a copy, or may require that a record be signed. However, there seems little reason to use these doctrines to preclude the admissibility of electronically signed records. These records are equivalent to signed writings, each copy of which is identical to the original. Accordingly, this section would prevent such challenges from stopping the introduction of electronically signed records into evidence.

(16) Admissibility of Digital Signature (§ 370.55)

This section would address the legal requirement that an item be authenticated before being introduced into evidence. ''Authentication'' is a term that has a technical meaning specifically linked to the security of electronic signatures, but also has a separate meaning in the law of evidence, at which this section is directed.

Under Rule 901 of the Federal Rules of Evidence, ''The requirement of authentication * * * as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.'' For instance, under Rule 901(b)(2), this evidentiary requirement may be met in regard to a handwritten record by nonexpert testimony as to the genuineness of handwriting. Although there have not as yet been any cases on the matter, the requirement of authentication for digital signatures likely can be met under Rule 901(b)(9), which allows for the sufficiency of ''[e]vidence describing a process or system used to produce a result and showing that the process or system produces such a result.''

However, in some situations authentication evidence is not required as a condition precedent to admissibility. As noted under Rule 902 of the Federal Rules of Evidence, extrinsic evidence of authenticity is not necessary for certified birth and death certificates, newspapers and periodicals, trade inscriptions, commercial paper, and notarized records, among other things. Because these items are likely to be authentic, a strict adherence to preliminary authentication procedures would unnecessarily expend a court's time and resources. Accordingly, the items are considered to be self-authenticating and—barring other objections to the evidence—may be admitted into evidence without additional preliminary review.

The inclusion of a limited self-authentication provision for digital signatures in these proposed regulations is appropriate. Under this section, extrinsic evidence of authenticity would be unnecessary to establish the existence of a digital signature that corresponds to a public key pair, as well as that an electronic record to which a digital signature is affixed has not been altered from its original form. Importantly, the self-authentication provision would not tie a digital signature to a particular person. Extrinsic evidence tying the public key pair used in the creation of a digital signature to a particular person still would have to be provided before a digital signature and a record to which it has been affixed could be admissible.

There are several reasons that support the insertion of a limited self-authentication clause into this proposed rule. If public-key encryption has been properly implemented, the risk of a successful forgery or alteration of a digital signature is extremely remote, and is significantly less than the risk of forgery or alteration for paper records. Furthermore, although a legal showing of authenticity in the absence of a self-authentication provision almost certainly could be accomplished, such a showing would require considerable time and resources. Among other things, it would entail extensive scientific testimony on encryption, leading to an expensive and unproductive ''battle of the experts.'' Use of a self-authentication provision would avoid this wasteful problem.

In almost all cases, the existence of a digital signature should be beyond reasonable dispute. The most likely challenges to a digital signature and an electronic record to which it is affixed will turn not on whether a digital signature exists, but on whether it should be attributed to a particular person. These challenges frequently will focus on the issuance, protection, or revocation of the digital certificates used to link a digital signature and accompanying record to a particular person. This section would do nothing to prevent such challenges. This section also would have no application in criminal cases. Furthermore, even to the extent that a self-authenticated digital signature and accompanying record could be introduced into evidence under this section, this section would in no way prevent a party against whom a digital signature is asserted from contesting the existence or authenticity of the signature. However, any arguments would go to the weight of the evidence, not to its admissibility.

(17) Negligence Contributing to Unauthorized Signature (§ 370.56)

This section would hold a person responsible for an unauthorized signature if the person's failure to use ordinary care substantially contributed to the creation or submission of the unauthorized signature. Furthermore, the burdens will be on the person challenging a signature to produce evidence that ordinary care was exercised and to persuade a trier of fact that it is more likely than not that the person exercised ordinary care.

This section is drawn from section 3–406 of the Uniform Commercial Code (UCC). The responsibilities imposed upon persons in regard to the technology used to create and submit electronic signatures are similar to those imposed under the UCC in regard to rubber signature stamps used to sign checks. Official Comment 3 to UCC section 3–406 is enlightening in this regard. If a person's rubber signature stamp and checks, kept in a unlocked drawer, are stolen and used by an unauthorized party to forge a check, a bank may be able to successfully argue that the person is precluded from disavowing the forged signature because the person's lack of ordinary care substantially contributed to the forgery.

Similarly, under the proposed rule if a person fails to take adequate security precautions to protect access to electronic signature technology (such as by not safekeeping a computer password, for instance) and this failure substantially contributes to the creation or submission of an unauthorized signature, the person would be precluded from disavowing the signature.

(18) Liability (§ 370.57)

This section would limit the Bureau of the Public Debt's liability for claims involving this subpart to the amount of the transaction, less any losses caused by the failure of a claimant to exercise due diligence. For instance, this section would have application to claims involving errors in the handling of otherwise properly authorized transactions.

III. Procedural Requirements

This proposed rule does not meet the criteria for a ''significant regulatory action,'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This proposed rule relates to matters of public contract and procedures for United States securities. Accordingly, although this proposed rule is being issued to secure the benefit of public comment, the notice and public comment provisions of the Administrative Procedure Act do not apply, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

There are no new collections of information contained in this proposed rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Parts 317, 351, 353, and 370

Bonds, Electronic Funds Transfers, Government Securities.

For the reasons set forth in the preamble, 31 CFR parts 317, 351, 353, and 370 are proposed to be amended as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 is revised to read as follows:

Authority: 2 U.S.C. 901; 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 317.1 to read as follows:

§ 317.1 Definitions.

(a) *Bond(s)* means those series of United States Savings Bonds currently being offered for sale by the Secretary of the Treasury.

(b) *Federal Reserve Bank* refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9(a).

(c) *Issuing agent* refers to an organization that has been qualified by a designated Federal Reserve Bank, the Commissioner of the Bureau of the Public Debt, or the Commissioner's designee to sell savings bonds. The definition encompasses:

(1) Each organization that accepts and processes purchase orders for bonds sold over-the-counter, but does not inscribe bonds, and

(2) Each organization that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans. An issuing agent acts as an agent of the purchaser in handling the remittance.

(d) *Offering circular* refers to Department of the Treasury Circular, Public Debt Series No. 1–80, current revision.

(e) *Organization* means an entity, as described in § 317.2, that may qualify as an issuing agent of bonds.

3. Revise § 317.2 to read as follows:

§ 317.2 Organizations authorized to act.

Organizations eligible to apply for qualification and serve as issuing agents are the following:

(a) Banks, Federal credit unions in good standing, trust companies, and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) Agencies of the United States and State and local governments.

(c) Employers operating payroll savings plans for the purchase of United States Savings Bonds, as well as organizations operating payroll savings plans on behalf of employers.

(d) Other organizations to be specifically and individually qualified by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee, whenever the Commissioner or the Commissioner's designee deems such a qualification to be in the public interest. In selecting an issuing agent, the Commissioner or the Commissioner's designee may use such process that the Commissioner or the Commissioner's designee deems to be appropriate. The selected issuing agent will be subject to such conditions that the Commissioner or the Commissioner's designee deems to be appropriate.

4. Amend § 317.3 as follows:

A. Revise paragraph (a) introductory text to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent.

(a) *Execution of application agreement.* An organization seeking issuing agent qualification shall obtain from and file with a designated Federal Reserve Bank an application-agreement form. If an organization seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c), the completed application-agreement form shall be forwarded by the designated Federal Reserve Bank to the Bureau of the Public Debt for approval by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

* * * * *

B. Add the words ''or the Bureau of the Public Debt'' after the words ''Federal Reserve Bank'' in paragraphs (b) and (c).

5. Revise § 317.6(b) to read as follows:

§ 317.6 Issuance of bonds.

* * * * *

(b) *Fees.* Each issuing agent, other than a Federal agency, will be paid fees. Only issuing agents are eligible to collect fees. With prior approval, agents that are authorized to inscribe bonds and receive fee payments will also be paid a bonus for presorting savings bond mailings. Schedules reflecting the amount of the fees and presort bonuses, and the basis on which they are computed and paid, will be published separately in the **Federal Register**.

* * * * *

6. Amend the appendix to § 317.8 as follows:

A. Revise the section heading to the appendix to read as set out below;

B. Remove paragraph 3 of subpart B;

C. Revise paragraphs 2(c) and 2(e) of subpart A, all of subpart C, and paragraphs 2(a)(i) and 2(b) of subpart D to read as follows:

§ 317.8 Remittance of sales proceeds and registration records.

* * * * *

Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4–67, Third Revision (31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

* * * * *

2. *Definition of terms.* As used in this appendix:

* * * * *

(c) *Over-the-counter sale* means any sale of savings bonds other than payroll sales.

* * * * *

(e) *Issuing agent,* as provided in § 317.1(c) of the Circular, refers to an organization that has been qualified by a designated Federal Reserve Bank, the Commissioner of the Bureau of the Public Debt, or the Commissioner's designee to sell savings bonds.

* * * * *

Subpart C—Remittance of Payroll Sales Proceeds

1. *Application of requirements.* The remittance requirements for payroll sales apply only to issuing agents. An employer that maintains a payroll savings plan but does not issue bonds shall be notified by the servicing issuing agent that it must remit sales proceeds to the issuing agent in sufficient time to permit compliance with the requirements.

2. *Remittance of payroll sales deductions.* Issuing agents shall remit sales proceeds throughout the month shown in the issue date as soon as the full amount of the purchase price of the bonds has been received or accumulated. In no case should such proceeds be remitted later than the second business day of the month following the month shown in the issue date. The issuing agent shall ensure that its system properly accounts for and recognizes when the full purchase price has been received, or has been accumulated, so that timely remittance can be made. The issuing agent shall transmit registration records in an electronically processible format within thirty (30) days following the month shown on the issue date.

Subpart D—Interest on Late Remittances

* * * * *

2. * * *

(a) *Bonds inscribed by issuing agent*—(i) *Payroll sales.* If, during any three (3) month

period, the interest assessed on an issuing agent's late remittance of proceeds from payroll savings plan sales or thrift, savings, vacation, or similar plan sales accumulates to less than $50 for each type of sales, the interest assessed for the first month will be waived. The interest assessed for each type of sales for the remaining two (2) months will then be carried forward to the next period of three (3) consecutive months.

* * * * *

(b) *Bonds inscribed by the designated Federal Reserve Bank.* The interest assessed on late remittance of all sales proceeds transmitted during a given month will be waived if it is less than $25.

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.1 to read as follows:

§ 351.1 Governing regulations.

Series EE bonds are subject to the regulations of the Department of the Treasury, now or hereafter prescribed, governing United States Savings Bonds of Series EE and HH, contained in Department of the Treasury Circular, Public Debt Series No. 3–80 (part 353 of this chapter). The regulations in part 370 of this chapter apply to transactions for the purchase of United States Savings Bonds issued through the Bureau of the Public Debt. The regulations in part 370 do not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

3. Revise § 351.5 to read as follows:

§ 351.5 Purchase of bonds.

(a) *Payroll sales*—(1) *Payroll savings plans.* Bonds in $100 and higher denominations may be purchased through deductions from the pay of employees of organizations that maintain payroll savings plans. The bonds must be issued by an authorized issuing agent.

(2) *Employee thrift, savings, vacation, and similar plans.* Bonds registered in the names of trustees of employee plans may be purchased in book-entry form in $100 multiples through a designated Federal Reserve Bank after Bureau of the Public Debt approval of the plan as eligible for the special limitation under § 353.13 of this chapter, also published as § 353.13 of Department of the Treasury Circular, Public Debt Series No. 3–80.

(b) *Over-the-counter sales*—(1) *Eligible issuing agents.* Bonds may be purchased through any issuing agent, except that an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) of this chapter may sell bonds only through payroll savings plans.

(2) *Manner of sale.* An application for the purchase of a bond must be accompanied by a remittance to cover the issue price. The purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent. An application may authorize purchases on a recurring basis. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the remittance.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

§ 353.6 [Amended]

2. Remove the word ''deduction'' in § 353.6(b)(4), and add, in its place, the word ''savings.''

§ 353.13 [Amended]

3. Add the phrase '', as amended'' after the word ''1954'' in § 353.13(c)(3).

4. Revise § 353.27 to read as follows:

§ 353.27 Application for relief—Non-receipt of bond.

If a bond issued on any transaction is not received, the issuing agent must be notified as promptly as possible and given all information about the non-receipt. An appropriate form and instructions will be provided. If the application is approved, relief will be granted by the issuance of a bond bearing the same issue date as the bond that was not received. Also, relief is authorized for the issuance of bonds for which the Secretary has not received payment, in order to preserve public confidence in dealing with issuing agents.

PART 370—REGULATIONS GOVERNING THE TRANSFER OF FUNDS BY ELECTRONIC MEANS ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for part 370 is revised to read as follows:

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

2. Revise § 370.0 to read as follows:

§ 370.0 Scope.

The regulations in this part apply to the transfer of funds by electronic means as employed by the Bureau of the Public Debt in connection with United States securities, except as otherwise provided. To the extent that the rules in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the rules in this part 370 apply in the event of any inconsistencies. Among other things, the written authorization of the Financial Management Service is not necessary for the issuance of routing numbers by a Federal Reserve Bank or for the receipt, origination, or reversal of any credit or debit entries accomplished pursuant to this part.

3. Revise § 370.1 to read as follows:

§ 370.1 Definitions.

In this part, unless the context indicates otherwise:

Automated Clearing House (ACH) entry means a transaction in accordance with applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law. The rules in this part control in the event of any inconsistencies with the applicable Operating Rules and Operating Guidelines.

Credit entry means an ACH entry for the deposit of money to a deposit account.

Debit entry means an ACH entry for the payment of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Financial institution means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. § 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term ''depository institution'' means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. § 1752) or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. § 1781);

(v) Any savings association (as defined in section 3 of the Federal Deposit Insurance Act) (12 U.S.C. § 1813) that is an insured depository institution (as defined in such Act) (12 U.S.C. § 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. § 1811 *et seq.*); and

(2) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. § 3101).

Originator means an entity authorized by a person to initiate debit or credit entries to the person's deposit account and that also has an agreement with a financial institution to transmit the debit or credit entries to the person's deposit account.

Owner means the person(s) in whose name(s) a security is registered.

Security means any obligation issued by the United States that, by the terms of the applicable offering circular, is made subject to this part.

Settlement date means the date an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s). For a security held in the TREASURY DIRECT system, the issue date will in most cases be the same as the settlement date. For United States Savings Bonds, the issue date will in most cases be the first day of the month in which settlement takes place.

4. Add § 370.4 to subpart B to read as follows:

§ 370.4 Definition.

Payment means, for the purpose of this subpart, the deposit of money from the Department to the deposit account of the owner.

5. Revise the heading of subpart C to read as follows:

Subpart C—Debit ACH Entries for the Sale of Securities in TREASURY DIRECT

6. Redesignate subpart D as subpart F and §§ 370.30 and 370.31 as §§ 370.60 and 370.61.

7. Add subparts D and E to read as follows:

Subpart D—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.
370.30 Governing law.
370.31 Authorization by purchaser.
370.32 Termination or suspension by the Bureau of the Public Debt.
370.33 Termination or suspension by purchaser.
370.34 Changes and error resolution.
370.35 Prenotification.
370.36 Liability.

§ 370.30 Governing law.

This subpart provides rules for Automated Clearing House debit entries used for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart does not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Public Debt or the Commissioner's designee requires otherwise.

§ 370.31 Authorization by purchaser.

(a) *General.* The purchaser of a bond shall authorize an originator to initiate Automated Clearing House debit entries and a financial institution and deposit account to receive such entries. An authorization shall be accomplished only through a form approved by the Bureau of the Public Debt. The purchaser's signature is necessary for the authorization to be effective. Except to the extent required by the Bureau of the Public Debt, the originator will not be required to take additional steps to verify the identity of the purchaser or the authenticity of the signature.

(b) *Recurring debit entries.* A single authorization may allow debit entries to be made to a deposit account on a recurring basis.

(c) *Successor originator.* The Bureau of the Public Debt reserves the right to name a successor to the originator named on the debit authorization form. The designation of a successor shall be effective without additional notice to the purchaser.

(d) *Subsequent authorizations.* A purchaser's subsequent authorization cancels a previous authorization only if so noted by the purchaser on the subsequent authorization form.

§ 370.32 Termination or suspension by the Bureau of the Public Debt.

The Bureau of the Public Debt may terminate or suspend the availability of debit entries as a means of purchase for bonds at any time. A decision to terminate or suspend the availability of debit entries as a means of purchase is in the sole discretion of the Bureau of the Public Debt and shall be final.

§ 370.33 Termination or suspension by purchaser.

The purchaser may terminate all future debits or suspend one or more future debits by providing written notice to the originator. A written notice is also necessary to lift a suspension of indefinite length. All notices must be received by the originator at least three business days before the debit is to be initiated.

§ 370.34 Changes and error resolution.

In response to an oral notice from a person relating to the propriety of bond issuance information or a debit entry involving the person's deposit account, the originator may request the person to submit the notice in writing. If so asked, the person shall respond in writing within thirty calendar days. The originator may ignore the oral notice if written notice is not received within thirty days. The originator may suspend debit entries while reaching a resolution in response to any notice, written or oral.

§ 370.35 Prenotification.

The requirement of a prenotification prior to the initiation of any debit entry, as well as the length of the period during which the originator must wait after initiating a prenotification before initiating a subsequent debit entry, is left to the discretion of the Bureau of the Public Debt.

§ 370.36 Liability.

(a) *Scope of liability.* Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as an originator, the Bureau of the Public Debt shall not be liable for any unauthorized, erroneous, duplicative, or otherwise improper debit entries, and shall not be liable for a failure to debit a deposit account. Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. Any claims must be pursued against the originator. The Bureau of the Public Debt shall not be liable for its choice of an originator. The Bureau of the Public Debt shall not be liable to any Automated Clearing House association.

(b) *Extent of liability.* For any claim that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the improper debit and does not extend to other damages or costs, including consequential damages,

punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt also shall be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Subpart E—Electronic Submissions of Purchase Applications and Remittances for the Purchase of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.
370.50 Governing law.
370.51 Definitions.
370.52 Contract formation.
370.53 Point of sale.
370.54 Effect of electronic signature.
370.55 Admissibility of digital signature.
370.56 Negligence contributing to unauthorized electronic signature.
370.57 Liability.

§ 370.50 Governing law.

This subpart provides rules for the electronic submission of purchase applications and remittances for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for transactions submitted through electronic means. This subpart does not apply to transactions for the sale of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt or the Commissioner's designee requires otherwise.

§ 370.51 Definitions.

(a) *Digital signature* is a type of electronic signature. A digital signature uses public-key encryption and a message digest function to transform an electronic record. A person who has the initial electronic record and the signer's public key can verify:

(1) Whether the transformation was accomplished by the private key that corresponds to the signer's public key, and

(2) Whether the initial record has been altered since the transformation was made.

(b) *Message digest function* means an algorithm mapping or translating one sequence of bits into another, generally smaller, set such that:

(1) An electronic record yields the same message digest result every time the algorithm is executed using the same electronic record as input,

(2) It is computationally infeasible that an electronic record can be derived or reconstituted from the message digest result produced by the algorithm, and

(3) It is computationally infeasible that two electronic records can be found that produce the same message digest using the algorithm.

(c) *Public-key encryption* means a process which generates and employs a key pair consisting of a private key and its mathematically related public key, in which one use of the public key is to verify a digital signature created by the private key.

(d) *Record* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(e) *Signature* means any symbol or method executed or adopted by a party with present intention to be bound, and includes electronic methods (such as those accomplished by digital and biometric means) approved by the Bureau of the Public Debt.

§ 370.52 Contract formation.

An application for a purchase of a bond submitted by electronic means is an offer to create a bond contract. An offer is accepted at the moment the message of acceptance is sent to the purchaser, not when the message is received by the purchaser, regardless of the method used to transmit the acceptance.

§ 370.53 Point of sale.

For jurisdiction and venue purposes, the point of sale for a bond purchased pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the application is transmitted or where the application is actually processed.

§ 370.54 Effect of electronic signature.

In any dispute involving this subpart, an electronic signature and any electronic record to which it is affixed shall not be denied legal effect because the signature or record is in electronic form. To the extent that the law requires a signature, a writing, or an original, an electronic signature and any electronic record to which it is affixed shall satisfy that rule of law.

§ 370.55 Admissibility of digital signature.

In any civil litigation or dispute involving this subpart, extrinsic evidence of authenticity as a condition precedent of admissibility shall not be necessary to establish:

(1) The existence of a digital signature that corresponds to a specific public key pair and is affixed to an electronic record, and

(2) The electronic record to which the digital signature is affixed has not been altered from its original form.

§ 370.56 Negligence contributing to unauthorized electronic signature.

A person whose failure to exercise ordinary care substantially contributes to the creation or submission of an unauthorized electronic signature is precluded from disavowing the unauthorized signature and the validity of any electronic record to which the signature is affixed. In any dispute involving this subpart, the burden of production and the burden of persuasion is on the person against whom the signature is asserted to establish the exercise of ordinary care.

§ 370.57 Liability.

For any claim arising out of an electronic transaction that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the transaction and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt shall also be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Dated: April 6, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

[FR Doc. 98–11153 Filed 4–29–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Savannah 98–010]

RIN 2115–AA97

Safety Zones: Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish six (6) temporary safety zones in the vicinity of the Savannah River and approaches during the Americas' Sail marine event to be held from July 2–6, 1998. These regulations are necessary to protect life and property on navigable waters because of the danger associated with the large number of expected participant and spectator craft within the narrow confines of the navigation channel.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Comments may be mailed to the Captain of the Port Savannah, 222 West Oglethorpe Avenue, Suite 402, Savannah, Georgia 31401. The comments will be available for inspection and copying at this location between 9 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Burt Lahn, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 0730 and 1600, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [COTP Savannah–98–010] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The events requiring these regulations will commence on July 2, 1998, when tall ships will begin arriving and anchoring in a pre-designated staging area offshore of Tybee Island, Georgia. On July 3, 1998, the tall ships will proceed in a pre-designated order into the Port of Savannah via the Savannah River, and will moor along the Savannah waterfront. During the period from July 3 to July 5, 1998, inport activities will be held, including a fireworks display on the evening of July 4, 1998. On the morning of July 6, 1998, the vessels will depart the port of Savannah, from up offshore, and the class A vessels (those greater than 150 feet) will commence racing to Long Island, new York.

Approximately 1,000 spectator craft are expected to participate in the Americas' Sail festivities. The Coast Guard proposes to establish the following six (6) safety zones at various times during the event: (1) A one square mile pre-arrival staging area offshore of Tybee Island, Georgia; (2) a safety zone from the entrance buoys, Savannah River to the Talmadge Bridge extending a width of 300 feet around the center of the channel for the inbound transit; (3) a safety zone from the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge extending Eastward to position 32–04.45N, 081–04.45W; (4) a 300 foot safety zone around a fireworks staging area located on Hutchinson Island, in an approximate position of 32–05N, 081–05W; (5) a safety zone from the entrance buoys, Savannah River to the Talmadge Bridge extending a width of 300 feet around the center of the channel for the outbound transit, and; (6) a safety zone northeast of Tybee Island, Georgia, for the pre-race staging and the commencement of the offshore race.

The anticipated concentration of spectator and participant vessels associated with this event poses safety and security concerns for the safety and well being of the parading vessels and spectators. These proposed regulations are intended to provide safety for the Americas' Sail participants and ensure safe navigation on the Savannah River and approaches by managing and controlling the traffic entering, exiting and traveling within the Savannah River waters. These safety zones are required to minimize the problems associated with large numbers of small craft within the confines of the narrow navigation channel on the Savannah River during the event.

The Coast Guard, assisted by State Law Enforcement patrol vessels, will be on scene to enforce the zones and monitor traffic. No persons or vessels will be allowed to enter or operate within these zones, except as may be authorized by the Captain of the Port. The following safety zones are proposed:

(1) The safety zone for the offshore staging/anchorage area for the tall ships will be in effect from 9 a.m. EDT on July 2, 1998, to 5 p.m. on July 3, 1998, and will encompass an area bounded by 32–00N, 080–45W, 32–01N, 080–45W, 32–01N, 080–46W, and 32–00N, 080–46W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(2) The safety zone to allow the parade of tall ships into the city of Savannah will be in effect from 10 a.m. to 5 p.m. EDT on July 3, 1998, and will encompass the center 300 feet of the Savannah River channel from the entrance of Bloody Point Range to the Talmadge Bridge. Enforcement of this safety zone will allow spectator vessels adequate room on each side of the navigation channel to transit or observe the parade of ships. Vessels that cannot navigate outside of this safety zone and desire to depart the port of Savannah on July 3, 1998, must depart in time to clear the entrance to Tybee Island Range prior to 10 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 3, 1998, must commence the inbound transit prior to 10 a.m. The Captain of the Port will allow vessel traffic to resume inbound transits utilizing the entire navigational channel when the last tall ship in the parade clears Longitude 081–02W. Vessels using the Intra-Coastal Waterway (ICW) will not be allowed to cross the Savannah River at the junction of Fields Cut once the parade commences. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) The safety zone for the mooring of the vessels will be in effect from 9 a.m. until 5 p.m. EDT on July 3, 1998. The safety zone for the departure of the vessels will be in effect from 9 a.m. until 5 p.m. EDT on July 6, 1998. These zones will include all waters bounded from the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge extending Eastward to position 32–04.45N, 081–04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) The safety zone for the fireworks display will be in effect from 9 p.m. to 11 p.m. EDT on July 4, 1998, and will encompass a 300 foot radius around the fireworks staging area located on Hutchinson Island, in approximate position 32–05N, 081–05W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(5) The safety zone to allow the parade of tall ships to depart the city of Savannah will be in effect from approximately 9 a.m. to 5 p.m. EDT on July 6, 1998, and will encompass the middle 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 9 a.m. Enforcement of this safety zone will allow spectator vessels adequate room on each side of the navigation

channel to transit or observe the parade of ships. Vessels that cannot safely navigate outside of the safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 9 a.m. If unable to clear the Savannah Riverfront area by 9 a.m., these vessels would be required to start the inbound transit entrance after 5 p.m. This time may be earlier if the tall ships complete their outbound transit before 5 p.m. This time may be earlier if the tall ships complete their outbound transit before 5 p.m. The Captain of the Port will allow vessel traffic to resume outbound transits utilizing the entire navigational channel when the last tall ship in the parade clears Longitude 080–51.00W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of Fields Cut once the lead tall ship in the parade approaches within one (1) nautical mile of this area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(6) The safety zone for the pre-race staging for the tall ships will be in effect from 9 a.m. to 5 p.m. EDT on July 6, 1998, and will encompass an area bounded by 32–00.19N, 080–44.07W, 31–59.35N, 080–43.08W, 32–00.59N, 080–41.32W, and 32–01.43N, 080–44.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

The Captain of the Port will restrict vessel operations in the above safety zones. No persons or vessels will be allowed to enter or operate within the zones, except as may be authorized by the Captain of the Port, Savannah, Georgia. These regulations are issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of Part 165.

Regulatory Evaluation

This temporary rule 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. The Office of Management and Budget has exempted it from review 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations will only be in effect for a short periord of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and government jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect in limited areas for a total of four days. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule 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 proposed rule will economically affect it.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.a (CE#(34(g)) of Commandant Instruction M16475.1C that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart C of 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.T07–010 is added to read as follows:

§ 165.T07–010 Safety Zones; Savannah River and Approaches, Savannah, GA.

(a) *Locations.* The following areas are safety zones (all coordinates reference Datum: NAD 83):

(1) From 9 a.m. EDT on July 2, 1998, to 5 p.m. EDT on July 3, 1998, an area bounded by 32–00N, 080–45W, 32–01N, 080–45W, 32–01N, 080–46W, and 32–00N, 080–46W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(2) From 10 a.m. to 5 p.m. EDT on July 3, 1998, the center 300 feet of the Savannah River navigational channel from the entrance of Bloody Point Range to the Talmadge Bridge. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 3, 1998, will be required to begin the outbound transit in sufficient time to clear the entrance to Tybee Island Range prior to 10 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 3, 1998, would be required to commence the inbound transit prior to 10 a.m. The Captain of the Port will allow vessel traffic to resume inbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 081–02W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade commences. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) From 9 a.m. until 5 p.m. EDT on July 3, 1998, and from 9 a.m. until 5 p.m. EDT on July 6, 1998, all waters bounded by the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge to position 32–04.45, 081–04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) From 9 p.m. to 11 p.m. EDT on July 4, 1998, a 300 foot radius around a fireworks staging area in approximate position 32–05N, 081–05W. During this

time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(5) From 9 a.m. to 5 p.m. EDT on July 6, 1998, the center 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 9 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 9 a.m. If unable to clear the Savannah Riverfront area by 9 a.m., these vessels would be required to start the inbound transit after 5 p.m. The Captain of the Port will allow vessel traffic to resume outbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 080–51W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade approaches within one (1) nautical mile of this area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(6) From 9 a.m. to 5 p.m. EDT on July 6, 1998, an area bounded by 32–00.19N, 080–44.07W, 31–59.35N, 080–43.08W, 32–00.59N, 080–41.32W, and 32–01.43N, 080–42.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

Note: The regulations specified in paragraphs (a)(1) and (a)(6) apply only within the navigable waters of the United States. In the waters within the offshore staging area and pre-race staging area that are outside the navigable waters of the United States, the following nonobligatory guidelines apply.

(i) All unaffiliated Americas' Sail vessels should remain clear of the staging area and pre-race staging area and avoid interfering with any Americas' Sail participant or Coast Guard vessel. Interference with anchoring or race activities may constitute a safety hazard warranting cancellation or termination of all or part of the Americas' Sail activities by the Captain of the Port.

(ii) Any unauthorized entry into these zones by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into these safety zones is subject to the following requirements:

(1) These safety zones are closed to all non-participating vessels, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The ''representative of the Captain of the Port'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Non-participating vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a Coast Guard vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port Savannah will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zones and restrictions imposed.

(c) *Dates.* This section is effective at 9 a.m. Eastern Daylight Time (EDT) on July 2, 1998, and terminates at 5 p.m. EDT on July 6, 1998, unless sooner terminated by the Captain of the Port.

Dated: April 15, 1998.

R.E. Seebald,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 98–11230 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCIES: National Park Service, Interior.

ACTION: Availability of Commercial Fishing Environmental Assessment (EA) and public comment period extension for Proposed Rule and EA.

SUMMARY: The National Park Service (NPS) announces the availability of the Environmental Assessment (EA) and extension of the public comment period for the proposed rule concerning Glacier Bay National Park commercial fishing (62 FR 18547). The public comment period for the EA and proposed rule will end June 1, 1998. This is the second extension of the public comment period on the proposed rule.

This document also announces the dates and locations of open houses and public hearings to solicit comments on the proposed rule and EA which are listed in the under **SUPPLEMENTARY INFORMATION** section, below.

DATES: Comments on the proposed rule and EA will be accepted through June 1, 1998. For dates of open houses and hearings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments on the proposed rule and EA should be submitted to the: Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. For locations of open houses and hearings, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Copies of the environmental assessment and an executive summary are available by writing Glen Yankus, National Park Service, Alaska Support Office, 2525 Gambell St., Anchorage, AK 99503–2838, or calling (907) 257–2645. A copy of the Executive Summary for the EA will be available on the park's web site at http://www.nps.gov/glba in the management issues section.

SUPPLEMENTARY INFORMATION: Open houses and public hearings are scheduled on the dates and at the time and locations indicated below:

Gustavus	May 4	Gustavus Library	3:00–5:00 p.m. (open house).
		Gustavus School	7:00–10:00 p.m.
Hoonah	May 5	Council Chambers	3:00–5:00 p.m.; 7:00–10:00 p.m.
Pelican	May 7	Community Hall	3:00–5:00 p.m.; 7:00–10:00 p.m.
Elfin Cove	May 8	School Library	4:00–6:00 p.m.; 7:00–10:00 p.m.

Juneau	May 11	Egan Room, Centennial Hall	3:00–5:00 p.m.; 7:00–10:00 p.m.
Sitka	May 12	Mausseau Room, Centennial	3:00–5:00 p.m.; 7:00–10:00 p.m.
Seattle	May 14	Klondike Gold Rush, NHP Theater	3:00–5:00 p.m.; 7:00–10:00 p.m.

The first 2 hours of each meeting will be an open house, discussion session. Representatives of the NPS will be available to answer questions and hear your comments in a more informal setting. The rest of the meeting will be a public hearing; a brief introduction by the hearing facilitator will be followed by public testimony on the plan.

The environmental assessment evaluates the proposed action and four alternatives for managing commercial fishing in the marine waters of the park.

The proposed action (Alternative One) would allow commercial fishing by qualified fishers in non-wilderness marine waters of Glacier Bay proper to continue for 15 years; commercial fishing in wilderness waters would end at the time the regulations go into effect. Commercial fishing would generally be authorized to continue in non-wilderness waters outside Glacier Bay proper under a cooperative fisheries management plan developed by the NPS and State of Alaska.

Alternative Two-No Action—This alternative would enforce the existing statutory and regulatory prohibitions regarding commercial fishing activities within the marine waters of the park. Enforcement of NPS regulations would result in the immediate cessation of all commercial fisheries in all park waters with no opportunity to phase out fishing through limited exemptions.

Alternative Three—This alternative incorporates marine reserve concepts consistent with the park's purposes. Specifically, this alternative would focus on protecting those species for which the park serves as an appropriate marine reserve (i.e., resident species) while allowing continued harvest of species that are subject to harvest outside park waters (i.e., transient species).

Alternative Four—This alternative would allow local individuals to continue commercial fishing throughout Glacier Bay National Park. This alternative would prohibit only those fisheries that cannot be sustained or that cause unacceptable habitat degradation.

Alternative Five—This alternative would implement a fisheries plan described in a NPS proposed regulations released in 1991. It would end all commercial fishing activities in the park after seven years, and until that time would allow commercial fishing in non-wilderness waters by traditional methods.

Dated: April 16, 1998.

Paul R. Anderson,,

Acting Regional Director, Alaska Region.

[FR Doc. 98–11080 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY25–2–173a, FRL–5995–5]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision for ozone concerning the control of volatile organic compounds submitted by the New York State Department of Environmental Conservation. The SIP revision consists of amendments to the New York Code of Rules and Regulations, Part 230, ''Gasoline Dispensing Sites and Transport Vehicles.'' These revisions were submitted to comply with the gasoline vapor recovery provisions of the Clean Air Act. In the final rules section of this **Federal Register**, EPA is approving New York's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 30, 1998.

William Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–11382 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 034–0070; FRL–6006–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) and oxides of sulfur (SO_X) emissions from petroleum refinery vacuum-producing devices or systems, including hot wells and accumulators.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of VOCs and SO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA

action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations: *Environmental Protection Agency,* Air Docket, 401 ''M'' Street, SW., Washington, DC 20460; *California Air Resources Board,* Stationary Source Division, Rule Evaluation Section, 1220 ''L'' Street, Sacramento, CA 95814; South Coast Air *Quality Management District,* 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD), Rule 465, Vacuum-Producing Devices or Systems. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 19, 1992.

II. Background

On March 3, 1978 EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Los Angeles—South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. Because the Los Angeles—South Coast Air Basin was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that SCAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles—South Coast Air Basin is classified as extreme[2] for VOCs; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.[3]

SCAQMD amended Rule 465, Vacuum-Producing Devices or Systems on November 1, 1991. The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on June 19, 1992, including the rule being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 465. This submitted rule was found to be complete on August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[4] and is being proposed for limited approval and limited disapproval.

The Los Angeles—South Coast Air Basin is classified as attainment for SO_2 (40 CFR 81.305). Therefore, for purposes of controlling SO_2, this rule need only comply with the general provisions of Section 110 of the Act and not Part D.

Rule 465 controls VOC and SOx emissions from petroleum refinery vacuum-producing devices or systems. VOCs contribute to the production of ground level ozone and smog. SCAQMD Rule 465 was originally adopted as part of the District's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rule 465.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to SCAQMD Rule 465 is entitled, ''Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds'', EPA–450/2–77–025. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] South Coast Air Quality Management District retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert Air Quality Management Area (AQMA), otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

[4] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

enforceable and strengthen or maintain the SIP.

While the Los Angeles—South Coast Air Basin is in attainment with the SO_2 NAAQS, many of the general SIP requirements regarding enforceability, for example, are still appropriate for the SO_X components of the rule. In determining the approvability of the SO_X components, EPA also evaluated this rule in light of the ''SO_2 Guideline Document'', EPA–452/R–94–008.

On August 11, 1992, EPA approved into the SIP a version of Rule 465, Vacuum Producing Devices or Systems, that had been adopted by South Coast Air Quality Management District on May 7, 1976. SCAQMD submitted Rule 465, Vacuum Producing Devices or Systems includes the following significant changes from the current SIP:

- Deletes a provision which exempted exhaust gases with gross heating values of less than 2500 kilogram calories per cubic meter.
- Deletes a provision which exempted vacuum systems with uncontrolled emission rates of organic gases with less than 20 pounds per day.
- Adds a section on definitions.
- Adds test methods for determining control device efficiency, exempt VOC compounds and sulfur concentration.

EPA has evaluated SCAQMD submitted Rule 465 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions result in a clearer, more enforceable rule. Although SCAQMD Rule 465 will strengthen the SIP, this rule contains deficiencies which should be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. SCAQMD Rule 465 contains the following deficiencies:

- The definition of exempt compounds includes a section titled ''Group II (Under Review)''. Carbon Tetrachloride is listed within this group as an exempt compound. The listing of Carbon Tetrachloride as an exempt compound is inconsistent with EPA's definition of exempt compounds as found in 62 FR 44926 dated August 25, 1997.
- The rule does not state explicitly any recording, reporting, or record retention requirements, which sources must fulfill to assess and ensure compliance.

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 465 (3/23/98), which is available from the U.S. EPA, Region 9 office. These deficiencies may lead to enforceability problems and are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book. As a result, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAA.

Also, because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD submitted Rule 465 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the SCAQMD and is currently in effect in the District. EPA's final limited disapproval action will not prevent SCAQMD or EPA from enforcing this rule.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA 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 any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 16, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–11508 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6005–6]

Hazardous Waste Management Program: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to incorporate by reference EPA's approval of the Oklahoma Department of Environment Quality's (ODEQ) hazardous waste for Non-HSWA Cluster VI, RCRA Clusters I, II, III and IV and to approve its revisions to that program submitted by the State of Oklahoma. In the final rules section of this **Federal Register**, the EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second **Federal Register** notice will be published before the time the immediate final rule takes effect. The second notice may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before June 1, 1998.

ADDRESSES: Written comments may be mailed to Alima Patterson, Regional 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444; or the Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, 73117–1212, Phone number: (405) 271–5338.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–11386 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[I.D. No. 101097A]

Designated Critical Habitat; Central California Coast and Southern Oregon/ Northern California Coast Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; re-opening of comment period.

SUMMARY: NMFS is re-opening the public comment period on proposed regulations to designate critical habitat for Central California Coast and Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*). These proposals were made on November 25, 1997, under provisions of the Endangered Species Act of 1973 (ESA). NMFS has received a request for additional time to complete the review and compilation of information. NMFS finds the request to be reasonable and hereby re-opens the comment period until June 10, 1998.

DATES: Comments on the proposed rule must be received before June 10, 1998.

ADDRESSES: Comments should be sent to: Garth Griffin, NMFS, Protected Resources Division, 525 NE Oregon St. - Suite 500, Portland, OR 97232–2737; or Craig Wingert, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005, Craig Wingert at (562) 980–4021, or Joe Blum at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list the Central California Coast Evolutionarily Significant Unit (ESU) of coho salmon as threatened under the ESA (61 FR 41514). Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coast coho salmon ESU as threatened under the ESA (62 FR 24588). On November 25, 1997 (62 FR 62741), NMFS published a proposed rule identifying critical habitat for each ESU and identified a 60-day comment period (which ended January 26, 1998) to solicit information relevant to the proposal. During the comment period, three public hearings were held between December 8–11, 1997 in Gold Beach, Oregon; Eureka, California; and Santa Rosa, California.

Requests for an extension of the public comment period were received from a California Congressional representative, as well as several county and private organizations and private citizens in northern California and southern Oregon. Reasons given for these requests included additional time required under state law to assemble county governments for a review of the proposal, and time needed to assess the scope and impact of the proposed rule. NMFS determined that the requests were reasonable and re-opened the comment period until April 26, 1998.

A request for an additional extension of the public comment period has been received from a California Congressional representative. The reason given for this request is to allow additional time for review of the potential impacts of the proposed critical habitat designation on local communities and private landowners. NMFS finds the request to be reasonable and hereby re-opens the comment period.

Critical habitat is defined as the specific areas within the geographical area occupied by the species, on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protections (ESA section 3(5)(A)(i)). Critical habitat shall not include the entire geographical area occupied by the species unless failure to designate such areas would result in the extinction of the species.

Proposed critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California. Also included are two rivers entering San Francisco Bay: Mill Valley Creek and Corte Madera Creek. Proposed critical habitat for the Southern Oregon/Northern California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in the proposed rule represent the current freshwater and estuarine range of the listed species. Marine habitats are also vital to the species and ocean conditions are believed to have a major influence on coho salmon survival. However, there does not appear to be a need for special management consideration or protection of this habitat. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). NMFS has identified twelve dams in the range of these ESUs (see proposed rule) that currently block access to habitats historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because areas downstream are believed to be sufficient for the conservation of the ESUs. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all concerned parties (see **ADDRESSES**); comments must be received by June 10, 1998. In particular, NMFS is requesting any data, maps, or reports describing areas that currently or historically supported coho salmon populations and that may require special management considerations. NMFS will consider all information received before reaching a final decision.

Date: April 24, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11427 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 227 and 622

[I.D. 042298A]

Fisheries of the South Atlantic; Shrimp Fishery of the South Atlantic; Endangered and Threatened Wildlife

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for information; notice of public hearings.

SUMMARY: NMFS has received comments from numerous fishermen, fishery organizations, and the states of Georgia and South Carolina recommending consideration of a closure of Federal waters offshore of Georgia and South Carolina to shrimping at night. State waters are currently closed at night, and commenters believed that a nighttime closure of Federal waters would reduce the concentration and total amount of fishing effort, and consequently would reduce lethal sea turtle captures. NMFS is requesting comments regarding the fishery management and/or sea turtle conservation benefits of closing all or some portion of Federal and state waters, off some or all of the South Atlantic states (North Carolina, South Carolina, Georgia, and Florida) to shrimp trawling at night.

DATES: Written comments will be accepted through June 29, 1998. Hearings will be held in May (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments may be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD. 20910. Hearings will be held in North Carolina, South Carolina, Georgia, and Florida (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS amended the Sea Turtle Conservation Measures through rulemaking in 1996 to reduce sea turtle mortalities associated with shrimping by maximizing the effectiveness of Turtle Excluder Devices (TEDs) in commercial use. During the comment period associated with that rulemaking effort, NMFS received comments recommending various alternative management measures to reduce shrimp fishing effort, including prohibitions of nighttime trawling. Although the final rule did not incorporate measures specifically intended to reduce shrimp fishing effort, NMFS stated in the responses to comments on the 1995 Advance Notice of Proposed Rulemaking:

> Prohibiting nighttime shrimping is a means to reduce shrimp trawling effort and enhance sea turtle protection, but NMFS does not believe that it should be employed at this time [April 1996]. In the Gulf of Mexico, the major fisheries for pink and brown shrimp are conducted mainly at night in deeper waters, when the target species are active, and nighttime closures would be incompatible with these fisheries. Trawling for white shrimp, on the other hand, is mainly done during the day in nearshore waters. Therefore, where white shrimp are the primary target species, nighttime closures may be compatible with operation of the fishery. Texas, Georgia, and South Carolina already have nighttime closures for management of shrimp stocks in some nearshore waters. A specific proposal was received, which recommended that NMFS coordinate with the States of Georgia and South Carolina to implement nighttime closures in Federal waters, concurrent with nighttime closures in State waters. Enforcement of closed areas would be greatly enhanced by cooperating Federal action. Coordinated state-Federal closures may also be a boon to local, primarily daytime shrimpers, by reducing the pressure to fish round the clock. This proposal may provide additional protection for sea turtles, and NMFS will investigate further whether closures in Federal waters offshore of Georgia and South Carolina would be consistent with State management goals and the interests of local shrimpers.

The regulatory situation is different in each South Atlantic state with respect to nighttime closures. In Georgia's territorial waters, trawling is prohibited from 8 p.m. eastern standard time to 5 a.m. eastern standard time. By convention, the same times of the closure also apply during Daylight Time. In South Carolina, state waters are closed to shrimp trawling between 9 p.m. and 5 a.m., from opening day (usually around May 15) to September 15, and between 7 p.m. and 6 a.m., from September 16 to closing day (usually around December 31). In Florida,

offshore waters are closed at night between one half-hour after official sunset to one half-hour before official sunrise, except in June, July, and August when the offshore waters do not close. North Carolina does not presently have any nighttime closure of its ocean waters, although the Director of the Division of Marine Fisheries has the authority to set the hours of day for the shrimping season by proclamation, appropriate to the management of the fishery.

Request for Comments

NMFS is inviting public comment and seeking information to help determine what, if any, nighttime closures should be implemented under the Magnuson-Stevens Fishery Conservation and Management Act and/or Endangered Species Act as a fishery management tool, and/or to provide enhanced protection to sea turtles. In particular, NMFS wishes to receive quantitative data, or other information, on the extent of fishery effort reduction that would be achieved under various closure schemes. Information on the impacts, positive and negative, on affected fishermen as well as the conservation of marine turtles is also specifically requested. NMFS will conduct four public hearings in the South Atlantic states to solicit additional information.

The hearings are scheduled as follows:

1. May 11, 1998, at 7 p.m., Bolivia, NC
2. May 12, 1998, at 7 p.m., Charleston, SC
3. May 13, 1998, at 7 p.m., Brunswick, GA
4. May 14, 1998, at 7 p.m., Atlantic Beach, FL

The hearings will be held at the following locations:

1. North Carolina Cooperative Extension Service, Brunswick County Government Center, Agriculture Building, (Meeting Room), 25 Referendum Drive, Bolivia, NC 28422;
2. South Carolina Marine Resources Research Institute, (Auditorium), 217 Fort Johnson Road, Charleston, SC 29412;
3. University of Georgia Marine Extension Service Office, (Conference room), 715 Bay Street, Brunswick, GA 31520; and
4. Mayport Elementary School, (Cafeteria), 2753 Shangri-La Drive, Atlantic Beach, FL 32233.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Charles A. Oravetz (see **FOR FURTHER INFORMATION CONTACT**).

Dated: April 24, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11426 Filed 4–28–98; 8:57 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980331079–8079–01; I.D. 031198D]

RIN 0648–AK71

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Seasonal Apportionments of Pollock

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; proposed amendment to change seasonal apportionments of pollock; request for comments.

SUMMARY: NMFS proposes to change the seasonal apportionment of the pollock total allowable catch amount (TAC) in the combined Western and Central (W/C) Regulatory Areas of the Gulf of Alaska (GOA) by moving 10 percent of the TAC from the third fishing season, which starts on September 1, to the second fishing season, which starts on June 1. This seasonal TAC shift is a precautionary measure intended to reduce the potential impacts on Steller sea lions of pollock fishing under an increased 1998 TAC by reducing the percentage of the pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. This action is intended to promote the conservation and management objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments on the proposed rule must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR part 600 and 50 CFR part 679.

Current groundfish regulations apportion the pollock TAC in the W/C Regulatory Areas among three statistical areas—610 (Shumagin), 620 (Chirikof), and 630 (Kodiak)—and divide the TAC apportioned to each statistical area into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the TAC, which become available on January 1, June 1, and September 1, respectively. The proposed rule would shift 10 percent of the TAC from the third to the second season resulting in seasonal allowances of 25 percent, 35 percent, and 40 percent, respectively.

In December 1997, the Council approved a 1998 pollock TAC of 119,150 metric tons (mt) for the W/C Regulatory Areas of the GOA. This TAC represents a 60 percent increase from the 1997 pollock TAC of 74,400 mt. The GOA Plan Team and the Council's Scientific and Statistical Committee recommended the increased TAC based on survey and fishery data indicating increasing abundance and the presence of a large 1994 year class. Despite the projected increase in the pollock biomass available in the GOA, NMFS marine mammal biologists believe that precautionary action is warranted to shift increases in pollock fishing away from the fall and winter months, which are a critical feeding period for Steller sea lions particularly juveniles and adult females. Without action, 50 percent of the increased TAC would become available to commercial fishing during the September fishing season, substantially increasing the amount of fish that could be harvested in that season and extending the fishery further into that season, a time period considered particularly critical to Steller sea lions.

Current Status of Steller Sea Lions

NMFS has the authority to implement regulations necessary to protect Steller sea lions under the Endangered Species Act (ESA) and the Marine Mammal

Protection Act. Similarly, under the Magnuson-Stevens Act, NMFS has the authority to regulate fishing activities that may be affecting sea lions, directly or indirectly. In 1990, coincident with the listing of Steller sea lion as threatened under the ESA (55 FR 12645; April 5, 1990), NMFS: (1) Prohibited entry within 3 nautical miles of listed Steller sea lion rookeries west of 150° W. long.; (2) prohibited shooting at or near Steller sea lions; and (3) reduced the allowable level of take incidental to commercial fisheries in Alaskan waters. As a result of ESA section 7 consultations on the effects of GOA groundfish fisheries, NMFS implemented additional protective measures in 1991, 1992, and 1993 to reduce the effects of certain commercial groundfish fisheries on Steller sea lion foraging.

On June 4, 1997, NMFS separated the Steller sea lion population into eastern and western stocks and listed the western stock as endangered under the ESA (62 FR 24345, May 5, 1997). The eastern stock remains listed as threatened. The two stocks are separated at 144° W. long., or approximately at Cape Suckling, just east of Prince William Sound. This stock separation was based on genetic differences (mitochondrial DNA), different population trajectories (declining stock in the west, stable or slightly increasing stock in the east), as well as other factors. No additional management actions accompanied the 1997 change in ESA listing.

Since these measures were imposed, NMFS has been studying the relationship between biomass removed by fisheries and declines in the Steller sea lion population (Ferrero and Fritz, 1994). These studies have been inconclusive, showing both positive and negative correlations between harvest levels and Steller sea lion populations at various locations in the GOA and Aleutian Islands. Because Steller sea lions are long-lived with low reproductive rates, the effects, if any, of these protective measures on the Steller sea lion population may be slow to manifest themselves. For perspective, NMFS marine mammal biologists estimate that fishing restrictions may need to be in place a minimum of 10 years to observe effects in the population.

During June 1997, NMFS surveyed Steller sea lion populations in the W/C Regulatory Areas of the GOA and the eastern Aleutians Islands. The 1997 survey included rookery and haul-out sites from Outer Island off the Kenai Peninsula to the Umnak Island region. Numbers of non-pups at rookery and haul-out trend sites in the survey area declined by 13.9 percent since 1994 and 10.3 percent since June 1996. The greatest relative declines were in the central GOA (Kenai Peninsula to the Semidi Islands), a region where non-pup numbers have declined each survey since 1989. Numbers also declined at trend sites in the western GOA and in the eastern Aleutian Islands, two regions where numbers are depressed but have remained relatively steady since 1989. Considering all sites surveyed each year since 1994 (approximately 50 percent more animals than at trend sites only), numbers of non-pups remained stable in the western Gulf and eastern Aleutian Islands (10,858 in 1994, 11,034 in 1996, 11,080 in 1997).

Importance of Pollock to Steller Sea Lions

At present, NMFS cannot fully characterize the foraging patterns and preferences of Steller sea lions. Nevertheless, pollock is a major component of their diet. Numerous studies of Steller sea lion diet suggest that, in many areas, pollock is their most frequent prey item (NMFS, 1995 Status review of the United States Steller Sea Lion [*Eumetopias jubatus*] population). The leading hypothesis for the decline of the Steller sea lion is the lack of available prey. Therefore, the availability of pollock is a matter of considerable management concern.

The pollock fishery in the Western Regulatory Areas occurs substantially within Steller sea lion foraging areas. Harvest data indicate significant pollock removals have occurred since 1977 from areas designated as critical habitat under the ESA. The percentage of total pollock catch in the GOA removed from within Steller sea lion critical habitat has increased significantly from less than 10 percent in the late 1970s to approximately 80 percent from 1983 to 1986. Except for a high removal in 1988 (approximately 90 percent), the percentage of the pollock catch removed from critical habitat dropped to approximately 60 percent or less of the total catch in 1987–91. Although as discussed above sea lion protective measures were put in place in the early 1990s, the percentage of total pollock removed from critical habitat has increased from the level seen in the late 1980s to 80 percent in 1993–96. This harvest has occurred principally within 20 nautical miles of rookeries and major haulouts. Additional information on the status of Steller sea lions and the pollock fishery in the GOA is available in the EA/RIR prepared for this action (See **ADDRESSES**).

Concerns Related to Current Pollock Seasonal Apportionments

The pollock fishery in the W/C Regulatory Areas of the GOA could adversely affect the foraging success of Steller sea lions in three major ways:

1. The fishery could deplete pollock stocks in a local geographic area of foraging importance due to aggregation of fishing effort;
2. Fishing pressure could alter the age structure of fish stocks targeted by a fishery, resulting in a shift in biomass from older to younger age classes; and
3. Fishing could alter the actual and relative abundance of pollock stocks in the GOA and increase the dominance of fish species that are less desirable for Steller sea lions. (NMFS, Biological Opinion on the Gulf of Alaska Groundfish Fishery Management Plan, 1991).

The first and third of these factors appear to have the greatest significance to Steller sea lions. The first factor may be more significant during late fall and winter, when sea lions, particularly pregnant females and newly-weaned pups, may be more nutritionally-stressed. Most Steller sea lions give birth to pups in June, and by October, some of the pups are beginning to wean. For Steller sea lions, weaning appears to be a protracted event. The post-weaning period may be a critical transition in a sea lion's life history, as pups begin foraging independently concurrent with more adverse winter conditions (Merrick and Loughlin, 1997).

The 60 percent increase in TAC in the W/C Regulatory Areas has raised two specific concerns related to the disproportionate percentage of TAC currently apportioned to the third fishing season, which opens September 1. The first concern is that, under a 60 percent TAC increase, the third pollock season is expected to last longer, increasing the time period during the third season in which sea lions may be in competition with the commercial fishery for pollock prey. Subsequent increases of TAC in future years could further aggravate this trend during a time period that may be critical to sea lions.

The second concern is that harvest of a disproportionate percentage of the TAC during a single time period may increase the likelihood that the commercial fishery may deplete the pollock resource in localized areas where Steller sea lions may forage. Since fishing activity is not distributed evenly throughout the W/C Regulatory Areas, (i.e., fishermen tend to fish as close to the processing plant as possible), there is a greater likelihood

that pollock stocks in certain localized areas could be depleted during the third season, which currently has twice the TAC allowance of the first and second seasons. While there is no evidence that such localized depletions have any effect on the health of the pollock stocks, the concern is that, if localized depletions occur near Steller sea lion feeding areas, they may adversely affect Steller sea lions.

Section 7 Consultation on the 1998 GOA Pollock TAC Specifications

Based on the concerns cited above, NMFS initiated ESA section 7 consultation on the 1998 GOA pollock TAC specifications. In a Biological Opinion dated March 2, 1998, NMFS described the proposed action as follows:

The proposed action is to conduct the Gulf of Alaska pollock fishery in 1998 with a 119,150 mt TAC divided among three seasons starting January 20, June 1, and September 1. Final specifications for the fishery will indicate a 25 percent, 25 percent, 50 percent TAC distribution for the three seasons, but the June 1 and September 1 TAC levels will be revised through rulemaking to a distribution of 35 percent and 40 percent for the last two seasons. This reapportionment will reduce the catch in the season beginning September 1 and shorten the duration of this season's pollock fishery. This measure will, therefore, minimize potential adverse effects of the fishery on Steller sea lions during the winter months, when weaned pups are learning to forage and adult females may be both pregnant and lactating.

The Biological Opinion concluded that the proposed increase in the TAC for pollock in the combined Western and Central Regulatory Areas of the GOA fishery is not likely to jeopardize the continued existence of the western population of Steller sea lions and is not likely to destroy or adversely modify designated critical habitat for the species in Alaska.

Amendment to Final 1998 W/C Regulatory Area Pollock TAC Specifications

To implement the proposed rule in 1998, this action also would amend Table 3 of the 1998 final harvest specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). Table 3 of the 1998 specifications would be revised as follows:

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES

[ABC for the W/C GOA is 119,150 metric tons (mt). Biomass distribution is based on 1996 survey data. TACs are equal to ABC. Inshore and offshore allocations of pollock are not shown. ABCs and TACs are rounded to the nearest 5 mt.]

Statistical area	Biomass percent	1998 ABC = TAC	(mt)		
			Seasonal Allowances		
			First	Second	Third
Shumagin (610)	25	29,790	7,450	10,430	11,910
Chirikof (620)	42	50,045	12,510	17,515	20,020
Kodiak (630)	33	39,315	9,830	13,760	15,725
Total	100	119,150	29,790	41,705	47,655

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

In 1996, the most recent year for which vessel participation data are available, 1,508 vessels participated in the groundfish fisheries of the GOA; 1,254 longline vessels, 148 pot vessels, and 202 trawl vessels. All of these vessels may be considered small entities under the Regulatory Flexibility Act and, all of these vessels may encounter pollock in the course of their fishing activity and are therefore, affected by regulations governing the taking of pollock in the GOA. These small entities could experience impacts from this rule in one of two ways depending on whether or not they participate in the directed fishery for pollock in the W/C Regulatory Area. The 1,412 vessels that do not engage in directed fishing for pollock are nonetheless affected by regulations governing the pollock fishery because improved retention/improved utilization regulations require that the vessels retain and utilize all pollock brought on board the vessel up to any maximum retainable bycatch amount in effect for pollock, regardless of whether pollock is the vessel's target fishery. A shift in pollock TAC from September to June would have the effect of shortening the September pollock fishery and lengthening the June pollock fishery. Consequently, vessels engaged in fisheries other than pollock will have a longer period in June during which all incidental pollock catch must be retained, and a shorter period in September during which all incidental catch of pollock must be retained. However, this shift is not expected to have any economic effect on vessels not engaged in directed fishing for pollock because all non-pollock vessels maintain incidental catch rates for pollock that are below the maximum retainable bycatch amount regardless of whether the pollock fishery is open or closed.

Because potential economic impacts would fall primarily on the vessels engaged in directed fishing for pollock, it is necessary to consider these entities as a separate universe for purposes of the Regulatory Flexibility Act. In 1996, 96 vessels, all of them trawl catcher vessels, participated in the directed fishery for pollock in the GOA. All of these vessels are considered small entities and all could experience economic impacts as a result of this rule. The projected exvessel value of the 1998 pollock fishery in the combined W/C Regulatory Area is $25,670,006 under the status quo, and $25,144,792 under the proposed action, which represents a 2 percent reduction in exvessel value from the status quo. Therefore, the 96 vessels in the GOA that engage in directed fishing for pollock may be expected to experience a 2 percent reduction in the exvessel value of their pollock catch under the proposed action, relative to the status quo. The actual impact on an individual vessel's gross annual revenue would vary depending on how much of its total annual revenue derives from the pollock fishery. Most vessels that engage in directed fishing for pollock participate in other groundfish fisheries and some also participate in crab and salmon fisheries as well. Therefore, in no case would the effect of the proposed action be a decrease greater than 2 percent of a vessel's gross revenue. This reduction in gross revenue relative to the status quo is not expected to force any small entities out of business, especially given that the 60 percent increase in pollock TAC for 1998 will result in a substantial increase in revenues to the pollock fishery relative to 1997.

Because a reapportionment of pollock TAC under the proposed action would not result in a reduction of gross annual revenue of more than 2 percent for any vessel in the fishery, would not increase total costs of

production, and would not increase total costs of production, and would not increase compliance costs for small entities compared with compliance costs as a percent of sales for large entities, this action would not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis was not prepared.

Copies of the EA/RIR are available from NMFS (see **ADDRESSES**).

A formal section 7 consultation under the Endangered Species Act was initiated for the 1998 final specifications for groundfish of the GOA. In a biological opinion dated March 2, 1998, the Assistant Administrator for Fisheries, NOAA, determined that fishing activities conducted under this proposed rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 24, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 773 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(ii) * * *

(B) *Seasonal allowances.* Each apportionment will be divided into three seasonal allowances of 25 percent, 35 percent, and 40 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

* * * * *

[FR Doc. 98–11472 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 63, No. 83
Thursday, April 30, 1998

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

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado; Nucla-Telluride Transmission Line Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement: Nucla-Telluride Transmission Line Project.

LOCATION: Montrose and San Miguel Counties, Colorado.

SUMMARY: The USDA Forest Service (lead agency) in cooperation with USDI Bureau of Land Management and the USDA Rural Utilities Service is considering applications to construct a 115kV transmission line in southwestern Colorado. The total length of the line is approximately 57 miles. The objectives of the project are to provide loop transmission to the Telluride, Colorado service area; improve the quality of electric service to the Norwood, Colorado service area; improve the service to the substations between Sunshine and Hesperus; and provide another interconnection to the Nucla generation plant. The uncertain reliability of the Telluride electric service will pose a health and safety hazard in the near future, if not corrected. The severe winter conditions of the area require reliable electric service to assure safe living conditions. The project is designed to meet this immediate human health and safety issue, and provide other benefits to rural electric users at the same time.

Preliminary issues related to potential direct and indirect resource effects include: visual resource impacts in a recreational setting; cultural resource encounters and accompanying mitigation steps; habitat alterations where special status species occur including the Gunnison sage grouse Mexican spotted owl, bald eagle and southwestern willow flycatcher; and perceived public health and safety concerns related to high voltage transmission facilities.

Three public workshops have been held to gain a perspective on the range of issues. Alternatives include: rebuilding an existing 69kV line for a large portion of the distance with new construction tieing to the Telluride substation; and relocation alternatives which will focus on minimizing residence and transmission line intersections, improving line location related to resource impacts and combining facility corridors.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing by June 30, 1998. Scoping meetings are scheduled for May 26, 27, and 28, 1998 in Redvale, Norwood and Telluride, Colorado respectively. The draft environmental impact statement is scheduled for fall 1998 and the final in winter 1999.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

ADDRESSES: Send written comments to Norwood Ranger District, PO Box 388, Norwood, Colorado 81423, ATTN: Steve Wells.

FOR FURTHER INFORMATION CONTACT: Steve Wells at (970) 327–4261.

SUPPLEMENTARY INFORMATION: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Other Potential Permits

USDI Fish & Wildlife Service informal consultation—Section 7 Threatened and Endangered Species Act; USDOD Army Corps of Engineers—Nationwide Permit—Section 404 Clean Water Act; Montrose County Building Permit; San Miguel County Building Permit; Certificate for Public Convenience—PUC, Colorado.

Dated: April 24, 1998.

Robert L. Storch,

Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests.

[FR Doc. 98–11478 Filed 4–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB)

regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Childhood Agricultural Injury Study.

DATES: Comments on this notice must be received by July 6, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Childhood Agricultural Injury Study.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: The Childhood Agricultural Injury Study is designed to provide estimates of childhood nonfatal injury incidence and description of injury occurred. Data will be collected for children injured on farms in 50 states. Data will relate to accidents and injuries occurring during the 1998 calendar year. These data will be used by the National Institute of Occupational Safety and Health to establish a measure of the number and rate of childhood injuries associated with production agriculture; to study the specific types of injuries sustained; and to generate reports and disseminate information to all interested parties concerning the finding of this study. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response.

Respondents: Farms.

Estimated number of Respondents: 42,500.

Estimated total Annual Burden on Respondents: 2,125 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 19, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–11498 Filed 4–29–98; 8:45 am]

BILLING CODE 3410–20–P

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations and Additional Releases

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on April 13, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen__Sullivan@jfk-arrb.gov>.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On April 13, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

Notice of Formal Determinations:

1 Carter Library Document: Postponed in Part until 10/2017
9 CIA Documents: Postponed in Part until 05/2001
689 CIA Documents: Postponed in Part until 10/2017
1 DIA Document: Postponed in Part until 10/2017
2 Eisenhower Library Documents: Postponed in Part until 10/2017
1198 FBI Documents: Postponed in Part until 10/2017
1 Ford Library Document: Postponed in Part until 10/2017
6 HSCA Documents: Open in Full
1 HSCA Document: Postponed in Part until 05/2001
29 HSCA Documents: Postponed in Part until 10/2017
25 JFK Library Documents: Postponed in Part until 10/2017
16 NARA Documents: Open in Full
4 NARA Documents: Postponed in Part until 05/2001
7 NARA Documents: Postponed in Part until 10/2017
92 US ARMY Documents: Postponed in Part until 10/2017

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 4 Carter Library documents; 26 DIA documents; 1 Eisenhower Library document; 643 FBI documents; 181 HSCA documents; 53 JFK Library documents; 92 LBJ Library documents; 242 Warren Commission documents; 62 U.S. Army documents.

The Review Board has noted sealed Federal Grand Jury information in 409 documents. This information is not believed to be relevant to understanding the assassination of President John F. Kennedy, and the Review Board has decided not to petition the relevant court to unseal this information.

Dated: April 27, 1998.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–11496 Filed 4–29–98; 8:45 am]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, May 8, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 17, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. Task Force SAC Appointment Process Recommendations
VI. State Advisory Committee Appointments for Hawaii, Montana, North Dakota, Texas, Utah and West Virginia
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–11673 Filed 4–28–98; 2:15 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of Manufactures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Zampogna for Food, Textiles, Apparel, Wood and Chemical Products, and Other Nondurables Products, Bureau of the Census, Room 2212, Building 4, Washington, DC 20233 on (301) 457–4810 and Kenneth Hansen for Electrical, Transportation, Metals, Industrial Machinery, and Other Durables Products, Bureau of the Census, Room 2207, Building 4, Washington, DC 20233 on (301) 457–4755.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau has conducted the Annual Survey of Manufactures (ASM) since 1949 to provide key measures of manufacturing activity during intercensal periods. In census years ending in ''2'' AND ''7'', we mail and collect the ASM as part of the census of manufactures. This survey is an integral part of the Government's statistical program. The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by product class, inventories, and expenditures for both plant and equipment and structures. The survey provides data for most of these items for each of the 473 industries as defined in the North American Industry Classification System (NAICS). It also provides geographic data by state at a more aggregated industry level.

The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. The ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories.

II. Method of Collection

The ASM statistics are based on a survey which includes two components, mail and non-mail. The mail portion of the survey is a probability sample of about 58,000 manufacturing establishments selected from a total of about 230,000 establishments. These 230,000 establishments represent all manufacturing establishments of multiunit companies (companies that operate at more than one physical location) and all single-establishment manufacturing companies that were mailed forms in the 1992 Census of Manufactures.

The non-mail portion of the survey is defined as all single-establishment manufacturing companies that we tabulated as administrative records in the 1992 Census of Manufactures. Although this portion includes approximately 140,000 establishments, it accounted for less than 2 percent of the estimate for total value of shipments at the total manufacturing level for 1992. This administrative information, which includes payroll, total employment, industry classification, and physical location, is obtained under conditions which safeguard the confidentiality of both tax and census records.

III. Data

OMB Number: 0607–0449.

Form Number: MA–1000(L), MA–1000(S).

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.

Estimated Number of Respondents: 58,000.

Estimated Time Per Response: 5.6 hours.

Estimated Total Annual Burden Hours: 324,800.

Estimated Total Annual Cost: The estimated cost to the respondent for this work is estimated to be $4,199,664.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–11453 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

U.S. Census Age Search

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mary Lee Eldridge, Bureau of the Census, Data Preparation Division, Management Services Branch, Jeffersonville, Indiana 812–218–3192.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Age Search is a service provided by the Census Bureau for persons who need transcripts of personal data as proof of age for pensions, retirement plans, medicare, or social security benefits. Transcripts are also used as proof of citizenship to obtain passports or to provide evidence of family relationship for rights of inheritance. The Age Search forms gather information necessary for the Census Bureau to make a search of its historical population census records in order to provide the requested transcript.

II. Method of Collection

BC–600—''Application for Search of Census Records''

Form BC–600, Application For Search of Census Records is a public use form that is submitted by applicants requesting information from the decennial census records.

BC–649(L)—''Not Found'' Form

Form BC–649(L), which is called ''Not Found'', advises the applicant that search for information from the census records was unsuccessful. The form also advises the applicant that new or corrected information must be furnished if further searches of the records are desired. A variety of footnotes are used to specify the nature of the item required in order to proceed with the search.

BC–658(L)—''Insufficient Information Received to Proceed With Search''

Form BC–658(L) is sent to the applicant when insufficient information was received on which to base a search of the census records. The form requests that the applicant provide the exact address of the place of residence including the street name and house number, or the names of cross streets between which the house is situated, and the name of the head of the household with whom the person resided on a particular census date.

III. Data

OMB Number: 0607–0117.

Form Number: BC–600, BC–649(L), BC–658(L).

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents: BC–600 (7,125); BC–649(L) (4,418); BC–658(L) (356); TOTAL = 11,899.

Estimated Time Per Response: BC–600 (12 min.); BC–649(L) (6 min.); BC–658(L) (6 min.).

Estimated Total Annual Burden Hours: 1,903.

Estimated Total Annual Cost: BC–600—$285,000 ($40 per applicant).

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13, USC, Section 8.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–11454 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 967]

Grant of Authority; Establishment of a Foreign-Trade Zone; Stockton, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Stockton Port District (the Grantee), a California public corporation, has made application to the Board (FTZ Docket 54–97, 62 FR 36258, 7–7–97), requesting the establishment of a foreign-trade zone at sites in the Stockton (San Joaquin County), California area, within the San Francisco/Oakland/Sacramento Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 231, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 15th day of April 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–11432 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–98]

Foreign-Trade Zone 26—Atlanta, Georgia Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, requesting authority to expand its zone in the Atlanta, Georgia area, adjacent to the Atlanta Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 16, 1998.

FTZ 26 was approved on January 17, 1977 (Board Order 115, 42 FR 4186, 1/24/77) and reorganized on April 18, 1988 (Board Order 381, 53 FR 15254, 4/28/88). The general-purpose zone was expanded on April 29, 1996 (Board Order 820, 61 FR 21156, 5/9/96) and currently consists of a 275-acre site adjacent to Hartsfield Atlanta International Airport (HAIA) in Clayton and Fulton Counties, Georgia, including jet fuel storage and distribution facilities at HAIA.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site: *Proposed Site 3* (2,472 acres)—at the Peachtree City Development Authority's Peachtree City Industrial Park, Highway 74 South, Peachtree City, which consists of two parks—the West Park and the South-Park International Business Park. The Peachtree City Development Authority, a Georgia non-profit corporation, will manage the site for FTZ purposes. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 14, 1998]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 285 Peachtree Center, Avenue, NE, Suite 200, Atlanta, GA 30303–1229

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: April 16, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–11431 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–98]

Foreign-Trade Zone 1—New York, New York; Application for Expansion; Extension of Public Comment Period

The comment period for the above case, submitted by the City of New York, requesting authority to expand its zone in New York, New York (63 FR 7755, 2/17/98), is extended to May 29, 1998, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include three (3) copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: April 22, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–11433 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–602]

Acetylsalicyclic Acid From Turkey; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Atabay Kimya Sanayi ve Ticaret A.S., a producer and exporter of subject merchandise to the United States, the Department of Commerce is conducting an administrative review of the antidumping duty order on acetylsalicylic acid from Turkey. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review August 1, 1996 through July 31, 1997.

We preliminarily determine that the respondent has not made sales below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with the comments: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Tomlinson, David Dirstine, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0090, (202) 482–4033, or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751 of the Act. In addition, unless otherwise indicted, all citations to the Department's regulations are to the regulations published on May 19, 1997 (62 FR 27296).

Background

On August 25, 1987, the Department published in the **Federal Register** (52 FR 32030) an antidumping duty order on acetylsalicylic acid from Turkey. On August 29, 1997, Atabay Kimya Sanayi ve Ticaret A.S. (AKS), a Turkish manufacturer/exporter of the subject merchandise, requested, in accordance with § 351.213(b)(2) of our regulations, that we conduct an administrative review for the period August 1, 1996 through July 31, 1997. AKS was the only party to request an administrative review for this period. We published the notice of initiation on September 25, 1997 (62 FR 50292).

Scope of Review

The product covered by this review is acetylsalicylic acid (aspirin) containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the Handbook of Non-Prescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under the Harmonized Tariff Schedule (HTS) subheading 2918.22.10. The HTS item number is provided for convenience and customs purposes. The written descriptions of the scope of this proceeding remains dispositive.

Normal Value Comparison

We compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. Because Turkey's economy experienced high inflation during the period of review (over 50 percent), we limited our comparisons to home market (HM) sales made during the same month in which the U.S. sale occurred and did not apply our standard 90/60-day contemporaneity guideline. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and HM sales. We compared products sold in the U.S. and home markets that were identical in materials, applications, standards and production processes.

Export Price

AKS sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation and the constructed export price methodology was not warranted based on the facts of the record. Accordingly, we used EP as defined in section 772(a) of the Act for the price to the United States. We calculated EP based on the packed, C&F New York price to unaffiliated purchasers in the United States. We deducted from the gross unit price an amount for international freight in accordance with section 772(c)(2)(A) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of HM and U.S. sales, we determined that the quantity of foreign-like product sold by AKS in the HM was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act. HM prices were based on the packed, delivered prices to unaffiliated purchasers. We made adjustments for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act. In accordance with sections 773(a)(6)(A) and (B)(i) of the Act, we deducted HM packing costs and added U.S. packing costs. We adjusted for differences in the circumstances of sale (specifically, imputed credit) in accordance with section 773(a)(6)(c)(iii) of the Act. AKS reported transactions with affiliates during the POR. Since these sales were not contemporaneous with the sales made to the United States, we excluded these sales from our analysis and relied on sales AKS made to unaffiliated parties. We based NV on sales at the same level of trade (LOT) as the EP.

Level of Trade

As set forth in section 773(a)(1)(B) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade as the U.S. sale. In both the U.S. and home markets, AKS has one chain of distribution and sells acetylsalicylic acid in only one customer category. We observed no differences between the two markets in the selling functions provided by AKS. Thus, we determined NV for sales at the same LOT as the U.S. sales and made no LOT adjustment.

Currency Conversion

Because this proceeding involves an economy experiencing high inflation, we limited our comparison of U.S. and HM sales to those occurring in the same month and only used daily exchange rates. (*See Certain Welded Carbon Steel Pipe and Tube from Turkey: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 6155 (February 6, 1998).)

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. The Federal Reserve Bank, however, does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the weighted-average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
Atabay Kimya Sanayi ve Ticaret A.S	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case briefs. Case briefs from interested parties may be submitted not later than 30 days from the date of publication of this notice in the **Federal Register**; rebuttal briefs may be submitted no later than five days thereafter. Rebuttal briefs are limited to the issues raised in the case briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(c) of the Tariff Act: (1) The cash deposit rate for AKS

will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and therefore de minimis, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 32.98 percent. This is the ''All Others'' rate from the LTFV investigation. (*See Antidumping Duty Order; Acetylsalicylic Acid from Turkey,* 52 FR 32030 (August 25, 1987).) These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 351.213 of the Department's regulations.

Dated: April 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–11434 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In response to a request made on March 12, 1998, by Colorcon, Inc., the Department of Commerce is initiating a changed circumstances antidumping duty review and issuing a preliminary intent to revoke in part the antidumping duty order on polyvinyl alcohol from Japan, the scope of which currently includes polyvinyl alcohol for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement. Air Products and Chemicals, Inc., the petitioner in this case, has expressed no further interest in the relief provided by the antidumping duty order with respect to polyvinyl alcohol imported from Japan for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement. Accordingly we intend to partially revoke this order.

EFFECTIVE DATE: April 30, 1998.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the regulations at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3836 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1996, the Department published in the **Federal Register** (61 FR 24286) an antidumping duty order on polyvinyl alcohol (''PVA'') from Japan. On March 12, 1998, Colorcon, Inc. (''Colorcon'') requested that the Department conduct a changed circumstances review and revoke, in part, the antidumping duty order with respect to PVA from Japan which is used as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement. Colorcon included in its request a statement from the petitioner dated October 30, 1997, expressing (i) no objection to a changed circumstances review, and (ii) no further interest in maintaining the antidumping duty order with respect to PVA imported from Japan for use in the manner described above.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole or in part if it determines that the producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results. Therefore, in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and

351.222, based on an affirmative statement of no interest by the petitioner in continuing the order with respect to PVA imported from Japan for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement, we are initiating this changed circumstances administrative review. Based on the fact that no other interested parties have objected to the position taken by the petitioner, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant partial revocation of the antidumping duty order on PVA from Japan. Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of PVA for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement.

If final revocation, in part, occurs, we intend to instruct the Customs Service to end, effective on the date of publication in the **Federal Register** of the final notice of partial revocation, the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of the above described PVA not subject to final results of an administrative review. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these results. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results.

This initiation of review and notice are in accordance with section 751(b) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: April 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1996 through March 31, 1997. For information on the net subsidy for all producers covered by this order, see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. *See Public Comment* section of this notice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department published in the **Federal Register** (50 FR 32880) the countervailing duty order on live swine from Canada. On August 4, 1997, the Department published a notice of ''Opportunity to Request Administrative Review'' (62 FR 41925) of this countervailing duty order. We received timely requests for review and on September 25, 1997, we initiated the review, covering the period April 1, 1996 through March 31, 1997 (62 FR 50292).

The Department has determined that it is not practicable to conduct a company-specific review of this order because a large number of producers and exporters requested the review. Therefore, pursuant to section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act), we are conducting a review of all producers and exporters of subject merchandise covered by this order on the basis of aggregate data. This review covers 27 programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR section 351, published in the **Federal Register** at 62 FR 27296 (May 19, 1997). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The merchandise covered by this order is live swine, except U.S. Department of Agriculture (USDA) certified purebred breeding swine, slaughter sows and boars, and weanlings, (weanlings are swine weighing up to 27 kilograms or 59.5 pounds) from Canada. The merchandise subject to the order is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and U.S. Customs Service (Customs) purposes. The written description of the scope remains dispositive.

Analysis of Programs

Allocation Methodology

In the past, the Department has relied on information from the U.S. Internal Revenue Service (IRS) on the industry-specific average useful life of assets in determining the allocation period for nonrecurring grant benefits. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37063, 37226 (July 9, 1993). However, in *British Steel plc.* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for

nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

The Department has not appealed the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (62 FR 52426; October 7, 1996) and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (62 FR 18087; April 14, 1997) (*Swine Tenth Review Results*), the Department determined that it is not reasonable and practicable to allocate non-recurring subsidies using company-specific AUL data because it is not possible to apply a company-specific AUL in an aggregate case (such as the case at hand). Accordingly, in this review, the Department has continued to use as the allocation period the average useful life of depreciable assets used in the swine industry, as set forth in the U.S. Internal Revenue Service (IRS) Class Life Asset Depreciation Range System (*see Swine Tenth Review Results*), which is a period of three years.

Calculation Methodology for Assessment and Cash Deposit Purposes

For the period of review (POR), we calculated the net subsidy on a country-wide basis by determining the subsidy rate for each program subject to the administrative review in the following manner. We first calculated the subsidy rate on a province-by-province basis; we then weight-averaged the rate received by each province using the province's share of total Canadian exports to the United States of the subject merchandise. We then summed the individual provinces' weight-averaged rates to determine the subsidy rate of each program. To obtain the country-wide rate, we then summed the subsidy rates from all programs.

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Federal/Provincial Programs

a. *National Transition Scheme for Hogs.* After termination of the National Tripartite Stabilization Program (NTSP) for Hogs in July 1994, hog producers became eligible to participate in the National Transition Scheme for Hogs (Transition Scheme), which provided for one-time payments to producers of hogs marketed from April 3, 1994 through December 31, 1994. The Transition Scheme provided payments to hog producers of Can$1.50 per hog from the federal government and a matching Can$1.50 from the provincial government.

In *Swine Tenth Review Results,* the Department found this program to be *de jure* specific, and thus countervailable, because the Transition Scheme Agreement expressly limits its availability to a specific industry (swine). We determined that the amounts provided by both the federal and provincial governments to the hog producers during that POR under the Transition Scheme represented a grant. We also found that these grants were non-recurring because the transitional payments are exceptional; the recipient cannot expect to receive benefits on an ongoing basis from POR to POR; and the government approved funding under the Transition Scheme for one year only. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In *Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review* 62 FR 47460 (September 9, 1997) and *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review* 63 FR 2204 (January 14, 1998) (*Swine Eleventh Review Results*) the following provinces received benefits under this program: Alberta, Manitoba, New Brunswick, Ontario, Quebec, and Saskatchewan.[1] The amount received under this program by live swine producers was greater than 0.50 percent of the value of total live swine sales in Canada. On this basis, we allocated the benefit from this grant over three years, which is the average useful life of depreciable assets used in the swine industry, as set out in the IRS Class Life Asset Depreciation Range System. We calculated the discount rate using the same methodology applied in previous reviews. (*See Live Swine From Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order in Part* 61 FR 26879, 26884 (May 29, 1996) and *Live Swine From Canada; Final Results of Countervailing Duty Administrative Reviews* 61 FR 52408 (October 7, 1996) *Swine 7,8,9 Review Results.* We used, as a discount rate, the simple average of the monthly medium-term corporate bond rates for the eleventh POR, from the *Bank of Canada Review Autumn (1996),* published by the Bank of Canada. We applied our standard grant methodology to calculate each province's benefit.

During the POR, there were no payments given under this program. However, residual benefits from provinces receiving payments in the 1995–1996 POR continue to provide countervailable benefits during the POR now under review, which is the second year of the three-year allocation period. To derive the benefit in this review, we took the portion of the benefit allocated to this POR from the *Swine Eleven Review Results* and, using each province's calculated total weight of market hogs produced during the POR, derived a benefit per kilogram for each province. We used only the weight of market hogs because only market hogs were eligible to receive NTSP benefits. We then weight averaged the benefits by each province's share of total Canadian exports of market hogs to the United States during the POR and summed the weighted averages. On this basis, we preliminarily determine the net subsidy for this program to be Can$0.0041 per kilogram for the POR.

The Transition Scheme program has been terminated. Because the last date residual benefits may accrue is the last day of the three-year allocation period, which is March 31, 1998, prior to the publication of these preliminary results, we determine that this program is terminated with no residual benefits. Moreover, there is no evidence on the record which would indicate that residual benefits are being provided or received or that a substitute program has been implemented. *See e.g., Swine Eleventh Review Results.* Therefore, for cash deposit purposes, the cash deposit rate for this program will be adjusted to zero due to the program-wide change which became effective April 1, 1998. However, we will continue to examine this program in the subsequent administrative review, if conducted, which would cover the last year of the three-year allocation period for purposes of duty assessment.

2. Provincial Programs

a. *Alberta Crow Benefit Offset Program (ACBOP).* This program, administered by the Alberta Department of Agriculture, is designed to compensate producers and users of feed grain for market distortions in feed grain prices, created by the federal government's policy on grain transportation. Assistance is provided

[1] We note that the provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan received payments under this program during the 1994–1995 POR which were expensed in the year of receipt. *See Swine Tenth Review Results.*

for feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides ''A'' certificates to registered feed grain users and ''B'' certificates to registered feed grain merchants to use as partial payments for grain purchased from grain producers. Feed grain producers who feed their grain to their own livestock submit a Farm Fed Claim directly to the government for payment.

Hog producers receive benefits in one of three ways: hog producers who do not grow any of their own feed grain receive ''A'' certificates which are used to cover part of the cost of purchasing grain; hog producers who grow all of their own grain submit a Farm Fed Claim to the government of Alberta for direct payment; and hog producers who grow part of their own grain but also purchase grain receive both ''A'' certificates and direct payments.

In *Swine Second and Third Review Results* (56 FR 10412), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (producers and users of feed grain). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To determine the benefit to swine producers from this program, we followed the methodology used in *Swine Tenth Review Results.* Using the Alberta *Supply and Disposition Tables,* we first estimated the quantity of grain consumed by livestock in Alberta during the POR. Then we multiplied the number of swine produced in Alberta during the POR by the estimated average grain consumption per hog, and divided the result by the amount of total grains used to feed livestock during the POR. We thus calculated the percentage of total livestock consumption of all grains in Alberta attributable to live swine during the POR. We then multiplied this percentage by the total value of ''A'' certificates and farm-fed claim payments received by producers during the POR. We divided this amount by the total weight of live swine produced in Alberta during the POR. We then weight-averaged this per-kilo benefit by Alberta's share of total Canadian exports of market hogs to the United States. On this basis, we preliminarily determine the benefit to be less than Can$0.0001 per kilogram for the POR.

ACBOP was terminated on March 31, 1994. Benefits for ''A'' certificates had to be claimed by June 30, 1994, and benefits tied to farm-fed grains had to be claimed by August 31, 1994. The original deadline for any payment of benefits under the program was March 31, 1996, however, producers could receive payments until May 17, 1996. Since no payments could be received after the publication of these preliminary results, we determine this program terminated with no residual benefits. Moreover, there is no evidence on the record which would indicate that residual benefits are being provided or received or that a substitute program has been implemented. Therefore, we will not examine this program in the future, and the cash deposit rate will continue to be zero for this program. (*See Swine Eleventh Review Results*).

b. *Ontario Livestock and Poultry and Honeybee Compensation Program*. This program, administered by the Farm Assistance Programs Branch of the Ontario Ministry of Agriculture, Food, and Rural Affairs, provides assistance in the form of grants which compensate producers for livestock and poultry injured or killed by wolves, coyotes, or dogs. Swine producers apply for and receive compensation through the local municipal government, and the Ontario Ministry of Agriculture, Food, and Rural Affairs reimburses the municipality.

In *Swine Fifth Review Results* (56 FR 29227), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock, poultry farmers, and beekeepers). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54119) and subsequent reviews. We divided the total payment to hog producers during the POR by the total weight of live swine produced in Ontario. We then weight-averaged the result by Ontario's share of Canadian exports of market hogs to the United States during the POR. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the POR.

c. *Saskatchewan Livestock Investment Tax Credit.* Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, cooperatives, and corporations who owned and fed livestock marketed or slaughtered by December 31, 1989. Claimants had to be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants received credits of Can$3 for each hog. Although this program was terminated on December 31, 1989, tax credits are carried forward through the end of fiscal year 1996 (April 1, 1995 through March 31, 1996). In *Swine First Review Results* (53 FR 22198), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To calculate the benefit for the POR, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120) and subsequent reviews (*see Swine Tenth Review Results*). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan during the POR, since the actual amounts cannot be determined. We divided the amount of benefit by the total weight of live swine produced in Saskatchewan during the POR. We then weight-averaged the result by Saskatchewan's share of total exports of market hogs to the United States. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the POR.

The Saskatchewan Livestock Investment Tax Credit was terminated on December 31, 1989 and the last year for disbursement of benefits was fiscal year 1996 (April 1, 1995 through March 31, 1996). Therefore, we consider this program terminated. Moreover, there is no evidence on the record which would indicate that residual benefits are being provided or received or that a substitute program has been implemented. Therefore, we will not examine this program in the future, and the cash deposit rate will continue to be zero for this program.

d. *Saskatchewan Livestock Facilities Tax Credit.* This program, which was terminated on December 31, 1989, provided tax credits to livestock producers based on their investments in livestock production facilities. The tax credits can only be used to offset provincial taxes and may be carried forward for up to seven years or until no later than fiscal year 1996 (April 1, 1995 through March 31, 1996). Livestock covered by this program includes cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals; covered livestock can be raised for either breeding or slaughter. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to

livestock facilities. The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs.

In *Swine Second and Third Review Results* (55 FR 20820), the Department found this program to be de jure specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54121) and subsequent reviews (*see Swine Tenth Review Results*). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan, since the actual amounts cannot be determined. We divided the amount of benefit by the total weight of live swine produced in Saskatchewan during the POR. We then weight-averaged the result by Saskatchewan's share of total exports of market hogs to the United States. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the POR.

The Saskatchewan Livestock Facilities Tax Credit was terminated on December 31, 1989 and the last year for use of tax credits was fiscal year 1996 (April 1, 1995 through March 31, 1996). Therefore, we consider this program terminated. Moreover, there is no evidence on the record which would indicate that residual benefits are being provided or received or that a substitute program has been implemented. Therefore, we will not examine this program in the future, and the cash deposit rate will continue to be zero for this program.

e. *New Brunswick Livestock Incentives Program*. This program, which operates under the Livestock Incentives Act, provides loan guarantees to livestock producers purchasing cattle, sheep, swine, foxes, and mink for breeding purposes, and for feeding and finishing livestock for slaughter. Loans in amounts ranging from Can$1,000 to Can$90,000 are granted by commercial banks or credit unions and guaranteed by the Government of New Brunswick (GONB) to an individual, partnership, corporation or incorporated co-operative association engaged in farming in New Brunswick. Swine producers submit an application for a loan under this program to a bank. The bank evaluates the loan application based upon standard loan criteria and either approves or rejects the application. A consideration for obtaining the loan is the presentation to the GONB of a farm plan established at the time the loan is taken out. For loans given for the purchase of animals for breeding purposes, the term of the loan is not more than seven years and the first payment of the principal is due two years after the date on which the loan was given. For loans given for the purchase of animals for feeding purposes, the loan is due when the animals have been sold which shall not exceed a period of eighteen months. The interest rate for these loans is set at the prime rate plus one percentage point.

At the end of three years after loans are issued, the GONB may give 20 percent of the loan amount to the farmer in the form of a grant. To be eligible for this grant, the farmer must have implemented, in a satisfactory manner, the farm plan established at the time the loan was taken out. The grant portion of this program was terminated for loans issued after July 15, 1992. No grants were provided during the POR and the GOC reported that no further grants will be issued under this program.

In Swine Second and Third Review Results (55 FR 20817), the Department found this program to be de jure specific, and therefore countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In accordance with section 771(5)(E)(iii) of the Act, a benefit from a loan obtained with a government guarantee shall normally be treated as conferred ''if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority.'' While there are no guarantee fees, the recipients are paying interest at the prime rate plus one percentage point. In *Swine Tenth Review Results* we found that the predominant lending rates in Canada for comparable long-term variable-rate loans are based on the prime rate plus a one or two-point spread. Therefore, in accordance with the *Swine Tenth Review Results* methodology, as our benchmark during the POR, we used the prime rate as published by the Bank of Canada in the *Bank of Canada Review Summer* (1997) plus one and one-half percentage points. This rate represents the simple average of the spread above prime charged by commercial banks on comparable loans. Comparing the benchmark interest rate to the interest rate charged on these loans, we preliminarily determine that the amount the recipient paid on these loans is less than the recipient would have paid on a comparable commercial loan. We note that because this review is conducted on an aggregate basis we are using a national-average short-term benchmark rather than a company-specific benchmark rate.

We calculated the benefit from the loan portion of this program as follows. For loans outstanding during the POR, either without repayments or paid off during the POR, we followed the methodology outlined in *Swine Tenth Review Results*. We determined the amount of the benefit attributable to the POR by calculating the difference between what the recipient paid during the POR under loans guaranteed by the GONB and what the recipient would have paid during the POR under the benchmark interest rate. We divided the benefit from all outstanding loans and loans paid off during the POR by the total weight of live swine produced in New Brunswick during the POR. We then weight-averaged the benefit by New Brunswick's share of Canadian exports of market hogs to the United States during the POR. On this basis, we preliminarily determine the net subsidy from this program to be less than Can$0.0001 per kilogram.

f. *New Brunswick Swine Industry Financial Restructuring and Agricultural Development Act—Swine Assistance Program*. The Swine Assistance program was established in fiscal year 1981–82, by the Farm Adjustment Board, under the Farm Adjustment Act, to provide interest subsidies on medium-term loans to hog producers. The program was available only to hog producers who entered production or underwent expansion after 1979. In 1985, the Farm Adjustment Act changed to the Agricultural Development Act. In 1984–85, this program was combined with the Swine Industry Financial Restructuring program under the New Brunswick Regulation 85–19. At that time, all obligations and outstanding loans under the Swine Assistance program were rolled over into the Swine Industry Financial Restructuring program.

The Swine Industry Financial Restructuring program was created by the Farm Adjustment Act (OC 85–98) and became effective April 1, 1985. Under this program the Government of New Brunswick granted hog producers indebted to the Board a rebate of the interest on that portion of their total debt (the residual debt) that, on March 31, 1984, exceeded the ''standard debt

load.'' The standard debt load is defined in the program's regulations as the amount of debt which the farmer, in the opinion of the Board, can reasonably be expected to service. The residual debt does not begin to accrue interest again until the debt load is no longer ''excessive.''

In *Swine Second and Third Review Results* (55 FR 20816, 20817), the Department examined these two programs separately. The Department found (1) the Swine Assistance program to be countervailable because loans were provided to a specific industry on terms inconsistent with commercial considerations, and (2) the New Brunswick Swine Industry Financial Restructuring program to be countervailable because it was limited to a specific industry and the government's rebate of interest and the interest repayment holiday were loan terms inconsistent with commercial considerations. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of these findings.

In *Swine Tenth Review Results,* we found that no new loans were provided for the past ten years, and that there was no recent activity on the outstanding loans. The loans given to producers were ''set aside'' in a provincial account and were not accruing any interest. The Department found that interest not accruing on the outstanding loan balance constituted a benefit to live swine producers. No changes to this program were reported in the instant review.

To calculate the benefit from this program, we multiplied the total outstanding debt at the beginning of the POR by the benchmark interest rate. We used, as a benchmark interest rate, the prime rate, as published by the Bank of Canada in the *Bank of Canada Review Summer* (1997), plus one and one-half percentage points. This rate represents the simple average of the commercially available rates for comparable loans. (*See Swine Tenth Review Results*). Next, we divided the benefit by the total weight of live swine produced in New Brunswick during the POR. We then weight-averaged the benefit by New Brunswick's share of Canadian exports of market hogs to the United States during the POR. On this basis, we preliminarily determine the benefit to be less than Can$0.0001 per kilogram for the POR.

II. Programs Preliminarily Determined Not to Confer Subsidies

A. Research Program under the Canada/Quebec Subsidiary Agreement on Agri-Food Development

The GOC and the GOQ reported that all projects completed under the Research program during the POR were made publicly available. Because the research results are publicly available, we preliminarily determine that the Research program did not confer countervailable subsidies to live swine during the POR. (*See e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Countervailing Duty Administrative Review,* 62 FR 51683 (October 3, 1996) and *Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16551 (April 7, 1997).

III. Programs Preliminarily Determined to be Not Used

We also examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

A. Western Diversification Program
B. Farm Income Stabilization Insurance
C. Federal Atlantic Livestock Feed Initiative
D. Agricultural Products Board Program
E. Newfoundland Farm Products Corporation Hog Price Support Program
F. Newfoundland Hog Price Stabilization Program
G. Newfoundland Weanling Bonus Incentive Policy
H. Nova Scotia Improve Sire Policy
I. Ontario Bear Damage to Livestock Compensation Program
J. Ontario Rabies Indemnification Program
K. Ontario Swine Sales Assistance Policy

IV. Programs Preliminarily Determined to be Terminated

We have examined the following programs and preliminarily determine they were terminated prior to the beginning of the POR (April 1, 1996), and there is no evidence which would indicate that residual benefits are being bestowed or that a substitute program has been implemented:

A. New Brunswick Swine Assistance Policy on Boars
B. Ontario Export Sales Aid

V. Other Programs Examined

On November 17, 1997, the GOC and the GOQ requested ''green box'' treatment for the Agri-Food Agreement. Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture shall be treated as non-countervailable if the Department determines that the measures conform fully with the provisions of Annex 2 of that same Agreement. The GOQ and the GOC claimed that the Agri-Food Agreement met these criteria, and therefore, funding under the Agri-Food Agreement should be noncountervailable pursuant to section 771(5B)(F) of the Act.

The initial Agri-Food Agreement was signed on February 17, 1987 and remained in effect from 1987 to 1991. On August 26, 1993, a new Agri-Food Agreement was enacted by the governments of Canada and Quebec covering the period April 1, 1993 through March 31, 1998. Funding for this agreement is shared 50/50 by the federal and provincial governments. Through this Agreement, grants are made to private businesses and academic organizations to fund projects under the following program areas:

(1) Research

The purpose of this program area is to increase and diversify scientific and technical expertise, in both the area of industrial production and in university-based studies. Specific areas of expertise to be covered include: food production, processing, storage and marketing.

(2) Technology Innovation

The purpose of this program area is to speed up the rate of adoption and dissemination of technologies and innovation and the development of new products. This program operates through awarding financial assistance and technical support to groups wishing to carry out testing projects or develop new technologies to promote agri-food development.

(3) Support for Strategic Alliances

The purpose of this program area is to stimulate cooperation and promote strategic activities intended to improve competitiveness in domestic and foreign markets. Funding for projects is made available to an ''industry network'' (which includes all stakeholders in an agri-food industry, from the producer of the raw material to the final processor) through an application and approval process.

The Department has previously examined each of the three components under the Agri-Food Agreement (Research, Technology Innovation, and Support for Strategic Alliances) as three

separate programs. *See Swine Tenth Review Results*. During the POR, producers of the subject merchandise received assistance under the three component programs of the Agri-Food Agreement for which the GOC and the GOQ have requested green box treatment.

Specifically, with regard to the Research program as discussed above in the section II, we have preliminarily determined that this program does not confer countervailable benefits because the results of the research are publicly available. As such, there is no need to address whether it is non-countervailable in the context of section 771(5B)(F). With regard to the Technology Innovations program and the Support for Strategic Alliances program, any benefit to the subject merchandise under either program or both programs combined is so small (Can$ 0.0000013 and Can$ 0.0000008 per kilogram, respectively) that there is no cumulative impact on the overall subsidy rate. Accordingly, because there is no impact on the overall subsidy rate in the instant review, we have not included the benefits from Technology Innovations program and the Support for Strategic Alliances program in the calculated subsidy rate for the POR, and do not consider it necessary to address the issue of whether benefits under these programs are noncountervailable as green box subsidies pursuant to section 771(5B)(F) of the Act. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995 (October 22, 1997); *Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review* 61 FR 64062, 64065 (December 3, 1996) and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review* 62 FR 16549 (April 7, 1997); *Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring (''LHF'') From Canada* 62 FR 5201 (February 4, 1997); *Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review* 61 FR 28845 (June 6, 1996) and *Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review* 61 FR 53351 (October 11, 1996).

In addition, some farmers in Prince Edward Island received payments during the POR under the Agricultural Disaster Insurance Program (ADIP), which is authorized under section 12(5) of the Farm Income Protection Act (FIPA) and a provincial statute. ADIP is a voluntary whole farm program under which a farmer may apply for income support when his current income margin falls below 70 percent of the average of the three previous years. Because ADIP provides income assistance based on a ''whole farm'' basis, it is not possible to segregate out benefits to individual agricultural products. Furthermore, it is not clear whether live swine producers benefitted from this program during the POR. The GOC stated that this program was designed to meet the ''green box'' criteria under the 1994 WTO Agreement on Agriculture. With regard to the ADIP program, any benefit to the subject merchandise under this program is so small (Can$ 0.0000081 per kilogram) that there is no impact on the overall subsidy rate, even when taking into account the assistance provided under the Technology Innovations program and the Support for Strategic Alliances program. In other words, when the benefits from the Technology Innovations program and the Support for Strategic Alliances program and the ADIP program are summed, the aggregate benefit from these three programs has no impact on the overall subsidy rate. Accordingly, because there is no impact on the overall subsidy rate in the instant review, we have not included the benefits from ADIP in the calculated subsidy rate for the POR, and do not consider it necessary to address the issue of whether benefits under this program are countervailable in this review.

Preliminary Results of Review

We preliminarily determine the total net subsidy on live swine from Canada to be Can$0.0041 per kilogram for the period April 1, 1996 through March 31, 1997. This rate is *de minimis*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to liquidate without regard to countervailing duties all shipments of the subject merchandise from Canada.

Because the calculated net subsidy of Can$0.0041 per kilogram is *de minimis*, the cash deposit rate will be zero. Accordingly, for all shipments of the subject merchandise from Canada, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, the cash deposits of estimated countervailing duties will be zero, if the final results remain the same as the preliminary results.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), 19 CFR section 351.213.

Dated: April 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–11528 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Preliminary Results of the Fifth Countervailing Duty Administrative Reviews; Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada. For information on the net subsidy for the reviewed company, as

well as for all non-reviewed companies, see the *Preliminary Results of Reviews* section of this notice. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested Parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Hong-Anh Tran or Beth Graham, AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0176 or (202) 482–4105, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 39392) the countervailing duty orders on pure and alloy magnesium from Canada. On August 4, 1997, the Department published a notice of ''Opportunity to Request an Administrative Review'' (62 FR 41925) of these orders. We received a timely request for review from Norsk Hydro Canada Inc. (NHCI) on August 29, 1997, and we initiated these reviews, covering the period January 1, 1996, through December 31, 1996, on September 25, 1997 (62 FR 50292).

In accordance with 19 CFR 351.213(b), these reviews cover NHCI, the only producer or exporter of the subject merchandise for which a review was specifically requested. Also, these reviews cover 17 subsidy programs.

On October 15, 1997, the Department issued questionnaires to NHCI, the Government of Canada (GOC), and the Government of Quebec (GOQ). We received a questionnaire response from NHCI, the GOC and the GOQ on November 21, 1997. The Department issued a supplemental questionnaire to NHCI on December 19, 1997, and received a response to it on December 23, 1997. On February 2, 1998, the GOQ submitted additional factual information.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. All other references are to the Department's regulations of 19 CFR Part 351 et al. Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296; May 19, 1997, unless otherwise indicated.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently classifiable under subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada* (57 FR 6094, February 20, 1992).

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies

A. Exemption from Payment of Water Bills

Pursuant to a December 15, 1988, agreement between NHCI and La Société du Parc Industriel et Portuaire de Bécancour (Industrial Park), NHCI is exempt from payment of its water bills. Except for the taxes associated with its bills, NHCI does not pay the invoiced amounts of its water bills.

In the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (Magnesium from Canada)* 57 FR 30946, 30948 (July 13, 1992), the Department determined that the exemption received by NHCI was limited to a specific enterprise or industry, or group of enterprises or industries because no other company receives such an exemption. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

We preliminarily determine the countervailable benefit to be the amount NHCI would have paid absent the exemption. To calculate the benefit under this program, we divided the amount NHCI would have paid for water during the POR by NHCI's total POR sales of Canadian-manufactured products. We preliminarily determine that the net subsidy provided by this program is 0.46 percent ad valorem.

B. Article 7 Grants From the Québec Industrial Development Corporation

The Société de Développement Industriel du Québec (SDI) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers, and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Magnesium from Canada,* 57 FR 30946, 30949 (July 13, 1992).) In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In *Magnesium from Canada,* we determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries. In these reviews, we are not considering information submitted by the GOQ on February 2, 1998, regarding Article 7 assistance provided to other companies subsequent to the assistance granted to NHCI in 1988; information with respect to the distribution of benefits after the provision of the subsidy in question is irrelevent. (See *Final Results of the Fourth Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada, (Magnesium from Canada Fourth Review)* 62 FR 48812 (September 17, 1997).) For the reasons set forth in the *Magnesium from Canada Fourth Review,* we preliminarily determine in these reviews that the Article 7 assistance received by NHCI was a non-recurring grant.

We calculated the benefit from the non-recurring grant received by NHCI using the company's cost of long-term, fixed-rate debt as the discount rate and

our declining balance methodology. We divided that portion of the benefit allocated to the POR by NHCI's total sales of Canadian-manufactured products. We preliminarily determine the net subsidy provided by this program to be 2.32 percent ad valorem.

II. Programs Preliminarily Found Not To be Used

We preliminarily find that NHCI did not apply for or receive benefits under the following programs during the POR:

St. Lawrence River Environment Technology Development Program
Program for Export Market Development
The Export Development Corporation
Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
Opportunities to Stimulate Technology Programs
Development Assistance Program
Industrial Feasibility Study Assistance Program
Export Promotion Assistance Program
Creation of Scientific Jobs in Industries
Business Investment Assistance Program
Business Financing Program
Research and Innovation Activities Program
Export Assistance Program
Energy Technologies Development Program
Transportation Research and Development Assistance Program

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i) we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1, 1996, through December 31, 1996, we preliminarily determine the net subsidy to be 2.78 percent *ad valorem*. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the F.O.B. invoice price on all shipments of the subject merchandise from NHCI entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Timminco Limited (which was excluded from the orders during the investigation), at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See* the *Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 62 FR 48607 (September 16, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996, through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the orders during the original investigation).

Public Comment

Parties to these proceedings may request disclosure of the calculation methodology and interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 351.309(c)(ii), are due.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

These administrative review results are published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 351.213.

Dated: April 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–11527 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–404]

Certain Textile Mill Products From Argentina; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances countervailing duty review and revocation of order.

SUMMARY: On April 2, 1996, the Department of Commerce initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). The Department of Commerce initiated these reviews in

order to determine whether, in light of the decision in *Ceramica Regiomontana* v. *United States*, 64 F.3d 1579, 1582 (Fed. Cir. 1995), the agency had the authority to assess countervailing duties on entries of merchandise covered by these orders occurring after September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of former section 303(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1303(a)(1) (1988; repealed 1994)). In the final results of these reviews, the Department of Commerce determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on unliquidated entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991. *See Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders*, (62 FR 41361).

As a result of the *Ceramica* decision and the changed circumstances reviews, the Department of Commerce published an initiation and preliminary results of changed circumstances review of the countervailing duty order on *Certain Textile Mill Products from Argentina* (63 FR 7125; February 12, 1998) in which it preliminarily determined that it does not have the authority to assess countervailing duties on unliquidated entries of merchandise covered by the order occurring on or after September 20, 1991. The notice also announced the Department's intention to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 through December 31, 1994. (The order has been revoked on two previous occasions. For a further discussion of these revocations and the resulting period affected by this determination, see the **SUPPLEMENTARY INFORMATION** section below).

We invited interested parties to comment on our preliminary results, consideration of revocation, and intent to revoke the order. We received no comments. Accordingly, our final results of changed circumstance review remain the same as our preliminary results and the Department is revoking this order with respect to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 through December 31, 1994.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

History of the Countervailing Duty Order on Textile Mill Products From Argentina

The countervailing duty order on *Certain Textile Mill Products from Argentina* was issued on March 12, 1985 pursuant to former section 303(a)(1) of the Act. Under former section 303, the Department of Commerce (the Department) could assess (or ''levy'') countervailing duties without an injury determination on two types of imports: (i) dutiable merchandise from countries that were not signatories of the 1979 Subsidies Code or ''substantially equivalent'' agreements (otherwise known as ''countries under the Agreement''), and (ii) duty-free merchandise from countries that were not signatories of the 1947 General Agreement on Tariffs and Trade. *See* S. Rep. 249, 96th Cong. 1st Sess. 103–06 (1979); H. Rep. No. 317, 96th Cong.; 1st Sess. 43, 49–50 (1979). At the time this order was issued, textile mill products from Argentina were dutiable. Also at that time, Argentina was not a ''country under the Agreement.'' In short, U.S. law did not require an injury determination as a prerequisite to the issuance of the order, and none was provided.

On August 13, 1990, the Department revoked the countervailing duty order on *Certain Textile Mill Products from Argentina* pursuant to section 355.25(d)(4)(iii) of the Department's then-current regulations. *See Certain Textile Mill Products from Argentina* (55 FR 32940). The Department's decision to revoke the order was challenged before the U.S. Court of International Trade (CIT). On March 24, 1992, the CIT reversed the Department's decision, holding that a domestic interested party had properly objected to the Department's intent to revoke the countervailing duty order. *See Belton Industries Inc.* v. *United States*, CIT Slip Op. 92–39 (March 24, 1992). In accordance with that decision, on May 7, 1992, the CIT ordered the Department to rescind the revocation and reinstate the countervailing duty order on certain textile mill products from Argentina. Subsequently, two related appeals were filed with the U.S. Court of Appeals for the Federal Circuit, *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1419,–1421, and –1451, and *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1452, and –1483. Because the United States withdrew its appeal (No. 92–1421), and Argentina was not a party to the appeals, the CIT decision became final and binding with respect to the order on certain textile mill products from Argentina. Consequently, the Department rescinded its revocation of the countervailing duty order on certain textile mill products from Argentina and reinstated the order on November 18, 1992, effective May 18, 1992. *See Certain Textile Mill Products from Argentina; Notice of Final Court Decision and Rescission of Revocation of Countervailing Duty Order* (57 FR 54368).

On March 1, 1994, the Department again published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty order on certain textile mill products from Argentina pursuant to 19 CFR 355.25(d)(4)(i)(1994) because no interested party had requested an administrative review for at least four consecutive review periods. The Department received a timely objection to the intended revocation from the American Textile Manufacturers Institute (ATMI) and its member companies as well as the Amalgamated Clothing and Textile Workers Union (ACTWU).

The Department requested clarifying information from ATMI and ACTWU regarding the like products their members produced. The Department determined that ATMI and ACTWU did not qualify as interested parties with respect to one like product category, ''Other Miscellaneous Categories.'' Therefore, the Department revoked the order with respect to that like product. *See Certain Textile Mill Products from Argentina; Determination to Amend Revocation, in Part, of the Countervailing Duty Order* (62 FR 41365).

As explained above, the countervailing duty order on certain textile mill products from Argentina was issued pursuant to former section 303. In the URAA, which amended the Act, section 303 was repealed partly because the new Agreement on

Subsidies and Countervailing Measures prohibits the assessment of countervailing duties on imports from a member of the World Trade Organization without an affirmative injury determination. The URAA added section 753 to the Act, which provided domestic interested parties with an opportunity to request an injury investigation for orders that had been issued pursuant to former section 303.

Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation on certain textile mill products from Argentina, the U.S. International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *See Revocation of Countervailing Duty Orders* (60 FR 40,568).

The Ceramica Regiomontana v. United States (Ceramica) Decision

On September 6, 1995, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held, in a case involving imports of dutiable ceramic tile from Mexico, that once Mexico became a ''country under the Agreement'' on April 23, 1985 pursuant to the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties (the Mexican MOU), the Department could not assess countervailing duties on tile from that country under former section 303(a)(1) of the Act. *Ceramica,* 64 F.3d at 1582. ''After Mexico became a 'country under the Agreement,' the only provision under which ITA could continue to impose countervailing duties was section 1671.'' *Id.* One of the prerequisites to the assessment of countervailing duties under 19 U.S.C. § 1671 (1988), according to the Federal Circuit, is an affirmative injury determination. *See also Id.* at § 1671e. However, at the time the countervailing duty order on ceramic tile was issued, the requirement of an affirmative injury determination under U.S. law was not applicable. Therefore, the Federal Circuit looked to see whether the statute contained any transition rules when Mexico became a country under the Agreement which might provide the order on tile with the required injury test. Specifically, the court looked at section 104(b) of the Trade Agreements Act of 1979, Pub. L. No. 96–39 (July 20, 1979) (1979 Act).

Section 104(b) was designed to provide an injury test for certain countervailing duty orders issued under former section 303 prior to the effective date of the 1979 Act (which established Title VII and, in particular, section 701 of the Act). However, in order to induce other countries to accede to the 1979 Subsidies Code (or substantially equivalent agreements), the window of opportunity was intentionally limited. In order to qualify (i) the exporting nation had to be a country under the Agreement (*e.g.,* a signatory of the Subsidies Code) by January 1, 1980, (ii) the order had to be in existence on January 1, 1980 (*i.e.,* the effective date of Title VII), and (iii) the exporting country (or in some instances its exporters) had to request the injury test on or before January 2, 1983.

In *Ceramica,* the countervailing duty order on ceramic tile was issued in 1982 and Mexico did not become a country under the Agreement until April 23, 1985. Therefore, in the absence of an injury test and the statutory means (under section 104 or some other provision) to provide an injury test, the Federal Circuit held that the Department could not assess countervailing duties on ceramic tile and would have to revoke the order effective April 23, 1985 (*i.e.,* the date Mexico became a ''country under the Agreement''). *Ceramica,* 64 F.3d at 1583.

On September 20, 1991, the United States and Argentina signed the Understanding Between the United States of America and the Republic of Argentina Regarding Subsidies and Countervailing Duties (Argentine MOU). Section III of that agreement contains provisions substantially equivalent to the provisions in the Mexican MOU that were before the Federal Circuit in the *Ceramica* case. Therefore, on April 2, 1996, the Department initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). Each of these orders had been issued without an injury determination. The purpose of these reviews was to determine whether the Department had the authority, in light of the *Ceramica* decision, to assess countervailing duties on entries of merchandise covered by the orders occurring on or after September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of 19 U.S.C. § 1303(a)(1) (1988; repealed 1994). In the *Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders,* (62 FR 41361) (*Argentine Changed Circumstances*), published in the **Federal Register** on August 1, 1997, the Department determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991.

Scope of the Review

Imports covered by this review are shipments of certain textile mill products from Argentina. The Harmonized Tariff Schedule of the United States (HTS) item numbers covered by the order are identified in Attachment A of this notice.

Final Results of Changed Circumstances Countervailing Duty Review and Revocation of the Order

In accordance with sections 751(b)(1) and 751(d) of the Act, and sections 351.216 and 351.221(c)(3) of the Department's regulations, we initiated this changed circumstances review on February 12, 1998. Because we determined that expedited action was warranted, our preliminary results were combined with the February 12, 1998 notice of initiation. Based upon our analysis of the *Ceramica* decision and the *Argentine Changed Circumstances* reviews, our preliminary results determined that the order on *Certain Textile Mill Products from Argentina* became entitled to an injury test as of September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of 19 U.S.C. § 1303(a)(1) (1988; repealed 1994). Moreover, in the absence of an injury determination or the statutory authority to provide an injury test, we further determined the Department does not have the authority to assess countervailing duties on unliquidated entries of certain textile mill products from Argentina occurring on or after September 20, 1991. For these reasons, we announced our intention to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 (the date on which the order was reinstated pursuant to the *Belton* decision) through December 31, 1994. The Department has previously revoked the countervailing duty order on textile mill products from Argentina for all entries occurring on or after January 1, 1995. *See Revocation of Countervailing Duty Orders* (60 FR 40568).

Because we received no comments following our preliminary results of

changed circumstances review and intent to revoke the order, our final results remain unchanged. The revocation of this order applies to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 through December 31, 1994.

Therefore, we will instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 18, 1992 and on or before December 31, 1994, without regard to countervailing duties. We also will instruct U.S. Customs to refund with interest any estimated countervailing duties collected with respect to those unliquidated entries.

This notice is published in accordance with section 751(b)(1) of the Act (19 U.S.C. section 1675(b)(1)).

Dated: April 21, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A—C–357–404 HTS List for Certain Textile Mill Products From Argentina

HTS Number

5111.1170; 5111.1960;[1] 5111.2090; 5111.3090; 5111.9090; 5112.1120; 5112.1990; 5112.2030; 5112.3030; 5112.9090; 5205.1110; 5205.1210; 5205.1310; 5205.1410; 5205.2400;[2] 5205.3100; 5205.3200; 5205.3300; 5207.1000; 5207.9000; 5407.9105; 5407.9205; 5407.9305; 5407.9405; 5515.1305; 5515.1310; 5801.3600; 6302.600010; 6302.600020; 6302.910005; 6302.910050; 6305.2000; 6305.9000

[FR Doc. 98–11430 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] Coverage limited to fabric, value not over $19.84/kg.

[2] Coverage limited to yarn, not exceeding 68 nm.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042098E]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on May 11–15, 1998.

ADDRESSES: These meetings will be held at the Sandestin Beach Hilton, 4000 Sandestin Boulevard South, Destin, FL; telephone: 850–267–9500.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

May 13

8:30 a.m.—Convene.

8:45 a.m. - 3:00 p.m.—Receive public testimony on: (1) Mackerel Total Allocable Catch (TAC) (2) Draft Mackerel Amendment 9; and, (3) Draft Reef Fish Amendment 16B.

Draft Mackerel Amendment 9 contains the following alternatives: (1) Possible changes to the fishing year for Gulf group king mackerel; (2) Possible prohibitions of sale of Gulf mackerel caught under the recreational allocation; (3) Possible reallocations of TAC for the commercial fishery for Gulf group king mackerel in the Eastern Zone; (4) Possible reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors to 70 percent recreational and 30 percent commercial; (5) Possible establishment of two subdivisions of TAC for the commercial, hook-and-line allocation of Gulf group king mackerel by area for the Florida west coast; (6) Possible subdivisions of TAC for commercial Gulf group king mackerel in the Western Zone (Alabama through Texas) by area, season, or a combination of area and season; (7) Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone; (8) Possible additional restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast; including a phase-out, a moratorium on additional net endorsements with requirements for continuing existing net endorsements, restrictions on the transferability of net endorsements, and restriction of the use of nets to primarily the waters off Monroe and Collier Counties; (9) Possible increase in the minimum size limit for Gulf group king mackerel to 24 or 26 inches fork length; (10) Possible re-establishment of an annual allocation or a TAC percentage of Gulf group Spanish mackerel for the purse seine fishery with consideration of trip limits and area restrictions; (11) Possible retention and sale of cut-off (damaged) legal-sized king and Spanish mackerel within established trip limits.

Draft Reef Fish Amendment 16B contains the following alternatives: (1) Possible establishment of a slot limit, of 14 inches and 20 (or 22) inches fork length, for banded rudderfish and lesser amberjack; and possible prohibition on the sale of minor amberjack species that are smaller than 36 inches fork length; (2) Possible 5–fish bag limit for lesser amberjack and banded rudderfish; (3) Possible removal from the fishery management plan (FMP) or management of sand perch, dwarf sand perch, Queen triggerfish, and hogfish; (4) Possible minimum size limits of 20 inches for scamp and yellowmouth grouper; 16 inches for mutton snapper; and 12 inches for blackfin snapper, cubera snapper, dog snapper, mahogany snapper, schoolmaster, silk snapper, mutton snapper, queen snapper, gray triggerfish, and hogfish; (5) Possible inclusion of the 5–fish red snapper bag limit as part of the 10–snapper aggregate snapper limit, and a 5–fish bag limit for hogfish, and 2 fish per vessel of cubera snapper over 30 inches total length; (6) Possible establishment of a 1–fish bag limit and commercial quotas for speckled hind and warsaw grouper, or a prohibition on harvest of these species.

3:00 p.m. - 5:00 p.m.—Receive a report of the Mackerel Management Committee.

5:00 p.m. - 5:30 p.m.—(CLOSED SESSION) Receive reports of the Advisory Panel Selection Committee and Marine Reserves Committee.

May 14 8:00 a.m. - 10:00 a.m.—Continue report of the Mackerel Management Committee.

10:00 a.m. - 3:15 p.m.—Receive a report of the Reef Fish Management Committee.

3:15 p.m. - 3:30 p.m.—Receive a report of the Shrimp Management Committee.

3:30 p.m. - 4:00 p.m.—Receive a presentation on the Barataria/Terrebonne Estuary Program.

4:00 p.m. - 6:00 p.m.—Receive a report of the Habitat Protection Committee.

May 15

8:30 a.m. - 9:15 a.m.—Continue report of the Habitat Protection Committee.

9:15 a.m. - 9:30 a.m.—Receive a report of the AP Selection Committee.

9:30 a.m. - 9:45 a.m.—Receive a report of the Marine Reserves Committee.

9:45 a.m. - 10:30 a.m.—Receive a presentation on the NMFS FMP Review and Approval Process.

10:30 a.m. - 10:45 a.m.—Receive a report on the NMFS Billfish/Highly Migratory Species APs meetings.

10:45 a.m. - 11:00 a.m.—Receive a report on the International Commission for the Conservation of Atlantic Tunas Advisory Committee meeting.

11:00 a.m. - 11:15 a.m.—Receive Enforcement Reports.

11:15 a.m. - 11:45 a.m.—Receive Directors' Reports.

11:45 a.m. - 12:00 p.m.—Other business to be discussed. Under Other Business the Council will consider state regulation of the line of separation for the Stone Crab/Shrimp Fisheries for southwest Florida.

1:00 p.m. - 3:30 p.m.—Convene a workshop with members of the Gulf Council, South Atlantic Council, and Florida Marine Fisheries Commission regarding management of mackerels, but particularly focusing on issues related to recreational sales, minimum size limits, and sale of cut-off (damaged) king and Spanish mackerel.

May 11

8:00 a.m. - 9:30 a.m.—(CLOSED SESSION) Convene the AP Selection Committee to consider the user group and geographic representation of the Reef Fish AP as well as consider appointing a sustainable fisheries generic amendment AP.

9:30 a.m. - 11:30 a.m.—(CLOSED SESSION) Convene the Ad Hoc Marine Reserve Committee to select Scientific and Statistical Committee members.

1:00 p.m. - 6:00 p.m.—Convene the Habitat Protection Committee to review a preliminary draft of the Essential Fish Habitat Generic Amendment and to consider a Corps of Engineers permit application for enlargement of the Gulfport, Mississippi harbor facility.

May 12

8:00 a.m. - 11:30 a.m.—Convene the Mackerel Management Committee to review reports of the Mackerel Stock Assessment Panel and Socioeconomic Panel along with recommendations of the Mackerel AP and Scientific Statistical Committee (SSC) regarding TAC for king and Spanish mackerel during the 1998–99 fishing season. The Committee will then develop recommendations to the Council on TAC and possibly other framework measures. The Mackerel Management Committee will also discuss possible management of dolphin and wahoo.

1:00 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee to review summaries of public comments from public hearings, the recommendations of the APs and SSCs, and develop recommendations to the Council on the alternatives of Draft Reef Fish Amendment 16B. They will also consider Federal actions regarding the TAC for red snapper and any need for further Council action, as well as the NMFS news release on TAC for red snapper.

5:30 p.m. - 6:00 p.m.—Convene the Shrimp Management to consider the NMFS news release on TAC for red snapper.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 4, 1998.

Dated: April 22, 1998.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11428 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042198C]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Coastal Migratory Committee (Committee) and the Atlantic States Marine Fisheries Commission's Bluefish Board (Board) will hold a public meeting.

DATES: The meeting will be held on Thursday, May 14, 1998, from 10:00 a.m. until 4:00 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn Philadelphia International Airport, 45 Industrial Highway, Essington, PA; telephone: 610–521–2400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the recommendations of the MAFMC Scientific and Statistical Committee regarding the status of the bluefish stock. The Committee and Board may recommend management measures compatible with the new assessment information.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson- Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 23, 1998.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, Natioal Marine Fisheries Service.

[FR Doc. 98–11423 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042198B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a Joint Dogfish Committee meeting.

DATES: The meeting will be held on Tuesday, May 12, 1998, from 10:00 a.m. to 5:00 p.m. through Wednesday, May 13, 1998, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn Philadelphia International Airport, 45 Industrial Highway, Essington, PA; telephone: 610–521–2400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and recommend qualifying criteria for limited access permits, adopt the definition of overfishing, discuss and adopt a stock rebuilding strategy, and discuss and adopt draft management measures for the dogfish public hearing document.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 22, 1998.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11425 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041798C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team (CPSPDT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

DATES: The CPSPDT meeting will be held on Thursday, May 14, 1998, in La Jolla, CA, at 10:00 a.m. and may go into the evening until business for the day is completed. The CPSAS meeting will be held on Wednesday, May 20, 1998, in Long Beach, CA, at 10:00 a.m. and may go into the evening until business for the day is completed. Persons wishing to attend these meetings should see **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting in La Jolla will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room C–127, La Jolla, CA. The meeting in Long Beach will be held at NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Doyle Hanan, telephone: (619) 546–7170; or Dr. Larry Jacobson, telephone: (619) 546–7117.

SUPPLEMENTARY INFORMATION: The primary purpose of the CPSPDT meeting is to continue revisions to the draft fishery management plan amendment and to prepare a draft amendment package for presentation to the Council at its June meeting. The primary purpose of the CPSAS meeting is to review documents developed by the CPSPDT.

Although other issues not contained in this agenda, may come before these groups for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 23, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11424 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mr. Michael deGruy, The Film Crew, 629 State Street, Suite 222, Santa Barbara, California 93101, has been issued an amendment to photography Permit No. 860–1374.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On September 3, 1997, notice was published in the **Federal Register** (63 FR 11423) that an amendment of Permit No. 860–1374, issued on October 15, 1997 (62 FR 54836), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*)and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (CFR part 216).

Permit No. 860–1374 authorizes the permit holder to take by Level B harassment gray whales (*Eschrichtius robustus*) and northern elephant seals (*Mirounga angustirostris*) in California waters for purposes of commercial photography. The Permit has been amended to include 50 California sea lions (*Zalophus californianus*).

Dated: April 24, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–11422 Filed 4–29–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee will conduct a public meeting on May 14, 1998 in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The meeting will begin at 1:00 p.m. and last until 5:00 p.m. The agenda will consist of the following:

Agenda

A. Part 1

1. Introductory Remarks by Commissioner Barbara Pedersen Holum, Chairman, Global Markets Advisory Committee
2. Report on CFTC Activities of International Interest by Chairperson Brooksley Born
3. Discussion of Business Problems Encountered during Asian Market Volatility
4. General Discussion of the Impediments to Conducting Business Abroad

B. Part 2

5. Discussion Regarding Placement of U.S. Exchanges' Terminals in Foreign Countries and Foreign Exchanges' Terminals in the U.S.
6. Other Topics of Concern to Advisory Committee Members

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on the myriad of complex and novel issues raised by the ever-increasing globalization of futures markets. The purposes and objectives of the Global Markets Advisory Committee are more fully set forth in the Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Global Markets Advisory Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on April 27, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11569 Filed 4–29–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–25]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–25, with attached transmittal and policy justification.

Dated: April 23, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

21 APR 1998

In reply refer to:
I-60413/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-25, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Italy for defense articles and services estimated to cost $126 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-25

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act (U)

(i) **Prospective Purchaser:** Italy

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 107 million
Other	$ 19 million
TOTAL	$ 126 million

(iii) **Description of Articles or Services Offered:** Thirty-eight Amphibious Assault Vehicles, spare and repair parts, support and test equipment, supply support, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of program support.

(iv) **Military Department:** Navy (SBM)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(vii) **Date Report Delivered to Congress:** 21 APR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy - Amphibious Assault Vehicles

The Government of Italy has requested a possible sale of 38 Amphibious Assault Vehicles, spare and repair parts, support and test equipment, supply support, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of program support. The estimated cost is $126 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Italy while enhancing weapon system standardization and interoperability.

Italy needs these vehicles to replace their earlier versions and will have no difficulty absorbing these vehicles into their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense L.P., San Jose, California. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Italy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–11418 Filed 4–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–34]

36(b)(1) Arms Sales Notification

AGENCY: The Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–34, with attached transmittal and policy justification.

Dated: April 23, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

21 APR 1998
In reply refer to:
I-63637/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-34 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Norway for defense articles and services estimated to cost $47 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: Norway

(ii) Total Estimated Value:

Major Defense Equipment*	$ 32 million
Other	$ 15 million
TOTAL	$ 47 million

(iii) Description of Articles or Services Offered: Sixteen ALQ-131 Block I Electronic Countermeasure Jamming Pods which will be upgraded to a Block II configuration with receiver/processor and low band capability, modification kits, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor technical support, and other related elements of logistics support.

(iv) Military Department: Air Force (DAU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 21 APR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway - Electronic Countermeasure Jamming Pods

The Government of Norway has requested a possible sale of 16 ALQ-131 Block I Electronic Countermeasure Jamming Pods which will be upgraded to a Block II configuration with receiver/processor and low band capability, modification kits, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor technical support, and other related elements of logistics support. The estimated cost is $47 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Norway, while enhancing weapon system standardization and interoperability.

The proposed sale will increase the effectiveness of the Norwegian Air Force to operate in an electronic warfare environment and participate in multinational operations. This increased capability will enhance NATO deterrence. Norway will have no difficulty absorbing these pods into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Northrup Grumman, Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require one contractor representative for two years in-country. There may be U.S. Government personnel required in-country periodically as the program proceeds.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–11419 Filed 4–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–36, with attached transmittal and policy justification.

Dated: April 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

21 APR 1998

In reply refer to:
I-64759/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-36 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $115 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 30 million
Other	$ 85 million
TOTAL	$ 115 million

(iii) Description of Articles or Services Offered: Upgrade of 1,500 AIM-9L missiles to the newer AIM-9M configuration; and possible sale of five sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods. The upgrade includes removing and replacing the older AIM-9L guidance control units (GCUs) and older rocket motors with the new AIM-9M GCUs and MK 36 MOD 11 rocket motors. This effort includes support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, and other related elements of logistics support.

(iv) Military Department: Air Force (SRC, Amendment 7)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 21 APR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Upgrade of AIM-9L to AIM-9M Missiles

The Government of Saudi Arabia has requested a possible upgrade of 1,500 AIM-9L missiles to the newer AIM-9M configuration; and possible sale of five sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods. The upgrade includes removing and replacing the older AIM-9L guidance control units (GCUs) and older rocket motors with the new AIM-9M GCUs and MK 36 MOD 11 rocket motors. This effort includes support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, and other related elements of logistics support. The estimated cost is $115 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The upgraded missiles will complement 300 AIM-9M missiles previously purchased. They will be used on the Saudi Arabian F-15S aircraft currently being delivered. The country will have no difficulty absorbing these additional missiles into its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Systems, Boston, Massachusetts and Lockheed Martin, Orlando, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one additional U.S. Government personnel and four contractor representatives for a four month period in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–11420 Filed 4–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–30]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–30, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: April 23, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

21 APR 1998

In reply refer to:
I-62588/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $20 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments
Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$ 18 million
Other	$ 2 million
TOTAL	$ 20 million

(iii) Description of Articles or Services Offered:
Twelve HARPOON missiles, personnel training and training equipment, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (ANU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See annex attached.

(vii) Date Report Delivered to Congress: 21 APR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - HARPOON Missiles

The Government of Canada has requested a possible sale of 12 HARPOON missiles, personnel training and training equipment, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $20 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and enhancing weapon system standardization and interoperability of this important NATO ally.

The HARPOON missiles will increase their military defensive posture and augment their current HARPOON inventory of surface deployed missiles. Canada, which already has HARPOON missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace Company, St. Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The RGM-84G-4 HARPOON surface launch missile has the following classified components, including applicable technical and equipment documentation and manuals:

Guidance Section Components: Confidential

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–11421 Filed 4–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of revised proposed policy and procedures.

SUMMARY: The Department of Energy (the Department or DOE) publishes a revised proposed policy statement setting forth its revised plans for implementing a program of technical and financial assistance to states for training public safety officials of appropriate units of local government and to Indian tribes through whose jurisdictions the Department plans to transport spent nuclear fuel or high-level radioactive waste to a facility authorized under the Nuclear Waste Policy Act, as amended (Section 180(c) program). The training would cover both safe routine transportation and emergency response procedures. The purpose of this notice is to communicate to stakeholders evolving positions of the Office of Civilian Radioactive Waste Management (OCRWM) within the Department regarding Section 180(c) policy issues and to respond to stakeholder comments on the previous notice. Written comments may be submitted to OCRWM on this document.

DATES: Written comments should be sent to the Department and must be received on or before August 1, 1998. The length of this comment period is to facilitate the submission of comments after the semiannual Transportation External Coordination Working Group Meeting is held on July 14–15, 1998.

ADDRESSES: Written comments should be directed to: Ms. Corinne Macaluso, U.S. Department of Energy, c/o Lois Smith, TRW Environmental Safety Systems, Inc., 600 Maryland Avenue, S.W., Suite 695, Washington, D.C. 20024, Attn: Section 180(c) Comments.

Persons submitting comments should include their names and addresses. Receipt of comments in response to this notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed.

FOR FURTHER INFORMATION: For further information on the transportation of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act, please contact: Ms. Corinne Macaluso, Waste Acceptance and Transportation Division, Office of Civilian Radioactive Waste Management, (RW–44), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–2837.

Information packets are available for interested persons who want background information about the Office of Civilian Radioactive Waste Management transportation planning and the Section 180(c) program. To receive an information packet, please call 1–800–225-NWPA (or call 202–488–6720 in Washington, D.C.) or write to the OCRWM National Information Center, 600 Maryland Avenue, S.W., Suite 695, Washington, D.C. 20024. Information packets also can be requested through the OCRWM Home Page at http://www.rw.doe.gov.

Copies of comments received will be available for examination and may be photocopied at the Department's Public Reading Room at 1000 Independence Avenue, S.W., Room 1E–190 or at the Nevada Operations Office Public Reading Facility at Building B3, 2621 Losee Road, North Las Vegas, Nevada or at the Yucca Mountain Site Characterization Office Technical Information Center, 1180 Town Center Drive, Las Vegas, NV 89134. They will be available through OCRWM's Home Page.

SUPPLEMENTARY INFORMATION:

I. Purpose and Need for Agency Action

Under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*) (NWPA or ''the Act''), the Department of Energy is responsible for the disposal of high-level radioactive waste and spent nuclear fuel in a deep geologic repository. Additionally, the Department is responsible for transportation of spent nuclear fuel and high-level radioactive waste to a NWPA-authorized Federal storage or disposal facility. The Director of the Office of Civilian Radioactive Waste Management is responsible to the Secretary of Energy to carry out these responsibilities. The Department is required to implement Section 180(c) of the Act. Section 180(c) of the Act requires the Department to provide technical assistance and funds to States for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdictions the Secretary plans to transport spent nuclear fuel or high-level radioactive waste to NWPA-authorized Federal storage and disposal facilities. Section 180(c) further provides that training cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. Section 180(c) identifies the Nuclear Waste Fund under the Act as the source of funds for work carried out under this subsection (42 U.S.C. 10175).

II. Section 180(c) History

OCRWM issued a Notice of Inquiry in the **Federal Register** on January 3, 1995 (60 FR 99), which briefly described various options to delineate policies and procedures for implementing Section 180(c) of the Nuclear Waste Policy Act. Members of the public were invited to submit comments on the Notice of Inquiry. In the March 14, 1995, **Federal Register** (60 FR 13715) OCRWM extended the deadline for comments to May 18, 1995 (60 FR 36793). In response to requests for additional information, OCRWM issued another, more detailed Notice of Inquiry in the **Federal Register** on July 18, 1995 (60 FR 36793). Members of the public were again invited to submit comments on the Notice of Inquiry. Next, on May 16, 1996, OCRWM published a Notice of Proposed Policy and Procedures (61 FR 24772) describing OCRWM's proposed approach to implementing Section 180(c) of the NWPA and responding to public comments received on the two prior notices. The public was again invited to submit comments on the Proposed Policy and Procedures. In response to these comments, and based on further research conducted by OCRWM staff, OCRWM decided to publish a Notice of Revised Proposed Policy and Procedures on July 17, 1997 (62 FR 38272). The public was again invited to submit comments.

After considering the comments received on the prior notices, input from stakeholders in various forums, and conducting extensive research, the Department is publishing another Notice of Revised Proposed Policy and Procedures. This notice details the policy and procedures by which the Department currently intends to implement Section 180(c) of the NWPA. These policy and procedures will remain in draft form until program progress or legislation provides definitive guidance as to when shipments will commence. At that time, OCRWM may finalize these policy and procedures or will consider promulgating regulations on Section 180(c) implementation.

In addition to the draft notice discussed above, OCRWM's work to date on Section 180(c) policy and implementation procedures has been discussed extensively in Transportation Coordination Group meetings, the Transportation External Coordination (TEC) Working Group meetings, and the cooperative agreement group meetings. The TEC Working Group comprises

organizations representing state, tribal, local, professional, technical, and industry associations that meet semiannually to identify and discuss issues related to the transport of radioactive materials. In addition, OCRWM has nine cooperative agreements with national and regional organizations representing various constituencies to exchange information and solicit input regarding the planned transportation activities of the Civilian Radioactive Waste Management program, including Section 180(c) issues. The cooperative agreement groups are the Southern States Energy Board, the Western Interstate Energy Board, the Council of State Governments Midwestern Office and Eastern Regional Conference, the Commercial Vehicle Safety Alliance, the Conference of Radiation Control Program Directors, the National Conference of State Legislatures, the National Congress of American Indians, and the National Association of Regulatory Utility Commissioners.

OCRWM also has released two documents that discuss Section 180(c) policy and implementation. These two documents are the *Strategy for OCRWM to Provide Training Assistance to State, Tribal, and Local Governments* (November 1992, DOE/RW–0374P) (the Strategy document), and the *Preliminary Draft Options for Providing Technical Assistance and Funding Under Section 180(c) of the Nuclear Waste Policy Act, As Amended* (November 1992) (the *Options* paper). These documents are available by requesting the information packet from the OCRWM National Information Center.

III. Policy and Procedures

Note: For definitions of terms used in the notice of final policy and procedures, see the appendix at the end of this document.

Policy Statement

It is OCRWM's policy that, for NWPA shipments, each responsible jurisdiction will have the training necessary for safe routine transportation of spent nuclear fuel or high-level waste and to respond to NWPA transportation incidents or accidents. OCRWM will provide funding and technical assistance, subject to annual appropriations, to assist states and tribes to obtain access to the increment of training necessary to prepare for NWPA shipments. This increment of training will include procedures for emergency response and safe routine transportation. The Department will take into consideration the states' and tribes' determinations of their needs when preparing its budget for the Civilian Radioactive Waste Management Program. If Congress does not fully appropriate the funds requested, the funding to eligible jurisdictions will be decreased proportionately.

Safe routine transportation of spent nuclear fuel and high-level waste will be accomplished through strict compliance with the Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) regulations and applicable state, tribal, and local laws and regulations. These include safety and enforcement inspections of NWPA highway shipments, rail measures that complement DOT's Federal Railroad Administration (FRA) inspection procedures, and continuous satellite tracking of all shipments. DOT regulations include requirements for highway routing; hazardous materials placarding, marking, and documentation; and rail inspections. The NRC has established regulations for radioactive materials shipments for protection of public health and safety. These regulations include requirements for package certification, loading, materials control and accountability, safeguards and security, state notification of shipments, quality assurance, and tracking. The NRC regulations for radioactive materials package certification require maintenance of criticality control and radioactive materials containment under credible accident scenarios. OCRWM recognizes that tribes are not included in NRC's notification regulations and has notified NRC that it intends to provide tribal notification of shipments in addition to the state notifications, and state and tribal access to satellite tracking information.

For safe routine transportation of spent nuclear fuel and high-level waste, it is OCRWM's policy to provide each eligible state and tribe the funding and technical assistance to prepare for safety and enforcement inspections of NWPA highway shipments, for rail measures that complement FRA inspection procedures, and for access to satellite tracking equipment and training on that equipment in cases where the capability does not already exist. Access to satellite tracking equipment and training will be subject to the NRC's verification that this use of satellite tracking technology does not violate NRC's safeguards and security regulations.

For dealing with emergency response situations, it is OCRWM's view that with implementation of the provisions for safe routine transportation, as stated in the previous paragraph, the risk of an accident is very low. Further, if an accident were to occur, the risk of any significant materials release or harmful increase in radiation levels in excess of NRC regulatory standards is extremely low. If an accident should occur, with or without a release, state and tribal governments have primary responsibility to respond and to protect the public health and safety in their jurisdiction. The Federal Government and, in particular, the Department have radiological emergency response resources available to assist when requested. Federal Government assistance is regionally based and can be mobilized and on scene in a few hours, although it may take up to forty-eight hours to be fully functional. The first responder is typically a local police or fire official. This official must be capable of identifying the shipment as a radiological materials shipment and notifying the appropriate radiological emergency response authorities. It is desirable, but not required, for some of the state and tribal responders to have received higher levels of hazardous materials training.

Therefore, for training for dealing with emergency response situations, it is OCRWM's policy to provide funds and technical assistance to states and tribes to obtain and maintain awareness-level training for all local response jurisdictions in the increment specific to NWPA shipments. In addition, to the extent funds are available, the assistance may be used to obtain an enhanced level of emergency response capability. This enhanced level may include operations level training, technician level training, and operations level and technician level refresher training in an increment specific to NWPA shipments.

Objectives

It is OCRWM's objective to provide a one-time only planning grant to every eligible state and tribe to aid in their determination of needs for technical assistance and funds to train public safety officials in procedures required for safe routine transportation and emergency response situations.

It is OCRWM's objective to provide a base grant to every eligible state and tribe to aid in planning and coordination activities for training in a timely manner. The base grant will be available every year of eligibility once the grant application has been approved. Any amount left after completion of the planning and coordination activities may be used for other allowable costs under the Section 180(c) program, at the discretion of the applicant.

It is OCRWM's objective to provide a two-part variable amount of funding and

technical assistance depending on the amount of assistance each applicant needs to obtain the incremental training requirements resulting from the planned NWPA shipments. The first part of the variable funding and technical assistance may be used only to provide training for safety and enforcement inspection training for NWPA truck shipments; rail measures that complement FRA inspection procedures; awareness level training, awareness level refresher training, and awareness level train-the-trainer training for emergency responders.

The second part of the variable funding, depending on available funds, will support an enhanced level of emergency response capability. As discussed in the Policy Statement section, OCRWM believes that the combination of the Federal radiological emergency response capability and a Section 180(c) program that provides inspection and awareness level training will provide the nation with an adequate basis to respond to any potential transportation emergency that may result from NWPA shipments. Nevertheless, to the extent that funds appropriated for Section 180(c) are sufficient, OCRWM will fund an enhanced level of training. This enhanced level could include operations and/or technician level training, and refresher training.

It is OCRWM's objective to provide funding and technical assistance for training for safety and enforcement inspections specific to NWPA truck shipments such as those described in the Commercial Vehicle Safety Alliance's (CVSA) Enhanced North American Standards.

It is OCRWM's objective to provide funding and technical assistance for states and tribes to obtain an increment of the training needed to conduct rail inspections under the FRA's State Participation Program. Since the FRA covers the training cost to state employees in the State Participation Program, there is no direct role for Section 180(c) to fund training. Instead, OCRWM will consider applicants' requests to fund, in the increment necessary for OCRWM shipments, safe rail transportation measures that complement DOT's FRA inspection procedures. Since currently there is no mechanism for tribes to participate in the State Participation Program, OCRWM will work with tribal governments to identify where funding and technical assistance may best assist a tribe in addressing procedures for rail safe routine transportation.

DOE intends to offer a variety of training delivery options such as a train-the-trainer program, a curriculum to insert into a jurisdiction's existing awareness level training programs, and a video that states and tribes may distribute to emergency response officials along the shipment routes. OCRWM plans to provide funds for the cost of the trainers' travel within the jurisdiction. Grant applicants may choose the combination of these resources that best matches their current training programs. This training should be at least consistent with Occupation Safety and Health Administration (OSHA) regulations at 29 CFR 1910.120(q) or National Fire Protection Association (NFPA) hazardous material training standards.

It is OCRWM's objective that any assistance provided supplements the applicant's existing safe routine and emergency response structure by providing an additional increment of preparedness.

In addition, OCRWM will adopt, to the extent practicable and consistent with the NWPA, any future Department-wide policies adopted to standardize assistance to states and tribes for the Department's radioactive materials shipments. This could include standardization of funding mechanisms, training standards, allowable equipment purchases, and the definitions of technical assistance and safe routine transportation.

Funding Mechanism

The Department will implement Section 180(c) through an OCRWM grants program. Funding will be provided every year (subject to Congressional appropriations) beginning approximately four years prior to the first shipment through state or tribal reservation boundaries. The grants will be specific to OCRWM's Section 180(c) program and, at this time, will not be combined with any other Department-sponsored transportation preparedness or training programs, although coordination by jurisdictions would be encouraged. The grants program may be combined with a Department-wide grants program in the future if one is developed, is practicable, and is consistent with existing law.

The grants program will be administered in accordance with the DOE Financial Assistance rules (10 CFR part 600), which implement applicable Office of Management and Budget circulars.

Basis for Cost Estimate/Funding Allocation

The total program cost and the allocation of funds among eligible states and tribes will be based on a one-time only planning grant, a predetermined base amount, and a variable amount determined through the application process. The planning grant of $150,000 will cover costs associated with conducting the determination of incremental needs required to complete the application package. This amount is based on an estimate of several states' past experience with planning for shipments to the Department's Waste Isolation Pilot Plant in Carlsbad, New Mexico.

The base grant will cover costs associated with planning for NWPA shipments, and is based on a salary estimate for planning such shipments. In 1994, a Conference of Radiation Control Program Directors' (CRCPD) survey found the average salary of a state health physicist was $35,000. The Department has doubled that figure and adjusted for inflation since 1994 to reach the $75,500 base grant. The figure was doubled on the assumption that states and tribes can, if they so choose, pay the salary of one person each for safe routine transportation and emergency response planning. The base amount will be adjusted annually for inflation.

The variable grant amount will be based on two parts of the application package process. The first part will ask the applicant to determine the amount of financial assistance needed to obtain the appropriate increment of awareness level training and to prepare for safe routine transportation inspections of NWPA shipments. The second part will ask the applicant to determine the amount of financial assistance needed to obtain the appropriate increment of operations and/or technician level training for emergency response for NWPA shipments. This second part of the application will be used to determine any enhanced level of training, depending on available funds.

Definition of Key Terms

The definition of safe routine transportation for the purposes of determining eligibility or allowable activities under the Section 180(c) program will be as follows:

- Safe routine transportation means the shipment of spent nuclear fuel and high-level radioactive waste to a repository or a Monitored Retrievable Storage facility pursuant to the NWPA through state, tribal, and local jurisdictions in a manner compliant with applicable Federal, state, tribal, and local laws and regulations. Safe routine highway transportation is characterized by adequate vehicle, driver, and package inspection and enforcement of the Federal Motor

Carrier Safety Regulations and the Hazardous Materials Regulations. Safe routine rail and barge transport is characterized by compliance with rail and barge transportation regulations including Federal Railroad Administration, Coast Guard regulations, and the Hazardous Materials regulations.

The definition of technical assistance for the purposes of determining eligibility or allowable activities under the Section 180(c) program will be as follows:

• Technical assistance means assistance, other than financial assistance, that the Secretary of Energy can provide that is unique to the Department to aid training that will cover procedures for the safe routine transportation and emergency response situations during the transport of spent nuclear fuel and high-level radioactive waste to a repository or Monitored Retrievable Storage facility pursuant to the NWPA, including, but not limited to, the provision of training materials, the provision of public information materials, and access to individuals involved in the shipments.

Technical assistance, as defined, will include access to the Department's regional and headquarters representatives involved in the planning and operation of NWPA transportation or emergency preparedness, provision of information packets that include material about the OCRWM program and shipments, and provision of information to insert into curricula. Recognizing the Federal Government's government-to-government relationship with and Trust responsibility toward tribal nations, and in response to comments about the lack of hazardous materials response capability on some tribal lands, the Department will consider making additional technical assistance available to tribes upon request.

Eligibility and Timing of the Grants Program

OCRWM will provide grants and technical assistance to those states and tribes through whose jurisdiction the Secretary of Energy plans to transport spent nuclear fuel and high-level radioactive waste pursuant to the NWPA. States and tribes having cross-deputization or mutual aid agreements with a jurisdiction that does have shipments, even though no shipments may occur within the borders of the mutual aid state or tribe, may receive funding from the jurisdiction that will receive shipments. Additionally, in cases where a route constitutes the border between two states, a state and a tribal government, or two tribal governments, jurisdictions on both sides of the route will be eligible for Section 180(c) assistance.

OCRWM intends that the application process for grants will begin approximately four years prior to transportation through the applicant's jurisdiction (about one year for the application process, and about three years to implement the program). OCRWM plans to notify the governor or tribal leader of the jurisdiction by letter, and include an information packet and application package. The governor or tribal leader would be requested to select one agency or representative within the jurisdiction to apply for and administer the Section 180(c) grant. The administering agency or representative would indicate in the application how it intends to use the funds. If funding needs to be provided to other agencies (for example, from the emergency services agency to the highway patrol to pay for inspector training), the transfer of funds would be the responsibility of the recipient state or tribe. DOE plans to require that information be provided in the application regarding the distribution of funds.

OCRWM plans to identify the preliminary routes that DOE anticipates using within state and tribal jurisdictions when it notifies governors and tribal leaders of their eligibility. The Regional Servicing Contractor (RSC) [1] would propose routes in the three years prior to shipment. If the selected routes are different than the preliminary routes, either as a result of the RSC selection process for the proposed routes or state designation of alternative routes, then OCRWM would work with those states and tribes affected by any route changes to facilitate revision of their grant applications and expedite the application review. The Department plans to retain final approval of all transportation routes and the RSC(s) would be responsible for obtaining NRC approval of the routes.

In accordance with the Section 180(c), local governments will not be eligible to apply for Section 180(c) grants directly. However, states, and tribes, if they have subjurisdictions, would be required to coordinate their planning with local jurisdictions, indicating in the application that the needs of local public safety officials have been considered and how the training assistance will be provided to local jurisdictions and their appropriate public safety officials. Because of the emergency response structure in most jurisdictions, OCRWM anticipates that the awareness level training will be made available to local public safety officials. OCRWM also anticipates that the inspection and enforcement training will be provided to state-level and tribal employees since they generally have inspection and enforcement authority. The operations and technician level training, to the extent they are funded, would be provided to the appropriate public safety officials at the grantee's discretion.

OCRWM expects the application to include a five-year plan detailing how the funds would be spent each year. Funding will be disbursed annually based on the applicant's five-year plan. The applicant may request an amendment to the application if conditions change significantly within the five-year period.

For the purposes of this policy, the year shipments commence is defined as ''Transportation Year'' or ''TY.'' During the fourth year prior to shipments; i.e., in Transportation Year minus 4 or TY–4, the eligible jurisdiction would be conducting its determination of needs for the grant application. The $150,000 planning grant would be available during TY–4 to conduct this work.

In the next year of eligibility to receive funding (TY–3), the base grant would be available. The next year, two years prior to shipment, or TY–2, the base grant and a variable amount of financial assistance would be available.

A state or tribe would continue to be eligible for and receive the base and variable amount of funding through TY–1 and TY, and in each year of eligibility thereafter as long as NWPA shipments go through its jurisdiction. Eligible states and tribes would need to reapply for the grant program every five years.

If there is a lapse of NWPA shipments for three or more years, the state or tribe would receive no funds during those years and would regain eligibility three years prior to another NWPA shipment through its jurisdiction. Three years prior to the resumption of shipments through its borders, a state or tribe may again apply for TY–3 grants. If the lapse is two years or less between shipments, the Transportation Year grants would continue as if shipments had been traversing that jurisdiction during the lapse.

The Section 180(c) program would include the following contingency plan for schedule and route changes: in

[1] RSC is defined in the draft *Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management* as the contractor responsible for all activities and services originating in its Servicing Region(s), including the provision of Transportation Cask Systems and Storage Systems as required to provide the necessary waste acceptance and transportation services.

general, eligible states and tribes may receive an additional amount of financial assistance if asked to complete activities in shorter amounts of time; i.e., a state or tribe may receive TY–1 and TY–2 funding in the same year. If the route for a shipment is selected too close to the start of the shipment to allow for Section 180(c) implementation or for any reason the responsible jurisdictions along a selected route lack adequate training, OCRWM may use escorts with more training and equipment than those normally used for the purpose of security until a reasonable time period for training has expired. The contingency plan could be activated in case of emergencies, or fraudulent actions or non-cooperation by a state or tribe along the route.

Allowable Activities for Funding

This section describes the types of activities that would be allowed under this policy. This is not meant to be a comprehensive list, but merely a guide to the types of activities an applicant jurisdiction might consider to be eligible for Section 180(c) funding.

For the most part, it would be the grantee's decision in consultation with local governments and first responders along the routes to select who gets trained and the organization that administers the training. Grantees would describe in their five-year plan their incremental training needs, where the training would be obtained, any drills and exercises they propose to conduct that are an integral part of the training curricula, whether the training curricula needs any input from OCRWM about NWPA shipments, what equipment and supplies they propose to purchase, and what technical assistance from DOE they anticipate requesting. The grantee would specify how this assistance augments their current infrastructure for safe routine transportation procedures and emergency response.

The initial planning grant may be used to pay for staff, travel, and other costs associated with conducting an assessment of incremental training needs. This may include a risk assessment, and other assessment activities.

The base grant could be used to pay for staff, travel, and other costs associated with preparing to train public safety officials, and the planning and coordination activities associated with interacting with local jurisdictions and neighboring jurisdictions. The base grant could also be used for training, risk assessment, and other assessment activities. The variable amount of funding could be used to pay for travel and tuition costs for those receiving training, including drills and exercises associated with training, and training on the satellite tracking system used for NWPA shipments. Training on the satellite tracking system could be contingent on the NRC's ruling as to whether state and tribal access to satellite tracking for OCRWM shipments is consistent with the safeguards and security regulations.

It would be the state's or tribe's choice, in consultation with the local governments and first responders along the route and within their annual budget, to determine who receives refresher training and with what frequency. It also would be the state's or tribe's choice, in consultation with the local governments and first responders along the route and within their annual budget, to determine which new personnel receive training and the location of that training. The training could apply to state or tribal inspectors, and state, local, or tribal emergency response personnel including medical emergency responders.

Regarding equipment, a grantee would be able to budget, for TY–2 and TY–1, 25 percent of each year's total Section 180(c) funds to purchase appropriate (i.e., training-related) equipment and supplies. Such equipment could also be used for inspections and for responding to emergencies. After TY–1, the applicant would be able to budget up to 10 percent of each year's Section 180(c) funds to purchase appropriate equipment and supplies. The equipment and supplies to be purchased must be identified in the application and the need for the equipment justified. The purchase of equipment related to the satellite tracking system for NWPA shipments would be included in these percentage caps, assuming NRC allows state and tribal access to satellite tracking information for OCRWM shipments. The title to equipment would be vested in the grantee in accordance with the property provisions at 10 CFR 600.232.

A state or tribe would not be authorized to use Section 180(c) funds for purposes not related to NWPA shipments such as development of a broad-based non-NWPA emergency response program. In cases where basic capabilities may be lacking, OCRWM recognizes the need to provide additional technical assistance. This assistance is not meant to build basic capabilities but to provide the jurisdiction with information that may help them prepare for the shipments. For example, DOE could provide information about what additional resources may be available to state, local, and tribal jurisdictions, what safety measures are being taken by the Department to ensure safe shipment despite a lack of local capabilities, or what safety measures other jurisdictions may have taken in a similar situation.

IV. Discussion of Comments Received on the Notice of Revised Proposed Policy and Procedures

The Department received 19 sets of comments in response to the July 17, 1997, Notice of Revised Proposed Policy and Procedures. Comments were received from the Commercial Vehicle Safety Alliance; Council of State Governments-Midwestern Office; International Association of Fire Fighters; International Association of Fire Chiefs; Edlow International Company; the Western Interstate Energy Board; Inyo County, California; National Congress of American Indians; State of Idaho; State of Nevada; Southern States Energy Board; Nuclear Waste Citizens Coalition; State of New Mexico; National Conference of State Legislatures; Prairie Island Indian Community; Nuclear Energy Institute; and the Pueblo of Acoma. Some commenters provided more than one set of comments.

The following section discusses general categories and summarizes major points of the comments and the Department's response.

A. Section 180(c) Policy

Policy Statement and General Themes

Most commenters stated that the needs-based approach described in the Revised Proposed Policy is an improvement over the formula-based approach described in the May 1996 Proposed Policy. There were positive comments on the equal treatment of states and tribes, the broadened definition of eligibility, and the broadened scope of allowable activities. The Nuclear Energy Institute and Edlow International generally endorsed the current proposal. The Nuclear Energy Institute applauded OCRWM's acknowledgment of current regulations within the body of the proposed policy.

However, the large majority of commenters emphasized that they believe that additional change is still needed in key areas, primarily more cooperative route selection and a more cooperative transportation planning process. The Western Interstate Energy Board ''continues to find the Section 180(c) policy * * * unacceptable because it ignores key policy decisions made by the Western Governors * * * and because it fails to ensure that an

effective emergency response mechanism will be in place to handle NWPA transportation accidents.'' The Southern States Energy Board, the Western Interstate Energy Board, the Commercial Vehicle Safety Alliance, and Inyo County, California, all recommended the Waste Isolation Pilot Plant's (WIPP) transportation planning process as a good example of cooperative planning. The comment was also made that OCRWM should take a leadership role within the Department in developing methods to assist state, local, and tribal governments to prepare for the shipments, as OCRWM will conduct the nation's single largest radioactive materials transportation campaign. One commenter asked whether basing the level of assistance on a determination of needs means that a ''well-prepared'' state would not be eligible for assistance beyond the base amount. Or, will ''relatively prepared'' states receive assistance based on the likelihood of a greater number of shipments and, therefore, a significant increase in the demands on, for example, state inspectors?

Several comments requested clarification or greater acknowledgment of the roles and responsibilities of different governmental levels. The Council of State Governments-Midwestern Office requested better definition of the roles of the Federal agencies involved in radioactive materials transportation accidents and how Federal agencies will interface with state and local emergency response officials. They also requested that the phrase ''state and tribal governments have a responsibility to * * * protect the public health and safety * * *'' be changed to ''state and tribal governments have *primary* responsibility to * * * protect public health and safety.'' They stated, ''We again object to OCRWM's apparent intent to substitute Federal radiological emergency response capability for state preparedness. The role of Federal resources is to supplement state response capabilities when necessary. OCRWM should correct any references in the notice that misrepresent the roles of and relationship between state and federal response capabilities.'' They emphasized their view that states will not turn over the responsibility of protecting citizen health and safety to DOE.

Communications was another frequently mentioned topic. Both the Council of State Governments-Midwestern Office and the Western Interstate Energy Board encouraged OCRWM to place more emphasis on early and substantive public outreach, asserting that effective communications will help create the public trust necessary for a successful transportation program. They are concerned that the field of public information will be dominated by an already organized and active opposition. The Council of State Governments-Midwestern Office included a Newsday article (August 6, 1997) about the lack of emergency preparedness for OCRWM shipments as an illustration of the success of these groups. The Western Interstate Energy Board stated that communications and interactions with states and tribes cannot appropriately be placed in the hands of private contractors because the contractors will be seen as acting in their own, profit-driven interests. They stated it is DOE's responsibility to secure the public's confidence by taking clear responsibility for interacting with states and tribes.

With regard to regulatory compliance, Inyo County, California, commented that public tolerance of a campaign of this magnitude will not allow minimum safety measures. The International Association of Fire Fighters (IAFF) felt that the Revised Proposed Policy and Procedures ''mostly sidestepped'' their comments. The IAFF expressed its view that strict compliance with regulations is a flaw that exaggerates a lack of oversight and enforcement. They added that these regulations are being weakened and pointed, as an example, to the U.S. Department of Transportation's Research and Special Programs Administration approval of a change to 62 FR 46214. They stated that this change ''removed Radiation Protection Program regulations and related modal provisions that would have required the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials.'' The IAFF's point was that the lessening of such requirements means that increased oversight above the regulatory minimum is necessary to prevent the politicization of the distributed funds. In contrast, the Nuclear Energy Institute stated that additional requirements should be considered only if they provide a clear benefit commensurate with their cost. The Nuclear Energy Institute stated that radioactive materials transportation has been proven safe under the current regulatory structure.

In other comments, the Council of State Governments-Midwestern Office and Inyo County, California, commented that OCRWM should commit to funding the Section 180(c) program regardless of congressional appropriations. Inyo County stated that the wording in the proposal ''if Congress does not fully appropriate the funds'' suggests that the funding may be congressionally controlled and invites Congress to micromanage the program. The Western Interstate Energy Board reiterated its position that the Nuclear Waste Fund should pay for all costs associated with implementing Section 180(c) and transportation preparation; if not, the program will be viewed as an unfunded mandate in violation of Executive Orders 12866 and 12875. The Commercial Vehicle Safety Alliance requested that the wording requiring a jurisdiction to coordinate with local jurisdictions to conduct the needs assessment also include a reference to coordinate with ''national safety organizations'' to ensure that safety inspections are efficient and uniform along all the routes.

The Nuclear Waste Citizens Coalition reiterated its previous comments that DOE should update NUREG/CR–2225 (1981), *An Unconstrained Overview of the Critical Elements in a Model State System for Emergency Response to Radiological Transportation Incidents.* The International Association of Fire Fighters requested that OCRWM address indemnification under the Price-Anderson Act, particularly as it relates to the potential financial impact that an incident involving radioactive materials may have on local governments. Specifically, IAFF asked whether DOE has an obligation to indemnify the contractor if its negligence is the proximate cause of an accident; whether DOE will reimburse local officials for the costs it might expend should such an accident occur; who precisely is responsible for clean-up; and who will pay clean-up costs.

Response. OCRWM has considered all the comments received in response to the Section 180(c) policy development. OCRWM has chosen not to incorporate comments when to do so would not increase shipment safety or the effectiveness of the grants program, or for other reasons is incompatible with OCRWM's mission to implement the Section 180(c) program according to the NWPA.

OCRWM intends that states or tribes be eligible to receive the variable amount of the grant regardless of their preparedness level. However, a more well-prepared jurisdiction could expect to receive less variable funding than a less well-prepared jurisdiction. The number of shipments through a jurisdiction would not be a measure of funding levels since once staff are trained, the training applies without regard to the number of shipments.

OCRWM recognizes the primary role of states and tribes in protecting the health and safety of their citizens. The language regarding the Department's radiological emergency response assets is a statement that the Federal capability exists to respond to a radiological materials shipment accident even in those areas of the country without basic emergency response capabilities. The roles and responsibilities of different government levels in preparing for and responding to a radiological emergency are defined in the Federal Radiological Emergency Response Plan. These roles and responsibilities will be further defined as OCRWM's transportation planning process continues.

OCRWM recognizes the crucial role of communications and public acceptance in developing a workable transportation program. To this end, OCRWM will retain primary responsibility for interactions with stakeholders. This will include providing public information to jurisdictions along the routes and making Departmental representatives, whether Federal or contract employees, available to communities as budgets permit. The regional servicing contractors will be required to have a Communications and Outreach Plan which will describe how they will communicate and interact with stakeholders.

With regard to regulatory compliance, it is OCRWM's view that the current regulatory structure is sufficient to provide for the safety of the shipments. In addition to Federal regulations, OCRWM shipments will be subject to applicable state, local, and tribal regulations. OCRWM also views the current procurement regulations as sufficient to ensure that the disbursement of funds will not become politicized within a recipient jurisdiction.

OCRWM disagrees that the phrasing ''if Congress does not fully appropriate the funds'' invites Congress to micromanage the grants program. The ability of Congress to limit funding to a particular program is simply a reality that OCRWM will have to work with to fund the grant recipients. Funds from the Nuclear Waste Fund are only available to the Department when appropriated to the Department by Congress. It is OCRWM's position that the Section 180(c) program should provide the increment of assistance needed to respond to an OCRWM radiological materials shipment, and should not provide basic emergency response capability to jurisdictions along the routes that have always been the responsibility of the state, local, and tribal governments. These governments are aided by other Federal agencies that have as part of their mission the assistance of state, local, and tribal governments in attaining more comprehensive emergency response and safe routine transportation capabilities. OCRWM does not believe that preparations for these shipments would constitute an unfunded mandate if not fully funded by the Section 180(c) program because there is no requirement under NWPA mandating states to take any particular action with regard to these shipments. The Commercial Vehicle Safety Alliance's request to add coordination with ''national safety organizations'' to the requirement on coordination by the grant applicant has not been incorporated because OCRWM believes the applicants should decide whether or not to coordinate with non-governmental entities.

Regarding the request to update NUREG/CR–2225, this is a Nuclear Regulatory Commission document that the Department does not have the authority to update. In addition, the NUREG/CR–2225 document is useful for planning in a model scenario, the text states that the study is an unconstrained view of the critical elements in a state program for radiological emergency response, presuming no bounds of manpower, funding, development time, or other real-world constraints. In addition, the model does not specify the type of radioactive material; therefore, it does not take into account the packaging used for NWPA shipments and the low risk of these shipments.

Liability for accidents that occur while the spent fuel and the high-level radioactive waste is in transit from the nuclear power plants to the proposed repository at Yucca Mountain, at a storage facility, or at the repository would be determined in accordance with applicable state tort law. In applying state tort law, a court normally would attribute liability to the person responsible for causing damage. If a DOE contractor is liable for nuclear damage or a precautionary evacuation resulting from its contractual activities, the contractor normally would be indemnified by DOE pursuant to the provisions of the Price-Anderson Act.

DOE's tort liability would be determined in accordance with State tort law and the Federal Tort Claims Act. However, under current plans, DOE will use contractors to transport the spent fuel and high-level waste and to construct and operate the repository and a storage facility, if one is constructed. Therefore, Price-Anderson indemnification would apply to liability claims arising from these activities.

Although there are certain limitations to the compensation available under the Price-Anderson system, it provides very broad financial protection to compensate for damage and injury, including loss of profits caused by a nuclear incident; costs of a precautionary evacuation ordered by an authorized state or local official, if such incident or evacuation arose in the course of transportation to a DOE storage or disposal site, or while at a DOE storage or disposal facility; and all reasonable additional costs incurred by a state or political subdivision of a state in the course of responding to a nuclear incident or a precautionary evacuation. Price-Anderson coverage is available to compensate persons for such losses whether or not negligence was the proximate cause of the nuclear incident or precautionary evacuation.

Routing Issues

Many of the comments on routing were alike. Commenters were concerned that the role of private contractors in route selection was not fully defined. It was a common opinion that routing decisions should not be delegated to the four potential regional servicing contractors partly because confusion could result from contractors in each region of the country selecting routes and modes that do not match at state borders. They asked that the policy clearly define this role.

Another frequently expressed comment was that the critical nature of routing decisions means that DOE should make routing decisions early to allow plenty of time for planning, and that DOE should commit to a cooperative effort to determine the routes. Commenters also encouraged DOE to commit to adopting a DOE-standardized policy on early and cooperative route selection, and suggested that the cooperative effort is needed because strict reliance on regulations will result in too many viable routes to focus scarce training and planning resources. The Western Interstate Energy Board restated that OCRWM should commit to meeting the demands of the Western Governors Association (WGA) for DOE to develop responsible routing criteria; to develop a sound methodology for evaluating optional mixes of routes and transportation modes; and to fix the shipping origins and destination points as early as possible [WGA resolution 93–003, Modified and Readopted June 24, 1996]. Other commenters stated that the current discussion on routing is inadequate to assure local governments that their concerns will be addressed in the route selection process.

Timing and routing announcements were also an area of concern. Several commenters said route identification must be done three to five years prior to shipments to enable affected states and tribes to designate alternative routes and assess their training and planning needs. They felt two years was not sufficient time to prepare for a shipping campaign of any magnitude. The Council of State Governments-Midwestern Office commented that the requirement to consult local governments in development of the application's three-year plan cannot be met unless routes have been announced. They also asked how states will assess state and local training needs in TY–3 if they don't know what routes to train along until TY–2. The State of Nevada suggested solving this dilemma by providing initial base grants for planning in TY–3 and delaying the requirement for submission of a multi-year plan until routes are known in TY–2.

Response. The draft Request for Proposal for the Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management issued November 24, 1997, clarifies many of the issues raised in comments regarding routing. The RSC(s) must abide by DOT and NRC routing regulations. The RSCs are also required to cooperate with other RSCs, as appropriate, in developing operating protocols and other operating procedures that will aid in integrating the operating environment throughout all four Servicing Regions. The Western Governors Association resolution was considered but not incorporated because OCRWM believes the current NRC and DOT routing regulations are sufficient to ensure shipment safety.

The eligible governors and tribal chairmen will be notified of the preliminary routes and modes in TY–4 so that they may conduct the determination of needs and consult with jurisdictions along the routes. The Department is currently considering the development and adoption of Department-wide standardized route selection critera through the Senior Executive Transportation Forum, established within DOE to coordinate the efforts of Departmental elements involved in the transportation of radioactive materials.

There are no regulations addressing the role of local governments in the route selection process. The most appropriate place for local concerns about routing is during states' selection of alternative routes. The DOT Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials indicate that States are required to coordinate and solicit input from local governments and other jurisdictions likely to be impacted by a routing decision.

Questions regarding timing of the route announcement have also been addressed in this proposed policy and the Draft Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management. The current schedule for route announcements should provide grant recipients with sufficient time to assess their needs and prepare for NWPA shipments. As stated in the Eligibility and Timing section, if there are route changes after an application has been submitted, OCRWM will work with those states and tribes affected by any route changes to facilitate revision of their grant applications and expedite the application review.

Allowable Use of Funds

The comments on allowable activities generally approved of the expansion of allowable activities in the Revised Proposed Policy. There were some specific comments and requests for clarification. Regarding the use of funds to purchase equipment, three commenters said the ten percent and twenty-five percent caps were arbitrary and unnecessary. The amount of funding should be negotiated in the grant application, allowing each eligible jurisdiction to determine its own equipment needs. Another stated that the ten percent cap should be increased to twenty percent while another stated that the twenty-five percent maximum cap should apply to each grantee's annual budget since few entities will have the foresight to accurately determine their full equipment needs up front for a program that will operate for decades. The National Congress of American Indians said the caps will not be sufficient for tribes that lack even basic equipment and trained personnel. The Commercial Vehicle Safety Alliance and the State of Nevada asked that the policy clarify that equipment for inspections is allowable as well as equipment for emergency response situations. One commenter asked whether the twenty-five percent cap would apply if, due to a lapse in shipments, a state loses eligibility and then reapplies for assistance. Another commenter asked whether the phrase ''train or otherwise prepare for'' in the objectives section of the notice meant that grant recipients could procure radiation detection/measurement instrumentation for use by vehicle inspectors and health physicists.

Regarding drills and exercises, commenters were pleased that drills and exercises will be an allowable expense. Two commenters asked DOE to clarify that all costs associated with drills and exercises will be covered—not just travel and tuition costs. There was also a question as to whether the drills and exercises would be those planned and conducted by the states, or whether DOE would plan and conduct the drills and exercises. Another commenter requested that drills and exercises be funded separately from the base grant as the commenter viewed drills and exercises as the most crucial aspect of any emergency response training.

Regarding risk assessment, the National Conference of State Legislatures stated that allowing eligible states and tribes to include risk assessment costs in their grant application adequately addressed this issue. However, the International Association of Fire Fighters felt the Revised Proposed Policy had not gone far enough and referred to the congressional endorsement of risk assessment ''when it required the Secretary of Transportation to conduct such an assessment during a study of routes and modes that would enhance overall public safety (49 U.S.C. Section 5105).'' They stated that, at a minimum, DOE should provide technical assistance for grant recipients to conduct risk assessments. The Council of State Governments-Midwestern Office stated any risk assessment must include alternative route analysis. They also asked OCRWM to clarify its position on risk assessments since the notice states in one place that route and risk assessments will be allowed, but the definition of safe routine transportation states that alternate route analysis will not be allowed.

Regarding safe routine transportation, a few commenters requested that attendance at the Federal Railroad Administration-certified railroad inspection classes be an allowable cost. These commenters explained that the Federal Railroad Administration will not be prepared to handle inspections for the number of shipments required under an NWPA shipping campaign due to staff shortages.

There were a variety of other comments. Two commenters stated that travel costs offset by the grants program should cover out-of-state travel, not just travel within the jurisdiction as stated in the Revised Proposed Policy and Procedures. Another commenter stated that grant recipients should be able to use the base grant for training as well as

for planning and coordination activities. The Council of State Governments-Midwestern Office said that DOE must allow funding for the enhanced training level in the overall needs assessment, and not just as funds are appropriated. Several commenters continued to request that funds be allowed to pay for infrastructure improvements, arguing that certain improvements are necessary for safe routine transportation. The Western Interstate Energy Board and the State of New Mexico both reiterated their position that the grants program must cover costs associated with equipment maintenance, record-keeping, and related costs. Other comments said that completing the needs assessment of the application package must be an allowable cost because its preparation will be burdensome for some jurisdictions.

Response. The Department has chosen not to lift the percentage cap on equipment in order to ensure that the majority of the funding is used for training as directed by the NWPA. If there is a lapse in shipments where a state or tribe loses eligibility and then regains eligibility because shipments resume through their jurisdiction, the same twenty-five percent and ten percent caps will apply to their applications. Whether these caps are sufficient to cover grant recipients' needs is related to the total amount of the grant awarded and that amount has not been determined. It will be a grant recipient's choice whether to allocate the money to equipment for training for safety inspections or emergency response situations. Both types of equipment will be considered an allowable expense. The Department recognizes that some tribes lack basic capabilities and will work with tribal governments on how best to address this issue.

Regarding drills and exercises, the Department intends for grant applicants to propose in their applications any drills and/or exercises, that are an integral part of the training curricula, and that they would conduct as part of the variable grant. These drills and exercises will be conducted by the states and tribes, not by DOE.

As indicated previously, risk assessment and alternative route analysis is an allowable expense.

As stated in the Objectives section of the policy, Section 180(c) funding may be used for rail safe routine transportation measures that complement DOT's FRA inspection procedures. Applicants will be expected to specify how these funds will be used in their five-year plan.

Regarding other comments, the base grant may be used to offset the cost of out-of-state travel, or for training after TY–3, as the grant recipient wishes. The base grant may also be used to offset the costs of equipment maintenance and recordkeeping. Recognizing that jurisdictions may wish to train beyond the awareness level, OCRWM intends to fund the operations and technician level training as funds allow. OCRWM reiterates its position that infrastructure improvements such as rail and road improvements are beyond the scope of the Section 180(c) mandate.

Training Standards

Comments differed regarding the most appropriate training standards for the Section 180(c) program. The most frequent comments encouraged OCRWM to offer training courses similar to those offered by WIPP, such as incident command training and emergency medical training. Many commenters strongly stated that training to the awareness level is insufficient and will leave local emergency responders unable to handle a radioactive materials accident. Commenters were in general agreement that local emergency responders must have at least the equivalent of OSHA's operations level training. The International Association of Fire Fighters said they believe that ''firefighters, at a minimum, must be trained to the operations level'' because of the National Fire Protection Association (NFPA) standards which state that ''operational-level competency is to be attained by those persons such as fire fighters and rescue personnel whose duties and functions include responding to hazardous materials incidents to mitigate the effects of a release without actually trying to stop the release.'' The International Association of Fire Chiefs said that OCRWM should provide 40 hours of training each for the technician and operations level responders that are trained under the enhanced level training outlined in the Revised Policy. They and other commenters stated that the OSHA and NFPA-based training is too generalized for the specific information needed for a radiological response since they encompass all hazardous materials. The International Association of Fire Chiefs also stated its belief that a 4-hour video-based course would be sufficient to train to the awareness level. The Council of State Governments-Midwestern Office asked OCRWM to clarify that *all* emergency responders along a route must be trained to the awareness level because references in the notice to ''the appropriate increment of awareness level training'' does not sufficiently convey the sense of providing training to all affected local officials.

Other comments focused more on the delivery of training. The Council of State Governments-Midwestern Office requested that OCRWM not restrict states to a train-the-trainer approach. The Western Governors' Association reiterated its request that OCRWM establish Regional Training Advisory Teams and a National Training Advisory Committee for radiological shipments to help coordinate training across jurisdictions. Inyo County, California, stated that OCRWM should restrict funds to local use only and not fund any state personnel because of the wording in Section 180(c) that says ''technical assistance and funds * * * for training public safety officials of appropriate units of local governments. * * *'' Another commenter said OCRWM should add program-specific instructions to existing training programs, not create new programs to train already overburdened emergency response officials. The State of Nevada and the International Association of Fire Chiefs recommended that OCRWM develop a national approach to training for responding to radiological incidents, in essence a Federal floor of adequacy for emergency response to these shipments. The Commercial Vehicle Safety Alliance requested this policy to state that safety and enforcement training must be given to the law enforcement agency having the proper training and authority to conduct safety inspections, including roadside inspections.

The International Association of Fire Fighters stated that it is DOE's sole responsibility to have trained emergency response personnel with each shipment if local jurisdictions choose not to prepare or respond to a radiological accident because they have received insufficient training. One commenter asked if the pilot test of a DOE Transportation Emergency Preparedness Program module ''Radiation Materials Emergency Response: Awareness Level'' is the correct title.

The National Congress of American Indians, the Pueblo of Acoma, and the Prairie Island Indian Community all requested that OCRWM reinstate funding to the National Congress of American Indians for the Tribal Radiological Emergency Preparedness Workshops. They stated that funding the workshops will help DOE meet its Trust responsibilities and assist tribes in attaining the proper readiness for NWPA shipments.

Response. As previously stated, OCRWM does not believe the enhanced level of training as defined in the policy is necessary for shipment safety. However, recognizing that jurisdictions may wish to train beyond the awareness level, OCRWM intends to fund the operations and technician level training as appropriations allow. The type of training provided would be left to the discretion of the grant recipient. OCRWM would fund train-the-trainer training, will work with the Department's existing training programs to include OCRWM-specific shipment information in other training programs that states and tribes may receive from the Department, and will provide shipment-specific information that states, local governments, and tribes can include in their training materials. All of this would be at the awareness level.

The issue of whether DOE is responsible to have trained emergency responders to handle an accident if a local fire department chooses not to respond because of lack of training is outside the scope of the Section 180(c) program. Section 180(c) mandates the provision of technical assistance and funds to states and tribes for training public safety officials in procedures required for safe routine transportation of spent nuclear fuel and high-level radioactive waste and emergency response situations.

The request that OCRWM specify that all emergency responders along a route will be trained to the awareness level is better left to the discretion of the state or tribe conducting the training. It will be their choice as to how many staff are trained within each jurisdiction along the route. With the high turnover rates among emergency responders, it seems unlikely that every emergency responder can be trained along every single route. However, OCRWM does anticipate that every jurisdiction along a route would have people trained to the awareness level for hazardous materials. OCRWM does not find it necessary to fund the creation of Regional Training Advisory Teams or a National Training Advisory Committee as requested. The eligible jurisdictions may use their Section 180(c) funds to coordinate with other jurisdictions. The policy does not incorporate CVSA's request that funds be directed to law enforcement agencies having the authority to conduct safety inspections, including roadside inspections, because OCRWM believes the grantee should decide the best distribution of funds.

The language of Section 180(c) does not prevent the program from training state-level officials, if appropriate. The correct name of the training video referred to in the July 17, 1997, notice is ''Radiation Materials Emergency Response: Awareness Level.'' If grantees choose to do so, they may use Section 180(c) funds to attend Tribal Emergency Preparedness Workshops.

Basis for Cost Estimate

Most commenters view the needs-based approach to determining grant awards as an improvement over the formula-based approach. Otherwise, comments primarily dealt with how the money should be allocated to the recipients or how the recipients should allocate the funds they receive. One commenter said 75 percent of the funds should be spent on emergency response personnel, limiting the money spent on administrative and other activities. The Commercial Vehicle Safety Alliance requested that funding be available for grant recipients to hire two people—one for emergency response training activities and one for safe routine transportation activities—since it would be difficult in most state government structures for one person to administer both types of training. The Western Interstate Energy Board stated its view that 25 percent of all available funds should be allocated to all corridor jurisdictions and the remaining 75 percent of combined grant applications should be allocated according to projected shipment miles in each jurisdiction as compared to the total number of shipment miles. The Nuclear Energy Institute encouraged OCRWM to return to basing the grant amount on route miles through each jurisdiction.

The States of Nevada and New Mexico, the Western Interstate Energy Board, and the Southern States Energy Board all objected to the methodology used to determine the base amount of funding and said the funding level of about $75,000 is insufficient. The Western Interstate Energy Board suggested that a $150,000 planning grant be used. The Council of State Governments-Midwestern Office stated that the structure of the base and two variable grants is too restrictive and decreases flexibility in how grant recipients use their funds. They also requested OCRWM to clarify what a typical grant award might be, how often OCRWM intends to adjust the base amount for inflation, and what the eligibility criteria would be for the variable funding levels.

Response. OCRWM has put few requirements on how a jurisdiction allocates its funding other than that the determination of needs must indicate cooperation with local governments, as stated in the Eligibility and Timing section of the policy. OCRWM has not allocated total funds according to shipment miles because once emergency responders are trained, they are trained without regard to the number of shipments. In addition, shipment miles as an allocation method will skew funding towards those places with longer routes, but not necessarily more population along the routes. This Section 180(c) policy will allow the grant recipient to allocate funds to those parts of its jurisdiction most in need.

OCRWM has decided to propose an initial planning grant of $150,000 to help offset the costs of the determination of needs. Otherwise, the structure of the base and variable grants being proposed has remained the same. The structure of the grant should not unduly restrict a recipient's flexibility in using the funds. OCRWM also plans to work to make the grant application as user-friendly as possible. A typical grant award cannot be determined without a sample of grant applications upon which to base an estimate. The base grant amount would be adjusted annually for inflation. OCRWM would consider developing for the application package a set of criteria by which to determine eligibility for the variable funding level. All grant applicants would apply for variable funding levels although the more a jurisdiction has already met the policy's training objectives, the less their variable grant award would be. This is in keeping with the policy to provide that increment of training needed for NWPA transportation preparedness.

Safe Routine Transportation

The primary comments about the definition of safe routine transportation and related policy statements were that they are too restrictive. The State of New Mexico stated that ''common sense dictates that safety precautions for NWPA shipments should at least be on par with those being applied to the WIPP campaign.'' A majority of the commenters encouraged OCRWM to use Section 180(c) funding to develop protocols similar to those negotiated with WIPP, such as carrier record-keeping audits, bad weather protocols, and identification of safe parking areas. Another commenter said the definition must include activities required for states to escort shipments and to plan and prepare for inspections, including paying for personnel, equipment, and planning.

Another frequently mentioned comment was that the policy statement regarding rail inspections does not provide sufficient oversight. OCRWM was encouraged to allow grant recipients to use funding to attend the

Federal Railroad Administration's State Participation Program for training in rail inspections. This request was based on the fact that the Federal Railroad Administration has stated (1) that it has neither the budget nor the staff to handle the anticipated volume of NWPA shipments and (2) that the State Participation Program could enable states to pick up some of the slack if there was sufficient funding to train inspectors. The State of Nevada asked how the Federal Railroad Administration will interact with states to ensure that rail inspections have been conducted and whether it should be assumed that the Federal Railroad Administration will ensure that the roadbed for the entire route of travel will be inspected and maintained.

The Council of State Governments-Midwestern Office cautioned OCRWM against requiring states to abide by the Commercial Vehicle Safety Alliance enhanced inspection standards. They pointed out that Illinois conducts its own inspections on every radiological materials shipment through its jurisdiction, wherever the shipment originates. The Nuclear Energy Institute cautioned OCRWM against adopting the enhanced North American inspection standards since they have not yet been ratified by the CVSA membership.

Other comments were provided on an array of subjects. The International Association of Fire Chiefs urged OCRWM to use escorts highly trained in emergency response procedures throughout the first year of shipment. Another commenter requested that the policy statement put equal emphasis on safe routine transportation and emergency response procedures. The Nuclear Energy Institute and Edlow International both wrote that the broad use of TRANSCOM is a security concern. They are concerned that if states and tribes have wide access to TRANSCOM tracking information, this will violate Nuclear Regulatory Commission safeguards and security regulations. Another commenter requested clarification on wording regarding TRANSCOM, asking whether OCRWM intends to provide states with ''access to satellite tracking information,'' or simply to help states ''to prepare'' for the access. The Commercial Vehicle Safety Alliance requested that three definitions be added to the appendix in the proposed policy. They are: ''(1) Responsible jurisdictions for safety and enforcement inspections means a government entity at any level of government, whether state, tribal, or any of their subjurisdictions that has the jurisdictional authority to conduct safety inspections and initiate law enforcement using the appropriate federal and or jurisdiction's laws and regulations; (2) Awareness level training also means training for individuals or jurisdictions who will accept and grant reciprocity to another jurisdiction's inspections; (3) Train-the-trainer also means training for certified instructors/individuals so that they may conduct refresher inspection courses for their respective jurisdiction's safety and enforcement inspectors.''

Response. OCRWM believes that the current definition of safe routine transportation, in combination with the policy statement on safe routine transportation, provides a sufficient measure of safety for the shipments that will be, at least, on par with the WIPP campaign. The requested additional activities would not appreciably increase shipment safety. Regarding rail inspections, the Objectives section has been changed to state that OCRWM intends to consider applicants' requests to fund, in the increment necessary for OCRWM shipments, rail safe transportation measures that complement DOT's FRA inspection procedures. Since currently there is no mechanism for tribes to participate in the State Participation Program, OCRWM plans to work with tribal governments to identify where funding and technical assistance may best assist a tribe in addressing rail inspections.

This policy does not require states to abide by the enhanced inspection standards developed by the Commercial Vehicle Safety Alliance largely because the reciprocal inspection standards are voluntary by the states who participate. Illinois is a member of the Commercial Vehicle Safety Alliance and its Department of Nuclear Safety staff received training in the enhanced standards during November 1997. It is OCRWM's understanding that the radiation inspection conducted by Illinois's Department of Nuclear Safety is separate from and is conducted simultaneously with the Illinois State Police safety inspection. The two types of inspections are not mutually exclusive. It is worth noting that the full membership of the Commercial Vehicle Safety Alliance adopted the enhanced inspections standards on October 1, 1997.

The policy statement does not intend to put more emphasis on safe routine transportation than on emergency response procedures. The emphasis each receives will be at the grant recipient's discretion. With regard to TRANSCOM, it is OCRWM's intent to allow grant recipients to include the purchase of tracking equipment in their equipment purchases. However, OCRWM recognizes the possible conflict with the NRC's regulations and has requested that the NRC clarify its position with regard to OCRWM's provision of a satellite tracking system to states and tribes that may wish to use it and agree to safeguard the information. If the NRC denies state and tribal access to satellite tracking information about NWPA shipments, this provision of the safe routine transportation procedures will have to be dropped.

The definitions requested by the Commercial Vehicle Safety Alliance have been adopted into the appendix of this notice, although not in their entirety. The reference to ''subjurisdictions'' was dropped from the definition of ''responsible jurisdiction'' because highway safety and enforcement inspections are always carried out under the authority of the state government, not local governments.

Technical Assistance

There were few comments on the definition of technical assistance. One commenter said that equipment should be included as part of the definition and that it is within the Department's discretion to make this change. Another commenter requested that OCRWM delete ''unique to the Department'' from the definition so as not to restrict DOE from either having under contract at some time in the future individuals that could provide the type of assistance sought by states and tribes, or establishing an agreement with another Federal agency to provide the requested assistance. Another commenter asked what scope of technical assistance will be available under the grants program.

Response. The phrase ''unique to the Department'' was not dropped from the definition because, as the shipper of record of NWPA shipments, DOE will provide technical assistance whether or not the Department contracts with other individuals or Federal agencies to provide services or technical assistance. Equipment is not included in the definition of Technical Assistance because 10 CFR 600 defines Financial Assistance to include the provision of equipment, thereby precluding it from the definition of Technical Assistance.

Eligibility and Timing

The comments on eligibility were rather limited while comments on timing were more extensive. OCRWM was commended for broadening the eligibility requirements where mutual aid and bordering jurisdictions are involved. However, two commenters

pointed out that OCRWM will not be able to notify eligible jurisdictions four years in advance of shipments unless routes are determined indicating when a route constitutes a border between two jurisdictions. Other commenters said that the transfer of funds from an eligible jurisdiction to a mutual aid jurisdiction is unlikely. The International Association of Fire Fighters viewed OCRWM's position on the pass-through of funds to mutual aid jurisdictions as ''patronizing and . . . urge[d] DOE to revisit this issue.'' The Pueblo of Acoma asked how DOE will ensure that the funds are transferred to mutual aid jurisdictions if the recipient jurisdiction does not willingly transfer the funds. The National Congress of American Indians stated its position that assistance should be provided to states and tribes that are near, but not on, transportation routes because their people and lands would also be at risk in the event of an accident. This commenter added that this is especially true for tribes that have culturally significant lands along a route that are not part of tribal lands.

Regarding issues on timing, three commenters requested clarification in the lapse in eligibility when shipments do not pass through a jurisdiction for three years or more. The Council of State Governments-Midwestern Office stated that two years of full funding prior to shipments is not sufficient time to accomplish all that is needed, such as considering alternative routes, officially designating them, assessing training needs along the route, applying for funding, and training the emergency responders along the route. They also asked how far in advance of shipments OCRWM will plan to notify governors about their individual state's eligibility. Similarly, the Southern States Energy Board said that the states and tribes cannot determine what training and equipment are necessary until OCRWM establishes more specifics on transportation planning, particularly routing. The Western Interstate Energy Board reiterated its position taken in prior comments and in WGA resolution 97–015 that OCRWM should specify that no shipments will occur unless funding has been provided three years prior to shipments. According to WGA, the three years is necessary because of the amount of time preparations for these shipments will take. The State of New Mexico stated its belief that three years of full program funding prior to shipments is probably sufficient for most jurisdictions if they have already conducted their needs assessments and are poised for program implementation.

The State of New Mexico continued to urge OCRWM to establish an administratively simple and efficient grant application process, and to develop a user-friendly ''format and content guide'' to assist applicants. The state voiced its concern about lack of information on the mechanics of the grants program, asking if a three-year budget will be negotiated and then funded in one-year increments; what is DOE's proposal with respect to re-application after the first three years; and what criteria will be used in determining the variable amounts of funding to be provided to states and tribes? A commenter asked if there is a difference among TY–2, TY–1, and TY grants other than the grant applicant's assessment of its needs.

Response. The wording of Section 180(c) of the NWPA does not allow for the funding of jurisdictions that are near, but not on, transportation routes. The extensive safety measures taken for these shipments make them very low risk and even if an accident or incident occurs, any impact on nearby jurisdictions is an even lower risk considering the packaging and other precautions taken to ensure shipment safety. If a nearby jurisdiction has the potential to respond to an NWPA transportation accident under a mutual aid request, then the state or tribe whose local jurisdiction may be requested to provide mutual aid will be eligible for funding from the state or tribe through whose jurisdiction the radioactive waste is transported. The state or tribe that has the route through its jurisdiction and that could request the mutual aid assistance would also be eligible for funding as described in the Eligibility and Timing section.

With regard to the grant application, OCRWM will consider developing a format and content guide to make the grant application as user-friendly as possible. In addition, the grant application will be written in as straightforward a manner as possible. The intent is that, after the initial planning grant, a five-year budget request will be established. OCRWM will consider developing qualifying criteria for the variable grant requests at a later time. OCRWM intends to include the application budget requests in its budget request to Congress and fund the applications to the extent Congress makes funds available on an annual basis. There are no differences among TY–2, TY–1, and TY grants other than the grant applicant's determination of its needs.

OCRWM believes the current time frame is sufficient to prepare for these shipments as outlined in the Policy and Objectives sections of this notice. Regarding eligibility after a lapse of shipments, the lapse would have to be three or more years for a jurisdiction to become ineligible for funding. If the lapse is two years or less, the jurisdiction would not lose eligibility. OCRWM plans to notify governors in the fourth year prior to shipments through their jurisdiction that they will regain eligibility for Section 180(c) funding and will receive the base grant.

Contingency Plan

The Nuclear Energy Institute supports the contingency plan outlined in the revised notice and requested that OCRWM add ''emergencies, fraudulent actions, or non-cooperation'' as cases where contingency shipment plans could be implemented. The Council of State Governments-Midwestern Office agreed with OCRWM's statement that planning with states and tribes along contingency routes should be handled on a case-by-case basis. The Southern States Energy Board argued that the contingency plan continues to address only emergency response procedures and not safe routine transportation procedures. The State of New Mexico stated that the ''current plan is skeletal and cursory in nature at best'' and may not offer adequate protection to public health and safety. The Western Interstate Energy Board again asked that OCRWM offer assurances that no shipments will occur, even on a contingency basis, unless funding has occurred at least three years in advance.

Response. The contingency plan has not changed significantly in this notice except to include cases such as emergencies, fraudulent actions, or non-cooperation as examples where contingency shipment plans could be implemented. If contingency shipments are made, OCRWM may use escorts with more training and equipment than those currently used for the purpose of safety until a reasonable time period for training has expired. These measures, combined with OCRWM's willingness to work with states and tribes on a case-by-case basis to plan for any contingency shipments, will ensure that the shipments are made as uneventfully as possible. Regarding equal emphasis on safe routine and emergency response procedures, OCRWM sees no reason why the current contingency plan should focus more on one set of procedures than the other. Arrangements for inspections and inspector training are expected to be part of the discussion if contingency shipments are necessary.

Trust Responsibility

The National Congress of American Indians, the Prairie Island Indian Community and the Pueblo of Acoma all stated their position that DOE should cite the requirements of DOE's Trust responsibility in the policy. They reiterated that the Trust responsibility stems from tribes' treaties with the United States government, tribes' status as sovereign nations, and the U.S. Constitution. The DOE's fiduciary duties to tribal governments have been reinforced by President Clinton's Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments, and the DOE's own American Indian Policy. They reiterated their view that the language of Section 180(c) does not limit tribal assistance and funding exclusively to training as it does to state governments. It is their position that nothing in Section 180(c) prevents DOE from funding basic emergency response capabilities and that it is part of the DOE's Trust responsibility to fund basic capabilities on those reservations which lack them.

Comments were favorable regarding OCRWM's equal treatment of states and tribes throughout the policy, with several commenters noting that the policy does incorporate many interests of tribal governments.

Response. OCRWM recognizes that there is a lack of infrastructure and trained personnel on many tribal lands. Typically, these areas may rely more heavily on technical assistance than other grant recipients. Since needs will be so varied and the determination of needs allows consideration of an individual jurisdiction's current preparedness level, OCRWM sees no purpose in defining further the specific activities that may be taken with regard to tribal preparedness. OCRWM is aware of its Trust responsibilities to tribes and will take it into account in all of OCRWM's decisions that may affect Indian tribes.

B. Section 180(c) Procedures

Funding Mechanism

While two commenters supported the OCRWM grants approach, the State of Idaho reiterated its position that OCRWM should coordinate its funding and training program with a Department-wide funding and training program. Idaho said that while it recognized the difficulties in developing a unified program, it was worth the increased effectiveness and efficiency of training emergency responders along a route one time for all DOE shipments, rather than training repeatedly every time a DOE program ships radioactive materials. The Commercial Vehicle Safety Alliance requested that OCRWM allow the possible combining of grants programs to train inspectors to allow for cross-training of inspectors. Similar to Idaho's comment, this would allow inspectors to become trained on the enhanced inspection standards once rather than attend a separate class every time another DOE program ships radioactive materials. The International Association of Fire Fighters registered the strongest complaint against the funding mechanism, saying the knowledge and expertise necessary to complete the needs assessment of the application package will place a tremendous administrative burden on the grant applicants.

Response. While this Revised Proposed Policy and Procedures does not combine the grants program with any other Department training or funding program, we plan for the grant application to state that OCRWM encourages recipients to use their funds in conjunction with other programs where the training aims to achieve the same or similar goals. For example, if a state were training its inspectors to the enhanced inspection standards, it could use the Section 180(c) funding in conjunction with funding it may receive from another DOE program to send additional inspectors to the same training. OCRWM has stated that it may combine the grants program with a Department-wide grant program in the future if one is developed and is practicable, and consistent with existing law.

C. Applicability of Section 180(c) to Private Shipments

Many states and state organizations urged that Section 180(c) assistance apply to all spent nuclear fuel or defense high-level radioactive waste shipments ultimately destined for an NWPA facility, whether or not those shipments are transported to and stored on an interim basis at a private facility. Commenters stated that transportation to a private facility would only be necessary if the Department fails to site an interim or permanent storage facility according to statutory obligations.

Response. The Department is currently authorized to implement the Section 180(c) program of financial and technical assistance only for shipments to a repository or Monitored Retrievable Storage facility constructed under the NWPA. However, the many comments on this issue have been noted.

D. Policy Development Process

A few commenters again questioned the Department's plans to issue a Notice of Policy and Procedures rather than promulgate regulations. They voiced concern that implementation of Section 180(c) through regulations is necessary to ensure stability through changes of leadership within the Department and that an interpretation of policy and procedures is more easily changed.

Response. OCRWM is developing the Revised Policy and Procedures after receipt and consideration of extensive public comments. At some future date, OCRWM may decide to promulgate regulations. However, since the program's current planning basis is to begin shipping in 2010, it is premature to codify the policy in regulations this far in advance of shipments. OCRWM will continue to monitor other Departmental transportation programs and may consider updating this Revised Policy as either a Final Policy or as regulations at a later date.

V. Conclusion

This notice has presented OCRWM's Revised Proposed Policy and Procedures for the Section 180(c) program. It also has presented OCRWM's summary of and response to comments received in the prior Notice of Revised Proposed Policy and Procedures issued July 17, 1997. These comments were given careful consideration in developing these policy and procedures. The purpose of this notice has been to communicate to stakeholders OCRWM's interim preliminary positions regarding Section 180(c) policy issues and to respond to stakeholder comments on the July notice. These policy and procedures will remain in draft form until programmatic decisions or legislation provides guidance as to when shipments will commence. At that time, OCRWM may finalize these policy and procedures or will consider promulgating regulations on Section 180(c) implementation.

OCRWM will accept comments from the public on this Notice of Revised Proposed Policy and Procedures.

Issued in Washington, D.C. on April 17, 1998.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

Appendix—Definition of Terms Used in the Notice of Final Policy and Procedures

1. Responsible jurisdiction, for emergency response procedures, means a governmental entity at any level of government, whether state or tribal, that has the authority to conduct part or all of an emergency response

to a radiological materials transportation accident or incident. Responsible jurisdiction for safety and enforcement inspections means a governmental entity, whether state or tribal that has the authority to conduct safety inspections and initiate law enforcement using the appropriate federal and or jurisdiction's laws and regulations.

2. First responders are generally those emergency response personnel who (1) assess the risk level of the emergency, (2) take defensive action to secure an accident scene, and (3) notify additional authorities if needed.

3. Awareness level training means training for individuals who are likely to witness or discover a hazardous materials substance release and who have been trained to initiate an emergency response sequence by notifying the authorities of the release. First responder awareness level training shall provide sufficient training to ensure that first responders objectively demonstrate competency in the following areas:

(A) Understand what hazardous substances are, and the risks associated with them in an incident.

(B) Understand the potential outcomes associated with an emergency created when hazardous substances are present.

(C) Recognize the presence of hazardous substances in an emergency.

(D) Identify the hazardous substance, if possible.

(E) Understand the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.

(F) Realize the need for additional resources, and make appropriate notifications to the communications center.

(29 CFR1910.120(q)(6)(I)(A–F))

Awareness level training also means training for jurisdictions or individuals who will accept and grant reciprocity to another jurisdiction's inspections.

4. First responder operations level hazardous materials training means training that provides for individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release and to be able to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operations level shall have received at least eight hours of training and have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for awareness level, and the employer shall so certify:

(A) Know the basic hazard and risk assessment techniques.

(B) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(C) Understand basic hazardous materials terms.

(D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(E) Know how to implement basic decontamination procedures.

(F) Understand the relevant standard operating procedures and termination procedures.

(29 CFR1910.120(q)(6)(ii)(A-F))

5. Hazardous materials technician level training is training for individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas, and the employer shall so certify:

(A) Know how to implement the employer's emergency response plan.

(B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.

(C) Be able to function within an assigned role in the Incident Command System.

(D) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(E) Understand hazard and risk assessment techniques.

(F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(G) Understand and implement decontamination procedures.

(H) Understand termination procedures.

(I) Understand basic chemical and toxicological terminology and behavior.

(29 CFR1910.120(q)(6)(iii)(A–F))

6. Train-the-trainer training, for emergency response procedures, means training for individuals so that they can teach other emergency responders to respond to a particular level of competency. Train-the-trainer training, for safe routine transportation procedures, means training for certified instructors/individuals so that they may conduct refresher inspection courses for their respective jurisdiction's safety and enforcement inspectors.

[FR Doc. 98–11520 Filed 4–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–24–001]

Cabot Oil & Gas Corporation; Notice of Amendment of Petition for Adjustment

April 24, 1998.

Take notice that on April 20, 1998, Cabot Oil & Gas Corporation (Cabot) amended its March 9, 1998 petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. § 3142(c) (1982)], by filing a copy of Cabot's Escrow Agreement with the Chase Bank of Texas, N.A. (Chase), for incorporation into the record in that proceeding. Cabot's April 20 amendment is on file with the Commission and open to public inspection.

In its March 9 petition, Cabot requested an extension of the Commission's March 9, 1998 refund deadline for first sellers to make Kansas ad valorem tax refunds to their respective pipeline purchasers, otherwise required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[1] Cabot's March 9 petition also indicated that Cabot intended to place refund amounts claimed by Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company, (Williams) and Panhandle Eastern Pipe Line Company (Panhandle) into an escrow account.

Cabot's April 20 amendment states that Cabot placed $1,187,513 into its escrow account with Chase on April 9, 1998 ($492,285 of principal and $695,228 in interest), under the aforementioned Escrow Agreement.

Any person desiring to answer Cabot's April 20 amendment should file such answer with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, on or before 15 days after the date of publication of this notice in the **Federal Register**, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.213, 385.215, 385.1101, and 385.1106).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–11463 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–82–000]

Helmerich & Payne, Inc.; Notice of Petition for Adjustment

April 24, 1998.

Take notice that on April 21, 1998, Helmerich & Payne, Inc. (H&P), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978, on behalf of Ivy League, Inc. (Ivy), one of

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

the working interest owners for whom H&P operated. Therein, H&P requests that the Commission grant an adjustment of its Kansas ad valorem tax refund procedures to Ivy, with respect to Ivy's refund liability to Colorado Interstate Gas Company (CIG) and Northern Natural Gas Company (Northern). H&P's petition is on file with the Commission and open to public inspection.

The Commission, in an order issued September 10, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

H&P states that Ivy seeks an adjustment of the Commission's refund procedures that:

(1) permits Ivy to defer, for one year, the payment of the royalty amounts that it owes Northern and CIG; and

(2) permits Ivy to escrow (a) the principal and interest on royalty refunds (during the 1-year deferral period), (b) the principal and interest on refunds attributable to production prior to October 3, 1983, and (c) the interest on principal refunds, other than the amounts listed in (a) and (b) above.

H&P proposes, under the terms of the adjustment relief requested, that Ivy be permitted to pay $50,231.89 into escrow, representing (a) principal and interest on royalties, (b) principal and interest on pre-October 3, 1983 production. H&P further proposes that Ivy be permitted to pay CIG and Northern $9,633.77 and $4,148.46, respectively ($13,782.23 in all), representing Ivy's principal refunds on post-October 3, 1983 production.

H&P asserts that it would be an unfair distribution of burden, if the adjustment relief it requests on behalf of Ivy is not granted by the Commission.

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* versus *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11464 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–351–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

April 24, 1998.

Take notice that on April 14, 1998, NorAm Gas Transmission Company (NorAm), 1111 Louisiana Street, Houston, Texas, filed in Docket No. CP98–351–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208(b)) for authorization to construct, install, and operate a 1-inch tap and first-cut regulator on Line LT–1, in Lafayette County, Arkansas to provide service to rural customers served by Arkla, a division of NorAm Energy Corp., under the blanket certificate issued and amended in Docket Nos. CP82–384–000 and Cp82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm states that the estimated peak day and annual deliveries are 196 MMBtu and 1,360 MMBtu respectively. NorAm states that the proposed delivered volumes are within Arkla's certificated entitlement and that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. NorAm estimates that the cost of the construction will be $2,414, or which Arkla will reimburse NorAm $1,833 of this cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11456 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–362–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

April 24, 1998.

Take notice that on April 17, 1998, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Nebraska 68134–1000, filed in Docket No. CP98–362–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate three tie-over lines on its pipeline system for the existing delivery points of Beaman, Tama and Amana in Iowa, under Northern Border's blanket certificate issued in docket No. CP84–420–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern Border proposes to construct and operate three tie-over lines on its pipeline system for the existing delivery points of Beaman, Tama and Amana. It is stated that at Beaman a 2-inch tap would be installed on the 36-inch pipeline and approximately twenty feet

of 2-inch pipe would extend from the tap to the 6-inch line serving the town of Beaman. It is further stated that at Tama a 2-inch tap would be installed on the 36-inch pipeline and approximately twenty feet of 2-inch pipe would extend from the tap to the 3-inch rise off of the tap on the 30-inch pipeline. Northern border further states that at Amana a 4-inch tap would be installed on the 36-inch pipeline and approximately twenty feet of 2-inch pipe would extend from the tap to the 6-inch line serving Amana. Northern Border states that the estimated cost of the proposed facilities is $26,803.

Northern Border states that during construction of its expansion/extension this summer, it would take out of service its existing 30-inch pipeline between Ventura, Iowa and Harper, Iowa while the tie-in of the cross-over lines between the 30-inch and 36-inch lines are completed. It is further stated that during the period that the 30-inch pipeline is out of service the contract volumes currently being shipped on its system would be transported through the 36-inch line.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11457 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–190–000]

WestGas InterState, Inc.; Notice of Petition for Waiver

April 24, 1998.

Take notice that on April 22, 1998, WestGas InterState, Inc. (WGI) tendered for filing a petition for waiver of the electronic communications and Internet transaction requirements of the Commission's Order Nos. 587–B, 687–C, and 587–G.

WGI states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

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, 888 First 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 must be filed on or before May 1, 1998. 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 this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–11463 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–280–000]

Williams Gas Pipelines Central, Inc., Notice of Application

April 24, 1998.

Take notice that on March 12, 1998, Williams Gas Pipelines Central, Inc. (Williams) P.O. Box 3288, Tulsa, Oklahoma, 74101, filed in Docket No. CP98–280–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the abandonment of Craig Storage Field (Craig Field), facilities and related storage service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams seeks authorization to abandon the Craig field located in Johnson County, Kansas; to plug 60 injection/withdrawal wells; 7 observation wells; and to abandon in place or by sale to Kansas Gas Service Company, A Division of ONEOK, Inc., approximately 12.76 miles of various diameter gathering lines and other appurtenant facilities.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 15, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of

Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–11465 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–55–000, et al.]

AES Alamitos, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 22, 1998.

Take notice that the following filings have been made with the Commission:

1. AES Alamitos, L.L.C.

[Docket No. EG98–55–000]

Take notice that on April 16, 1998, AES Alamitos, L.L.C. (AES), filed with the Commission in the above-referenced docket a supplement to the application for determination of exempt wholesale generator (EWG) status under Part 365 of the Commission's Regulations. AES states that the supplemental filing is intended to clarify that (1) AES will sell ancillary services and (2) such sales will be consistent with EWG status.

A sworn verification accompanies the supplemental filing. AES states that copies of the supplemental filing have been served on the California Public Utilities Commission and the Securities and Exchange Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. AES Huntington Beach, L.L.C.

[Docket No. EG98–56–000]

Take notice that on April 16, 1998, AES Huntington Beach, L.L.C. (AES), filed with the Commission in the above-referenced docket a supplement to the application for determination of exempt wholesale generator (EWG), status under Part 365 of the Commission's Regulations. AES states that the supplemental filing is intended to clarify that (1) AES will sell ancillary services and (2) such sales will be consistent with EWG status.

A sworn verification accompanies the supplemental filing. AES states that copies of the supplemental filing have been served on the California Public Utilities Commission and the Securities and Exchange Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. AES Redondo Beach, L.L.C.

[Docket No. EG98–57–000]

Take notice that on April 16, 1998, AES Redondo Beach, L.L.C. (AES), filed with the Commission in the above-referenced docket a supplement to the application for determination of exempt wholesale generator (EWG) status under Part 365 of the Commission's Regulations. AES state that the supplemental filing is intended to clarify that (1) AES's will sell ancillary services and (2) such sales will be consistent with EWG status.

A sworn verification accompanies the supplemental filing. AES state that copies of the supplemental filing have been served on the California Public Utilities Commission and the Securities and Exchange Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CMS Marketing, Services and Trading Company

[Docket No. ER96–2350–012]

Take notice that on April 16, 1998, CMS Marketing, Services and Trading Company (CMS MST), submitted for filing a Code of Conduct Regarding the Relationship Between CMS Marketing, Services and Trading Company and Consumers Energy Company (Code of Conduct) in compliance with Ordering Paragraph A of the Commission's September 6, 1996, Order Conditionally Accepting for Filing Proposed Market-Based Rates. CMS MST also seeks waiver of any regulations of the Federal Energy Regulatory Commission necessary to permit withdrawal of its prior code of conduct compliance filing and substitution of this Code of Conduct therefore.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER98–488–001]

Take notice that on April 17, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon City of Bristol, Virginia and Virginia State Corporation Commission.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98–1579–000]

Take notice that on April 17, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Entergy Services, Inc., Texas Public Utility Commission, Public Utilities Commission of Ohio, Kentucky Public Service Commission, Indiana Utility Regulatory Commission and Office of Consumer Counselor for Federal and State Affairs.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–1580–000]

Take notice that on April 17, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Public Utilities Commission of Ohio, Kentucky Public Service Commission, Indiana Utility Regulatory Commission, and Office of Consumer Counselor.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–1711–000]

Take notice that on April 17, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Edgar Electric Cooperative Association and Illinois Commerce Commission.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–1812–000]

Take notice that on April 17, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon DTE Energy Trading, Inc., Michigan Public Service Commission, Public Utilities Commission of Ohio, Kentucky Public Service Commission, Indiana Utility Regulatory Commission and Office of Consumer Counselor for Federal/State Affairs.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–2111–000]

Take notice that on April 17, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon City of Springfield, Illinois, City Water, Light and Power, Illinois Commerce Commission, Public Utilities Commission of Ohio, Kentucky Public Service Commission, Indiana Utility Regulatory Commission and Office of Consumer Counselor for Federal/State Affairs.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power & Light Company

[Docket No. ER98–2564–000]

Take notice that on April 17, 1998, Minnesota Power & Light Company and Superior Water, Light and Power tendered for filing a signed Service Agreement for Firm Point-to-Point Transmission Service with Northern States Power Company under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Minnesota Power & Light Company

[Docket No. ER98–2565–000]

Take notice that on April 17, 1998, Minnesota Power & Light Company tendered for filing a signed Service Agreement with Allegheny Power and Southwestern Public Service Company under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER98–2566–000]

Take notice that on April 17, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, submitted for filing a Facilities Agreement dated February 17, 1998, between MidAmerican and Enron Wind Development Corp., (Enron Wind).

MidAmerican states that the Facilities Agreement provides for the design, construction and ownership of interconnection facilities necessary for Enron Wind to sell capacity and energy to MidAmerican under the Alternate Energy Production Purchase Contract accepted for filing by the Commission in Docket No. ER97–2532–000. MidAmerican further states that the Facilities Agreement requires Enron Wind to either reimburse MidAmerican for the cost to construct the necessary MidAmerican interconnection facilities or to construct such interconnection facilities and transfer them to MidAmerican.

MidAmerican proposes that the Facilities Agreement become effective on the sixtieth day after the date of filing.

MidAmerican has served a copy of the filing on representatives of Enron Wind, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. WKE Station Two Inc.

[Docket No. ER98–2568–000]

Take notice that on April 17, 1998, WKE Station Two Inc. (Station Two Subsidiary), submitted for filing, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.12, a petition for disclaimer of jurisdiction or, in the alternative, acceptance for filing of the ''Station Two Agreement'' and accompanying Rate Formula which contains the rates, terms and conditions for the operation and maintenance (O&M), services Station Two Subsidiary will provide with respect to the Station Two generating facility which is owned by the City of Henderson, Kentucky (City).

Copies of the filing were served upon Big Rivers and its counsel, the City and its counsel and the Kentucky Public Service Commission.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Western Kentucky Energy Corp.

[Docket No. ER98–2569–000]

Take notice that on April 17, 1998, Western Kentucky Energy Corp. (WKEC), submitted for filing, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d and Part 35 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.12, a petition for disclaimer of jurisdiction or, in the alternative, acceptance for filing of a Facilities Operating Agreement and accompanying Rate Formula which contains the rates, terms and conditions for the operation and maintenance service WKEC will provide to Big Rivers Electric Corporation (Big Rivers).

Copies of the filing were served upon Big Rivers, its counsel and the Kentucky Public Service Commission.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER98–2570–000]

Take notice that on April 17, 1998, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and a Network Operating Agreement. Both were with L. Perrigo Company and have effective dates of April 10, 1998.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the customer.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER98–2571–000]

Take notice that on April 17, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its response to the Commission's Deficiency Notice in the above-captioned docket.

Copies of the filing have been served on the Public Service Commission of the State of New York.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Electric Power Company

[Docket No. ER98–2572–000]

Take notice that on April 17, 1998, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with Cinergy Capital & Trading, Inc. Service

will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER98–2573–000]

Take notice that on April 17, 1998, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Cinergy Capital & Trading, Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy System

[Docket No. ER98–2576–000]

Take notice that on April 17, 1997, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for Vitol Gas & Electric, LLC and Tenaska Power Services Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements are March 26, 1998 and April 1, 1998, respectively for the above mentioned Service Agreements in this filing.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Potomac Electric Power Company

[Docket No. ER98–2577–000]

Take notice that on April 17, 1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Allegheny Power Service Corporation as agent for Allegheny Power; and First Energy Corp., acting as agent for and on behalf of the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company. An effective date of March 17, 1998 for these service agreements, with waiver of notice, is requested.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Pittsfield Hydropower Company, Inc.

[Docket No. ER98–2579–000]

Take notice that on April 17, 1998, Pittsfield Hydropower Company, Inc., made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in Connecticut Valley Electric Company, Inc., v. Wheelabrator Claremont Company L.P. *et al.* in Docket Nos. EL94–10, *et al.*

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. HDI Associates III

[Docket No. ER98–2580–000]

Take notice that on April 17, 1998, HDI Associates III made a conditional tariff filing regarding the Lower Robertson Dam Project in compliance with the Commission's order of February 11, 1998 in Connecticut Valley Electric Company, Inc., v. Wheelabrator Claremont Company L.P., *et al.*, Docket Nos. EL94–10, *et al.*

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. HDI Associates III

[Docket No. ER98–2581–000]

Take notice that on April 17, 1998, HDI Associates III made a conditional tariff filing regarding the Ashuelot Paper Company Dam Project in compliance with the Commission's order of February 11, 1998 in Connecticut Valley Electric Company, Inc., v. Wheelabrator Claremont Company L.P., *et al.*, Docket Nos. EL94–10, *et al.*

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Newfound Hydroelectric Company

[Docket No. ER98–2588–000]

Take notice that on April 17, 1998, Newfound Hydroelectric Company made a conditional tariff filing in compliance with the Commission order of February 11, 1998, in Connecticut Valley Electric Company v. Wheelabrator Claremont Company, L.P., *et al.*, Docket No. EL94–10.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. W.M. Lord Excelsior a/k/a Union Village Dam

[Docket No. ER98–2589–000]

Take notice that on April 17, 1998, W.M. Lord Excelsior (Union Village Dam), made a conditional tariff filing in compliance with the Commission's order dated February 11, 1998, in Connecticut Valley Electric Company v. Wheelabrator Claremont Company, L.P., *et al.* Docket No. EL94–10, *et al.*

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Mad River Power Associates

[Docket No. ER98–2590–000]

Take notice that on April 17, 1998, Mad River Power Associates (owner of a hydroelectric facility located at the Campton Dam in the Town of Campton, N.H.—FERC No. 3253–NH) made a conditional tariff filing in compliance with the Commission's Order of February 11, 1998 in Connecticut Valley Electric Company, Inc., v. Wheelabrator Claremont Company L.P. *et al.*, Docket Nos. EL 94–10, *et al.*

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER98–2610–000]

Take notice that April 17, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing pursuant to the Federal Energy Regulatory Commission's January 29, 1998, Order issued in Docket No. ER98–855 accepting Wisconsin Electric Power Company's (Wisconsin Electric), tariff for market based power sales and reassignment of transmission capacity, FERC Electric Tariff, Original Volume No. 8, is the quarterly transaction report for the calendar quarter ending March 31, 1998.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Edison Company Commonwealth Edison Company Of Indiana, Inc.

[Docket No. OA97–459–004]

Take notice that on April 9, 1998, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ComEd), tendered for filing revisions to its standards of conduct.

ComEd states that copies of its filing have been mailed to each person designated on the official service list in this proceeding.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11487 Filed 4–29–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2551–000, et al.]

Ameren Services Company, et al.; Electric Rate and Corporate Regulation Filings

April 21, 1998.

Take notice that the following filings have been made with the Commission:

1. Ameren Services Company

[Docket No. ER98–2551–000]

Take notice that on April 16, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between ASC and Amoco Energy Trading Corporation (AETC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to AETC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER98–2552–000]

Take notice that on April 16, 1998, Union Electric Company (UE) tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and Southern Illinois Power Cooperative (SIP). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to SIP pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Econnergy Energy Company, Inc.

[Docket No. ER98–2553–000]

Take notice that on April 16, 1998, Econnergy Energy Company, Inc. (Econnergy), petitioned the Commission for acceptance of Econnergy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Econnergy intends to engage in wholesale electric power and energy purchases and sales as a marketer. Econnergy is not in the business of generating or transmitting electric power. Econnergy is not a subsidiary or affiliate of any other company.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER98–2554–000]

Take notice that on April 16, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Cinergy Services, Inc., under its Market-Based Rate Tariff.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Peco Energy Company

[Docket No. ER98–2555–000]

Take notice that on April 16, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated February 23, 1998, with MERGEFIELD Company Name Citizens Power Sales (MERGEFIELD) ShortName (CP SALES) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of April 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to CP SALES and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service

[Docket No. ER98–2556–000]

Take notice that on April 16, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Conagra Energy Services, Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER98–2557–000]

Take notice that on April 16, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Amoco Energy Trading Corporation (AETC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to AETC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98–2558–000]

Take notice that on April 16, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Merchant Energy Group of the Americas, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1998.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER98–2559–000]

Take notice that on April 16, 1998, Niagara Mohawk Power Corporation filed a Notice of Cancellation of FERC Rate Schedule No. 231 and any supplements thereto, with Aquila Energy Marketing, effective May 13, 1998.

Notice of the proposed cancellation has been served upon Aquila Power Corporation.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER98–2560–000]

Take notice that April 16, 1998, Niagara Mohawk Power Corporation filed a Notice of Cancellation of FERC Rate Schedule No. 243, and any supplements thereto, with Cleveland

Electric Illuminating Company, effective April 10, 1998.

Copies of the proposed cancellation have been served upon Cleveland Electric Illuminating Company.

Comment date: May 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11488 Filed 4–29–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–65–000, et al.]

Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P., et al. Electric Rate and Corporate Regulation Filings

April 24, 1998.

Take notice that the following filings have been made with the Commission:

1. Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P.

[Docket No. EG98–65–000]

On April 22, 1998, Duke Energy New Smyrna Beach Power Company Ltd, L.L.P. (''Duke New Smyrna''), 422 South Church Street, Legal PB05E, Charlotte, N.C. 28202–1904, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Duke New Smyrna is a wholly owned, indirect affiliate of Duke Energy Corporation. Duke New Smyrna is developing a power plant consisting of two combustion turbines and one steam turbine with an overall combined capacity of approximately 500 MW. Duke Energy New Smyrna intends to sell capacity and energy from the Facility at wholesale at rates to be negotiated with purchasers. On April 21, 1998, Duke New Smyrna filed an application pursuant to Section 205 of the Federal Power Act for acceptance of its market-based rate schedule.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Massachusetts Department of Telecommunications and Energy

[Docket No. EL98–42–000]

Take notice that on April 14, 1998, the Massachusetts Department of Telecommunications and Energy tendered for filing a Petition for Declaratory Order in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–002]

Take notice that on April 21, 1998, Denver City Energy Associates, L.P. (DCE) tendered for filing a revised Code of Conduct in compliance with the letter order issued March 23, 1998 in Docket No ER97–4084–001.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER98–2047–000]

Take notice that on April 10, 1998, New York State Electric & Gas Corporation tendered for filing a Notice of Withdrawal in the above referenced docket.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Rochester Gas and Electric Company

[Docket No. ER98–2561–000]

Take notice that on April 16, 1998, Rochester Gas and Electric Company tendered for filing its quarterly report of transactions for the period January 1, 1998 to March 31, 1998.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER98–2563–000]

Take notice that on April 16, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies,'' tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of January 1, 1998 to March 31, 1998.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER98–2574–000]

Take notice that on April 17, 1998, PJM Interconnection, L.L.C. (PJM) tendered for filing signature pages (in some instances executed and in other instances unexecuted) of Load Serving entities required to the parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA).

PJM requests a waiver of the Commission's notice requirements to permit an effective date of January 1, 1998 for the addition of the parties to the RAA, consistent with the effective date of the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state regulatory commissions within the PJM Control Area.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER98–2578–000]

Take notice that on April 17, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements with Cargill-Alliant, L.L.C. for point-to-point service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon Cargill-Alliant, L.L.C.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Project Owner, Powerhouse Systems, Inc.

[Docket No. ER98–2611–000]

Take notice that on April 20, 1998, Powerhouse Systems, Inc. filed a conditional tariff filing in compliance with the Commission's order of February 11, 1998, in Connecticut Valley Electric, Inc. v. Wheelabrator Claremont Company, L.P., *et al.*, Docket No. EL94–10–000, *et al.*

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98–2616–000]

Take notice that on April 21, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Merchant Energy Group of the Americas, Inc. (MEGA). Wisconsin Electric respectfully requests an effective date of May 15, 1998, to allow for economic transactions.

Copies of the filing have been served on MEGA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER98–2617–000]

Take notice that on April 21, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Northern/AES Energy, LLC (Northern). Wisconsin Electric respectfully requests an effective date of April 24, 1998 to allow for economic transactions.

Copies of the filing have been served on Northern, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Nautilus Energy Company, LLC

[Docket No. ER98–2618–000]

Take notice that on April 21, 1998, Nautilus Energy Company, LLC (Nautilus) petitioned the Commission for acceptance of Nautilus Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Nautilus intends to engage in wholesale electric power and energy purchases and sales as a marketer. Nautilus is not in the business of generating or transmitting electric power.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Otter Lane Hydro LLC

[Docket No. ER98–2619–000]

Take notice that on April 21, 1998, Otter Lane Hydro LLC filed a conditional tariff filing in compliance with the Commission's order of February 11, 1998, in Connecticut Valley Electric Company Inc. v. Wheelabrator Claremont Company, L.P., *et al.*, Docket No. EL94–10–000, *et al.*, 82 FERC 61,116 (1998).

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Power Company

[Docket No. ER98–2620–000]

Take notice that on April 21, 1998, Ohio Power Company (OPC) tendered for filing a Letter Agreement dated February 26, 1998, between OPC, Buckeye Power, Inc. (Buckeye) and Hancock-Wood Electric Cooperative, Inc. (HWEC). HWEC is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

HWEC has requested OPC provide a delivery point, pursuant to provisions of the Power Delivery Agreement between OPC, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Columbus Southern Power Company and Toledo Edition Company, dated January 1, 1968. OPC requests an effective date of August 7, 1998, for the tendered agreements.

OPC states that copies of its filing were served upon Hancock-Wood Electric Cooperative, Inc., Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER98–2621–000]

Take notice that on April 21, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and NEV East, LLC (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 1, 1998 for the NEV East, LLC Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

[Docket No. ER98–2624–000]

Take notice that on April 21, 1998, Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. (Duke New Smyrna) tendered for filing pursuant to Rule 205, 18 CFR § 385.205, an application for an order accepting its rates for filing, determining rates to be just and reasonable, and granting certain waivers and preapprovals.

Duke New Smyrna is developing an approximately 500 MW generation facility in New Smyrna Beach, Florida. Duke New Smyrna proposes to sell the facility's energy and capacity at market-based rates in the peninsular Florida market. Duke New Smyrna also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its power marketing activities.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER98–2625–000]

Take notice that on April 21, 1998, Idaho Power Company (IPC) tendered for filing Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Tucson Electric Power.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. West Texas Utilities Company

[Docket No. ER98–2627–000]

Take notice that on April 21, 1998, West Texas Utilities Company (WTU) submitted for filing Facilities Schedule A–4 to the Interconnection and Power Interchange Agreement between WTU and Brazos Electric Power Cooperative, Inc. (Brazos), dated December 12, 1996. Facilities Schedule A–4 provides for an interconnection point between WTU and Brazos to permit WTU to serve the City of Hearne, Texas (Hearne).

WTU requests an effective date of April 16, 1998. Accordingly, WTU requests waiver of the Commission's

notice requirements. A copy of this filing has been served on Brazos, Hearne, and the Public Utility Commission of Texas.

A copy of the filing has been provided to the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Minnesota Power & Light Company

[Docket No. ER98–2628–000]

Take notice that on April 21, 1998, Minnesota Power & Light Company (Minnesota Power) submitted for filing a transmission service agreement with its merchant operations arm, MPEX, for the provision of firm point-to-point transmission service for MPEX. Minnesota Power requests Commission approval on or before May 28, 1998.

A copy of the filing has been provided to the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Minnesota Power & Light Company

[Docket No. ER98–2629–000]

Take notice that on April 21, 1998, Minnesota Power & Light Company (Minnesota Power) submitted for filing a service agreement under Minnesota Power's Wholesale Coordination Service tariff WCS–1 by which Minnesota Power's merchant operations arm, MPEX, will deliver power and energy on behalf of Minnkota Power Cooperative, Inc. (Minnkota) using transmission service obtained by MPEX under Minnesota Power's open access transmission tariff. Minnesota Power requests Commission approval on or before May 28, 1998.

A copy of the filing has been provided to the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER98–2641–000]

Take notice that on April 21, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Transmission Service Agreement between NMPC and Aquila Power Corporation. The Transmission Service Agreement specifies that Aquila Power Corporation has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. The Tariff, filed with FERC on July 9, 1996, will allow NMPC and Aquila Power Corporation to enter into separately scheduled transactions under which NMPC will provide transmission service for Aquila Power Corporation as the parties may mutually agree.

NMPC requests an effective date of April 9, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Aquila Power Corporation.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER98–2642–000]

Take notice that on April 21, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Transmission Service Agreement between NMPC and Aquila Power Corporation. The Transmission Service Agreement specifies that Aquila Power Corporation has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. The Tariff, filed on July 9, 1996, will allow NMPC and Aquila Power Corporation to enter into separately scheduled transactions under which NMPC will provide transmission service for Aquila Power Corporation as the parties may mutually agree.

NMPC requests an effective date of April 9, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Aquila Power Corporation.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. AES Redondo Beach, L.L.C.

[Docket No. ER98–2646–000]

On April 21, 1998, AES Redondo Beach, L.L.C. (AES Redondo Beach), a subsidiary of The AES Corporation, unilaterally tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Participating Generator Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Redondo Beach states that the tendered Agreement is materially identical to the Participating Generator Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket No. ER98–1910–000, *et al.* It requests that the Commission accept the Agreement for filing, grant waiver of notice so that the Agreement may take effect on the date that AES Redondo Beach acquires a generating facility, and set the Agreement for hearing. AES Redondo Beach states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. AES Alamitos, L.L.C.

[Docket No. ER98–2647–000]

On April 21, 1998, AES Alamitos, L.L.C. (AES Alamitos), a subsidiary of The AES Corporation, tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Meter Service Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Alamitos states that the tendered Agreement is materially identical to the Meter Service Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket No. ER98–1842–000, *et al.* It requests that the Commission accept the Agreement for filing, to be effective on the date that AES Alamitos acquires a generating facility, and set the Agreement for hearing. AES Alamitos states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. AES Huntington Beach, L.L.C.

[Docket No. ER98–2648–000]

On April 21, 1998, AES Huntington Beach, L.L.C. (AES Huntington Beach), a subsidiary of The AES Corporation, tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Meter Service Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Huntington Beach states that the tendered Agreement is materially identical to the Meter Service Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket No. ER98–1842–000, *et al.* It requests that the

Commission accept the Agreement for filing, to be effective on the date that AES Huntington Beach acquires a generating facility, and set the Agreement for hearing. AES Huntington Beach states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. AES Huntington Beach, L.L.C.

[Docket No. ER98–2649–000]

Take notice that on April 21, 1998, AES Huntington Beach, L.L.C. (AES Huntington Beach), a limited liability subsidiary of The AES Corporation, unilaterally tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Participating Generator Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Huntington Beach states that the tendered Agreement is materially identical to the Participating Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket No. ER98–1910–000, *et al.* It requests that the Commission accept the Agreement for filing, grant waiver of notice so that the Agreement may take effect on the date that AES Huntington Beach acquires a generating facility, and set the Agreement for hearing. AES Huntington Beach states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. AES Redondo Beach, L.L.C.

[Docket No. ER98–2650–000]

On April 21, 1998, AES Redondo Beach, L.L.C. (AES Redondo Beach), a subsidiary of The AES Corporation, tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Meter Service Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Redondo Beach states that the tendered Agreement is materially identical to the Meter Service Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket No. ER98–1842–000, *et al.* It requests that the Commission accept the Agreement for filing, to be effective on the date that AES Redondo Beach acquires a generating facility, and set the Agreement for hearing. AES Redondo Beach states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. AES Alamitos, L.L.C.

[Docket No. ER98–2651–000]

Take notice that on April 21, 1998, AES Alamitos, L.L.C. (AES Alamitos), a limited liability subsidiary of The AES Corporation, unilaterally tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Rule 205, 18 CFR 285.205, an unexecuted Participating Generator Agreement (Agreement) with the California Independent System Operator Corporation (ISO).

AES Alamitos states that the tendered Agreement is materially identical to the Participating Generator Agreements that the Commission accepted for filing, suspended for a nominal period, and set for hearing on March 30, 1998, in Docket Nos. ER98–1910–000, ER98–1912–000, ER98–1930, ER98–1931–000, ER98–1933–000, ER98–1935–000, and ER98–2115–000. It requests that the Commission accept the Agreement for filing, grant waiver of notice so that the Agreement may take effect on the date that AES Alamitos acquires a generating facility, and set the Agreement for hearing. AES Alamitos states that a copy of its filing has been served on the ISO.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11485 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–13–000, et al.]

IES Utilities Inc., et al.; Electric Rate and Corporate Regulation Filings

April 23, 1998.

Take notice that the following filings have been made with the Commission:

1. IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company Heartland Energy Services and Industrial Energy Applications, Inc.

[Docket Nos. EC96–13–000, ER96–1236–000 and ER96–2560–000]

Take notice that on April 20, 1998, Alliant Services, Inc. (Alliant), on its own behalf and on behalf of IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company, Heartland Energy Services and Industrial Energy Applications, Inc. (the IEC Operating Companies), submitted as a compliance filing the System Coordination and Operating Agreement Among IES, IPC, WPL and Alliant and Alliant's Order No. 888–A open access transmission tariff. The filings were made in response to the Commission's Opinion No. 419 approving the merger of the companies. The filings are proposed to take effect on April 21, 1998. Central Hudson Gas & Electric Corporation, *et al.*

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Committee of Certain Members of Cajun Electric Power Cooperative, Inc.

[Docket No. EL98–41–000]

Take notice that on April 20, 1998, the Committee of Certain Members of Cajun Electric Power Cooperative, Inc., tendered for filing a petition for declaratory order seeking an order from the Commission declaring that certain elements of the plan of reorganization proposed by the Trustee in the ongoing Chapter 11 bankruptcy proceeding concerning Cajun Electric Power Cooperative, Inc., are contrary to the Federal Power Act, Commission precedent, and Section 32 of the Public Utility Holding Company Act.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER98–2575–000]

Take notice that on April 17,1998, Entergy Services, Inc. (Entergy Services), submitted for filing an Enabling Agreement for the Sale and Purchase of Unplanned Energy in ERCOT between Entergy Services and Texas Utilities Electric Company (TU), dated March 24, 1998. Entergy Services states that the Agreement sets forth the terms and conditions governing the sale/purchase of unplanned energy between Entergy Services and TU.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER98–2582–000]

Take notice that on April 20, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Tenaska Power Services Company under its Market-Based Rate Tariff.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power

[Docket No. ER98–2583–000]

Take notice that on April 20, 1998, Washington Water Power, tendered for filing its summary of activity for the quarter ending March 31, 1998, under its FERC Electric Tariff Original Volume No. 9.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

Docket No. ER98–2584–000]

Take notice that on April 20, 1998, Portland General Electric Company (PGE), tendered for filing a revised Application for Order Accepting Revised Rate Schedule and Granting Waivers and Blanket Authority, to become effective April 21, 1998.

The proposed tariff revisions (FERC Electric Service Tariff First Revised Volume No. 10) provide the terms and conditions pursuant to which PGE will sell electric energy to the California Independent System Operator (ISO). In these transactions, PGE intends to charge market-based rates as determined by the auction settlement procedures prescribed by the ISO Operating Agreement and Tariff of the California Independent System Operator Corporation filed in FERC Docket No. ER96–1663.

Copies of this filing were served upon the Oregon Public Utility Commission and the California ISO.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER98–2585–000]

Take notice that on April 20, 1998, Rate Schedule FERC No. 224, to the City of Severance, Kansas, as filed with the Federal Energy Regulatory Commission by Western Resources, Inc., is to be canceled. Future service will be provided by the Doniphan Electric Cooperative Association, Inc.

Notice of the proposed cancellation has been served upon the City of Severance and the Kansas Corporation Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER98–2586–000]

Take notice that on April 20, 1998, Western Resources, Inc., (Western Resources), tendered for filing a proposed change to its Rate Schedule FERC No. 220. Western Resources states that the change is to add a new delivery point under its electric power supply contract with Doniphan Electric Cooperative Association, Inc., (Cooperative). The change is proposed to become effective March 20, 1998.

Copies of the filing were served upon the Cooperative and the Kansas Corporation Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER98–2587–000]

Take notice that on April 20, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing an Amendatory Agreement between Entergy Mississippi and Tennessee Valley Authority (TVA) and an Agreement for Freeport-Miller 161 kV Transmission Line Project between Entergy Mississippi and TVA.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Avery Hydroelectric Associates

[Docket No. ER98–2591–000]

Take notice that on April 20, 1998, Avery Hydroelectric Associates made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in Connecticut Valley Electric Company Inc., v. Wheelabrator Claremont Company, L.P. et al., Docket Nos. EL94–10, *et al.*

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Errol Hydroelectric Limited Partnership

[Docket No. ER98–2592–000]

Take notice that on April 20, 1998, Errol Hydroelectric Limited Partnership made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company L.P. et al.*, Docket Nos. EL94–10, *et al.*, 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Briar Hydro Associates

[Docket No. ER98–2593–000]

Take notice that on April 20, 1998, Briar Hydro Associates, owner of the Penacook Upper Falls Hydroelectric (Project No. 6689), made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, L.P. et al.*, Docket Nos. EL94–10, *et al.*

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Hadley Falls Associates

[Docket No. ER98–2594–000]

Take notice that on April 20, 1998, Hadley Falls Associates made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company Inc.*, v. *Wheelabrator Claremont Company, L.P. et al.*, Docket Nos. EL94–10, *et al.*

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Gregg Falls Hydroelectric Associates

[Docket No. ER98–2595–000]

Take notice that on April 20, 1998, Gregg Falls Hydroelectric Associates made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.*, v. *Wheelabrator Claremont Company L.P. et al.*, Docket Nos. EL94–10, *et al.*, 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Pembroke Hydro Associates

[Docket No. ER98–2596–000]

Take notice that on April 20, 1998, Pembroke Hydro Associates made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.,* v. *Wheelabrator Claremont Company L.P. et al.,* Docket Nos. EL94–10, *et al.*

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Nashua Hydro Associates

[Docket No. ER98–2597–000]

Take notice that on April 20, 1998, Nashua Hydro Associates, owner of the Jackson Mills Dam Hydroelectric (Project No. 7590), made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, L.P. et al.,* Docket Nos. EL94–10, *et al,* 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. White Mountain Hydroelectric

[Docket No. ER98–2598–000]

Take notice that on April 20, 1998, White Mountain Hydroelectric Corporation, owner of the Apthorp Project No. 11313–NH made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, L.P., et al.,* Docket Nos. EL94–10, *et al.,* 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. White Mountain Hydroelectric Corporation

[Docket No. ER98–2599–000]

Take notice that on April 29, 1998, White Mountain Hydroelectric Corporation, owner of the Lisbon Hydro Project No. 3464–NH made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, L.P., et al.,* Docket Nos. EL94–10, *et al.,* 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Lakeport Hydroelectric Associates & Lakeport Hydroelectric Corp.

[Docket No. ER98–2600–000]

Take notice that on April 20, 1998, Lakeport Hydroelectric Associates and Lakeport Hydroelectric Corp., made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company Inc.,* v. *Wheelabrator Claremont Company, L.P. et al.,* Docket Nos. EL94–10, *et al,* 82 FERC 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Thomas Hodgson & Sons, Inc.

[Docket No. ER98–2601–000]

Take notice that on April 20, 1998, Thomas Hodgson & Sons, Inc., made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc.,* v. *Wheelabrator Claremont Company L.P. et al.,* Docket Nos. EL94–10, *et al,* 82 FERC 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Briar Hydro Associates

[Docket No. ER98–2602–000]

Take notice that on April 20, 1998, Briar Hydro Associates, owner of the Rolfe Canal Hydroelectric (Project No. 3240), made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, L.P. et al.* Docket Nos. EL94–10, *et al.,* 82 FERC ¶ 61,116 (1998).

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southwood 2000, Inc.

[Docket No. ER98–2603–000]

Take notice that on April 20, 1998, Southwood 2000, Inc. (Southwood), petitioned the Commission for acceptance of Southwood 2000 Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Southwood intends to engage in wholesale electric power and energy purchases and sales as a marketer. Southwood is not in the business of generating or transmitting electric power. Southwood is a Minnesota corporation and is affiliated with Redwood Electric Cooperative and South Central Electric Association. Redwood Electric Cooperative and South Central Electric Association are rural electric cooperatives formed in accordance with the Rural Electrification Act.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Great Bay Power Corporation

[Docket No. ER98–2604–000]

Take notice that on April 20, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between North American Energy Conservation, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective April 8, 1998

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The Washington Water Power Company

[Docket No. ER98–2605–000]

Take notice that on April 20, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement between WWP and the Bonneville Power Administration as a supplement to WWP's Rate Schedule FERC No. 223.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Power Service Corporation on behalf of The Potomac Edison Co.

[Docket No. ER98–2606–000]

Take notice that on April 20, 1998, Allegheny Power Service Corporation, on behalf of The Potomac Edison Company (Potomac Edison) filed Supplement No. 2 to Potomac Edison's Settlement Agreement with requirements customers to extend the initial term of the Agreement for a three-month period. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective date, March 13, 1998, as specified in the mutually agreed upon amendment entered into between Potomac Edison and the requirements customers.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Central Vermont Public Service Corporation

[Docket No. ER98–2607–000]

Take notice that on April 20, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Sonat Power Marketing L.P., under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on April 22, 1998.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Alternative Energy, Allendorf, L.L.C.

[Docket No. ER98–2608–000]

Take notice that on April 20, 1998, Northern Alternative Energy, Allendorf L.L.C. (NAEA), tendered for filing an Alternate Energy Production Electric Service Agreement (the Agreement) between itself and IES Utilities, Inc., (IES). Under the Agreement, IES will purchase all electric energy produced by NAEA's wind-driven electric power generation facility located near Allendorf, Iowa and IES will supply NAEA's net electric service requirements.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Interstate Power Company

[Docket No. ER98–2612–000]

Take notice that on April 20, 1998, Interstate Power Company (IPC), tendered for filing a Network Transmission Service between IPC and Wisconsin Power and Light (WPL). Under the Service Agreement, IPC will provide Network Integration Transmission Service to WPL for the City of Albany.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. South Carolina Electric & Gas Company

[Docket No. ER98–2613–000]

Take notice that on April 20, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Allegheny Power (AP) and Amoco Energy Trading Corporation (AETC), as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon AP, AETC, and the South Carolina Public Service Commission.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER98–2614–000]

Take notice that on April 20, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which VTEC Energy, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 13, 1998.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Northwestern Public Service Company

[Docket No. ES98–27–000]

Take notice that on April 13, 1998, Northwestern Public Service Company submitted an application under Section 204 of the Federal Power Act for authorization to issue short-term debt in an aggregate principal amount of not more than $200 million during the period of two years starting with the date of the letter order.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11486 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11549–001 Wisconsin]

Dunkirk Water Power Company, Inc.; Notice of Availability of Draft Environmental Assessment

April 24, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the Dunkirk Hydroelectric Project, located on the Yahara River in Dane County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project.

Copies of the DEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Chris Metcalf at (202) 219–2810.

Linwood A.Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11461 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8656–007]

William K. Fay; Notice of Availability of Environmental Assessment

April 24, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the revocation of the Bannister Mill Project. William K. Fay,

the project exemptee, failed to complete construction of the project within the required time frame. Under article 3 of the exemption, the Commission has the authority to revoke the exemption should the exemptee fail to complete project construction within the required time frame. In the environmental assessment (EA), staff concludes that revocation of the project would not constitute a major Federal action significantly affecting the quality of the human environment. The Bannister Mill Project is located on Sewall Brook near the town of Boylston in Worcester County, Massachusetts.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11459 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2487–006]

John M. Skorupski; Notice of Site Visit and Scoping Meetings Pursuant to the National Environmental Policy Act of 1969

April 24, 1998.

On March 27, 1998, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the John M. Skorupski's application for new license for the Hoosick Falls Hydro Project, located on the Hoosick River in Rensselaer County, New York.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the environmental document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled ''Scoping Document'' (SD) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SD provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

Project Site Visit

The applicant and the Commission staff will conduct a site visit of the Hoosick Falls Hydro Project on May 19, 1998, at 1:00 p.m. They will meet at the project powerhouse, located off Rt. 22, north of Hoosick Falls. All interested individuals, NGO's and agencies are invited to attend. All participants are responsible for their own transportation. For more details, interested parties should contact Mr. Douglas Clark, the applicant contact, at (518) 794–8613, prior to the site visit date.

Scoping Meetings

The Commission staff will hold scoping meetings on May 18 and 19, 1998, in preparation for completing an Environmental Assessment (EA), under the National Environmental Policy Act (NEPA), for relicensing the Hoosick Falls Project.

Commission staff will hold the scoping meetings in the vicinity of the Hoosick Falls Project: one evening meeting and one morning meeting. The evening will focus on receiving input from the public, whereas the afternoon meeting will focus on resource agency concerns. We invite all interested agencies, NGOs, and individuals to attend one or both of the meetings, and to assist staff in identifying the scope of environmental issues that should be analyzed in the EA. The times and locations of these meetings are shown below.

Evening Scoping Meeting

Date: May 18, 1998.

Time: 7:00 p.m. until 9:00 p.m.

Place: Hoosick Falls Town Hall, 80 Church St., Hoosick Falls, NY 12090, (518) 686–4571.

Morning Scoping Meeting

Date: May 19, 1998.

Time: 10:00 a.m. until 12:00 p.m.

Place: Hoosick Falls Town Hall, 80 Church St., Hoosick Falls, NY 12090, (518) 686–4571.

To help focus discussions, we will distribute a Scoping Document (SD) outlining the areas to be addressed at the meetings to the parties on the Commission's mailing list. Copies of the SD also will be available at the scoping meetings.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements on environmental issues that should be analyzed in the EA, including opinions in favor of, or in opposition to, the staff's preliminary list of issues; (4) determine the depth of analysis for issues addressed in the EA; and (5) identify resource issues that will not require detailed analysis in the EA.

The scoping meetings will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the project. Before each meeting starts, all individuals who attend, especially those individuals that intend to make statements during the meeting, will be asked to sign in and clearly identify themselves for the record prior to speaking. Time allotted for presentations will be determined by staff based on the length of the meetings and the number of people wanting to speak. All individuals wishing to speak will be provided at least five minutes to present their views.

Interested parties who choose not to speak, or are unable to attend the scoping meetings, may provide written comments and information to the Commission until June 1, 1998. Written comments and information should be submitted to the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The first page of all filings should indicate ''Hoosick Falls Project, FERC No. 2487–006'' at the top of the page. All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. Furthermore, participants in this proceeding are reminded that if they file comments with the Commission, they must serve a copy of

their filing to the parties on the Commission's service list.

For further information, please contact John Costello at (202) 219–2914.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11458 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11072–001 New York]

Trenton Falls Hydroelectric Company, Inc.; Notice of Availability of Final Environmental Assessment

April 24, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for original license for the Boyd Dam Hydroelectric Project, located on the East Branch of the Fish Creek in Lewis County, New York, and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, contact William Diehl at (202) 219–2813 or Ed Lee at (202) 219–2809.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11460 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6006–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; NPDES Modification and Variance Requests

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Pollutant Discharge Elimination System (NPDES) Modification and Variance Requests, EPA ICR No. 0029.07, OMB No. 2040–0068, expires August 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 29, 1998.

ADDRESSES: A copy of the ICR will be available at the Water Docket (W–98–11), Mail Code–4101, U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460. Copies of the ICR can be obtained free of charge by writing to this address. All public comments shall be submitted to: ATTN: NPDES Modification and Variance ICR Renewal Comment Clerk, W–98–11, Water Docket MC–4101, U.S. EPA, 401 M Street SW, Washington, DC 20460.

Please submit the original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–98–11. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed ICR revision has been established under docket number W–98–11, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Water Docket, Room M2616, Washington, DC 20460. For access to the docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Phone: (202) 260–6814, Fax: (202) 260–9544, E-mail: Lee.Angela@EPAmail.EPA.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are NPDES permit applicants that request a variance from the conditions that would normally be imposed on the applicant's discharge or NPDES permittees that request a modification of the NPDES or sewage sludge management permit conditions.

Title: NPDES Modification and Variance Requests (OMB Control No. 2040–0068, EPA ICR No. 0029.07) expiring 8/31/98.

Abstract: This ICR calculates the burden and costs associated with modifications and variances made to NPDES permits and to the National Sewage Sludge Management Program permit requirements. The regulations specified at 40 CFR 122.62 and 122.63 specify information a facility must report in order for the U.S. Environmental Protection Agency (EPA) to determine whether a permit modification is warranted. A NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. An applicant must submit information so the permitting authority can assess whether the facility is eligible for a variance, and what deviation from Clean Water Act (CWA) provisions is necessary. In general, EPA and authorized States use the information to determine whether: (1) the condi-tions or requirements that would warrant a modification or variance exist, and (2) the progress toward achieving the goals of the Clean Water Act will continue if the modification or variance is granted. Other uses for the information provided include: Updating records on permitted facilities, supporting enforcement actions, and overall program management, including policy and budget development and responding to Congressional inquiries. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collec-tion of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates the total annual burden for respondents (including State governments) is approximately 131,152 hours and a total cost of $5,365,639. The following hourly labor rates were used: $17.84 for municipal sector, $54.01 for the private sector and $30.26 for Federal and State government. Table 1 shows the number of respondents and respondent burden for different variance requests and reports. Table 2 shows the Federal and State burden for evaluating these requests and reports.

TABLE 1.—RESPONDENT BURDEN HOURS AND COSTS

Item/Type of respondent	(A) Number of respondents per year	(B) Burden hours per respondent	C=(A*B) Total hours	(D) Respondent per hour labor cost	E=(C*D) Total respondent cost
Request for Water Quality Related Effluent Limitation Modification	0	n/a	0	n/a	$0
Permittee Report of Planned Facility Changes:					
Major Municipals	200	4.0	800	17.84	14,272
Minor Municipals	304	4.0	1,216	17.84	21,693
Major Nonmunicipals	136	4.0	544	54.01	29,381
Minor Nonmunicipals	1,146	4.0	4,584	54.01	247,582
Municipal Sludge Facilities	153	4.0	612	17.84	10,918
Subtotal	1,939		7,756		323,846
Permittee Report of Anticipated Non-compliance:					
Major Municipals	40	5.0	200	17.84	3,568
Minor Municipals	152	5.0	760	17.84	13,558
Major Nonmunicipals	27	5.0	135	54.01	7,291
Minor Nonmunicipals	573	5.0	2,865	54.01	154,739
Municipal Sludge Facilities	153	5.0	765	17.84	13,648
Nonmunicipal Sludge Facilities	10	5.0	50	54.01	2,701
General Permittees	1,111	5.0	5,555	54.01	300,026
Subtotal	2,066		10,330		495,531
Facility and Permit Transfer Report:					
Major Nonmunicipals	55	3.0	165	54.01	8,912
Minor Nonmunicipals	1,720	3.0	5,160	54.01	278,692
Subtotal	1,775		5,325		287,604
Permittee Report of Inaccurate Previous Information:					
Major Municipals	40	2.0	80	17.84	1,427
Minor Municipals	304	2.0	608	17.84	10,847
Major Nonmunicipals	27	2.0	54	54.01	2,917
Minor Nonmunicipals	1,146	2.0	2,292	54.01	123,791
Required because of use or disposal permit conditions	30	2.0	60	17.84	1,070
General Permittee	111	2.0	222	54.01	11,990
Subtotal	1,658		3,316		152,042
Excessive Discharge Report:					
Major Municipals	136	4.0	544	54.01	29,381
Minor Municipals	1,720	4.0	6,880	54.01	371,589
Subtotal	1,856		7,424		400,970
Permittee Notice of Regulated Discharge Cessation:					
Major Municipals	55	1.0	55	54.01	2,971
Minor Municipals	459	1.0	459	54.01	24,791
General Permittees	1,111	1.0	1,111	54.01	60,005
Subtotal	1,625		1,625		87,767
Request for Modification, Revocation and Reissuance, or Termination	225	5.0	1,125	54.01	60,761
Variance Request for Fundamental Different Factors	8	160.0	1,280	54.01	69,133
Variance Request for Non-conventional Pollutants	9	150.0	1,350	54.01	72,914
Variance Request for Innovative Pollution Control Technology	2	60.0	120	54.01	6,481
Variance Request Regarding Thermal Discharges (new)	8	400.0	3,200	54.01	172,832
Variance Request Regarding Thermal Discharges (renewals)	40	4.0	160	54.01	8,642
Variance Request Regarding into Marine Waters	0	n/a	0	n/a	0
Total Respondent Burden and Cost			43,011		2,138,523

TABLE 2.—GOVERNMENT BURDEN HOURS AND COSTS

Item/Type of respondent	(A) Number of respondents per year	(B) Burden hours per response	C=(A) * B) Government burden	D=(C * 80%) State Burden	E=(C * 20%) Federal burden	G=(D * Labor rate) State cost	H=(E * Labor rate) Federal Cost
Request for Water Quality Related Effluent Limitations Modifications	0	n/a	0	0	0	$0	$0
Permittee Report of Planned Facility Changes:							
Major Municipals	200	20.0	4,000	3,200	800	96,832	24,208
Minor Municipals	304	20.0	6,080	4,864	1,216	147,185	36,796
Major Nomunicipals	136	20.0	2,720	2,176	544	65,846	16,461
Minor Nonmunicipals	1,146	20.0	22,920	18,336	4,584	554,847	138,712
Municipal Sludge Facilities	153	20.0	3,060	2,448	612	74,076	18,519
Subtotal	1,939	.....	38,780	31,024	7,756	938,786	234,696
Permittee Report of Anticipated Non-compliance:							
Major Municipals	40	10.0	400	320	80	9,683	2,421
Minor Municipals	152	10.0	1,520	1,216	304	36,796	9,199
Major Nonmunicipals	27	10.0	270	216	54	6,536	1,634
Minor Nonmunicipals	573	10.0	5,730	4,584	1,146	138,712	34,678
Municipals Sludge Facilities	153	10.0	1,530	1,224	306	37,038	9,260
Nonmunicipals Sludge Facilities	10	10.0	100	80	20	2,421	605
General Permittees	1,111	10.0	11.110	8,888	2,222	268,951	67,238
Subtotal	2,066	.....	20,660	16,528	4,132	453,658	113,415
Facility and Permit Transfer Report:							
Major Nonmunicipals	55	4.0	220	176	44	5,326	1,331
Minor Nonmunicipals	1,720	4.0	6,880	5,504	1,376	166,551	41,638
Subtotal	1,775	.....	7,100	5,680	1,420	625,535	156,384
Permittee Report of Inaccurate Previous Information:							
Major Municipals	40	4.0	160	128	32	3,873	968
Minor Municipals	304	4.0	1,216	973	243	29,437	7,359
Major Nonmunicipals	27	4.0	108	86	22	2,614	654
Minor Nonmunicipals	1,146	4.0	4,584	3,667	917	110,969	22,742
Required because of use or disposal permit conditions	30	4.0	120	96	24	2,905	726
General Permittee	111	4.0	444	355	89	10,748	2,687
Subtotal	1,658	.....	6,632	5,306	1,326	156,673	39,168
Excessive Discharge Report:							
Major Nonmunicipals	136	4.0	544	435	109	13,169	3,292
Minor Nonmunicipals	1,720	4.0	6,880	5,504	1,376	166,551	41,638
Subtotal	1,856	.....	7,424	5,939	1,485	336,393	84,098
Permittee Notice of Regulated Discharge Cessation:							
Major Nonmunicipals	55	4.0	220	176	44	5,326	1,331
Minor Nonmunicipals	459	4.0	1,836	1,469	367	44,446	11,111
General Permittees	1,111	4.0	4,444	3,555	889	107,580	26,895
Subtotal	1,625	.....	6,500	5,200	1,300	157,352	39,337
Request for Modification, Revocation and Reissuance or Termination	225	40.0	9,000	7,200	1,800	217,872	54,468
Variance Request for Fundamentally Different Factors	8	520.0	4,160	3,328	832	100,705	25,176
Variance Request for Non-conventional Pollutants	9	520.0	4,680	3,744	936	113,293	28,323
Variance Request for Innovative Pollution Control Technology	2	520.0	1,040	832	208	25,176	6,294
Variance Request Regarding Thermal Discharges (new)	8	520.0	4,160	3,328	832	100,705	25,176
Variance Request Regarding Thermal Discharges (renewals)	40	1.0	40	32	8	968	242
Variance Request Regarding Discharge into Marine Waters	0	n/a	0	0	0	$0	$0
Total Respondent Burden and Cost	.....	.....	110,176	88,141	22,035	3,227,116	806,777

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 23, 1998.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 98–11510 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6006–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Beryllium National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants, Subpart C—Beryllium (OMB #2060–0092, expiration 6/30/98). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 0193.06 .

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart C—Beryllim (OMB Control No. 2060–0092; EPA ICR No. 0193.06) expiring 6/30/98. This is a request for extension of a currently approved collection.

Abstract: Beryllium and many of its compounds are considered to be among the most toxic and hazardous of the nonradioactive substances in industrial use. Consequently, EPA promulgated standards to control airborne releases from affected facilities such that ambient air concentrations would not exceed 0.01 micrograms per cubic meter. Alteration of a beryllium product by burning, grinding, cutting, or other physical means can, if uncontrolled, produce a significant hazard in the form of dust, fumes, or mist.

The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium were proposed on December 7, 1971 (36 FR 23939) and promulgated on April 6, 1973 (38 FR 8826). This standard applies to all extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste. The standard also applies to machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than five percent beryllium by weight. All sources known to have caused, or to have the potential to cause, dangerous levels of beryllium in the ambient air are covered by the Beryllium NESHAP. This information is being collected to assure compliance with 40 CFR part 61, subpart C.

Owners or operators of the affected facilities described must make one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Most facilities subject to NESHAP subpart C will meet the standard by means of a one-time-only initial stack test. However, approximately 10 existing facilities have elected to comply with an alternative ambient air quality limit by operating a continuous monitor in the vicinity of the affected facility. The monitoring requirements for these facilities provide information on ambient air quality and ensure that locally, the airborne beryllium concentration does not exceed 0.01 micrograms/m^3. For those complying by ambient monitoring, a monthly report of all measured concentrations shall be submitted to the Administrator. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements and records. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 2, 1997 (62 FR 63709). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 15 .6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ten facilities electing to meet the monthly average ambient standard are required to keep daily records and report monthly. In addition, 23 facilities (roughly 10 percent of the 226 facilities that comply with the emission standard) must file a report annually due to operational changes that could alter emission rates. Each year, approximately 203 existing sources have no reporting or record keeping requirements under NESHAP subpart C.

Respondents/Affected Entities: Plants, foundries, incinerators which process beryllium and their derivatives.

Estimated Number of Respondents: 33.

Frequency of Response: daily records/monthly reports for 10 facilities; annual reports for 23.

Estimated Total Annual Hour Burden: 2,232 hours.

Estimated Total Annualized Cost Burden: $35,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0193.06 and OMB Control No. 2060–0092 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 24, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–11511 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6006–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Vinyl Chloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride, OMB control #2060–0071 expiration June 30, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 0186.08

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Vinyl Chloride Subpart F, OMB Control No. 2060–0071; EPA ICR No. 0186.08 expiring 06/30/98. This is a request for extension of a currently approved collection.

Abstract: The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for vinyl chloride (VC) were proposed on December 24, 1975, promulgated on October, 21, 1976, and amended on June 7, 1977, September 30, 1986, September 23, 1988 and December 23, 1992. These standards apply to exhaust gases and oxychlorination vents at ethylene dichloride (EDC) plants; exhaust gases at vinyl chloride monomer (VCM) plants; and exhaust gases, reactors opening losses, manual vent valves, and stripping residuals at polyvinyl chloride (PVC) plants. The standards also apply to relief valves and fugitive emission sources at all three types of plants. In the Administrator's judgement, vinyl chloride emissions from polyvinyl chloride (PVC), ethylene dichloride (EDC), and vinyl chloride monomer (VCM) plants cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapaciting reversible illness. Vinyl chloride is a known human carcinogen which causes a rare cancer of the liver. There is no reason to believe that operators of plants affected by this NESHAP would maintain low emissions without regulations under the Clean Air Act.

In order to ensure compliance with the standard, adequate record keeping and reporting is necessary. This information enables the Agency to: (1) Ensure that facilities affected continue to operate the control equipment and use proper work practices to achieve compliance; (2) notification of startup indicates to enforcement personnel when a new facility has been constructed and is thus subject to the standards; and (3) provides a means for ensuring compliance. The standards require daily measurements from the continuous monitoring system and of the reactor pressure and temperature. Establishment of a continuous monitoring program is a high priority of the Agency. The continuous monitoring system monitors VC emissions from the stack to judge compliance with the numerical limits in the standards. The parameters are used to judge the operation of the reactor so that the source and EPA will be aware of improper operation and maintenance. The standards implicitly require the initial reports required by the General Provisions of 40 CFR 61.7 and 61.9. These initial reports include application for approval of construction or modification, and notification of startup. The standards also require quarterly reporting of vinyl chloride emissions from stripping, reactor openings, and exhausts. Reports must be submitted within 10 days of each valve discharge and manual vent valve discharge. All reports are sent to the delegated State authority. In the event that there is no such delegated State authority, the reports are sent directly to the EPA Regional Office.

The owner/operator must make the following one-time-only reports; application for approval of construction or modification; notification of startup; application of waiver of testing (if desired by source); and an initial report. The initial report includes a list of the equipment installed for compliance, a description of the physical and functional characteristics off each piece of equipment, a description of the methods which have been incorporated into the standard operation procedures for measuring or calculating emissions, and a statement that equipment and procedures are in place and are being used. Generally, the one-time only reports are required of all sources subject to NESHAP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/02/97 (62 FR 63703); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 92 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize

technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Following Plants: Ethylene Dichloride, Vinyl Chloride Monomer, Polyvinyl Chloride.

Estimated Number of Respondents: 44.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 16,159 hours.

Estimated Total Annualized Cost Burden: $1,980,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0186.08 and OMB Control No. 2060–0071 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 24, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–11512 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6005–9]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions Petition for Exemption—Class I Hazardous Waste Injection Parke-Davis Division, Warner-Lambert Company of Morris Plains, NJ, Holland, MI Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to Parke-Davis Division, Warner-Lambert Company, of Morris Plains, New Jersey, for its Class I injection wells located in Holland, Michigan. As required by 40 CFR Part 148, Parke-Davis has demonstrated, with a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Parke-Davis of the specific restricted hazardous wastes identified below exclusively into the Class I hazardous waste injection wells at the Holland facility specifically identified as Wells Numbers 3, 4 and 5. This decision constitutes final USEPA action for which there is no Administrative Appeal.

D001, D002, D004, D005, D006, D007, D008, D009, D010, D011, D018, D019, D021, D022, D035, D038, D040, D043, F002, F003, F005, P030, P095, P102, U002, U003, U004, U012, U019, U029, U037, U043, U044, U048, U056, U057, U080, U112, U122, U147, U151, U154, U159, U188, U190, U196, U210, U211, U213, U220, U228, U239, U404

One code, U404, was inadvertently omitted from the draft list of codes and has been added.

Background: Parke-Davis submitted a petition for exemption from the land disposal restrictions on hazardous waste on June 10, 1991. USEPA personnel reviewed all data pertaining to the petition, including, but not limited to, well construction, regional and local geology, seismic activity, penetrations of the confining zone and the computer model. The USEPA has determined that the geological setting at the site and the construction and operation of the well are adequate to prevent fluid migration out of the injection zone within 10,000 years, as required under 40 CFR part 148. The zone which will contain the hazardous constituents, the injection zone, at this site is the Munising and Trempeleau Formations between the depths of 4452 and 6027 feet below ground level. Injection is permitted into the Mt. Simon Member of the Munising Formation between the depths of 5080 and 6027 feet. The immediate confining zone is the Prairie du Chien Group at a depth between 3929 and 4452 feet. The confining zone is separated from the lowermost underground source of drinking water (at a depth of 240 feet) by a sequence of permeable and less permeable sedimentary rocks, which provide additional protection from fluid migration into drinking water sources. A fact sheet containing a more complete summary of the of the final decision is available from the USEPA Region 5 office.

A public notice was issued on March 2, 1998, pursuant to 40 CFR 124.10. A public hearing was scheduled for April 1, 1998, in Holland, Michigan but was canceled due to lack of public interest. The public comment period ended on April 1, 1998. No comments were received.

Conditions: As a condition of this exemption, Parke-Davis must meet the following conditions:

(1) The monthly average injection rate is limited to 100 gallons per minute per well.

(2) Injection shall occur only into the Mt. Simon Sandstone Member of the Munising Formation between the depths of 5080 and 6027 feet.

(3) Parke-Davis must be in full compliance with all conditions of its permits. Other conditions relating to the exemption may be found in 40 CFR 148.23 and 148.24.

DATE: This action is effective as of April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Roy, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–6556, electronic mail roy.stephen@epamail.epa.gov. Copies of the petition and all pertinent information relating to it are on file and are part of the administrative record. It is recommended that you contact the lead reviewer prior to reviewing the administrative record.

Rebecca Harvey,

Acting Director, Water Division.

[FR Doc. 98–11509 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6006–6]

Science Advisory Board; Notification of Public Teleconference Meeting

May 14, 1998

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Science Advisory Board's (SAB)

Ecological Processes and Effects Committee will conduct a public teleconference meeting on Thursday, May 14, 1998, between the hours of 11:00 am and 1:00 pm, Eastern Time. The purpose of the meeting is for the Committee to discuss possible strategic projects that it may wish to initiate over the coming months. A limited number of teleconference lines will be available on a first-come first-served basis for members of the public who wish to call into the meeting. For additional information on the meeting, including how to participate in the conference call, contact Ms. Stephanie Sanzone, Designated Federal Official for the Committee, at (202) 260–6557 or sanzone.stephanie@epa.gov no later than 4:00 pm on May 12, 1998. Anyone wishing to provide written or oral comments (limited to five minutes per individual) to the Committee must contact Ms. Sanzone in writing by 4:00 pm on May 12, 1998 at fax (202) 260–7118 or sanzone.stephanie@epa.gov.

Dated: April 22, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–11513 Filed 4–29–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

April 23, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by June 29, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0089.

Title: Application for Land Radio Station Authorization in the Maritime Services.

Form No.: FCC 503.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,926.

Estimated Time Per Response: 45 minutes.

Total Annual Burden: 2,195 hours.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: FCC Rules require that applicants file FCC 503 when applying for a new station or when modifying an existing land radio station in the Maritime Mobile Service or an Alaska Public Fixed Station. This form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules - 47 CFR Parts 1.922, 80.19 and 80.29. The data collected is necessary to evaluate a request for station authorization in the Maritime Services or an Alaska Public Fixed Station, to issue licenses, and to update the database to allow proper management of the frequency spectrum.FCC Form 503 is being revised to collect Antennna Structure Registration Number/or FCC Form 854 File Number; and Internet or E-Mail address of applicant. Due to changes in the antenna clearance procedures we no longer need to collect certain antenna information, such as name of the nearest aircraft landing area and distance and direction to nearest runway. The instruction are being edited accordingly.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11443 Filed 4–29–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

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. The notices also will 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 May 14, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Darby Family Limited Partnership No. 2, Vidalia, Georgia; to retain voting shares of DBT Holding Company, Vidalia, Georgia, and thereby retain voting shares of Darby Bank & Trust Company; Vidalia, Georgia.

Board of Governors of the Federal Reserve System, April 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11482 Filed 4–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Cambridge Financial Group, Inc., Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridge Savings Bank, Cambridge, Massachusetts.

2. Plymouth Bancorp, Inc., Wareham, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Plymouth Savings Bank, Wareham, Massachusetts.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BankFirst Corporation, Knoxville, Tennessee (formerly Smoky Mountain Bancorp, Inc.); to acquire 100 percent of the voting shares of First Franklin Bancshares, Inc., Athens, Tennessee, and thereby indirectly acquire The First National Bank and Trust Company, Athens, Tennessee.

2. CNB Holdings, Inc., Alpharetta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Chattahoochee National Bank, Alpharetta, Georgia (in organization).

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. NW Bancorp, Inc., Prospect Heights, Illinois; to acquire 100 percent of the voting shares of Village Bank & Trust, North Barrington, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., and its wholly owned subsidiary, Ameribanc, Inc., both of St. Louis, Missouri; to acquire Firstbank of Illinois Co., Springfield, Illinois, and thereby indirectly acquire Bank Central, Inc., Springfield, Illinois; Central National Bank of Mattoon, Mattoon, Illinois; Central Bank System, Inc., Fairview Heights, Illinois; Central Bank, Fairview Heights, Illinois; Farmers and Merchants Bank of Carlinville, Carlinville, Illinois; Colonial Bancshares, Inc., Des Peres, Missouri; The Colonial Bank, Des Peres, Missouri; Duchesne Bank, St. Peters, Missouri; Elliott State Bank, Jacksonville, Illinois; First National Bank of Central Illinois, Springfield, Illinois; and First Trust and Savings Bank, Taylorville, Illinois.

In connection with this application, Applicants have also applied to acquire Zemenick & Walker, Inc., St. Louis, Missouri, and thereby engage in the business of providing investment advisory services, including offering non-discretionary investment advice, pursuant to § 225.28(b)(6) of the Board's Regulation Y; Mid-Country Financial, Inc., Springfield, Illinois, and thereby engage in making indirect consumer automobile loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; FFG Trust, Inc., Springfield, Illinois, and thereby engage in providing corporate trust and investment management services, pursuant to §§ 225.28(b)(5) and (6) of the Board's Regulation Y; and GCT Realty, Fairview Heights, Illinois, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y.

E. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of MidAmerica Bancshares, Inc., Newport, Minnesota, and thereby indirectly acquire MidAmerica Bank, Newport, Minnesota; Minnesota Bancshares, Inc., Newport, Minnesota; MidAmerica Bank South, Mankato, Minnesota; Wisconsin Bancshares, Inc., Newport, Minnesota; MidAmerica Bank Hudson, Hudson, Wisconsin; MidAmerica Bank North, Phillips, Wisconsin; MidAmerica Bank; Dodgeville, Wisconsin; Charter Bancorporation, Inc., Scottsdale, Arizona; Bank of Arizona, Scottsdale, Arizona; The Bank of New Mexico Holding Company, Albuquerque, New Mexico; and The Bank of New Mexico, Albuquerque, New Mexico.

In connection with this application, Applicant also has applied to acquire MidAmerica Financial Corporation, Newport, Minnesota, and thereby engage in making, acquiring and servicing loans and other extensions of credit, pursuant to § 225.28(b)(1) of the Board's Regulation Y; and in leasing personal and real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. San Juan Bank Holding Company Friday Harbor, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Islanders Bank, Friday Harbor, Washington.

Board of Governors of the Federal Reserve System, April 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11483 Filed 4–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to acquire Bankers Savings Bank, FSB, Coral Gables, Florida, and thereby engage in operating a savings association, pursuant to §

225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11484 Filed 4–29–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Long-Term Health Effects of Methyl Parathion in Children—A Follow-Up Study—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. Children were exposed to Methyl Parathion (MP) via illegal indoor residential spraying of MP for pest control in nine states. All of these sprayed areas have been designated as CERCLA sites and placed on the National Priorities List (NPL) for conducting remedial actions. The MP sites consist of contaminated residences and businesses spread over several counties and states, intermingled with other building structures that were never sprayed with MP, making targeted remedial actions more challenging.

This study of children exposed to MP and children not exposed, but matched on age, sex, and race will provide critical public health information for the gap in data regarding the effects of lower dose, sub-acute exposure on neurobehavioral and respiratory development. The study population will consist of children under 6 years of age at the time of exposure (exposed group), whose residences in Ohio and Mississippi were illegally sprayed with MP since 1994, and matched with unexposed children (unexposed group). No data exist regarding low dose, sub-acute exposure to MP in children. The goal of this study is to examine the association between lower dose, sub-acute MP exposure in children, specifically from indoor spraying, and the risk of adversely affecting normal neurobehavioral and respiratory development.

The questionnaire will be administered in person by trained interviewers to the mothers (fathers or other guardians, if the mother is not available) of the exposed and unexposed children. The Pediatric Environmental Neurobehavioral Test Battery (PENTB) will be administered by personnel trained in the neurobehavioral assessment of children at annual intervals for the three study years. The total annual burden hours are 1,208.

Respondent questionnaire	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total annual burden (in hours)
Parent/Child (general)	537	1	1	537
(PENTB) Test Battery Questionnaires	537	1	1.25	671

2. Survey of Assisted Reproductive Technology Embryo Laboratory Procedures and Practices—New—Public Health Practice Program Office—In October 1992, Congress passed the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA). In accordance with this statute, the CDC has been tasked with developing a model certification program for assisted reproductive technologies (ART) embryo laboratories that are providing services to human fertility specialists in the U.S. This model certification program is to be voluntarily implemented by States or by independent certifying agencies such as the College of American Pathologists (CAP), which are approved by the State. The model certification program is to include a set of quality standards for the performance of laboratory procedures, maintenance of records, qualifications of laboratory personnel, and criteria for the inspection and certification of embryo laboratories. Other than a General Accounting Office Survey conducted in 1988, no current survey of ART laboratory procedures and practices is available. The proposed information collection will use a paper survey to provide an enumeration of these ART laboratory procedures, equipment maintenance practices, and personnel qualifications. This information is required to finalize the development of the model certification program and also provide a baseline study for evaluating its impact and effectiveness.

The intended population is ART laboratory directors at all facilities with human embryo laboratories in the U.S. The estimated time for completion of this survey is expected to be approximately one hour per response. This estimate includes the time needed to review instructions, gather the relevant information, complete the form, and review the collected data. The total annual burden hours are 488.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (hours)
ART Laboratory Directors	325	1	1.5	488

Dated: April 24, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–11479 Filed 4–29–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 98–CB–02–1]

Announcement of the Availability of Financial Assistance and Request for Applications to Support a National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families; a National Resource Center for Community-based Family Resource and Support Programs; and Grants to Tribes, Tribal Organizations and Migrant Programs for Community-based Family Resources and Support Programs

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of correction.

SUMMARY: This notice corrects the Program Announcement published in the **Federal Register** on April 1, 1998, (62 FR 15847) by extending the due date to June 22, 1998; by correcting the address to which completed applications are to be sent; and by amending the dollar amount available for the National Resource Center for Community-based Family Resource and Support Programs. The correct address for the submission of proposals is ACYF Operations Center, 1225 Jefferson David Highway, Suite 415, Arlington, Virginia 22201. The amount of funding available for the National Resource Center for Community-based Family Resource and Support Programs is $675,000.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson David Highway, Suite 415, Arlington, Virginia 22201. The telephone number is 1–800–351–2293.

SUPPLEMENTARY INFORMATION: On April 1, 1998, the Administration on Children, Youth and Families published Program Announcement Number: CB–98–02 in the **Federal Register** soliciting proposals to conduct a National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families; a National Resource Center for Community-Based Family Resources and Support Programs; and Grants to Tribes, Tribal Organizations and Migrant Programs for Community-based Family Resource and Support Programs.

Due to delays in reprinting and in mailing out the application packages, potential applicants may not have sufficient time to prepare an application and this amendment extends the due date. All other requirements for mailed applications/overnight/express mail service and hand-delivered applications/applicant couriers remain the same as in the original announcement.

The address to which these proposals were to be sent was mistyped in the announcement and the dollar amount for the National Resource Center for Community-Based Family Resource and Support Programs was incorrectly given; and therefore, this amendment corrects those errors.

(Catalog of Federal Domestic Assistance Program Numbers 93.551, Abandoned Infants Assistance Program; 93.590, Child Abuse Prevention and Treatment Act)

Dated: April 21, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–11492 Filed 4–29–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2008–PN]

RIN 0938–AI90

Medicare and Medicaid Programs; Recognition of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. for Ambulatory Surgical Centers Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice we announce the receipt of an application from the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) for recognition as a national accreditation program for ambulatory surgical centers that wish to participate in the Medicare or Medicaid programs. The Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing a 30 day public comment period.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 pm on June 1, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2008–PN, P.O. Box 26688, Baltimore, MD 21207–5178.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1885–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Joan C. Berry (410) 786–7233.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided certain requirements are met. Section 1832 (a)(2)(F) of the Social Security Act (the Act) includes the requirements that an ASC have an agreement in effect with the Secretary and meet health, safety, and other standards specified by the Secretary in regulations. Regulations concerning supplier agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. Our regulations at 42 CFR Part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for facility services.

Generally, in order to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency

to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b) of the Act permits ''accredited'' ASCs to be exempt from routine surveys by State survey agencies to determine compliance with Medicare requirements. Section 1865(b)(1) of the Act provides that if the Secretary finds that accreditation of a provider entity by a national accreditation body demonstrates that all of the applicable conditions and requirements are met, the Secretary would deem those provider entities as meeting the applicable Medicare requirements. Hence, if the Secretary finds that the accreditation of an ASC by a national accreditation body demonstrates that all the Medicare conditions and standards are met or exceeded, then the Secretary ''deems'' the requirements to be met by the ASC. Our regulations concerning approval of accrediting organizations are at §§ 488.4, 488.6, and 488.8. A national accrediting organization starts the process by requesting that the Secretary recognize its accreditation program. To date, two organizations have been recognized with deeming authority for their ASC programs: the Joint Commission on Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care.

II. Approval of Accreditation Organization

The purpose of this notice is to notify the public of the request of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) for approval of its request that the Secretary find its accreditation program for ambulatory surgical centers meets or exceeds the Medicare conditions. This notice also solicits public comment on the ability of this body's requirements to meet or exceed the Medicare conditions for coverage.

Section 1865(b)(2) of the Act requires that the Secretary's findings consider the applying accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and ability to supply information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish within 60 days of the receipt of a completed application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30 day public comment period. In addition, the Secretary has 210 days from the receipt of the request to publish a finding of approval or denial of the application.

This notice also solicits public comment on the ability of this body's requirements to meet or exceed the Medicare conditions of coverage.

III. Evaluation of Deeming Request

On November 18, 1997, the AAAASF submitted all the necessary information concerning their request for a finding by the Secretary that its accreditation program met or exceeded the Medicare conditions. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (''Federal review of accreditation organizations'') our review and evaluation of AAAASF is being conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAAASF's requirements for an ASC to our comparable requirements for the ASC.
- AAAASF's survey process to determine the following:

—The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

—The comparability of its processes to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

—The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are used only when the organization identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).

- The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- The ability of AAAASF to provide us with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of AAAASF's staff and other resources, and its financial viability.
- AAAASF's ability to provide adequate funding for performing required surveys.
- AAAASF's policies with respect to whether surveys are announced or unannounced.
- AAAASF's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Notice Upon Completion of Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

V. Responses to Public Comments

Because of the large number of comments we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and will respond to them in a forthcoming rulemaking document.

(Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–11491 Filed 4–29–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–04]

Office of Policy Development and Research; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* June 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development 451—7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact Priscila J. Prunella, 202–708–3700, extension 5711 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Networks Evaluation.

Description of the need for information and proposed use: The Department is conducting under contract the evaluation of its new initiative—Neighborhood Networks—to: document the extent to which onsite access to computers and training resources in the Neighborhood Network Centers influences the self-sufficiency, employability, and economic self-reliance of low-income families living in HUD-insured and -assisted properties; and, characterize the composition and performance of the centers.

Members of the affected public: Residents of the HUD-insured and assisted properties who use the computer learning centers and computer learning center managers and/or staff.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will: (1) Survey 150 computer learning center managers twice; the interviews are expected to last 40 minutes; (2) Survey computer learning center clients in three waves—the first wave will cover an initial sample of 350 clients, the second wave will cover fewer clients (approximately 275 clients), and the last wave no fewer than 200 clients; the interviews will last approximately 30 minutes; and (3) Conduct site visits at 9 sites at three separate time periods, coinciding with the client interviews, to interview center staff; the interviews will last approximately one hour.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 20, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–11494 Filed 4–29–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–02]

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* June 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Albany Financial Operations Center, telephone number 518–464–4200 extension 4206 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Repayment Agreement.

OMB Control Number, if applicable: 2502–0483.

Description of the need for the information and proposed use: Once a Debt Servicing Representative has a clear understanding of the debtor's attitude about repayment of the debt and the debtor's ability to repay the debt, attempts should be made to secure a signed repayment agreement.

Agency form numbers, if applicable: HUD–56146.

Members of affected public: Individuals or households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 1,258.

Frequency of response: On occasion.

Total hours of response requested: 1.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 24, 1998.

Art Agnos,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–11495 Filed 4–29–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–841026

Applicant: Thane Wibbels, Univ. of Alabama, Birmingham, AL.

The applicant has requested a permit to import blood samples of hatchling Kemp's ridley sea turtles (*Lepidochelys kempi*) for enhancement of the species through scientific research.

PRT–840618

Applicant: Fredrick S. Larson, Little Falls, MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–840620

Applicant: John T. Portemont, Andalusia, AL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–841388

Applicant: LeRoy Mohrman, Jacksonville, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–841282

Applicant: Memphis Zoo, Memphis, TN.

The applicant requests a permit to import three captive-bred Komodo dragons (*Varanus komodoensis*) from the Gembira Loka Zoo, Yogyakarta, Indonesia for the purpose of enhancement of the species through captive propagation.

PRT–841636

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one, captive-born, female Blyth's tragopan (*Tragopan blythii*) for the purpose of enhancement of the species through captive propagation.

PRT–841765

Applicant: Thane Wibbels, Dept. of Biology, University of Alabama at Birmingham, Birmingham, AL.

The applicant requests a permit to import biological samples from captive-held hawksbill sea turtles (*Eretmochelys imbricata*) from Canada for the purpose of scientific research to benefit the species in the wild. This notice covers activities conducted by the applicant over a 5 year period.

PRT–799227

Applicant: Riverbanks Zoo, Columbia, SC.

The applicant request amendment to US 799227 to include the import of all biological samples including preserved organs, tissue samples and other parts from captive-held and captive born specimens of black-footed cat (*Felisn igripes*) that have died in captivity in zoos world wide for the purpose of scientific research to enhance the survival of the species.

PRT–828861

Applicant: Wesley W. Kyle III, Pipe Creek, TX.

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–841982

Applicant: Ravetch Underwater Films, Toronto, Ontario, Canada.

Permit Type: Take for Photography [Sec 104(c)(6) of the Marine Mammal Protection Act].

Name and Number of Animals: Pacific walrus (*Odobenus rosmarus*), as available.

Summary of Activity to be Authorized: The applicant requests a permit for commercial/educational photography involving no more than Level B harassment of Pacific walrus in the area of Cape Pierce, Alaska. The applicant has indicated that the resulting product will be used for an educational program on Pacific walrus. Most filming is expected to occur on land or by boat from the water surface. However, the applicant is also requesting authorization to film animals in the water using a diver if conditions are suitable. Other activities related to this work include attachment of a camera device to a walrus tusk for educational and scientific research purposes. That proposal is being reviewed under a separate request as an amendment to a scientific research permit, PRT–801652, submitted by the Alaska Science Center.

Source of Marine Mammals: Cape Pierce, Alaska.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–840943

Applicant: Angie D. Hall, Sarasota, FL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–841205

Applicant: Allan E. Bergland, Flagstaff, AZ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–841988

Applicant: Ronald J. Pavlik, Fort Lauderdale, FL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–841987

Applicant: Joseph B. Dodge, Jr., Jackson, NH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population,

Northwest Territories, Canada for personal use.

PRT–841894

Applicant: Prince T. House, Little Rock, AR.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703–358–2281).

Dated: April 24, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–11477 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication AA–6984–B; 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 Klawock-Heenya Corporation for 80.50 acres. The lands involved are in the vicinity of Klawock, Alaska.

Copper River Meridian, Alaska

T. 74 S., R. 82 E.,

Secs. 1, 2 and 3.

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 June 1, 1998 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.

Patricia K. Underwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–11473 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1010–00; AZA–29861]

Notice of Availability of Draft Hualapai Mountains Land Exchange, Environmental Impact Statement/Plan Amendment

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of availability and notice of public meetings.

SUMMARY: Pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended and Section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kingman Field Office, Arizona, has prepared an EIS/Plan amendment to analyze the effect of a proposed land exchange and a proposed plan amendment to the Kingman Resource Management Plan. The EIS addresses the effects of a proposal to exchange approximately 70,000 acres of public land for approximately 70,000 acres of private land. The proposed land exchange is entirely within Mohave County, Arizona. The amendment is needed because the Proponent selected public lands that were not identified for disposal in the Kingman Resource Management Plan by Township, Range, and Section. The plan amendment will assess impacts of proposed changes to land tenure classification decisions and resource management.

DATES: Written comments will be accepted until July 27, 1998. Public meetings, to listen to concerns and answer questions, will be held on the following dates:

Tuesday June 9 in Wikieup, AZ at the Owens School, 14109 East Chicken Springs Road, Wikieup, AZ 85360

Wednesday June 10 in Kingman AZ, at the Mohave County Public Library, located at 3269 N. Burbank, Kingman, AZ 86401

Thursday June 11 in Yucca, AZ, at the Yucca Fire Department, 12349 S. Yucca Frontage Road, Yucca, AZ 86348

All meetings will start at 6:00 pm and end at 8:00 pm.

ADDRESSES: Copies of the document are available at the following locations: Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629 and Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203. Comments should be sent to the Team Leader, Hualapai Mountain Project, Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629.

FOR FURTHER INFORMATION CONTACT: Don McClure, phone: (520) 692–4400.

SUPPLEMENTARY INFORMATION: The land exchange includes both public and non-public land in Mohave County in northwestern Arizona, encompassing approximately 140,000 acres. Issues that have been addressed are ranching, biological resources, socioeconomics, recreation/access, soil erosion, cultural resources, realty, riparian areas, mineral resources, and areas of critical environmental concern. Proposed modifications to the Kingman Resource Management Plan have been integrated with the proposed Hualapai Mountains Land Exchange, and the impacts thereof will be presented in a single EIS-level analysis.

Dated: April 14, 1998.

John R. Christensen,

Field Manager.

[FR Doc. 98–11445 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G8–0160]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 12 S., R. 1 E., accepted March 25, 1998
T. 20 S., R. 36 E., accepted January 22, 1998
T. 24 S., R. 3 W., accepted February 4, 1998
T. 20 S., R. 4 W., accepted February 23, 1998
T. 2 S., R. 5 W., accepted March 25, 1998
T. 25 S., R. 7 W., accepted February 4, 1998
T. 28 S., R. 10 W., accepted March 13, 1998
T. 29 S., R. 11 W., accepted March 25, 1998

Washington

T. 35 N., R. 11 E., accepted January 27, 1998
T. 11 N., R. 28 E., accepted January 28, 1998

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be field with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 21, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–11444 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve

ACTION: Notice of meeting

SUMMARY: This notice sets the schedule for a meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES, TIMES, AND ADDRESSES: Wednesday, May 6, 1998; 8 a.m. until business and public comment are complete; Council Grove Christian Church, 106 East Main, Council Grove, Kansas.

This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by April 29, 1998, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845; or telephone him at 316–273–6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104–333, dated November 12, 1996.

Dated: April 15,1998.

Alan M. Hutchings,

Acting Regional Director, Midwest Region.

[FR Doc. 98–11441 Filed 4–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information collection reinstatement without change; Making officer Redeployment Effective (more).

The proposed information collection is published to obtain comments from the public and affected agencies. The COPS Office has submitted the following information request utilizing emergency review procedures, to OMB for review and clearance accordance with sections 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS Office has determined that it cannot reasonably comply with the normal clearance procedures under this Part of the Act because normal clearance procedures are reasonably likely to prevent or disrupt the collection of the information.

Therefore, OMB emergency approval has been requested by May 11, 1998. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Dennis Marwich), Washington, D.C. 20530. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at (202) 395–7285. During the first 60 days of this same review period, a regular review of this information collection is also being undertaken, All comments and suggestion, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions should be directed to: Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Layman, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection: Reinstatement without Change of a Previously Approved Collection.*

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine applicant eligibility for the grant program Making Officer Redeployment Effective (MORE). Completion of such an application is a requirement for consideration for MORE grant funding Upon receipt and review, the agency will notify the applicant whether it will receive such an award under this program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,150 responses; 31.2 hours per response (including record keeping) = 35,880 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,880 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, D.C. 20530.

Dated: April 28, 1998.

Brenda E. Dyer,

Department of Justice, Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–11480 Filed 4–29–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 2, 1998, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501) a basic class of controlled substance listed in Schedule II.

The phenylacetone will be imported for conversion to amphetamine base, isomers and salts thereof for sale in bulk form to customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 1, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

John H. King,

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

Dated: April 17, 1998.

[FR Doc. 98–11500 Filed 4–29–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Employment and Training Administration is soliciting comments concerning the proposed new collection of the ''Welfare to Work Monitoring

Guide''. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 29, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, Office of Welfare to Work, ATTENTION: Alicia Fernandez-Mott, 200 Constitution Avenue, N.W., Room C–4524, Washington, D.C. 20210; telephone: 202–208–7185 x183 (this is not a toll free number) and, fax: 202–219–0376.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a comprehensive welfare reform bill, under which the Temporary Assistance for Needy Families (TANF) program was established to supersede the Aid to Families With Dependent Children (AFDC) welfare program, the Job Opportunities and Basic Skills (JOBS) training program and the Emergency Assistance (EA) program. The TANF program section 401(a) of the Social Security Act (Act) established the following objectives:

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

The TANF provisions substantially changed the nation's welfare system from one in which cash assistance was provided on an entitlement basis to a system in which the primary focus is on moving welfare recipients to work and promoting family responsibility, accountability and self-sufficiency. In general, adult welfare recipients are expected to become self-sufficient within a 60-month period of time. In support of this ''work-first'' objective, the TANF provisions established an overall work participation rate for all households and a work participation rate for two-parent families that must be met by each State starting in fiscal year (FY) 97 and in each fiscal year thereafter through FY 2002. States that do not meet the TANF-established work participation rates face significant financial penalties.

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended certain TANF provisions of the Act and authorized the Secretary of Labor to provide Welfare-to-Work (WtW) grants to States and local communities for transitional employment assistance to move the hard-to-employ TANF welfare recipients into unsubsidized jobs and economic self-sufficiency.

Approximately 75 percent of WtW funds will be distributed to the States as formula grants in each fiscal year. The States will pass through at least 85 percent of their grant funds to local service delivery areas (SDAs) in their State, to be administered by the Private Industry Council (PIC) or an alternate administrative entity upon approval by the Secretary of Labor.

Approximately 25 percent of the WtW funds shall be distributed through competitive grants to PICs or private entities applying in conjunction with the PIC or political subdivision in a State. A second Solicitation for Grant Application (SGA), was published in the **Federal Register** on April 15, 1998. This provides notice of the availability of WtW grant funds under the competitive process; which includes all necessary information and forms to apply for these funds.

Interim Final Rules, 20 CFR Part 645, were published in the **Federal Register** on November 18, 1997, and provide direction for the implementation of WtW Formula and Competitive grants. Oversight and monitoring responsibilities for all WtW grants are as prescribed in the Interim Final Rules:

§ 645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?

(a) The Secretary may monitor all recipients and subrecipients of all grants awarded and funds expended under WtW. Federal oversight will be conducted primarily at the State level for formula grants and at the recipient level for competitive grants.

(b) The Governor shall monitor PICs (or other administrative entities as approved) funded under the State's formula allocated grants on a periodic basis for compliance with the applicable laws and regulations. The Governor shall develop and make available for review a State monitoring plan.

II. Current Actions

This Notice submits for public review and comment a proposed WtW Monitoring and Oversight Guide. The Guide is solely an instrument to assist the Department of Labor in meeting the responsibilities of the Secretary for oversight and monitoring of WtW Formula and Competitive grants.

The current draft was developed by the WtW Task Force and has undergone an initial internal review by ETA program and administrative staff. Secondly, it was reviewed by ETA Regional offices, the Office of the Inspector General, and by the Department of Health and Human Services. This initial and extensive review and editing process has resulted in a comprehensive draft, focused on WtW program performance, quality of service to TANF recipients, and WtW work-first strategies.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Welfare to Work Monitoring Guide.

OMB Number: 1205–0New.

Affected Public: State Agencies, public or private, profit and non-profit entities.

Total Respondents: 54 states and territories plus approximately 120 entities (competitive grants). This total includes, as respondents, all eligible States, however, it is possible that not all eligible States will apply for WtW funds. A revised information collection worksheet may be provided to reduce the burden hours.

Frequency: Annually.

Total Responses: 174.

Average Time Per Response: 4 hours.

Estimated Total Burden Hours: 696 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of this information collection request; and will also become a matter of public record.

Dated: April 24, 1998.

Dennis Lieberman,

Acting Director, Office of Welfare to Work.

[FR Doc. 98–11493 Filed 4–29–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Project Title: External Systems Building

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: All information required to submit a grant application by eligible applicants is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), Bureau of Apprenticeship and Training, announces the availability of funds for State Apprenticeship Agencies and/or organizations that represent them (i.e., stakeholders, partners) to participate in enhancing the National Apprenticeship System. The demonstration program will be funded by the Job Training Partnership Act, (JTPA), Titles III and IV.

This notice provides information on the process that eligible entities must use to apply for demonstration funds, how grantees are to be selected, and the responsibilities of grantees.

DATES: The closing date for receipt of proposals is May 29, 1998, at 2:00 p.m. (Eastern Time).

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Denise Roach, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210, Reference: SGA/DAA 98–012.

FOR FURTHER INFORMATION CONTACT: Denise Roach, Division of Acquisition and Assistance. Telephone 202–219–7300, ext. 134 (this is not a toll-free number). Questions of a technical nature must be FAXED to 202–219–8739 to the attention of Ms. Roach.

SUPPLEMENTARY INFORMATION: The Bureau of Apprenticeship and Training, is soliciting proposals, on a competitive basis, to provide opportunities for apprenticeship stakeholders and partners to assist in enhancing the modern National Registered Apprenticeship System in order to improve its effectiveness in the 21st Century. Applicants selected for award will be those who best delineate their innovative approaches for enhancing the National Apprenticeship System. Proposals must demonstrate methods for modernizing apprenticeship systems to become aligned with the National Apprenticeship System's initiatives in expanding apprenticeship, developing competency systems, and developing new and innovative strategies for increasing the participation of women and minorities in our nation's apprenticeship programs.

The announcement consist of four parts. Part I describes the application process for eligible applicants who wish to apply for grant funds. Part II provides the Government's Required Statement of Work. Part III describes the selection criteria for award. Part IV provides information regarding reporting requirements.

Part I. Application Process

A. Eligibility

Eligible applicants are State Apprenticeship Agencies and/or organizations that represent them, i.e., stakeholders, partners, Human Resource Councils or State Workforce Development Councils.

B. Period of Performance

The Period of Performance will be July 1, 1998 through June 30, 1999.

C. Funding

The Department anticipates awarding two (2) grants not to exceed $60,000 each for a total of $120,000. Applications that exceed $60,000 will not be considered. Awards will be made on a competitive basis.

D. Page Limitation

Applicant's technical proposal shall be limited to 20 double-spaced, single-sided pages with 1-inch margins. Text type shall be at least 10 pitch or larger. Applications that do not meet these requirements will not be considered.

E. Submission of Proposal

Four (4) copies of the proposal (an original and three copies) must be received. Your proposal must be organized in the following manner:

Section I—Financial and Summary Information (this section does not count against your page limitation).

(1) Standard Form (SF)–424; ''Application for Federal Assistance'' (Appendix A). The Federal Domestic Assistance Catalog number 17.246.

(2) A one or two page summary of your proposed project which shall include information on the number of welfare recipients in the State and proposed target area.

(3) ''Budget Information'', (Appendix B). Also include, on separate pages, a detailed breakout of each proposed budget line item.

Section II—Technical Proposal (limited to 20 pages).

Your technical proposal must demonstrate the grant applicant's capabilities in accordance with the Statement of Work in Part II of this solicitation. No cost data or reference to costs shall be included in the Technical Proposal. Applicants must also include resumes of proposed staff and an organizational chart.

F. Hand Delivered Proposals

Proposals may be mailed or delivered by hand. A mailed proposal should be mailed no later than five (5) calendar days prior to the closing date for the receipt of applications. Hand-delivered grant applications must be received at the designated place by 2:00 p.m., (Eastern Time) on the closing date for receipt of applications. All overnight mail shall be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Telegraphed, electronic mail, or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

G. Late Proposals

A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service Express Mail Next Day service, Post Office to Addressee not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

(2) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th); The term ''post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily

identifiable without further action as having been supplied in the original receipt from the U.S. Postal Service. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late. ''Post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

H. Withdrawal of Proposals

A grant application may be withdrawn by written notice or telegram (including mailgram) received at any time before the awarding of a grant. An application may be withdrawn in person by the grant applicant, or by an authorized representative of the grant applicant if the representative's identity is made known and the representative signs a receipt for the proposal.

Part II. Statement of Work

Changes in our economy, technology, and our need to embrace diversity are the major driving forces behind new initiatives to expand apprenticeship, develop competency systems, and identify additional strategies for increasing the participation of women and minorities in our nation's apprenticeship programs.

To that end, the major tasks of this procurement are, but not limited to the following:

- To propose suggestions, methods, practices, protocols, and or systems which delineate the modernization of registration processes and improvements and or updates in services to enhance the modern apprenticeship system (i.e., survey of registration agency ''Best Practices'' or ''Benchmarking'' of services which registration agencies provide to workforce development systems);
- To propose methods and approaches that would result in a better alignment between apprenticeship stakeholders (i.e., Human Resource Councils, State Workforce Development Councils, State Apprenticeship Agencies) and the National Apprenticeship System (i.e., activities, forums, suggestions, governance, collective or collaborative action on apprenticeship issues);
- To propose practices, procedures, methods for the expansion and information sharing of National Apprenticeship Systems;
- To discuss, propose, and recommend approaches for the development of Competency Based Systems (i.e., pilot activities for the application of ''skills standards'' to apprenticeship training);
- To develop and propose new and innovative strategies for increasing the participation of minorities and women in apprenticeship.

Applicants must include a detailed workplan that delineates a schedule of proposed activities and milestones for implementing the tasks indicated above within the award period (July 1998—June 1999).

Part III. Selection/Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results shall be advisory in nature and not binding on the Grant Officer. Panelists shall evaluate applications for acceptability based upon overall responsiveness to the Statement of Work, with emphasis on the factors enumerated below. Applicants are advised that awards may be made without further discussions.

A. Modernization of registration process (20 points)—The extent to which the offeror has delineated reliable processes to identify efficient procedures of registration and service delivery.

B. Alignment (20 points)—Delineation and prioritization of initial steps, activities, and areas that would provide a better alignment between Apprenticeship Agencies and stakeholders.

C. Expansion (20 points)—Analyze and propose the most effective strategies for the expansion of registered apprenticeship.

D. Competency Based Systems (20 points)—Assess and propose strategies for incorporating Competency Based Systems (i.e., skill standards) in registered apprenticeship training.

E. Increase Minority & Female Participation (20 points)—Identify and delineate promising strategies (i.e., best practices) for increasing the number of minority and female apprentices.

Applicants are advised that letters of support are not necessary.

Part IV—Reporting Requirements

Applicants selected as grantees will be required to provide the following information in timely fashion:

A. Monthly Financial Status Reports (i.e., Standard Form 269);

B. Quarterly progress against the workplan (i.e., status) reports with narrative summaries;

C. Draft Final Project Report on desired outcomes within 30 days prior to grant expiration date. Specific format to be determined.

Signed at Washington, DC, this 27th day of April 1998.

Janice E. Perry,

Grant Officer.

Appendices

Appendix A—Application for Federal Assistance (Standard Form (SF)–424)

Appendix B—Budget Information

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

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.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 98–11489 Filed 4–29–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Project Title: Systematic Approach-Profile/ Referral Welfare Participants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: All information required to submit a grant application by eligible applicants is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of funds for demonstration projects to provide additional testing of a profiling process whereby State and local officials can allocate reemployment and training services under the major requirements of the new legislation, the Personal Responsibility and Work Opportunity Act of 1996. The program will be funded by the Job Training Partnership Act, (JTPA), Titles III and IV.

This notice provides information on the process that eligible entities must use to apply for demonstration funds, how grantees are to be selected, and the responsibilities of grantees.

DATES: The closing date for receipt of proposals is May 29, 1998, at 2:00 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Marian G. Floyd, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210, Reference: SGA/DAA 98–010.

FOR FURTHER INFORMATION CONTACT: Marian G. Floyd, Division of Acquisition and Assistance. Telephone 202–219–7300, ext. 142 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: U.S. Department of Labor, Employment and Training Administration, is soliciting proposals on a competitive basis to provide additional testing of a profiling process whereby State and local officials can allocate reemployment and training services. The announcement consists of four parts. Part I describes the application process for eligible applicants who wish to apply for grant funds. Part II provides the Government's Required Statement of Work. Part III provides the deliverables and timetables. Part IV describes the selection criteria for award.

Part I. Application Process

A. Eligibility

Eligible applicants are State Security Agencies (SESAs) and Service Delivery Areas (SDAs) as designated by the State under JTPA, within States containing a minimum of 0.50% of welfare recipients as a percentage of the national welfare recipient population as of June 30, 1997.

B. Period of Performance

The Period of Performance will be twenty-one (21) months from date of grant execution.

C. Funding

The Department anticipates awarding three (3) to five (5) grants between $75,000 and $100,000 per grant, for a total of $400,000. Applications that exceed $100,000 will not be considered. Awards will be made on a competitive basis.

D. Matching Funds

Applicants will be expected to provide at least a 60 percent match of the Federal funding with an in-kind or cash contribution to assure a jointly administered pilot program. Also, applicants may use the expertise, experience, and data and computer facilities of universities or other interested research centers. Applicants are further encouraged to coordinate with the Temporary Assistance to Needy Families (TANF) grantee agency in their areas.

E. Page Limitation

Applicant's technical proposal shall be limited to 20 double-spaced, single-sided pages with 1-inch margins. Text type shall be at least 10 pitch or larger. Applications that do not meet these requirements will not be considered.

F. Submission of Proposal

Four (4) copies of the proposal (an original and three copies) must be received. Your proposal must be organized in the following manner:

Section I—Financial and Summary Information (this section does not count against your page limitation.)

(1) Standard Form (SF)–424; ''Application for Federal Assistance'' (Appendix A). The Federal Domestic Assistance Catalog number 17.246.

(2) A one or two page summary of your proposed project which shall include information on the number of welfare recipients in the State and proposed target area.

(3) ''Budget Information'', (Appendix B). Also include, on separate pages, a detailed breakout of each proposed budget line item.

Section II—Technical Proposal (limited to 20 pages).

Your technical proposal must demonstrate the grant applicant's capabilities in accordance with the Statement of Work in Part II of this solicitation. No cost data or reference to costs shall be included in the Technical Proposal. Applicants must also include resumes of proposed staff and an organizational chart.

G. Hand Delivered Proposals

Proposals may be mailed or delivered by hand. A mailed proposal should be mailed no later than five (5) calendar days prior to the closing date for the receipt of applications. Hand-delivered grant applications must be received at the designated place by 2:00 p.m. (Eastern Time), on the closing date for receipt of applications. All overnight mail shall be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Telegraphed, electronic mail, or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

H. Late Proposals

A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service Express Mail Next Day service, Post Office to Addressee not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

(2) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

The term ''post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied in the original receipt from the U.S. Postal Service. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late. ''Post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as

having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

I. Withdrawal of Proposals

A grant applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the awarding of a grant. An application may be withdrawn in person by the grant applicant, or by an authorized representative of the grant applicant if the representative's identity is made known and the representative signs a receipt for the proposal.

Part II. Statement of Work

A. Purpose

The purpose of this solicitation is to fund pilot projects to adapt, test and implement a profiling and referral model for welfare recipients. The Department wants to expand the pilot sites to include a variety of State Agencies or SDAs with emphasis placed on the metropolitan areas with high welfare caseloads. The projects will be developing models which:

1. Identify welfare recipients by using welfare administrative data taken from applications/initial interviews for use in determining the participants probability of finding (or not finding) employment within a defined time period.

2. Provide a systematic approach for determining, referring, and following up participants within the agencies to determine the efficacy of the model, with computer communications available and used by major parties, including TANF grantees, JTPA entities, and SESAs.

B. Background

States and localities are facing significant challenges resulting from the recent passage of federal welfare reform legislation. They are confronted with the dilemma of moving large numbers of welfare recipients into jobs to provide reemployment assistance to participants in Welfare-to-Work (WTW) programs. Currently, a demonstration in Kalamazoo, Michigan is testing a profiling model that will assist States dealing with this problem. This solicitation will provide for additional testing of a profiling process, which, if successful, will enable State and local officials to allocate reemployment and training services in a cost effective manner and fulfill the requirements of the new legislation, the Personal Responsibility and Work Opportunity Act of 1996 (PWRO).

Profiling is an early intervention approach for providing welfare recipients with reemployment services to help speed their entry/reentry into productive employment. It consists of two components: a profiling mechanism and a set of reemployment services. It is the goal of welfare profiling to predict the probability that individual welfare recipients will find employment, based on administrative data that is collected at the time individuals apply for welfare.

The model developed for a locality is based on historical data for a recent past period of one to two years duration. It can then be applied to current welfare recipients to determine the level and kinds of employment services that should be provided to particular individuals. Welfare profiling is a targeting tool that can be used by program managers to guide them in their assignment of welfare recipients to available employment services. It can also be used as an allocation tool to assist in determining which welfare recipients should be assigned to limited employment services.

The concept of profiling is not new. The Unemployment Insurance (UI) program has been profiling since 1994 to assist dislocated workers in their transition to new employment. The creation of the Worker Profiling and Reemployment Services (WPRS) system represents a major development for the employment and training system.

Throughout its history, UI had been concerned solely with providing temporary compensation to eligible unemployed people while they look for a new job. However, as economic conditions have changed and permanent dislocation of workers has become a more common phenomenon, UI has expanded the scope of its mission to attend more adequately to the needs of dislocated workers who are likely to exhaust their UI benefits before finding a new job.

UI now profiles claimants to determine their likelihood to exhaust their benefits. Claimants who have the highest probabilities of exhaustion are referred to reemployment services —provided by the Employment Service (ES) and JTPA—as a condition of continued eligibility for benefits. The success employment and training programs have had in the early years of implementation of WPRS strongly suggests that this model can be applied in other areas (like welfare-to-work) to target services more effectively.

The Kalamazoo Welfare-to-Work Profiling pilot has developed a PC-based software program that incorporates into the client intake system the process of assigning probabilities of employment and referring participants to services. It is designed to be used at the intake site during the initial orientation as individuals are enrolled in the welfare-to-work program. This software package can be adapted to welfare-to-work programs at other sites and is available at no cost to agencies involved in this initiative. The program, constructed using standard database software, integrates and automates the various steps in the intake process.

The intake administrator can use this program in the following way. First, client information that has been previously collected is entered into the database. Second, the administrator is notified of missing information, which can be updated by asking the client to furnish that information during intake. Third, based on the client information and the predetermined weights generated from the statistical model, probabilities of employment are assigned to each individual. Fourth, the administrator enters the number of slots available in the various services, and the program refers clients to these services based upon their probabilities and a pre-assessment of the efficacy of these services for clients with various needs. Fifth, referral slips are printed for each client as a reminder of their assignment to services. Sixth, all relevant information is stored in the database.

C. Project Design

Starting with the experience derived from developing and implementing the Kalamazoo model, the purpose of the project is to adapt or modify, test, and implement a profiling system geared to assisting welfare recipients in acquiring the services needed to obtain gainful employment.

The pilot will be based on the Kalamazoo WTW profiling model which, in turn, takes as its starting point the approach used by the Worker Profiling and Reemployment Services, which was mandated by Congress (Pub. L.103–152). (The WTW profiling paper for the Kalamazoo, Saint Joseph County SDA is available from the W.E. Upjohn Institute for Employment Research, as a working paper on their website at: http://www.upjohninst.org/publication/wp). This model should have value for welfare recipients because it uses a targeting approach to allow custom targeting of scarce resources for welfare recipients.

The major tasks are as follows:

- The State Agency/SDA will adapt or modify and test a profiling model for the selected area that requires a two step

process. First, appropriate data for estimating the statistical profiling model will be developed using recent welfare and work history of recipients eligible for welfare. Second, a statistical model will be adapted that uses the data to estimate the probability that an individual participant will find employment. This involves benchmarking results from a sample and applying results to characteristics for predicted levels for individuals.

- The State Agency/SDA will implement the profile and referral system within the area using the characteristics of each welfare recipient to generate probabilities of long term welfare recipiency for individuals entering the welfare program. Based upon the probabilities, welfare participants will be referred to services that best meet their needs. This will require participant data collection and processing. Successful implementation and outcomes of the profiling and referral system will require the ability of states and SDAs to vary their mix and intensity of services to participants according to their estimated probabilities of employment.
- The State Agency/SDA will assess effectiveness of the project within the area and based upon its experience, provide a general evaluation strategy for other SDA's/other states. They further agree to provide the model and documentation for further testing and evaluation to a sample of SDA's within ETA's pilot program and work with and provide data to related research contractors funded by ETA as part of this project.

Part III. Deliverables and Timetables

The Period of performance is *21 months* from the date of execution of the grant. The deliverables and due dates are as follows: (The due dates are subject to negotiations between the grantee and the Grant Officer's Technical Representative (GOTR).)

- Paper illustrating the adaptation and testing of the profiling model. This includes the appropriate data, recent welfare and work history of welfare eligibles for estimating the model. This includes a benchmark for assessing the accuracy of the model. This will be due approximately *150 days after award*.
- Paper describing implementation of the profiling and referral system focusing on the results from the area. This will involve tracking and processing information on a sample of participants. (A process and impact analysis) This would be due *180 days after award*.
- Grantees will prepare periodic and final program and financial reports as stipulated in the grant agreement.

Part IV. Selection/Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results shall be advisory in nature and not binding on the Grant Officer. Panelists shall evaluate applications for acceptability based upon overall responsiveness to the Statement of Work, with emphasis on the factors enumerated below. Applicants are advised that awards may be made without further discussions.

a. Design and implementation plan for a profiling model for the area served. (40 points)

b. Plan for participating in the assessment of the effectiveness of the project (it will include a process and impact analysis). (25 points)

c. Relationship and linkages with other organizations and agencies within the service area. (20 points) This should include agencies which traditionally serve the target population (welfare recipients).

d. Experience and qualifications of key staff. (15 points)

Applicants are advised that letters of support are not necessary.

Signed at Washington, DC, this 27th day of April 1998.

Janice E. Perry,

Grant Officer.

Appendices

Appendix A—Application for Federal Assistance (Standard Form (SF)–424)

Appendix B—Budget Information

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

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.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

FR Doc. 98–11490 Filed 4–29–98; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATE: June 8–10, 1998, 8:30 a.m. to 5:00 p.m.

LOCATION: Sheraton City Center Hotel, 1143 New Hampshire Avenue, NW, Washington, DC 20037; 202–775–0800.

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session
Executive Order on Employment
Youth Leadership Development Conference
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on April 22, 1998.

Ethel D. Briggs,

Executive Director.

[FR Doc. 98–11622 Filed 4–28–98; 10:57 am]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions to the National Council on the Arts will meet on May 14, 1998. The Committee will meet from 10:00 a.m. to 3:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 2:30 to 3:30 p.m., will be open to the public for a policy discussion.

The remaining portion of this meeting, from 10:00 a.m. to 2:30 p.m., is for the purpose of review, discussion, evaluation, and recommendation on proposals for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Pennie Ojeda, Associate Division Coordinator, Planning & Stabilization Division, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5562.

Dated: April 23, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–11468 Filed 4–29–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INDIAN GAMING COMMISSION

Paperwork Reduction

AGENCY: Natonal Indian Gaming Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the information collection activities for Annual Fees Payable by Gaming Operations has been forwarded to the Office of Management and Budget (OMB) for review and comment. The National Indian Gaming Commission (NIGC) is requesting an extension of a currently approved collection.

DATES: Comments on this notice must be received by June 1, 1998.

ADDRESSES: Comments should be addressed to Desk Officer for the National Indian Gaming Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of documents submitted to OMB may be obtained from Cindy Altimus, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005; Telephone 202/632–7003; Fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Title: Annual Fees Payable by Gaming Operations.

OMB Number: 3141–0007.

Abstract: The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) [the Act] as amended authorizes the NIGC to establish a schedule of fees to be paid to the NIGC by each gaming operation under the jurisdiction of the NIGC. Fees are computed using rates set by the NIGC and the assessable gross revenues of each gaming operation. The total of all fees assessed annually cannot exceed $8,000,000. The required information is needed for the NIGC to

both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

Respondents: Gaming operations.

Estimated Number of Respondents: 279.

Estimated Annual Responses: 1,116.

Estimated Annual Burden Hours Per Respondent: 5.

Estimated Total Annual Burden on Respondents: 1,395 hours.

Larry D. Rosenthal,

Chief of Staff, National Indian Gaming Commission.

[FR Doc. 98–11522 Filed 4–29–98; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; EHR Impact Database

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection, the EHR (Directorate for Education and Human Resources) Database. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB clearance of this collection for no longer than 3 years.

SEND COMMENTS TO: Gail A. McHenry, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, Virginia 22230 or send email to gmchenry@nsf.gov. Written comments should be received within 60 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mrs. McHenry on (703) 306–1125 x2010 or send email to gmchenry@nsf.gov. Copies of specific data collection instruments are available from Mrs. McHenry.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Renewal Project: The EHR Impact Database was established in 1995 to integrate all available information pertaining to the NSF's Education and Training portfolio. Under a generic survey clearance (OMB 3145–0136) data from the NSF administrative database are incorporated and additional information is obtained through initiative-, divisional-, and program-specific data collections.

Use of the Information: This information is required for effective administration, program monitoring and evaluation, and for measuring attainment of NSF's program goals, as required by the Government Performance and Results Act (GPRA).

Burden on the Public: The total estimate for this collection is 50,000 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance. The average annual reporting burden is between 2 and 50 hours per 'respondent' who may be an individual or a project site representing groups.

Dated: April 27, 1998.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 98–11521 Filed 4–29–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name: Special Emphasis Panel for Geosciences.

1. Date & Time: May 18–22, 1998; 8:30 am–5:00 pm.

Contact Person: Dr. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.

Agenda: To review and evaluate Ocean Science Research Programs (OSRS) as part of the selection process for awards.

1. Date & Time: May 18–19, 1998; 8:30 am–5:00 pm.

Contact Person: Dr. Taylor, Program Director of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.

Agenda: To review and evaluate Life in Extreme Environments Program (LExEn) proposals as part of the selection process for awards.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 27, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–11516 Filed 4–29–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[License No. 45–24851–02; Docket No. 030–32660; EA 98–213]

In the Matter of Moisture Protection Systems Analysts, Inc., 1350 Beverly Road, Suite 223, McLean, VA 22101; Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License

I

Moisture Protection Systems Analysts, Inc., 1350 Beverly Road, Suite 223 McLean, Virginia 22101, (the Licensee or MPS) is the holder of Byproduct Material License No. 45–24851–02 (the license), which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on January 30, 1992. The license authorizes MPS to possess byproduct material, i.e., a Siemens Model R–50 portable roofing gauge that contains a nominal 40 millicuries (mCi) of Americium-241, for use in measuring moisture density of roof surfaces in accordance with the conditions specified in the license. Mr. Virgil J. Hood, President, MPS, is the only authorized user listed on the license. On February 27, 1997, and May 15, 1997, the license was suspended by immediately effective Order based on non-payment of annual fees required pursuant to 10 CFR 171.16.

II

On February 3, 1997, an NRC inspection was attempted at the Licensee's address (above). The address is a mixed commercial/residential use condominium. The inspector contacted the condominium's marketing representative to determine the whereabouts of the Licensee. The marketing representative stated that the Licensee had broken the lease and vacated the premises without prior notice in mid-December 1996. The inspector and the marketing

representative searched the offices formerly used by the Licensee for any evidence of the gauge containing licensed material that the Licensee was authorized to possess. Visual observation and radiation surveys showed no evidence of the licensed material. The marketing representative gave a forwarding address as 2811 12th Street, NE, Washington, D.C. The marketing representative indicated that this address was provided by one of the Licensee's clients. On February 5, 6, 10, 11, and 12, 1997, the NRC Region II Office attempted unsuccessfully to contact the Licensee by telephone at the 2811 12th Street address, identified as Atlas Contractors (ACI). Telephone messages were left with an answering service on February 4 and 6, 1997.

On February 20, 1997, an NRC inspection was attempted at ACI at the 2811 12th Street address. The inspector spoke to the Office Manager for ACI. The Office Manager stated that she had forwarded NRC telephone messages to Mr. Hood, the Licensee president and authorized user. The Office Manager stated that Mr. Hood was an owner of ACI. The inspector conducted visual observation and radiation surveys, but found no evidence of the gauge containing licensed material. The inspector requested that the Office Manager ask Mr. Hood to contact the NRC Region II Office as soon as possible, and the inspector provided two names and telephone numbers there, including his own. On February 24 and 25, 1997, and March 12 and 13, 1997, the NRC Region II Office attempted unsuccessfully to contact the Licensee by telephone at ACI.

On March 18, 1997, an NRC inspection was again attempted at ACI at the 2811 12th Street address. No one was at the ACI office. On March 25, 1997, the NRC Region II Office attempted unsuccessfully to contact the Licensee by telephone at ACI. In April 1997, the NRC Region II Office contacted ACI and confirmed that Mr. Hood, the Licensee president and authorized user, was operating out of that office. On June 10, 11 and 20, 1997, and November 19, 1997, the NRC contacted a business associate of the Licensee's president and authorized user and left messages for the Licensee's president to contact the NRC when possible. On November 20, 1997, an NRC inspection was attempted at 1441 Florida Avenue, N.W., Washington, D.C., an address provided to the NRC inspector by the telephone directory service. The inspector was informed that Mr. Hood was out of the country and would not return until December 10, 1997.

On February 27, 1997, NRC issued an Order Suspending License (Effective Immediately) to the Licensee based on non-payment of the annual fee for Fiscal Year 1996, required pursuant to 10 CFR 171.16. The Order was sent to the licensee at 2811 12th Street, NE, Washington, D.C., by Certified Mail, and was returned to NRC as undelivered.

On May 15, 1997, NRC issued an Order Suspending License (Effective Immediately) to the Licensee based on non-payment of annual fees for Fiscal Years 1996 and 1997, required pursuant to 10 CFR 171.16. The Order was sent to the Licensee at 2811 12th Street, NE, Washington, D.C., by Certified Mail, and was received at that address on May 22, 1997, as evidenced by a signed return receipt. The May 1997 Order was effective immediately and required, among other things, that the Licensee: (a) Cease use of its licensed material, other than activities involving decommissioning, storage or transfer; (b) dispose of its licensed nuclear material; and (c) submit an answer to the Order within 30 days of the date of the Order. To date, the Licensee has not submitted the required answer to the Order and has not been in contact with NRC. It is not known whether the Licensee has complied with the portions of the Order that require the Licensee to suspend its use of licensed material and dispose of the licensed material.

III

10 CFR 30.52(a) requires that the Licensee afford to the Commission at all reasonable times the opportunity to inspect byproduct material and the premises and facilities wherein byproduct material is used or stored. 10 CFR 30.52(b) requires that the Licensee make available to the Commission for inspection, upon reasonable notice, records kept by the Licensee pursuant to pertinent regulations. As detailed above, the Licensee has violated these requirements. Moreover, given the failure of the Licensee to notify the NRC of its abandonment of the facility named on the license; the failure to notify NRC of a location where the Licensee could be found and inspections conducted; and the admission of the Office Manager that she forwarded NRC's telephone messages to Mr. Hood, these violations are indicative, at a minimum, of careless disregard as defined in the ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600. Because NRC has been denied the opportunity to inspect the Licensee's records and its byproduct material, NRC cannot be certain that public health, safety and the environment are being adequately protected. For example, it is not known whether the Licensee has performed leak tests as required by Condition 14 of its NRC license and whether or not the source is leaking radioactive material.

Payment of annual fees for possession of byproduct material is required by 10 CFR 171.16. As detailed in the May 15, 1997 Order, the Licensee violated this requirement for Fiscal Years 1996 and 1997.

IV

The failure of the Licensee to respond as required by the May 15 Order, the apparent violations detailed above, and the apparent careless disregard of the Licensee's principal officer, Mr. Hood, demonstrate that the Licensee is either unwilling or unable to comply with Commission requirements and cannot be tolerated. Additionally, given the Licensee's actions to thwart an NRC inspection of its licensed material and the premises where the material is used and stored, the status of the licensed material cannot be determined, and I lack the requisite reasonable assurance that licensed activities under Byproduct Material License No. 45–24851–02 can be conducted in compliance with Commission requirements and that public health and safety will be protected if the Licensee were to continue in possession of licensed material at this time. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations described above is such that the public health, safety and interest require that the provisions of Section V.A. of this Order be immediately effective.

V

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Parts 30, 170, and 171,

A. It is hereby ordered that, effective immediately:

1. The requirements of Paragraphs A. through E. of Section III of the Order dated May 15, 1997 and attached hereto remain in effect except where modified below.

2. The Licensee shall immediately contact Mr. Douglas M. Collins, Director, Division of Nuclear Materials Safety, NRC Region II, at telephone number (404) 562–4700, and report the current location, physical status, and storage arrangements of the licensed material. A written response documenting this information shall be submitted under oath or affirmation to the Regional Administrator, NRC Region

II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia within ten days of the date of this Order.

3. Within ten days of the date of this Order, the Licensee shall complete a leak test pursuant to Byproduct Material License No. 45–24851–02, Condition 14.A.(1), C and D, to confirm the absence of leakage of radioactive materials and to establish the levels of residual radioactive contamination. The Licensee shall, within five days of the date the leak test results are known, submit the results of the leak test in writing to the NRC Region II office. This information should be addressed to the Regional Administrator, NRC Region II, at the address given in Paragraph A.2. above. If the test reveals the presence of 0.005 microcurie or greater of removable contamination, the Licensee shall immediately contact Mr. Douglas M. Collins, NRC Region II, at the telephone number given in Paragraph A.2. above.

4. Within 30 days of the date of this Order, the Licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41 and shall submit for NRC approval a completed form NRC–314. This information should be addressed to the Regional Administrator, NRC Region II, at the address given in Paragraph A.2. above.

5. At least two working days prior to the date of the transfer of any licensed material, the Licensee shall notify Mr. Douglas M. Collins, NRC Region II, at the telephone number given in Paragraph A.2. above, so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

6. Within seven working days following completion of the transfer, the Licensee shall provide to the Regional Administrator, NRC Region II, in writing, under oath or affirmation: (1) Confirmation, on form NRC–314, that all licensed material has been transferred; (2) the last date that the licensed material was used; (3) a copy of the leak test performed prior to transfer; (4) a copy of the survey performed in accordance with 10 CFR 30.36(j)(2); and (5) a copy of the certification from the authorized recipient that the licensed material has been received. This information shall be addressed to the Regional Administrator, NRC Region II, at the address given in Paragraph A.2. above.

B. It is further ordered:

1. Upon a written finding by the Regional Administrator, NRC Region II, that no licensed material remains in the Licensee's possession and that other applicable provisions of 10 CFR 30.36 have been fulfilled, Byproduct Material License No. 45–24851–02 is revoked.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above provisions upon demonstration of good cause by the Licensee.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings Adjudications Staff, Washington, D.C. 20555.

Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303 and to MPS if the answer or hearing request is by a person other than MPS. If a person other than MPS requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), MPS may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the provisions of this Order which are immediately effective on the ground that those provisions, including the need for immediate effectiveness, are not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the provisions of this order which are immediately effective.

Dated at Rockville, Maryland, this 20th day of April 1998.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Acting Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–11502 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–306]

Northern States Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northern States Power Company (the licensee) to withdraw its February 10, 1998, application for proposed amendment to Facility Operating License No. DPR–60 for the Prairie Island Nuclear Generating Plant, Unit 2, located in Goodhue County, Minnesota.

The proposed amendment requested a limited duration change to the Prairie Island Technical Specifications that would allow a reduction in the boron concentration required for Mode 6.

The Commission had previously published notices in the Minneapolis Star Tribune on February 16, 1998, and in the Red Wing Republican Eagle and Minneapolis Star Tribune on February 17, 1998, requesting comments on the NRC staff's proposed determination that the proposed amendment involved no significant hazards considerations. However, by letter dated March 31, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 10, 1998, and the licensee's letter dated March 31, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 24th day of April 1998.

For the Nuclear Regulatory Commission.

Tae Kim,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11501 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7001 Certificate No. GDP–1 EA 98–156]

In the Matter of United States Enrichment Corporation Bethesda, MD; Confirmatory Order Modifying Certificate (Effective Immediately)

I

United States Enrichment Corporation (Corporation) is the holder of Certificate No. GDP–1 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 76. The certificate authorizes the Corporation to operate the Paducah Gaseous Diffusion Plant (Paducah) for the purpose of enriching uranium up to 2.75 percent ^{235}U by weight. The certificate, originally issued on November 26, 1996, is due to expire on December 31, 1998.

II

Since transition to NRC regulatory oversight on March 3, 1997, the Corporation has been operating its withdrawal facilities (Buildings C–310/310A and C–315) with liquid uranium hexafluoride (UF_6) inventories in process piping, condensers, and accumulators. The certificate conditions placed no restrictions on those inventories, thereby allowing the accumulators to contain any amount up to their full capacity. A certificate amendment request dated October 31, 1997, submitted by the Corporation, requested an update to the Safety Analysis Report (SAR) to include a new Chapter 4, ''Accident Analysis.'' An NRC request for additional information (RAI) dated February 5, 1998, identified questions about the conservative nature of assumptions for the seismic accident scenario in Chapter 4. In response to the RAI, the Corporation reviewed Paducah's liquid UF_6 withdrawal facilities' records and determined that the seismic accident analysis assumption of no liquid UF_6 in both facilities' accumulators underestimated the potential source term from the withdrawal facilities for the seismic accident scenario. In telephone discussions with the NRC on February 18, 1998, the NRC made it clear to the Corporation that a notification pursuant to 10 CFR 76.9(b) was warranted. Thereafter, the Corporation provided verbal notification to NRC Region III on February 19, 1998, and a follow-up written report on February 20, 1998, identifying the potential nonconservative assumption in the SAR updated accident analysis. Then, on February 24, 1998, in telephone discussions with NRC, the Corporation also provided information that the withdrawal facilities' current operations were outside the Certification SAR because the Chapter 4 seismic accident analysis assumed no liquid UF_6 in Building C–315 withdrawal facility's process piping, condensers, and accumulators. In addition, the source term from Building C–310/310A was probably too low.

Based on the NRC's review of the certificate amendment request dated October 31, 1997, submitted by the Corporation and the current Certification SAR, the NRC has concluded that violations of NRC requirements occurred. The violations involve an inadequate accident analysis and a failure to comply with the conditions of certification. The Commission's regulations in 10 CFR 76.85 require the Corporation, as the certificate holder, to perform an analysis of potential accidents and consequences to establish the basis for limiting conditions for operations and to provide assurance that plant operation will be conducted in a manner to prevent or to mitigate the consequences from a reasonable spectrum of postulated accidents, including natural phenomena. Further, 10 CFR 76.85 requires that the assessment consider the full range of operations, including operations at the maximum capacity contemplated. The Commission's regulations in 10 CFR 76.51 require the Corporation, as the certificate holder, to comply with the conditions set forth in the Certificate of Compliance. Condition 8 of the Certificate of Compliance (GDP–1) for the Paducah Gaseous Diffusion Plant requires the Corporation to conduct its operations in accordance with the statements and representations contained in the certification application and subsequent amendments. The certification application includes Safety Analysis Report (SAR) Chapter 4, ''Accident Analysis,'' Section 4.6, ''Natural Phenomena,'' describing assumptions made on facility operations to determine the consequences of postulated seismically-induced failures. The Chapter 4 seismic accident analysis is based on an inappropriately low assumption of the amount of liquid UF_6 in Buildings C–310/310A and C–315 withdrawal facilities' process piping, condensers, and accumulators in calculating the possible releases. Current facility configuration and operations are such that significantly higher volumes (on the order of several thousand pounds (lbs)) of liquid UF_6 may be present. Therefore the accident analysis in the Certification SAR is not in compliance with 10 CFR 76.85 and operation of that facility is not in compliance with Condition 8. Furthermore, operation with the larger amount of liquid UF_6 in the withdrawal facilities is safety significant because failure could result in potential on-site fatalities/injuries and off-site injuries. During a seismic event of 0.05 g peak ground acceleration, failure of equipment in both withdrawal facilities would likely occur with releases of liquid UF_6. If the 0.05 g seismic event occurred with substantial amounts of liquid UF_6 in those facilities, the on-site and off-site consequences would exceed any analyzed accident and be unacceptable.

III

By letter dated February 25, 1998, the Corporation committed to implement the administrative control as stated below:

1. Access to Buildings C–310/310A and C–315 will be limited to only those individuals essential to operations, inspections, or those personnel performing any modifications to fix the identified seismic failures.

By letter dated March 5, 1998, the Corporation committed to implement the following additional administrative controls in order to mitigate the consequences of a seismic event:

2. When flow of liquid UF_6 has been diverted to the on-line accumulator in C–310A or C–315 for greater than one hour (nominal 2,000 and 5,000 lbs liquid UF_6, respectively, at one hour),

the Corporation will take the following immediate actions:

a. Notify the Plant Shift Superintendent (PSS) of accumulator usage.

b. Begin tracking of quantities by using calculated withdrawal rates.

c. The PSS will initiate high priority actions for timely resolution of unscheduled outages.

d. The Cascade Coordinator will take actions to reduce tails downflow and/or product or tails withdrawal rates to minimize accumulator use as appropriate.

e. Notify the NRC.

3. If the calculated accumulator inventory reaches 4,000 lbs liquid UF_6 in C–310A or 10,000 lbs liquid UF_6 in C–315, flow of liquid UF_6 to the affected accumulator will be stopped immediately.

By letter dated March 11, 1998, the Corporation proposed to install seismic modifications to the equipment in Buildings C–310/310A and C–315 by September 30, 1998. Those seismic modifications will increase the seismic capacity of the equipment to withstand an earthquake producing a peak ground acceleration of 0.165 g.

I find that the Corporation's commitments to install the seismic modification within the proposed time frame and these administrative controls acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Corporation's commitments be confirmed by this Order. By letter dated, April 1, 1998, the Corporation consented to the issuance of this Order confirming its commitments, as described in Section IV below. The Corporation further agreed in that letter that this Order is to be effective upon issuance. Implementation of these commitments will minimize the available liquid UF_6 inventories that could be released in a seismic event and reduce the on-site and off-site consequences. Based upon the above and the Corporation's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 161b, 161i, 161o, and 1701 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 76, including specifically 10 CFR 76.70, *It is hereby ordered, effective immediately,* that certificate No. GDP–1 is modified as follows:

Condition 13 is added to the Certificate of Compliance GDP–1 to require that:

1. The Corporation will by no later than September 30, 1998, complete seismic modifications to the equipment containing liquid UF_6 in Buildings C–310/310A and C–315. Those seismic modifications will increase the seismic capacity of the equipment to withstand an earthquake producing a peak ground acceleration of 0.165 g.

2. Until such time as the above seismic modifications are completed, the following additional administrative controls shall be followed:

a. When flow of liquid UF_6 has been diverted to the on-line accumulator in C–310A or C–315 for greater than one hour (nominal 2,000 and 5,000 pounds (lbs) liquid UF_6 respectively at one hour), the Corporation will immediately:

i. Notify the Plant Shift Superintendent (PSS) of accumulator usage.

ii. Begin tracking of quantities by using calculated withdrawal rates.

iii. Ensure that the PSS will initiate high priority actions for timely resolution of unscheduled outages.

iv. Ensure that the Cascade Coordinator will take actions to reduce tails downflow and/or product or tails withdrawal rates to minimize accumulator use as appropriate.

v. Notify the NRC.

b. If the calculated accumulator inventory reaches 4,000 lbs liquid UF_6 in C–310A or 10,000 lbs liquid UF_6 in C–315, flow of liquid UF_6 to the affected accumulator will be stopped immediately.

c. Access to Buildings C–310/310A and C–315 will be limited to only those individuals essential to operations, inspections, or those personnel performing any modifications to fix the identified seismic failures.

The Director, Office of Enforcement, may, in writing, relax or rescind this Order upon demonstration by the Corporation of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Corporation, may submit a written response within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to respond. A request for extension of time must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any response shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the response shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Corporation.

In the absence of any response, or written approval of an extension of time in which to respond, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for submitting a response has been approved, the provisions specified in Section IV shall be final when the extension expires if a response is not received. If a written response is received, the Commission may make a final decision or may adopt by order further procedures for consideration of the issues before making a final enforcement decision. Written responses shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of April 1998.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–11506 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34060; [License No. 52–25113–02; EA–98–183]

In the Matter of José M. Colón Vaquer, M.D., Manatí Puerto Rico; Confirmatory Order Modifying License Effective Immediately

I

At present, José M. Colón Vaquer, M.D. (Licensee) is the holder of NRC License No. 52–25113-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 35. The license authorizes the Licensee to possess and use a 125 millicurie (decay corrected to 91 millicurie) Strontium-90 (Sr-90) eye applicator for medical treatment of superficial eye conditions. The license was issued on March 28, 1997, and is due to expire on March 31, 2002. The Licensee first obtained license No. 52–25113–01 to possess and use a 125 millicurie Sr-90 eye applicator for medical treatment of superficial eye conditions on December

17, 1990. That license expired on November 30, 1995. Subsequently, the Licensee applied for a new license on January 31, 1996, which was issued as License No. 52–25113–02 on March 28, 1997.

II

During a routine inspection on August 10, 1995 (inspection report No. 52–25113–01/95–01), the NRC identified violations regarding the failure to perform leak test of the sealed source as required by 10 CFR 35.59(b)(2) and the failure to perform a review of the Quality Management Program (QMP) as required by 10 CFR 35.32(b)(1). Moreover, the Licensee did not take actions to correct the violation within 30 days as required by the Notice of Violation dated August 10, 1995. Thus, the Licensee continued to be in violation of the cited requirements from the time they were identified on August 10, 1995, until the expiration of the license No. 52–25113–01, on November 30, 1995.

The NRC conducted a special inspection of the Licensee on March 2 and 5, 1998. The inspection examined activities conducted under the license with respect to the use of the Sr-90 eye applicator, proper calibration and decay correction of the surface dose rate for the Sr-90 eye applicator, and the implementation of the Quality Management Program (QMP). After identifying significant failures to comply with NRC requirements in these areas, the scope of the inspection was expanded to address radiation safety and compliance with other NRC regulations and the conditions of the license.

During the inspection, the inspectors identified two misadministrations resulting from treatments using the Sr-90 eye applicator. These were brought to the Licensee's attention during the inspection. One misadministration occurred when 1500 centigrays (cGy) (1500 rads) was administered when 1000 cGy (1000 rads) was intended, and the other involved the administration of 1000 cGy (1000 rads) when 1500 cGy (1500 rads) was intended.

Based on the results of this inspection, 10 violations were identified. The violations involved: (1) The failure to use written directives on multiple occasions as required by 10 CFR 35.32(a)(1); (2) the failure to have a written procedure to ensure that final treatment plans and related calculations (exposure time) were in accordance with written directives as required by 10 CFR 35.32(a)(3); (3) the failure to limit activities involving byproduct material to those related to decommissioning following the expiration of license No. 52–25113–01 as required by 10 CFR 30.36(c); (4) the failure to control and maintain under constant surveillance licensed material as required by 10 CFR 20.1801; (5) the failure to perform annual reviews of the radiation protection program as required by 10 CFR 20.1101(c); (6) the failure to test a brachytherapy source for leakage as required by 10 CFR 35.59(b)(2) (this is a repeat violation); (7) the failure to perform brachytherapy surveys quarterly as required by 10 CFR 35.59(h); (8) the failure to issue personnel dosimetry monitoring as required by condition 17 of license No. 52–25113–02; (9) the failure to record brachytherapy source inventories as required by 10 CFR 35.59(g); and (10) the failure to post copies of the current license and NRC regulations as required by 10 CFR 19.11(a) and (b).

The NRC is concerned that following telephonic notification by the NRC on December 1, 1995, that the license No. 52–25113–01 had expired and that licensed material needed to placed in safe storage until a new license was granted, the Licensee continued to use the licensed material until a new license No. 52–25113–02 was received on March 28, 1997. In addition, the violations identified in 1995 and the number and scope of the violations identified during the March 2 and 5, 1998, inspection reflect current inadequate control over the safe use of licensed material and a significant breakdown in the radiation safety program and QMP. Collectively, these findings indicate a lack of regard or carelessness toward licensed activities.

The Licensee met with NRC inspectors during the inspection exit meeting at the Licensee's facility on March 5, 1998, to review the findings of the inspection. During the inspection exit meeting, the Licensee discussed his intentions to cease use of the Sr-90 eye applicator and to place it in safe storage. The Licensee agreed to submit these proposals to the NRC in writing.

III

By letter dated March 6, 1998, the Licensee indicated that, effective immediately and until it is determined otherwise:

1. All use of the Sr-90 eye applicator will cease; and
2. The Sr-90 eye applicator will be placed in locked safe storage.

On April 16, 1998, the Licensee consented in writing to the issuance of this Order and its provisions, as described in Section IV below. The Licensee further agreed in its letter of April 16, 1998, that this Order is to be effective upon issuance and that he has waived his right to a hearing. Implementation of these commitments will provide enhanced assurance that licensed material will remain secure and in safe storage pending completion of satisfactory corrective actions and resolution of the identified enforcement issues.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30 and 35, it is hereby ordered, effective immediately, that, pending further action by the NRC, License No. 52–25113–02 is modified as follows:

1. The Licensee shall discontinue all uses of the Sr-90 eye applicator.
2. The licensee shall place the Sr-90 eye applicator in locked safe storage until further Order of the Commission.

The Regional Administrator, Region II, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, 23T85, 61 Forsyth Street, S.W., Atlanta, GA 30303–3415, and to the Licensee. If such

a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 21st day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–11503 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213, License No. DPR–61]

Connecticut Yankee Atomic Power Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated March 13, 1998, Citizens Awareness Network Inc., has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Haddam Neck plant. Petitioner requests that NRC immediately suspend the licensee's operating license.

As the basis for this request, the petitioner states that the licensee has failed to adequately exercise radiological controls. The petitioner further states that the licensee's proposal to cool the spent fuel pool by ventilating the spent fuel storage building with ambient air through doors and roof hatches, in the event that the new spent fuel pool cooling system is unavailable, would constitute an unmonitored and unplanned release of radiation into the environment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. A copy of this petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 22nd day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11505 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–199]

Notice of Application for Decommissioning Amendment Manhattan College; Zero Power Research Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from Manhattan College dated January 12, 1998, for a license amendment approving the decommissioning plan for the Manhattan College Zero Power Reactor (Facility License No. R–94) located in the Leo Engineering Building, two blocks from the Manhattan College Campus in Riverdale, New York.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 22nd day of April 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11504 Filed 4–29–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of an information collection. SF 3106, Application for Refund of Retirement Deductions, and SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, are used by former Federal employees who contributed to the Federal Employee's Retirement System to receive a refund of retirement deductions and any other money to their credit in the Retirement fund.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

There are approximately 81,000 respondents for the SF 3106 and 40,500 respondents for the SF 3106A. It takes approximately 27 minutes to complete SF 3106 and 6 minutes to complete SF 3106A. The annual burden for SF 3106 is 36,450 and 4,050 for the SF 3106A.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before June 29, 1998.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–11402 Filed 4–29–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Revised Information Collections: OPM Form 1496 and 1496A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. OPM Forms 1496 and 1496A, Application for Deferred Retirement (Separations before October 1, 1956) and Application for Deferred Retirement (Separations on or after October 1, 1956) are used by eligible former Federal employees to apply for a deferred Civil Service annuity. Two forms are needed because there was a major revision in the law effective October 1, 1956; this affects the general information provided with the forms.

Approximately 3,000 OPM Forms 1496 and 1496A will be completed annually. We estimate it takes approximately 1 hour to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before June 1, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–11401 Filed 4–29–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39910; File No. SR–CBOE–98–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

April 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 4, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 20, 1998, the CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, in order to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the scope of Rule 2.30 to include all types of executed trades and to reduce the amount of time under Rule 2.30 in which Exchange members and clearing firms are assessed additional fees for late trade submission.[3] As Exchange rules currently stand, market-makers and clearing firms are assessed fees for delayed trade match submission if eighty percent (80%) of market-maker in-person trades are not submitted in less than two (2) hours. The Exchange proposes to amend this rule to include all types of trades (not just market-maker in-person trades) and to require, by December 1, 1998, that the submission time for fee assessment be reduced from two (2) hours to one (1) hour. The eighty percent (80%) formula will remain the same, as will existing protections for extremely high volume days.

The inclusion of all types of trade activity under Rule 2.30 is proposed to begin with the initial reduction of the time requirement below two (2) hours, which the Exchange proposes to start on June 1, 1998. All trades that a member executes and all trades a clearing firm has executed for it will be required to be submitted on a timely basis to avoid additional fees. Under current rules, only in-person market-maker trades are considered under Rule 2.30. In 1991, when Rule 2.30 was implemented, certain in-person market-maker trades were being significantly delayed for submission to the Exchange's trade match system. Over time these delays were reduced and, in general, market-maker in-person trades now are received within two (2) hours. Non-market-makers trades originally were not included under Rule 2.30 because virtually all non-market-maker activity at that time met the two (2) hour time requirement. Within the revised time frames, ultimately one (1) hour, the Exchange realizes that a small but

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange made technical corrections to the proposed rule change and clarified the date of its implementation. See Letter from Stephanie C. Mullins, Attorney, CBOE, to Ken Rosen, Attorney, Division of Market Regulation, Commission, dated April 23, 1998 (''Amendment No. 1'').

[3] The CBOE will not begin to implement any of the proposed changes to Rule 2.30 until June 1, 1998. See Amendment No. 1.

significant portion of non-market-maker trades would not be submitted on a timely basis. For this reason, all executed trades will be included, so that all parties in the trading process will be held to the same standards.

Under the proposal, the submission time reduction from two (2) hours to one (1) hour will be done gradually over a period of months, so that members and clearing firms will grow accustomed to the tighter time requirement and will be encouraged towards immediate submission of trades. The first time reduction will go into effect on June 1, 1998, and will require timely trade submission to be within one (1) hour, thirty (30) minutes of execution. The next reduction would go into effect on September 1, 1998, and will require timely trade submission to be within one (1) hour, fifteen (15) minutes of execution. Finally, from December 1, 1998, forward, the Exchange will require that timely trade submission be within one (1) hour of execution.

At the present time, the average submission time for all market-maker trades is thirty-one (31) minutes from execution, and eighty percent (80%) of all market-maker trades are submitted within one (1) hour of execution. For non-market-makers, the average submission time is twenty-two (22) minutes, and eighty-seven percent (87%) of trades are submitted within one (1) hour of execution. Thus, it should not be a hardship for all members and clearing firms to abide by the proposed rule.

The purpose of this amendment is to increase the speed at which trades are received and matched by the trade match system. With the advent of a more automated trading environment, the current two (2) hour requirement is not stringent enough and may cause the CBOE to be slower than other exchanges in matching trades. More timely trade submission will lead to quicker awareness of out-trades, and consequently will limit financial loss, thereby allowing the Exchange to better compete among the other options exchanges for customer orders.

The Exchange has continually made systems enhancements and improvements to its procedures in order to quickly receive and compare trades. The Exchange currently has the ability to receive and match trade input on a real-time basis, throughout the business day. In a real-time environment, it is much more difficult and time consuming for all parties to deal with trade data that is not submitted on a timely basis. Members and clearing firms that submit trades on a delayed basis create an unnecessary burden on the majority of participants that submit trades on a timely basis. When a member or clearing firm does not submit its portion of a trade quickly after execution, an uncompared trade is created that can result in considerable financial loss if not resolved in a timely manner. Thus, the benefits to members and clearing firms of comparing trades immediately after execution are significant.

Exchange Rule 2.30(c), which formerly was reserved, is proposed to address the situation where a nominee-employee of a clearing member executes and submits trades for that clearing member. This situation is best represented by an employee of a retail, public customer brokerage firm who is responsible for executing and submitting trades for the firm. In this situation, where ownership and/or controlling interest in the membership lies with the clearing member, assessment of both a member and clearing member fee would apply a double charge to the responsible entity for not fulfilling the requirement of Rule 2.30. For this reason, the Exchange proposes to apply only the member fee when the member is solely employed by and is acting on behalf of the clearing member.

Additionally, because of improvements to the Exchange's trade match system and the advances of clearing firms, several sections of Rule 2.30 have become obsolete and are proposed to be eliminated. As a result of the ability to trade match continually throughout the day, Exchange Rule 2.30(d)(2) has become obsolete. Thus, the Exchange proposes to delete Rule 2.30(d)(2). When Rule 2.30 was initially implemented, a deficient clearing firm exception was included, 2.30(f)(1). This exception waived fifty percent (50%) of a market-maker's delayed submission fee if the clearing firm through which the market-maker submitted trades was severely deficient in submitting all of its trades on a particular day. This exception initially was applied infrequently, and in the last two years has not been applied to a market-maker client of a clearing firm. Due to hand held trade input terminals and general improvements in trade submission systems, it is nearly impossible for a clearing firm to fall below the deficient clearing firm level of fifty-five percent (55%). Therefore, Exchange Rule 2.30(f)(1) has become obsolete and the Exchange proposes to delete it.

* * * * *

The Exchange believes that the current proposal will result in an improved trade comparison process, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

SR–CBOE–98–09 and should be submitted by May 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11447 Filed 4–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39908; File No. SR–CBOE–98–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Trading of Stocks, Warrants and Other Non-Option Securities

April 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed to clarify certain of its rules governing the trading of stocks, warrants and other non-option securities.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain of CBOE's rules applicable to securities traded on CBOE, other than options. The proposed revisions are to rules in Chapter XXX, which governs trading in ''Stocks, Warrants and Other [non-option] Securities.'' The Exchange also is proposing to add Interpretation and Policy .04 to Rule 8.80 in order to clarify the obligations of a Designated Primary Market-Maker (''DPM'') acting in respect of securities other than options. In conjunction with the implementation of certain upgrades and enhancements to the Exchange's computer system that will apply to the trading of securities other than options (the automated system for trading securities other than options as enhanced is referred to herein as the ''System''), the Exchange reviewed all of its Chapter XXX rules to make certain that the rules conformed with the features of the new System. Although the Exchange determined that no substantive changes to its rules were necessary as a result of this review, the Exchange did determine to make the following clarifications to its rules.

Odd Lot Orders

The Exchange has proposed to adopt new Interpretation and Policy .04 under rule 8.80 in order to require DPMs to fill the odd lot portion of a mixed lot order (an order that includes an odd lot portion in addition to one or more round lots) in any security to which they are assigned at a price determined in accordance with Interpretation and Policy .05 under Rule 30.22. That Interpretation and Policy currently provides that the odd lot portion of a PRL (part of round lot) order is to be filled at the same price as the round lot portion, and is proposed to be amended to clarify that if the round lot portion of a PRL order fills at multiple prices, the odd lot portion is to be executed at a price equal to the first round lot execution. This change is descriptive of how the System will actually process the execution of odd lot portions of PRL orders.

Priority

Rule 30.13(f), which provides for time priority for bids and offers made at the same price, is proposed to be amended to clarify that if a member makes certain changes to an order, that order will be considered made at the time of the change. The following changes will cause the time of entry of an order to be updated for time priority purposes: (1) Changing the price of the order, (2) increasing the size of the order; (3) increasing the length of time during which the order remains subject to execution; (4) removing or amending any other contingency applicable to the order; and (5) causing the order to shift between types of order books (e.g. from a round lot to an odd lot order).

2. Statutory Basis

The Exchange represents that the proposed rule changes are consistent with Section 6(b)[4] of the Act in general and further the objectives of Section 6(b)(5)[5] in particular in that, by clarifying the obligations of DPMs in respect of odd lot portions of orders and clarifying the types of changes to orders that cause the time of the orders to be updated for purposes of time priority, they are designed to promote just and equitable principles of trade and to protect investors and the public interest.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(e)(6).

[3] The Exchange has represented that the proposed rule change: (1) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. *Id.*

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act [7] and subparagraph (e)(6) of Rule 19b–4 thereunder.[8] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 17, 1998, more than 30 days from April 16, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–14 and should be submitted by May 21, 1998.

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(e)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11449 Filed 4–29–98; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39911; File No. SR–CBOE–98–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Committee Responsible for Governing RAES Participant in SPX

April 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, U.S.C. 78s(b)(1), notice is hereby given that on February 20, 1998, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE filed an amendment on April 15, 1998, requesting that the filing be handled as a regular way filing under Section 19(b)(2) of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

the CBOE proposes to change the Committee responsible for governing RAES eligibility in options on the Standard & Poor's 500 Index (''SPX'') from the appropriate Floor Procedure Committee to the appropriate Market Performance Committee. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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, Proposed Rule Change

1. Purpose

The Exchange has decided to change the body governing eligibility for RAES in SPX from the appropriate Floor Procedure Committee to the appropriate Market Performance Committee. Currently, SPX is the only options class in which the issues concerning the eligibility of market-makers to participate in RAES is governed by a Floor Procedure Committee instead of by a Market Performance Committee. Rule 8.16 (in the case of option classes other than OEX [2], SPX, and DJX [3]) and Rule 24.17 (in the case of OEX and DJX option classes) provide that the appropriate Market Performance Committee will govern the RAES market-maker eligibility issues. This change, therefore, will make the regulation of SPX RAES eligibility consistent with that of the other option classes traded on the Exchange. The governance of eligibility issues for SPX RAES will initially be delegated to the newly formed Index Market Performance Committee.

As with the other options classes, the Index Market Performance Committee will have authority to exempt market-markers from: the requirement that the market-maker be present in the crowd to log onto or remain on RAES (Rule 24.16(a)(iii)), the requirement that the market-maker must log onto RAES at any time during an expiration month when he is present in the crowd and when he has logged on previously during that expiration month (Rule 24.16(b)), certain requirements concerning the participation of joint accounts (Rule 24.16(c)), and certain requirements concerning the participation of member organizations with multiple nominees (Rule 24.16(d)). The Index Market Performance Committee will also take over the broader authority of the SPX Floor Procedure Committee to set the maximum number of RAES participants in RAES groups, to disallow the participation of certain RAES groups

[1] *See*, letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, Chicago Board Options Exchange to Victoria Berberi-Doumar, Division of Market Regulation, SEC, dated April 15, 1998.

[2] OEX stands for options on the Standard & Poor's 100 Index.

[3] DJX stands for options on the Dow Jones Industrial Average.

(Rule 24.16(e)), to require market-makers of the trading crowd to log onto RAES if there is inadequate participation (Rule 24.16(f)), and to take other remedial action as appropriate (Rule 24.16(g)).

2. Statutory Basis

By moving the authority for the governance of RAES eligibility issues in SPX from a Floor Procedure Committee to a Market Performance Committee, thus, making SPX RAES consistent with RAES for the other option classes traded on the Exchange, the proposed rule change is consistent with Section 6 of the Act in general and Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 CBOE. All submissions should refer to File No. SR–CBOE–98–07 and should be submitted by May 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11515 Filed 4–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39906; File No. SR–CHX–98–7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Regarding Maintenance Standards and Listing Requirements

April 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 18, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 14, 15, 16, 17 and 22 of Article XXVIII and the interpretation and policy .01 of Rule 2 of Article XXVIII. The Exchange further proposes to add interpretation and policy .03 to Rule 2 of Article XXVIII. The proposed rule amendments would clarify the requirements for listing and/or maintenance on the CHX a security that is also listed on another primary market and modify the maintenance and delisting standards regarding securities listed on Tier II of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change relates to four listing issues: (i) Tier II listing standards for stock warrants, (ii) listing application requirements for securities that are listed or approved for listing on certain other markets, (iii) delisting of a security for lack of sufficient trading volume, and (iv) the elimination of certain maintenance listing standards for securities currently listed on certain other markets.

Tier II Stock Warrants. The exchange does not currently have maintenance standards for stock warrants listed on Tier II of the Exchange. The proposed rule change would require that, in the case of Tier II stock warrants, the common stock of the company or other security underlying the stock warrants meet the applicable Tier II maintenance requirements. The proposed rule change would allow the Exchange to delist stock warrants that did not have adequate ''backing'' of an underlying security.

Listing Application Requirements For Certain Securities Listed on Other Markets. Currently, the Exchange may list a security of an issuer that is listed or has been approved for listing on another primary market. The proposed rule change would clarify that if the Exchange chooses to list, under either Tier I or Tier II, a security listed or approved for listing, within the past twelve months, on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), except for Emerging Company Marketplace

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

securities, or the Nasdaq National Market, the issuer shall not be required to fulfill all the requirements for an original listing application. Instead, the issuer shall only be required to submit to the Exchange (1) a copy of the application for listing on the NYSE, Amex or Nasdaq National Market, together with all supporting materials, (2) a board resolution of the issuer authorizing listing on the Exchange, (3) the issuer's Form 10–K, most recent three Form 10–Qs, and most recent proxy statement (for non-IPOs), or the issuer's latest registration statement and exhibits (for IPOs), (4) the required listing fee, (5) an executed Exchange listing agreement, (6) evidence of approval for listing by the NYSE, Amex or Nasdaq National Market, (7) a specimen stock certificate, (8) the issuer's registration statement filed under the Securities Exchange Act of 1934, and (9) a Letter of Reliance authorizing the Exchange to process the application and supporting materials as if addressed to the Exchange in lieu of an original listing application.

Delisting For Lack of Sufficient Volume. Current Rule 22(c) of Article XXVIII provides that Tier II listed issues will normally be considered for delisting if the company fails to maintain a net worth which is the greater of (i) 150% of the prior year's consolidated net loss or (ii) $500,000 or when the volume of trading declines to a level which will not support a listed market in the judgment of the Exchange and its Committee on Floor Procedure. The proposed rule change would eliminate the specific reference to volume of trading as vague and unnecessary in light of the authority Rule 22(a) grants the Exchange to delist Tier II securities.

Maintenance Listing Standards. Currently, Rules 14, 15, 16, 17 and 22 of Article XXVIII provide for certain maintenance standards that Tier I and Tier II listed securities must meet in order to continue to be listed on the Exchange. The proposed rule change would provide that if a security that is listed on the Exchange is also listed on the NYSE, Amex or Nasdaq National Market, as long as the security continues to be listed on such other market, it shall not be required to meet certain of the maintenance standards contained in the Exchange's rules.[2] This provision will avoid a situation where the Exchange might be forced to delist a security that fails certain maintenance tests, when it continues to meet the requirements of such other market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[3] of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, 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.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 submissions, 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. 522, will be available for inspection and copying at the Commission's Public Reference Room, 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 CHX. All submissions should refer to File No. SR–CHX–98–7 and should be submitted May 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11448 Filed 4–29–98; 8:45 am]

BILLING CODE 8010–01–M

[2] The proposal would exempt from the Exchange's quantitative maintenance standards securities that are also listed on the NYSE, Amex, or Nasdaq National Market. The quantitative maintenance standards govern, for example, net tangible assets, the number of public beneficial shareholders, and the market value of an issuer's shares publicly held. The Commission notes that the proposed rule change would not provide an exemption from the Exchange's corporate governance and disclosure requirements for securities that maintain a listing on the CHX and are otherwise listed on the NYSE, Amex, or Nasdaq National Market.

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Truck Size and Weight Impact Methodology Review Conference

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FHWA is announcing an informational meeting concerning the analytical procedures used to estimate the impact of potential changes to the Nation's truck size and weight (TS&W) limits on:

1. Freight diversion and mode share;
2. Safety and traffic operations;
3. Highway agency costs (pavement, bridge and roadway geometry);
4. Shipper costs and rail industry profitability;
5. Roadway geometry requirements;
6. Traffic operations; and
7. Environmental quality and energy consumption.

An understanding of these procedures is required to evaluate the illustrative TS&W scenarios which will be presented in the U.S. Department of Transportation's (U.S. DOT's) 1998 Comprehensive Truck Size & Weight (CTS&W) Study.

DATES: The meeting will be held on July 7, 1998, from 8:30 a.m. to 5:00 p.m. and on July 8, 1998, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Willard Inter-Continental Hotel, 1401 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Regina McElroy, Office of Policy Development, HPP–10, (202) 366–9216, for substantive information regarding the conference; Megan Naranjo, HPP–10, (202) 366–0281, for conference registration material; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs.

Background

The U.S. DOT currently has underway a CTS&W Study. The Study was initiated in 1994 by Secretary of Transportation Rodney E. Slater, who was then the Federal Highway Administrator. The Study is intended to provide decisionmakers with fact-based information regarding the highly controversial and multifaceted TS&W issue. The Department anticipates that the final TS&W Study report will be transmitted to Congress by the end of 1998. It will include four volumes: Volume I—Executive Summary, Volume II—Issues and Background, Volume III—Scenario Analysis, and Volume IV—Guide to Documentation. A draft version of Volume II was distributed for external review in June 1997. Many valuable comments were received and, as a result, the final version will be markedly improved.

Work on Volume III, Scenario Analysis, is now in progress. The Department expects that a draft version will be available for review and comment this summer. A number of illustrative size and weight scenarios have been identified for analysis, and each scenario will be evaluated in terms of its likely impact on freight diversion, safety, infrastructure (pavement, bridge and roadway geometry), shipper costs, rail industry viability, traffic operations, energy consumption and environmental quality. The scenarios, as well as the impact areas, were selected based on comments received through the Study's extensive outreach process.

As part of the overall outreach activity, the FHWA, on behalf of the Department, is sponsoring a TS&W Impact Methodology Review Conference. This event is being organized to facilitate review of the Volume III draft. At the conference, subject matter experts will present the analytical approach employed, for each of the impact areas identified above, to evaluate the illustrative scenarios. The presentations will focus on technical methods used in the scenario analysis. Study results will not be discussed.

For individuals unable to attend the meeting, copies of the briefing material may be obtained, free of charge, by contacting Ms. Megan Naranjo at the address and telephone number listed at the beginning of this Notice. In addition, we will publish a summary of the conference following the event. The summary may also be obtained by contacting Ms. Naranjo.

Meeting Information

Guest rooms at the Willard Hotel, for confirmed participants, are available at a discounted rate. Room reservations should be made directly with the hotel at (202) 628–9100.

An agenda, registration form, and supporting conference materials may be obtained from the FHWA. The point of contact is Ms. Megan Naranjo at the address and telephone number at the beginning of this Notice.

In order to provide ample opportunity for dialogue, we are limiting the meeting to 100 participants. *All participants must be registered in advance.* Should demand significantly exceed this limit, we will consider holding another similar event.

A fee is being charged to partially cover the cost of the conference. The fee includes a continental breakfast on the first and second days and lunch on the first day. The early registration fee (received on or before June 6, 1998) is $55.00. After June 6, 1998, a late registration fee of $65.00 is payable at the conference.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Gary E. Maring,

Acting Associate Administrator for Policy.

[FR Doc. 98–11523 Filed 4–29–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33558]

Camas Prairie Railnet, Inc.; Acquisition and Operation Exemption; Camas Prairie Railroad Company, Union Pacific Railroad Company, and the Burlington Northern and Santa Fe Railway Company

Camas Prairie Railnet, Inc. (CSPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a series of interconnected lines of railroad currently owned by the Union Pacific Railroad Company (UP), and The Burlington Northern and Santa Fe Railway Company (BNSF), and operated by the Camas Prairie Railroad Company (CSP)[1] as follows: (1) A line of railroad, known as the 1st Subdivision, extending from milepost 137.0, at Lewiston, ID, to milepost 61.0 (end of track), at or near Kooskia, ID; (2) a line of railroad, known as the 2nd Subdivision, extending from milepost 0.0, at Spalding, ID, to milepost 66.5 (end of track), at or near Grangeville, ID; (3) a line of railroad, known as the 3rd Subdivision, extending from milepost 0.0, at Riparia, WA, to milepost 71.5, at East Lewiston, ID; and (4) a line of railroad, known as the 4th Subdivision, extending from milepost 0.0, at Orofino, ID, to milepost 31.0 (end of track), at or near Revling, ID.[2] In addition, CSPR will also obtain incidental overhead trackage rights over UP trackage between milepost 10.46, at Riparia, and approximately milepost 267.1, at Ayer, WA, for the purpose of interchanging traffic with both UP and BNSF. The trackage to be acquired and operated by CSPR is approximately 245 route miles in length, and the related trackage rights are approximately 15.1 miles in length.

The transaction was scheduled to be consummated on or after April 17, 1998.

This transaction is related to STB Finance Docket No. 33578, *North American Railnet, Inc.—Continuance in Control Exemption—Camas Prairie Railnet, Inc.*, wherein North American Railnet, Inc. has concurrently filed a verified notice to continue in control of CSPR upon its becoming a Class III rail carrier.

Because the projected revenues of the rail lines to be operated will exceed $5 million, CSPR certified to the Board, on

[1] CSPR will replace CSP as the common carrier operator of the lines being acquired.

[2] BNSF currently owns the lines known as the 1st Subdivision, the 2nd Subdivision, and the 4th Subdivision. UP currently owns the line known as the 3rd Subdivision.

February 13, 1998, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on February 12, 1998. See 49 CFR 1150.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33558, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: April 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11361 Filed 4–29–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33578]

North American Railnet, Inc.; Continuance in Control Exemption; Camas Prairie Railnet, Inc.

North American Railnet, Inc. has filed a notice of exemption to continue in control of the Camas Prairie Railnet, Inc. (CSPR), upon CSPR's becoming a Class III railroad.

The transaction was scheduled to be consummated on or after April 17, 1998.

This transaction is related to STB Finance Docket No. 33558, *Camas Prairie Railnet, Inc.—Acquisition and Operation Exemption—Camas Prairie Railroad Company, Union Pacific Railroad Company, and The Burlington Northern and Santa Fe Railway,* wherein CSPR seeks to acquire and operate a series of interconnected rail lines from the Camas Prairie Railroad Company, the Union Pacific Railroad Company, and The Burlington Northern and Santa Fe Railway Company.

Applicant controls two existing Class III railroads: Nebraska, Kansas, & Colorado Railnet, Inc., operating in the States of Kansas, Nebraska, and Colorado; and Illinois RailNet, Inc., operating in the State of Illinois.

Applicant states that: (i) The rail lines to be operated by CSPR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect CSPR's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33578, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1707 L, N.W., Suite 570, Washington, DC 20036.

Decided: April 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11362 Filed 4–29–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials (Committee), authorized by 38 U.S.C. 2401, will be held Tuesday, June 23 and Wednesday, June 24, 1998, at the Handlery Hotel and Resort, 950 Hotel Circle North, San Diego, CA, 92108. This will be the committee's first meeting of the year 1998.

The purpose of the Committee is to review the administration of VA's cemeteries and burial benefits program. On Tuesday, June 23, 1998, the meeting will convene at 2:00 p.m. (PDT) and adjourn at 7:00 p.m. (PDT). On Wednesday, June 24, 1998, the meeting will convene at 8:00 p.m. (PDT) and adjourn at 5:00 p.m. (PDT).

On Tuesday, June 23, there will be a business session at the Handlery Hotel and Resort in the Club Room. The Committee will then depart for Fort Rosecrans National Cemetery, Cabrillo Memorial Drive, in the town of Point Loma, San Diego, CA 92106, for a tour and an equipment show.

On the morning of June 24, the Committee will meet at the Handlery Hotel and Resort, in the Director Room, where they will receive presentations from Ex-Officio Committee members. In the afternoon, the Committee will attend a Best Practices Panel with cemetery directors, in the Crystal Room. After the Best Practices Panel, the Committee will meet, in the Director Room, for a business session and an update briefing on National Cemetery System activities.

The meeting will be open to the public. Those wishing to attend should contact Ms. Louise Ware, Special Assistant to the Director, National Cemetery System, (phone (202) 273–7577) no later than 12 noon (EST), June 15, 1998.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Acting Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC. 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. In addition, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Acting Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Acting Director, National Cemetery System, by 12 noon (EST), June 15, 1998. Oral statements will be heard between 1:30 p.m. and 2:00 p.m. (PDT), June 24, 1998, at the Handlery Hotel.

Dated: April 23, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–11467 Filed 4–29–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
April 30, 1998

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 8, 882, 982, and 983

Section 8 Certificate and Voucher Programs Conforming Rule; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 8, 882, 982, and 983

[Docket No. FR–4054–F–02]

RIN 2577–AB63

Section 8 Certificate and Voucher Programs Conforming Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule completes the process of combining and conforming the regulations for tenant-based rental assistance under the Section 8 certificate and voucher programs, by adding two subparts that had been reserved in the previous final rule establishing the single part governing tenant-based assistance. This rule also amends requirements for project-based assistance under the certificate program. In addition, this rule continues the Department's regulation streamlining efforts by revising various sections in the part previously created to cover the combined Section 8 certificate and voucher programs and by consolidating definitions now found in individual program regulations into the part that covers definitions that have broader applicability.

EFFECTIVE DATES: This rule shall be effective June 1, 1998, except §§ 983.254(a)(1) and (2)(i); and 983.256(c)(2)(v) shall be effective November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Gloria Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4204. Her telephone numbers are (202) 708–2841 (voice); (202) 708–0850 (TTY). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in §§ 982.516, 982.517, 983.254, 983.255, and 983.256 of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB approval number is 2577–0169, which expires on April 30, 2001. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

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I. History and Scope of Rule

On February 24, 1993 (58 FR 11292), HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the certificate and voucher programs. The proposed rule also would have amended requirements for project-based assistance under the Section 8 certificate program. HUD received approximately 400 comments on the proposed rule, which generally approve the broad purpose of the rule. Comments recommend revision of particular features of the rule.

On July 18, 1994, HUD published the first portion of the comprehensive final rule for the tenant-based program at 24 CFR part 982. This publication contained the final rule on unified admission procedures for the program (59 FR 36662) (part 982, subpart E). On July 3, 1995 (60 FR 34660), HUD published the second portion of the comprehensive final rule for the tenant-based programs at 24 CFR part 982, as well as regulations for the project-based certificate program at 24 CFR part 983. This publication did not include provisions concerning:

— Calculation of the rent and housing assistance payment for the tenant or project-based programs.
— ''Special housing types'': program variants to meet special housing needs, such as congregate housing, shared housing, single room occupancy housing and group homes.

Today's publication covers the subjects omitted in the July 1995 final rule. In addition, the rule includes some streamlining and clarifying changes to parts 982 and 983.

II. Types of Tenancy

The rule (§ 982.501) specifies that there are three types of tenancy in the Section 8 tenant-based programs:

— A ''regular'' tenancy under the certificate program;
— An ''over-FMR'' tenancy under the certificate program; and
— A tenancy under the voucher program.

In a regular certificate tenancy, the share of rent paid by an assisted family is defined by a statutory formula. Section 8 subsidy covers the balance of rent for the unit. The family may not agree to pay a bigger share of the rent. In an over-FMR tenancy, the family may agree to pay more. This rule adds authority for over-FMR tenancies. The term ''regular'' tenancy is added to designate and distinguish the original form of certificate tenancy.

Comments propose that HUD should combine the certificate and voucher programs. Subsidy should be calculated by the same method. The programs should not use different FMRs and voucher payment standards. The certificate and voucher programs should use the same rent formula. The HA should assume responsibility to administer the program and stretch the dollars.

In this rulemaking, HUD has fully unified the tenant-based certificate and voucher programs so far as allowed by current Federal law. Except for limited differences in calculation of subsidy and family contribution, the same regulations apply to the tenant-based certificate and voucher programs, and to a regular or over-FMR tenancy under the certificate program. For example, both programs are subject to the same requirements concerning finding and leasing a unit, housing quality standards and subsidy standards (maximum unit size), landlord responsibility and family obligations.

The three forms of tenancy conform to specific statutory requirements affecting subsidy and family contribution. Within this framework, however, the rule is designed to minimize or eliminate unnecessary differences.

For each tenancy, the same fair market rent or HUD approved exception rent (called the ''FMR/exception rent limit'') determines the maximum subsidy for a program family. Actual subsidy generally equals maximum subsidy minus 30 percent of a family's adjusted income. For a regular tenancy in the certificate program, the FMR/exception rent limit is the maximum initial rent. For a voucher or over-FMR tenancy, the FMR/exception rent limit is the maximum payment standard. The same area exception rents apply for a regular, voucher or over-FMR tenancy. For each type of tenancy, the rent to owner may not exceed comparable rent.

III. Rent to Owner

A. Rent Reasonableness (Comparability)

1. Comparability Requirement

During a Section 8 tenancy, an owner's rent must be ''reasonable.'' The HA must determine whether the initial or adjusted rent for a Section 8 unit is reasonable in comparison with rent for units in the private unassisted market (§ 982.503(b) and § 983.256(b)).

The final rule (§ 982.503(b)) refines requirements on how the HA determines comparable rent. To determine comparability, the HA must consider:

— Location, quality, size, unit type and age of the contract unit, and
— Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

2. Comparability: Comments

a. Against comparability. Comments assert that HUD should not require that rents must be reasonable. Some comments suggest that HUD should eliminate rent reasonableness in both the certificate and voucher programs. In the certificate program, rents are controlled by the FMRs. In the voucher program, tenants choose to pay the rent.

Other comments urge that the rent reasonableness requirement should be limited to the certificate program and should not apply to the voucher program. Rent reasonableness negates the designed purpose of the voucher program—allowing a participant to freely select a higher priced unit, reducing concentrations of low-income housing. Rent reasonableness curbs the ability to disperse low-income families.

Comments state that participants in the voucher program like the flexibility to negotiate rent, and to choose a higher rent unit. Owners prefer the voucher program because they do not want to negotiate rents with the HA. If voucher rents are limited by comparability, owners may refuse to participate.

Comments claim that comparability subjects a landlord to de facto rent control. Ongoing HA inspection of reasonableness reduces a landlord's incentive to offer assisted housing. Application of rent reasonableness creates undue owner uncertainty and confusion. Requiring initial and annual examination of rent is a burden on a landlord's property and privacy.

b. For Comparability. Some comments support rent reasonableness requirements and extension of comparability to the voucher program. A cap on family rent payment in the voucher program is overdue. Rent reasonableness prevents owners charging excessive rents for marginal units. Owners charge different rents for different programs. In tight markets, a voucher tenant is forced to pay higher rent out-of-pocket. Under the new rule, an HA can establish a systematic method for establishing reasonable rent for the unit size.

c. Comparability During Term. The rule (§ 982.503(a)(4)) provides that rent must be reasonable during the whole course of an assisted tenancy. This principle applies both to the certificate program and to the voucher program.

The rent must be reasonable at the beginning of the lease, and during the lease term.

Comments state that rent reasonableness should only apply to new HAP contracts, not annually. Comparability should not be required unless rent increases. According to the comments, requiring reasonableness when rent does not increase during the lease term is an unnecessary administrative burden.

Comments ask HUD to clarify what happens if the HA determines that a proposed rent increase is not reasonable.

d. How HA Determines Comparability. Comments state that HUD should clarify how to determine the relevant ''market'', and should define ''private *unassisted* market''. Does the unassisted market include types of assisted housing other than Section 8? Does assisted refer to all types of Federal, State or local subsidies, or only to housing assisted under Section 8?

Comments state that reasonableness should not be applied on a building by building basis. Comparability should recognize market differences between units. An HA should not set single rents for a class of units in a particular property. Comparability should only assure that rent and rent increases for Section 8 and non-Section 8 units are substantially the same. Rent reasonableness should take into account unit to unit value differences ordinarily recognized in the market. Comparability should not override an owner's rental determination in response to actual market dynamics.

Comments recommend that HAs should emphasize quality, age and location of a Section 8 unit as compared with the other units. The comments claim that HAs consider any unit that passes HQS as comparable to an unassisted private market unit with an equal number of bedrooms. Substandard housing and apartments are rented for the same amount as standard and above standard rentals in the same neighborhood. Comments state that families should not pay equal or higher rent for ''substandard'' units as for standard units rented on the unassisted private market.

Comments assert that HUD has not given adequate guidance for determining rent reasonableness. By contrast, there are ''extensive regulations'' on setting and review of Fair Market Rents. Comments recommend that HUD should require:

—Determination by a qualified person;
—Information on procedures used by an HA;
—Opportunity for negotiation and correction, and a procedure for resolution of disputes;
—Review and correction of the HA determination of reasonable rent.

Comments ask HUD to clarify whether rent for an over-FMR tenancy must meet rent reasonableness.

e. Rents Charged by Section 8 Owner. The proposed rule would have provided that ''reasonable rent'' may not exceed rent charged by a Section 8 owner for a comparable ''*assisted* or unassisted'' unit in the same building. (This definition was issued as a final rule in the second phase of this rulemaking, published July 3, 1995.) The proposed rule also provided that an owner who accepts an assistance payment from the HA certifies that rent does not exceed rents charged *by the owner* for any comparable ''*assisted* or unassisted'' unit in the building.

Comments argue that owner rents for assisted units should not be used to show market rent.

f. Administration of Comparability. Comments remark that determination of comparability is an additional administrative burden for the HA, and wastes program administrative resources.

Comments note that the comparability requirement is no longer limited to the certificate program. The new rule will require HAs to determine rent reasonableness in both the certificate and voucher programs. In the past, HUD justified lower fees for administration of the voucher program on the ground that an HA does not have to perform rent reasonableness. Under the new rule, HAs will now incur additional costs to perform comparability for the voucher program. Comments recommend that HUD should not reduce the administrative fee, or should increase the fee.

Comments note that Section 8 rent setting is more complicated than in private transactions, because Section 8 rent is subject to HUD and HA regulation.

Comments state that HUD should increase monitoring of rent reasonableness if there is more than one HA operating in a jurisdiction. HUD should prevent landlords from playing HAs against each other to increase the rent.

Some comments state that an owner should certify that rent is no more than rent the owner charges for a comparable unit in the building or complex. Comments state that an HA should presume that the rent for a Section 8 unit is reasonable unless rent is higher than rent for a comparable non-Section 8 unit in the building.

Comments state that non-profit owners charge a lower rent for families who do not receive Section 8 subsidies. These owners want to charge a neighborhood comparable rent to Section 8 participants. The comment recommends that an owner should be allowed to charge a higher rent for Section 8 tenants than for market rate tenants if comparable rents are charged in the neighborhood.

g. Comparability: Other Issues. Comments express concern on how implementation of rent reasonableness may affect existing tenancies. Comments ask HUD to clarify how rent reasonableness applies to existing voucher tenancies. Comments ask HUD to clarify when and how voucher landlords can raise the rent.

By law, an HA may serve as contract administrator of units owned by the HA. Because of the evident conflict between the HA's proprietary interest and the responsibility for determining if the landlord's rent is reasonable, HUD determines whether rent of HA-owned units is reasonable. Comments state that comparability should be determined by the HUD field office economist rather than the Secretary.

The proposed rule provides than an HA must ''assist'' the family in negotiating reasonable rent. Comments ask what assistance must be provided.

3. Comparability: HUD Response

a. Use of Comparability. By law, rents for voucher units must be ''reasonable in comparison with rents charged for comparable units in the private unassisted market'' (or for units assisted under the Section 8 certificate program) (42 U.S.C. 1437f(o)(10)(A)). The HA must review all initial rents or rent increases, and must determine whether the rent requested by an owner is reasonable.

> A public housing agency shall review all rents for [voucher] units * * * (and all rent increases for [voucher] units.* * *) to determine whether the rent (or rent increase) requested by an owner is reasonable. If the public housing agency determines that the rent (or rent increase) for a unit is not reasonable, the agency may disapprove a lease for such unit. (42 U.S.C. 1437f(o)(10)(A))

Under this law, the rent reasonableness requirement must be applied in the voucher program. Rent reasonableness may not be restricted to the certificate program as suggested by some public comment.

In the certificate program, by law rent adjustment is subject to comparability. ''Adjustments'' may not result in ''material differences'' between rent for a Section 8 assisted unit and rent for

comparable unassisted units (42 U.S.C. 1437f(c)(2)(C)). The adjusted rent may not exceed ''the rent for a comparable unassisted unit of similar quality, type and age in the market area'' (42 U.S.C. 1437f(c)(2)(A)). By this HUD regulation, comparability applies both to initial rent to owner and rent to owner as adjusted during the life of the assisted tenancy (§ 982.503(a)).

Under this rule, comparability for a voucher or certificate tenancy limits the maximum ''rent to owner''—the amount of rent payable to the owner in accordance with the lease (§ 982.4). Rent to owner does not include any allowance for tenant-paid utilities. By contrast, the fair market rent limit (for a regular tenancy under the Section 8 certificate program) is a limit on the initial ''gross rent''—the total amount of the rent to owner plus any allowance for tenant-paid utilities.

In the regular certificate program, the initial rent is subject to both limits: initial rent to owner must be reasonable, and the total of the rent to owner plus any utility allowance may not exceed the fair market rent. In a voucher or over-FMR tenancy, the initial rent to owner must be reasonable. However, the fair market rent is not used as a restriction on the rent. Instead, the fair market rent is used as a limit on the ''payment standard''—the maximum subsidy for a family.

Comparability review by the HA prevents owners from charging Section 8 families more than market rents charged for private market tenants. Experience in operation of the Section 8 programs shows that without this control, the availability of the Section 8 subsidy encourages and enables owners to charge more than a normal market rent.

A Section 8 family may lack the motive, knowledge or leverage to negotiate a market rent. For a regular certificate tenancy, the participant has no economic motive to limit the amount of rent paid to an owner, since the amount of the rent paid to the owner does not affect the family's share of rent. A higher rent is covered by a higher Federal subsidy. In a voucher or over-FMR tenancy a higher rent increases the family's out of pocket payment. Nevertheless, without comparability, families may agree to excess rents since part of the rent—often the greatest part of the rent—is paid by the Section 8 subsidy.

The Section 8 program is designed to enable poor families to pay a fair rent for decent housing, not to subsidize excessive rents or profits. High rents waste Federal subsidy. By requiring reasonable rents for Section 8 families, this rule attempts to gain the maximum benefits from use of available program funds.

Comments state that HUD should not require the HA to redetermine comparability unless the rent increases, and express concern with the administrative burden of the annual determination. In response to these concerns, the final rule (§ 982.503(a)(2)) only requires that the HA conduct a redetermination of reasonable rent in two cases:

—Before any *increase of rent to owner*, or

—If there is a five percent *decrease in the published FMR* (in effect 60 days before the contract anniversary) as compared with the FMR in effect one year before the contract anniversary.

In a regular certificate tenancy, rent may increase by application of the published factor at the annual anniversary, or by a HUD-approved special adjustment. In an over-FMR or voucher tenancy, rent may increase by terms of the lease between the owner and the tenant. For each type of tenancy, the HA must conduct a comparability analysis before an owner may increase the rent. An increased rent may not exceed the reasonable rent for unassisted units in the local market.

Market rents may decline. Even absent a rent increase, the current rent to owner for a program unit—though reasonable at the time of the last HA comparability determination—may now exceed reasonable rent for comparable unassisted units rented in the local market. This excess is a windfall to the owner and results in excess subsidy payment by HUD or an excess payment by the family. To prevent excess rent in such cases, the rule will now require that the HA must conduct a comparability analysis if there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary as compared with the FMR rent in effect one year before the contract anniversary.

The FMR is HUD's estimate of the fortieth percentile rent for standard units in the local market. A five percent decrease in the FMR indicates a substantial decrease in market rents, and justifies requiring the HA to undertake a comparability determination. Conversely, however, the rule does not require that the HA automatically and routinely conduct a comparability determination if the unit rent does not rise, and if there is no fall in the published FMR for the market. Even if there is substantial decline in local market rents, signalled by a fall in the FMR, rent for the particular assisted unit is not reduced unless the comparability analysis shows that current unit rent exceeds rent for comparable unassisted units.

At any time, HUD may direct the HA to determine comparability for its program generally or for particular units, though there is no proposed increase in unit rent or decrease in market rents (§ 982.503(a)(2)(iii)). For example, HUD may exercise this authority because of concern that program rents are excessive because an HA has failed to carry out rent comparability in accordance with program requirements.

The rule also provides that the HA may redetermine reasonable rent at any time (§ 982.503(a)(3)). The HA has discretion to conduct rent reasonableness analysis for any or all units, though not mandated in accordance with the rule.

Comparability applies to existing program tenancies, as well as new tenancies. Application of reasonableness during the lease term is required by law, and is consistent with provisions of assistance contracts for existing certificate and voucher tenancies. In the certificate program, HAP contracts provide that rent adjustments must be reasonable. In the voucher program, current HAP contracts also provide that rent paid to the owner must be reasonable.

The HA must keep records to document the basis for each HA determination, as required under the rule, that the initial and adjusted rent to owner is reasonable during the assisted tenancy (§ 982.158(f)(7) (for tenant-based programs) and § 983.12(b)(2) (for PBC program)). In the tenant-based programs, a comparability determination must be kept for at least three years. In the PBC program, a comparability determination must be kept during the HAP contract term and for at least three years thereafter.

b. How HA Determines Comparability. HUD has not adopted comments recommending that HUD issue extensive and detailed Federally-prescribed procedures for rental valuation and for resolution of valuation issues. Instead, the final rule (§ 982.503(b)) contains a brief and simple statement of the basic standards to be applied by an HA in determining reasonable rent of a unit with Section 8 tenant-based assistance.

Each HA should use appropriate and practical procedures for determining rental values in the local market. The HA is responsible for designating qualified HA staff or outside analysts. HAs have extensive experience in determining rent reasonableness for the

Section 8 tenant-based programs, and can utilize available techniques and expertise. An HA is well able to gather and maintain data on rent values in its local market, or to retain qualified analysts for this purpose.

An HA's day-to-day operation of a tenant-based program is a prime source of up-to-date information on private market rentals in the HA community. In the process of examining and approving rentals for program participants, the HA receives on-the-ground information on rents demanded and accepted by local landlords. HA's can maintain current rental data, and can designate staff or outside specialists with training and experience in rental valuation.

The determination of rent reasonableness for Section 8 tenant-based assistance does not call for a special or unusual valuation in accordance with detailed procedures prescribed by HUD. The central purpose of comparability is merely to assure that federally subsidized rents do not exceed rental values in the private market. Each individual HA should value units so that the HA's determination of reasonable rent faithfully reflects the characteristics of the Section 8 unit, and the valuation of comparable units in the private unassisted market.

c. Factors Considered in Valuing Unit. To determine if rent is reasonable, the HA must compare characteristics of the contract unit with characteristics of comparable unassisted units. The rule provides (§ 982.503(b) and § 983.256(b)) that an HA must consider:

—Location, quality, size, unit type and age of the contract unit.
—Amenities, housing services, maintenance and utilities to be provided by the owner of the contract unit in accordance with the assisted lease.

The proposed rule would have provided that the HA must consider ''any'' owner services. The final rule specifies that the HA may only consider ''housing'' services (§ 982.503(b)(2) and § 983.256(b)(2)). Comparable rent does not include the value of any non-housing services provided by the owner to the assisted tenant (for example, the value of any food or medical services). In determining comparable rent, rent of any comparable with non-housing services must be adjusted down to indicate rent of an assisted unit without such services.

Comments state that an HA should consider local regulations that affect rent of comparable units. HUD agrees that local laws or regulations may affect rent of a comparable or subject unit. However, such effects would be reflected in the comparable rents, and in the comparison between the comparable and subject. There is no need to add any special regulatory treatment concerning the effect of local laws or regulations.

d. Rent Charged by Owner. The proposed rule would have provided that rent to owner may not exceed rent that the owner is charging for a comparable assisted or unassisted unit. Public comments state that comparability should not be based on owner rent for assisted units. On reconsideration, HUD agrees that the rent for assisted units is not a persuasive indicator of private market unassisted rents. In renting to certificate or voucher families, the owner may not be able to match reduced rents for subsidized units in the same building.

Under the final rule (§ 982.503(b)), reasonable rent for a contract unit is determined by comparison with rents for other comparable ''unassisted'' units in the local market and the owner's premises. In the final rule (§ 982.4), the term ''reasonable rent'' means a rent that is not more than rent for comparable units in the private unassisted market, including rent charged by the owner for comparable *unassisted* units in the premises.

The final rule does not provide, as proposed, that rent for a contract unit may not exceed rent charged by the owner for a comparable ''assisted'' unit in the premises. The rule therefore deletes the requirement for owner certification of this fact. By accepting the HA's monthly Section 8 payment, an owner certifies that rent for a Section 8 unit does not exceed rent charged by the owner for comparable unassisted units in the premises (§ 982.503(c); § 983.256(d)).

If requested, the owner must give the HA information on rents charged by the owner for other units in the premises or elsewhere (§ 982.503(c); § 983.256(d)). Comments agree with HUD that the owner should be required to give the HA information on rents charged by owner.

B. Other Limits on Rent to Owner

1. New Provisions

The final rule adds new provisions to confirm that owner rents for some units may be subject to limits in addition to rent reasonableness. These limits apply:

—To units subject to rent control under local law;
—To units subject to rent restrictions under rules for the HUD HOME program (HOME Investment Partnerships Program; see 24 CFR part 92);
—To project-based certificate (PBC) units, to ensure that an owner does not receive excessive subsidy by combining Section 8 assistance with tax credits or other subsidies.
—At the discretion of the HA, because of other governmental subsidies in addition to Section 8 assistance.

2. Rent Control

Local rent control may force an owner to reduce the rent to owner below the HA-determined reasonable rent (or below the fair market rent for a regular tenancy in the Section 8 certificate program). The rule provides that the amount of rent to owner may be subject to rent control limits under State or local law (§ 982.511 and § 983.258).

The new rule confirms that the Section 8 program rule establishes the maximum rent to owner, but does not establish the minimum rent to owner. Therefore the rule does not pre-empt local rent control laws which may prohibit an owner from charging the full comparable rent otherwise allowed in accordance with requirements of the Federal program regulation.

3. HOME Rents

Section 8 families may rent units in projects assisted under the HUD HOME program. Requirements of the HOME program determine the maximum rents for units in a HOME-assisted project. The Section 8 rule provides that rent for HOME-assisted units is subject to requirements of the HOME program (§ 982.512(b) and § 983.257(a)).

This rule thus confirms that participation in the Section 8 program does not relieve or replace rent limits required by the HOME program. The converse is also true. Participation in the HOME program does not relieve or replace rent limits required by the Section 8 program. Rather, for a unit that is assisted both under the HOME program and under the Section 8 program, the owner is subject both to the HOME and Section 8 limits on unit rents. As for other Section 8 units, rent for a HOME-assisted unit must not exceed rents charged by the owner for comparable unassisted units.

4. Other Subsidies

The new rule provides that an HA may adopt policies requiring a reduction of the initial rent to owner because of other governmental subsidies (§ 982.512(c) and § 983.257(c)). In some cases the owner or property may benefit from Governmental subsidies in addition to Section 8. Such subsidies may flow from the Federal government, or from a State or local government. The subsidy may take various forms: such as

tax concessions or credits, subsidized loans or grants to an owner.

The HA may judge that the combination of Section 8 subsidy with other subsidies is an excess concentration of public resources, is more than necessary to induce the owner to provide the housing, or provides a windfall or excessive profit to the owner. The final rule explicitly grants the HA discretion to refuse Section 8 initial rents that the HA deems excessive after considering other available subsidies for the project, and to require an initial rent below the reasonable rent otherwise allowed under the program.

Section 8 housing may benefit from federal tax credits allocated by State housing credit agencies. Section 102(d) of the HUD Reform Act of 1979 (42 U.S.C. 3545 and 3545 note) requires HUD to take into account other government assistance in determining the amount of Section 8 or other HUD assistance for ''any housing project.'' Before the HA commits assistance under the project-based certificate program, HUD or a State housing credit agency must certify that the combination of Section 8 and other governmental assistance for a project is not ''more than is necessary to provide affordable housing.''

Departmental regulations provide that in making a certification under Section 102(d), HUD will consider the aggregate amount of assistance from the Department and other sources that is ''necessary to ensure the feasibility of the assisted activity'' (24 CFR 4.13(a)). If HUD determines that the aggregate amount of assistance is more than necessary for this purpose ''the Department will consider all options available to enable it to make the required certification, including reductions in the amount of Section 8 subsidies'' (24 CFR 4.13(b)). To implement the limitation of Federal assistance for a project, HUD has issued administrative guidelines on the ''layering'' of governmental subsidies (59 FR 9332, February 25, 1994).

The proposed PBC rule would have provided that the initial rents to owner (contract rent) may not exceed the rents necessary to make the assisted activity feasible, after taking into account assistance from other government sources, and that the HA and owner must so certify. Comments object to the requirement for certification that this standard is met. The final PBC rule does not include this certification requirement.

The final PBC rule provides, at § 983.257(b), that:

> * * * the HA may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other Federal, State or local agencies, or with low income housing tax credits.

An owner may receive excessive benefit by combining Section 8 benefits with tax credit or other governmental subsidies. Excess aggregate subsidy may be eliminated by reducing Section 8 rents or by reducing tax credits or other governmental subsidies. On the one hand, a State housing credit agency may reduce the allocation of Federal tax credits. Alternatively, the HA may exercise its regulatory discretion to reduce initial Section 8 rents because of tax credits or other subsidies for the project.

IV. Maximum Subsidy

A. Purpose and Proposed Changes

HUD publishes the fair market rent (FMR) for each market area. The FMRs are estimates of the cost to rent standard existing housing. In the Section 8 certificate and voucher programs, the published FMR is generally the maximum subsidy for a family. However, HUD may approve an ''exception rent'' to allow a higher subsidy. The ''FMR/exception rent limit'' is the fair market rent or any HUD-approved exception rent. (§ 982.504, and definition of FMR/exception rent limit in § 982.4.) (In addition to the tenant-based programs, the exception rent requirements in § 982.504 also apply to PBC (§ 983.252(b)).)

For a regular tenancy in the certificate program, the FMR/exception rent limit is the maximum initial rent (§ 982.508(a); see also § 982.504(a)(2)). The initial rent may not exceed the FMR/exception rent limit either for the actual size of the unit rented, or for the ''family unit size''—the appropriate unit size for the family (§ 982.508(a)(2); § 982.402(c)(1)). Family unit size is determined under the HA subsidy standards (§ 982.402).

For a voucher or over-FMR tenancy, the FMR/exception rent limit determines the HA payment standard (maximum subsidy amount) (§ 982.505; see also § 982.504(a)(2)). For the voucher program, the payment standard may not exceed the FMR/exception rent limit (§ 982.505(b)(1)). For an over-FMR tenancy, the payment standard is the FMR/exception rent limit (§ 982.505(c)(1)).

Under the old certificate rule, an HA was permitted to approve exception rents up to 110 percent of published FMR for up to 20 percent of units in the HA certificate program. The HA did not need to ask HUD permission to approve such exception rents. In addition, HUD could approve certificate program exception rents for neighborhoods or special cases. In the voucher program, the HA could set a payment standard up to a HUD-approved exception rent for the whole HA jurisdiction. In this rulemaking, HUD proposed to eliminate the existing exception rent authorities, and to substitute a new uniform exception rent standard for the tenant-based programs.

Under the proposed and final rule HUD may approve an exception rent limit for part of the area covered by a published FMR. In all cases, the approved exception rent limit may not exceed 120 percent of the published FMR (§ 982.504(b)(1)(ii) of final rule)—the statutory exception rent limit. Within this limit, the final rule allows two alternative procedures for determining the maximum exception rent.

First, in accordance with prior practice and as provided in the proposed rule, the final rule provides that HUD may approve an exception rent that does not exceed the 40th percentile of rents to lease standard units in the exception rent area. Under this method, the 40th percentile rent is determined by the same method as is used to establish the published FMR for the whole FMR area.

Second, the final rule adds a new method for determining the maximum approvable exception rent. The final rule provides that HUD may approve an exception rent if the exception rent does not exceed the FMR times a fraction comprised of the median rent of the exception rent area divided by the median rent of the entire FMR area. For this purpose, HUD will use decennial census data and other available statistically valid information to determine the median rent for the exception rent area and FMR area (§ 982.504(b)(1)(ii)(B).)

The final rule also provides that HUD will not approve an area exception rent unless HUD determines that an exception rent is needed for either of two specific program reasons (§ 982.504(b)(1)(iii)):

—To help families find housing outside area of high poverty, or

—Because a high percentage of certificate or voucher holders have trouble finding housing for lease under the tenant-based program within the term of the certificate or voucher.

The total population of exception rent areas in an FMR area may not include more than 50 percent of the population of the fair market rent area (§ 982.504(b)(1)(iv)).

A HUD-approved area exception rent applies to any family that rents a unit with tenant-based assistance in a HUD-approved exception rent area (§ 982.504(b)(1)(i)). The rule does not limit the number of exception rent tenancies in these areas.

In addition, the final rule provides that for a regular certificate tenancy, the HA may approve an exception rent up to 120 percent of the published FMR, as a reasonable accommodation for a disabled family member (§ 982.504(b)(2)).

B. FMR/Exception Rent Limit: Comments

1. Certificate Program: Elimination of HA Exception Authority

Some comments argue that HUD should not change the old exception rent regulation. Other comments state that the new exception rent system is flexible and offers more choice for clients.

Comments object to losing the HA's 20 percent exception authority in the certificate program. Comments recommend increasing the percentage of exception units.

Comments complain that the new rule restricts HA flexibility. They state that an HA should retain discretion to allow FMR exceptions on a community-wide or unit-by-unit basis. The comments state that the old certificate system allows the HA to consider local market conditions and circumstances of participating families. The HA needs discretion to meet special needs or unusual circumstances. Sometimes the HA needs to grant an exception rent for a specific unit because of special family needs.

Comments suggest that an HA may reduce arbitrary variation in HA exception rent approval by adopting objective criteria for determining when to grant exception rents. The HA administrative plan should include provisions on HA approval of exception rents. Inclusion of HA exception rent policy in the administrative plan prevents arbitrary or abusive action by the HA.

Comments note that removal of HA exception rent authority hampers ability of certificate-holders to lease units. The HA loses landlords when the FMR is low and rents are high. A tight market forces tenants into poor neighborhoods. Under the old rule, an HA can use the 20 percent exception authority so program families can lease in new areas. However, an HA comment states that the HA does not allow exception rents since there are many units available under the FMR.

2. Over-FMR Tenancy

Some public comments concern the relation between exception rent limits on maximum subsidy, and the new rules that allow some certificate families to pay a higher rent. In this type of tenancy, the maximum subsidy is capped at the FMR limit, but the family can pay the owner rent that exceeds the FMR limit. (In the proposed rule, this is called an ''excess rent'' tenancy. In the final rule this is called an ''over-FMR'' tenancy.) By law, the HA may not approve such tenancies for more than 10 percent of ''incremental'' units in the HA program.

Comments state that the over-FMR tenancy is not an adequate substitute for the 20 percent exception rent authority. Over-FMR tenancies are limited to 10 percent of the HA program and families who can afford to pay more than the FMR. Poor welfare families will not qualify for excess rent tenancy. According to the comments, the over-FMR tenancy substitutes for the individual exception rent authority under old rule. An HA needs authority to approve higher rents for more than 10 percent of incremental units.

3. Exception Rent: HUD Approval

Comments note that the new rule requires HUD approval for all exception rents. The law does not require HUD approval for exception rents up to 10 percent over FMR. Comments claim that elimination of HA exception rent authority is contrary to law.

Comments state that communities should not be required to submit an unusual amount of data in requesting approval of an exception rent. An HA cannot afford to hire consultants for each FMR change.

Comments recommend a 30 day deadline for HUD to review an HA exception rent request. If HUD misses the deadline, the HA request should be automatically approved.

Comments ask HUD to clarify some aspects of the new exception rent system. HUD should specify that the new exception rent authority replaces the former HA authority to approve exception rents without HUD approval. HUD should explain how deletion of 20 per cent authority is phased-in, and whether prior approved exceptions are grandparented.

Comments note that the new system only allows an exception rent for a unit located in an approved exception rent area. The new system may eliminate incentive for an owner to improve property over the HQS.

4. Exception Rent: New Procedure

Comments state that the new exception rent procedure is too complex. The authority to approve an exception rent is not based on individual family circumstances. HUD should not require the HA to document the rent level representing a given percentile of the local market.

C. FMR/Exception Rent Limit: New Rule

1. Approval of Exception Rent

a. New rule. Fair market rents (FMRs) are published annually by HUD. An ''exception rent'' is a maximum rent subsidy in excess of the published FMR. Under the old rule, an HA was authorized to approve exception rents up to 110 percent of the FMR for up to 20 percent of units under the ACC (annual contributions contract between HUD and an HA).

The new rule (§ 982.504(b)) permits two types of exception rent:

—An exception rent for part of the FMR area. Such exception rents must be approved by HUD. Area exception rents apply to all three types of program tenancy: a regular certificate tenancy, a voucher tenancy and an over-FMR tenancy.

—For a regular certificate tenancy only, an exception rent granted by the HA as a reasonable accommodation for a person with disabilities.

b. Area Exception Rent. The final rule provides that an HA may request exception rent approval for a part of the fair market rent area designated as an ''exception rent area'' (§ 982.504(b)(1)). HUD may approve an exception rent for all units, or for all units of a given size (number of bedrooms), leased by program families in a HUD-approved exception rent area. However, the total population of exception rent areas in a fair market rent area may not include more than 50 percent of the population of the fair market rent area (§ 982.504(b)(1)(iv)).

The amount of the HUD-approved exception rent is subject to two restrictions. First, the exception rent may not exceed 120 percent of the published fair market rent (§ 982.504(b)(1)(ii)(A)). For a regular tenancy in the Section 8 certificate program, the maximum monthly rent is 120 percent of the published FMR (42 U.S.C. 1437f(c)(1)). In the voucher program, the payment standard must be ''based on'' the published fair market rent (42 U.S.C. 1437f(o)(1). Under the rule (§ 982.505), the 120 percent of FMR

limit is the maximum payment standard for a voucher or over-FMR tenancy.

Second, in addition to the 120 percent limit, the exception rent may not exceed a second limit, designed to test whether there is a need for higher rental subsidy in a proposed exception rent area. Under the proposed rule, HUD would have applied the same methodology that is used to determine the FMR for the whole FMR area. FMRs are currently set at the 40th percentile rent—the rent level that includes rents for 40 percent of standard quality units renting in the local housing market (§ 888.113(a)). When the proposed rule was published in February 1993, FMRs were set at the 45th percentile rent. The proposed rule would have provided that the exception rent may not exceed the 45th percentile rent as determined by the methodology used to determine the published FMR.

Under the final rule, the HUD field office may approve an area exception rent for a high-rent portion of the FMR area. HUD may use one of two alternative methods for determining the maximum area exception rent. The area exception rent may be based either: (1) on the 40th percentile rent for the exception rent area, or (2) on the relationship between the median rent of the exception rent area as compared with the median rent for the whole FMR area (§ 982.504(b)(1)).

Using the first method, the exception rent may not exceed the lower of:

—120 percent of the published FMR, or
—The 40th percentile rent for the exception rent area.

Using the second method, the exception rent may not exceed the lower of:

—120 percent of the FMR, or
—The published FMR times a fraction comprised of the median rent of the exception rent area divided by the median rent of the entire FMR area.

When the second method is used, HUD compares exception area median rent to median rent for the entire FMR area. The information needed for this comparison can be obtained easily from the decennial United States census. By contrast, information on the 40th percentile rent level relationships for the FMR and exception rent areas is not available in census publications or tabulations in the same detail used by HUD to compute the FMR.

Under the proposed rule and existing practice, an HA would have been required to submit survey data which justifies the HA's request for HUD approval of an exception rent. To secure exception rent approval, the HA would have been forced to gather and submit survey data showing the 40th percentile rent for the proposed exception rent area. The new rule relieves the HA of the obligation and burden of supplying rental survey data to support its request for exception rent approval.

The new rule provides instead that HUD may use decennial census data and other available statistically valid information to determine the median rent for the exception rent area and FMR area. HAs usually lack the resources and statistical know-how to conduct adequate rental surveys for determination of percentile rent. Moreover, the random digit dialing technique that is used to determine the FMR does not work well for parts of FMR areas because of the large number of calls, and therefore the associated high cost, that is required to obtain an adequate sample size for the exception rent area.

The determination that exception area rents are more expensive than rents for the FMR area as a whole (either by median rent comparison or by determination of the 40th percentile rent) does not itself show that there is a programmatic justification for a higher subsidy. The final rule (§ 982.504(b)(1)(iii)) provides that HUD will not approve an exception rent unless HUD determines that an exception rent is needed either:

—To help families find housing outside areas of high poverty, or
—Because a high percentage of certificate or voucher holders have trouble finding housing for lease under the program within the term of the certificate or voucher.

An area exception rent only applies if a family selects and rents a unit within a HUD-approved exception rent area (§ 982.504(b)(1)(i)). There is no limit on the number or percentage of area exception rent units in the HA program. However, the total population of exception rent areas in an FMR area may not include more than 50 percent of the population of the fair market rent area (§ 982.504(b)(1)(iv)).

c. Regular Tenancy: Accommodation for Person With Disabilities. The final rule (§ 982.504(b)(2)) provides that on request from a family that includes a person with disabilities, the HA must approve an exception rent of up to 120 percent of the fair market rent if appropriate as a reasonable accommodation for the needs of a such person arising from such person's disability. This authority to approve a higher rent only applies to a regular certificate tenancy, and does not apply to a voucher tenancy or over-FMR certificate tenancy.

2. Exception Rent: New Rule—HUD Response

HUD has not adopted the recommendation to retain the HA 20 percent exception authority in the old certificate rule, or to retain a broad authority for HAs to grant exception rents for neighborhoods or special cases. Instead, the rule is designed to apply a uniform and equitable exception standard for all areas and all cases (with a limited exception to accommodate the special needs of a person with disabilities). This standard is applied across the whole universe of the HA tenant-based programs—to establish the maximum initial rent to owner in a regular certificate tenancy, or the payment standard for a voucher or over-FMR tenancy.

Under the old voucher rule, HUD only allowed the use of ''community-wide'' exception rents to determine the voucher payment standard: certificate exception rents that apply to the whole HA jurisdiction. Under the new rule, the same exception rent limit applies for certificates and vouchers. For both tenant-based programs, and for any form of tenancy, HUD may approve an exception rent for a portion of the HA jurisdiction. Some comments support this change, noting that exception rents are critical to success of the certificate and voucher programs.

As noted above, some comments claim that elimination of the HA's 20 percent exception authority limits family opportunity to search for units in better areas—nearer to schools or jobs, and outside impacted areas with a high concentration of poor or minority families. However, under the new rule HUD may approve area exception rents so families can rent more expensive units in better areas. The granting of an area exception rent allows families to access decent units in the exception rent area. There is no percentage limit on the number of assisted families that may rent in exception rent areas.

In a regular certificate tenancy, the family may rent a unit up to the exception rent limit. Such rentals do not count against the statutory limit on the percent of certificate families paying in excess of the FMR/exception rent limit under an over-FMR tenancy.

HUD has not accepted a comment urging HUD to phase in elimination of an HA's 20 percent exception rent authority. There is no need for a phase-in since the new procedure does not reduce the subsidy for existing program tenancies. The new provision only applies to lease approvals after the regulation effective date. In the regular certificate program, the FMR/exception

rent limit only operates as a constraint on rent at the beginning of the lease term, but does not affect rent adjustments during the lease term. In a voucher or over-FMR tenancy, the family is protected against a drop of the payment standard during the lease term.

Under the new rule, HUD may approve an exception rent for a ''designated'' part of the FMR area. Comments state HUD should define what this means. HUD believes there is no need for further definition. Under the rule, HUD may designate any part of the FMR area.

The rule specifies that a designated exception rent area may not include more than 50 percent of the FMR area population. If there is a need for higher rents and subsidy in a larger portion of the FMR area, HUD will consider whether the available data indicate that HUD should adopt a higher published FMR, instead of adopting a higher ''exception rent'' for more than half of the FMR area.

V. Minimum Rent: Family Share of Rent

In the certificate and voucher programs the family must contribute at least 10 percent of gross income as rent for the unit (for certificates: 42 U.S.C. 1437a(a)(1) and 1437f(c)(3)(A); see also 24 CFR 5.613 (61 FR 54502, October 18, 1996); for vouchers: 42 U.S.C. 1437f(o)(2); see also § 982.507 (regular certificate tenancy); § 982.505(b)(2)(ii) (vouchers); § 982.505(c)(2) (over-FMR tenancy)). Comments state that HUD should raise the ''minimum rent'' from 10 percent of gross income to 14 percent.

HUD has not raised the minimum rent. The minimum rent percentage is determined by the statute.

For several years, temporary laws have provided that a Section 8 assisted family must pay a ''minimum monthly rent'': the minimum share of rent that is not covered by Section 8 subsidy (110 Stat. 40, sec. 402(a) of P.L. 104–99, 1/26/96, as amended by 110 Stat. 2892–2893, sec. 201(c) of P.L. 104–204, 9/26/96). The temporary minimum rent requirement applies in addition to standing statutory requirements that specify the amount of the rent a Section 8 (non-voucher) family is ''required to pay'' (42 U.S.C. 1437f(c)(3)(A)), and the amount of subsidy for a voucher family (42 U.S.C. 1437f(o)(2)). The Congress may extend temporary minimum rent requirements to future years. The rule is revised to provide for enforcement of minimum rents as enacted by the Congress.

In an *over-FMR tenancy,* the initial gross rent (rent paid to owner plus allowance for tenant-paid utilities) exceeds the FMR limit (§ 982.4). The final rule provides that the subsidy payment for an over-FMR tenancy may not exceed gross rent minus the minimum rent as required by law (§ 982.505(c)(2)(ii)). For a *regular tenancy,* the final rule provides that the subsidy payment equals the gross rent minus the higher of the total tenant payment or the minimum rent as required by law (§ 982.507(b)).

In a *voucher tenancy,* the subsidy payment may not exceed gross rent minus the minimum rent (minimum family share) (§ 982.505(b)(2)). In the voucher program, the minimum rent is the higher of (1) 10 percent of gross income (42 U.S.C. 1437f(o)(2)) or (2) a higher minimum rent as required by law. For each type of tenancy, the minimum rent requirement assures that the family must pay out-of-pocket at least a minimum share of actual rent during the course of the tenancy.

In the regulatory formula for determining the amount of subsidy in an over-FMR tenancy (§ 982.505(c)(2)), total tenant payment is deducted from the payment standard to calculate the maximum subsidy (payment standard minus total tenant payment). Minimum rent is deducted from the actual unit rent (gross rent) to determine the minimum family share. The actual subsidy for a family is the lesser of the amounts derived from these two calculations.

For a voucher or over-FMR tenancy, the assistance formulas also assure that the subsidy does not exceed the amount needed to support the actual reasonable rent for the unit. Subsidy may not exceed the difference between the ''gross rent'' and the minimum rent (§ 982.505(b)(2)(i) (voucher tenancy) and § 982.505(c)(2) (over-FMR tenancy)). ''Gross rent'' is the sum of the actual rent to owner and the HA allowance for tenant-paid utilities (definition at § 982.4). Rent to owner must be reasonable (§ 982.503(a)).

VI. Certificate Program: Over-FMR Tenancy

A. New Type of Tenancy

For the first time under this rule, some families in the certificate program may choose to rent units that rent for more than the fair market rent (FMR)/exception rent limit. In the proposed rule this type of tenancy was called an ''excess rent tenancy.'' In the final rule this type of tenancy is called an ''over-FMR tenancy'' (§ 982.4).

The name used in the proposed rule may be misleading, since the phrase ''excess rent tenancy'' suggests that the rent is excessive. By law and HUD regulation, rent paid to the owner must be reasonable—both in relation to comparable market rents and to family financial resources. Thus the rent may not be ''excessive.'' The phrase ''over-FMR tenancy'' better indicates that the family pays a rent that exceeds the FMR limit—the cap on gross rent in the regular certificate program.

By allowing a family to rent above the FMR/exception rent limit, this regulatory change enlarges the pool of available housing that can be rented by a family under the certificate program, and may enable the family to pick a unit that better fits the family needs. A family that enters an over-FMR tenancy pays more than the statutory formula rent (''total tenant payment'') that otherwise defines the family share of unit rent. However, as for all housing assisted in the certificate and voucher programs, the total rent to owner may not exceed the reasonable market rent. Moreover, as for all housing assisted in the certificate program, the fair market rent limit is the maximum initial subsidy. (The initial subsidy payment is the difference between the fair market rent limit and the formula rent paid by the family.)

In the final rule, the term ''regular tenancy'' is used to distinguish the basic form of certificate program tenancy used since the beginning of the certificate program from an ''over-FMR'' tenancy,'' newly authorized by this rule. A regular tenancy is defined as a certificate program tenancy ''*other than* an over-FMR tenancy'' (§ 982.4).

In a regular tenancy, the initial rent (the rent at the beginning of the lease term, including the HA allowance for tenant-paid utilities) may not exceed the FMR/exception rent limit. The family pays the portion of rent determined by the statutory formula (42 U.S.C. 1437f(c)(3)(A) and 1437a(a)(1)), generally 30 percent of adjusted income. The family is prohibited from paying a higher share of the rent. The subsidy covers the difference between the actual unit rent and the formula rent paid by the family.

Both in the voucher program and in an over-FMR tenancy in the certificate program, the family may rent a unit for more than FMR/exception rent limit. The family pays the portion of rent not covered by the HUD subsidy.

For a tenancy in the voucher program, the HA sets the maximum subsidy level, called the ''payment standard''. The payment standard may not exceed the FMR/exception rent limit. Unless HUD approves a lower percent, the payment standard may not be less than 80 percent of the FMR/exception rent limit.

For an over-FMR tenancy in the certificate program, the maximum subsidy equals the FMR/exception rent limit. (For any tenancy in the certificate and voucher programs, the actual subsidy payment generally equals the maximum subsidy minus 30 percent of the family's adjusted income.)

B. Over-FMR Tenancy: Comments

1. General Effect of Rule

Some comments welcome regulatory change to allow over-FMR tenancies in the certificate program. By permitting use of an over-FMR tenancy, the certificate program operates more like the voucher program. The over-FMR tenancy opens housing opportunities for program participants. The over-FMR tenancy helps families, including large families, that cannot find suitable units at rents under the FMR.

Comments state that the over-FMR tenancy removes the need for ''side payments'' by a family. (''Side payments'' are illegal family rental payments to a Section 8 landlord that exceed the tenant rent share (''tenant rent'') defined by federal law.) Comparability assures that rent paid to the owner is not excessive. Comments assert that the tenant-based programs need flexibility for higher rental payments.

2. Objections to Over-FMR Tenancy

Other comments object to the over-FMR tenancy. Comments state that HUD should not allow an assisted family to pay a higher share of family income. Authorization for the over-FMR tenancy casts the HA as a financial manager for the tenant. An over-FMR tenancy is not consistent with the low-income program. A tenant may overextend financially in agreeing to a higher rent. Family income may decrease after rental of the unit. The tenant may be forced to move. The HA will have a financial burden if a family is forced to move.

HA comment indicates that there may be little need to allow the over-FMR tenancy. An HA states that there are many units available within the FMR in the HA's local housing market. Because of deflation, Section 8 tenants have a wider choice of housing.

Comments state that the over-FMR tenancy encourages fraud, and non-reporting of family income by participants. Owners will try to collect extra money. The over-FMR tenancy will make owners greedy, and cause price escalation in tight markets. The over-FMR tenancy may be ''discriminatory.'' Landlords will favor over-FMR tenants. The permission to allow an over-FMR tenancy limits the ability of other families to find housing in the open market.

Comments state that the over-FMR tenancy will be an administrative burden. The HA must determine residual income, and track over-FMR tenancies. HA's cannot explain the over-FMR tenancy to families, and the families will not understand how such a tenancy works. The new rule will create a new certificate sub-program rather than simplifying administration by combining and conforming the certificate and voucher programs, the stated objective of the conforming rule.

C. Over-FMR Tenancy: 10 Percent Limit

1. Law

The law provides that an HA may not approve over-FMR tenancies (''excess rentals'') for more than 10 percent of ''incremental rental assistance'' (42 U.S.C. 1437f(c)(3)(B)(ii)). To implement this statutory restriction, the proposed rule would have provided that the number of over-FMR tenancies may not exceed 10 percent of ''incremental units'' in the HA certificate program. Incremental refers to additional program units not provided for families previously receiving Section 8 assistance.

2. Comments

Comments state that the HUD rule should not restrict the number of over-FMR tenancies in an HA program. HUD should not limit HA authority to approve over-FMR tenancies to 10 per cent of the HA's incremental units. The 10 percent limit is arbitrary and too low.

Comments also state that the same requirements should apply to certificates and vouchers. The certificate rule should follow the voucher program. In the voucher program, there is no limit on the number or percentage of units that rent above the voucher payment standard. The voucher program should be the model for a future combined tenant-based program. Different certificate and voucher limits on family share of rent confuse families and landlords.

Comments state that the rule should allow over-FMR tenancy for all families. The HA should not have to approve over-FMR tenancies on a unit by unit basis. Tenants and owners will not know if HA exception authority is available. Comments ask how an HA determines whether to approve a family's request within the 10 percent limit.

Comments note that the opportunity for an over-FMR tenancy opens up a tight housing market. Availability of over-FMR tenancy for all units would increase family opportunities. The 10 percent maximum restricts family choice. All families should have the same choice. An over-FMR tenancy permits a family to rent a single family dwelling instead of an apartment.

Comments state that there is no need for a 10 percent cap. Rent paid by a family must be reasonable and affordable. Allowing Section 8 assistance for an over-FMR tenancy does not increase the amount of HUD subsidy. The family pays the excess over FMR.

The meaning of ''incremental'' units is not clear, and should be stated in plain language.

Under the old rule, an HA could approve exception rents for up to 20 percent of units under ACC. However, over-FMR tenancies are only permitted for 10 percent of ACC units. Comments claim that the proposed rule reduces authority to grant exceptions from 20 percent to 10 percent of ACC. Comment asks if pre-rule exception rents count against the 10 percent limit.

3. HUD Response

HUD agrees with commenters that the 10 percent limit is an arbitrary restriction on the HA's authority to approve over-FMR rentals in the certificate program. As remarked in the comments, the opportunity for an over-FMR tenancy opens up new housing choices for an assisted family, but does not increase the maximum federal subsidy. HUD is, however, constrained by current law, under which such rentals may not exceed 10 percent of ''incremental'' units in the HA certificate program (see 42 U.S.C. 1437f(c)(3)(B)(ii)).

In HUD appropriations practice, incremental assistance generally refers to appropriated funding for units which increase the aggregate supply of federally assisted housing, as contrasted with continued funding for previously assisted units or families. The 10 percent limit is applied to the base of incremental units in the HA program. Under the proposed rule, the number of incremental units under the ACC (consolidated ACC) would be calculated by subtracting ACC units for families previously assisted under other Section 8 or *federal housing programs.* Under the final rule (§ 982.506(a)(2)), all certificate units are counted as incremental except units provided to replace units for which HUD provided tenant-based program funding designated for families residing in section 8 project-based housing.

D. Over-FMR Tenancy: Affordability of Rent (Maximum Family Share)

1. Law and Regulation

In a regular Section 8 certificate tenancy, a family must rent a unit below the FMR limit, and a statutory formula specifies the family share of the rent (called ''total tenant payment'') as a percentage of family income (42 U.S.C. 1437f(c)(3)(A) and 1437a(a)(1)). The family usually pays 30 percent of adjusted income toward the total unit rent.

In an over-FMR tenancy, a family may rent a unit over the FMR limit. The family pays a higher percentage of income towards the total unit rent than otherwise allowed by the statutory Section 8 rent formula. The law provides that a family may not enter an over-FMR tenancy (agree to pay more than 30 percent of income) unless the HA has determined that:

> * * * the rent for the unit and the rental payments of the family are reasonable, after taking into account other family expenses (including child care, unreimbursed medical expenses, and other appropriate family expenses). (42 U.S.C. 1437f(c)(3)(B)(i)(II))

The proposed rule would have provided, both for vouchers and for an excess rent (over-FMR) tenancy, that the initial family share of rent may not exceed half of a family's adjusted income. Under the proposed rule, the other half of family income must not be needed for rent, and remains available (as ''residual income'') for family expenses other than housing—including costs of food, child care, unreimbursed medical expenses and other appropriate family expense.

The final rule does not prescribe the percent or amount of residual family income that must be left over for non-housing expenses in an over-FMR tenancy. The HA decides how to implement the statutory test. The final rule grants the HA maximum authority to determine whether the family share of rent at the beginning of the lease term is reasonable. In making this determination, the HA must consider amounts remaining for other family expenses, such as child care, unreimbursed medical expenses, and other appropriate family expenses as determined by the HA (§ 982.506(b)(2)).

In the proposed rule, the residual income requirement would have applied to rentals under the voucher program, as well as over-FMR tenancies (called ''excess rent'' tenancies in the proposed rule) under the certificate program. In the final rule, the revised residual income requirement only applies for an over-FMR tenancy in the certificate program. There is no such statutory or regulatory requirement for rentals under the voucher program.

2. Comments

a. Objections to Affordability. Some comments object to the affordability (residual income requirement) for an over-FMR tenancy under the statute and proposed rule. These comments assert that the family should be allowed to pay a higher rent.

Comments object that the affordability test limits use of the over-FMR tenancy to families that can afford to pay the rent. The residual income requirement excludes families that are too poor to locate an affordable unit. HUD should not deny assistance for rental of a unit because a family would have to pay more than half of income for rent, if the family would have to pay even more on the private market.

The family should choose how much to pay for rent, and whether a unit is affordable. The HA should not be responsible for determining if the rent is affordable for the family. The family should have freedom of choice. The family should not be prevented from renting above the payment standard because the rent does not leave enough residual income for non-rental purposes. The family should decide its own priorities. The program should not decide maximum housing cost in relation to family income, and should not require rent reasonableness.

Comments state that the proposed 50 percent residual income requirement is arbitrary. The rule should not require that participant has 50 percent for other costs. If an HA believes the family cannot afford the unit, the HA should counsel the family.

Comments also indicate that the HA cannot enforce the residual income requirement. Residents will choose units beyond their means. A residual income requirement is not needed since the HA performs rent reasonableness. Other comments urge that HUD should not require either affordability or rent reasonableness.

b. Defining Affordability. Comments argue that the HA should limit the rent paid by a family. The HA should not approve a unit unless the family can afford the rent.

Some comments favor a residual income test that prevents a family from renting a unit if the family will not have income to cover other everyday living expenses. A family needs residual income for other non-rent family necessities. A residual income test avoids problems between the tenant and owner. A tenant who cannot afford the rent may break the lease.

Comments express different views on the appropriate test of residual income. Some comments indicate that an HA should have discretion whether to approve an over-FMR tenancy if a family is paying more than half of income for rent. Other comments state that the rule should not allow rent over 50 percent of income. Comments welcome the proposed change requiring that a voucher family must have 50 percent residual income after payment of its rent.

Comments state that a family should not be permitted to pay as much as 50 per cent of income (adjusted income) for rent. A family paying 50 percent (of gross income) would qualify for statutory federal preference in admission to assisted housing. (Note: federal preference requirements have been suspended.) Comments state that it is disturbing and absurd to provide federal preference for admission of a family with a 50 percent rent burden, but allow a program rent burden exceeding 50 percent. Comments note that a family that qualifies for rent burden preference (because rent is more than 50 percent of income) cannot meet the residual income test unless the family moves or rent is reduced.

Comments recommend that HUD should allow an HA to:

—Limit maximum rents: Rent cannot exceed 10 or 20 percent over the FMR/exception rent.

—Require affordability: Rent cannot exceed 50 percent or 40 per cent of adjusted income.

c. Affordability: Other Comments. Comments state that the regulatory affordability test should consider family payments for taxes and social security. HUD adjusted income does not reflect tax payments. Families pay a higher percent of ''real'' (after tax) income for rent. On the other hand, comments note that adjusted income does not count all family resources, such as student loans.

Comments state that there should be a uniform affordability policy for certificates and vouchers. The same limit should apply for both tenant-based programs. Comments object to HUD's proposal to apply a residual income test in the voucher program, as well as an over-FMR tenancy in the certificate program.

The rule should clarify what happens if family does not maintain required residual income.

Comments note that the affordability test is an administrative burden for the HA. The affordability (residual income) requirement is confusing.

3. How HA Determines Affordability

Program subsidy pays a part of the rent. The balance is paid by the family. To decide, as required by law, whether the family can afford the housing, the HA must examine whether the family share of the rent (''rental payments of the family'') is reasonable in relation to family resources and other family expenses. By contrast, the rent reasonableness test examines whether the rent paid to an owner is reasonable in relation to market rents for comparable units, not whether the rent is reasonable for an individual assisted family.

The final rule (§ 982.4) adds the defined term ''family share'': ''the portion of rent and utilities paid by the family''. Family share is calculated by subtracting the housing assistance payment from the gross rent (rent to owner plus any utility allowance) (§ 982.515(a)).

The term ''family share'' replaces the equivalent term ''tenant contribution'' in the proposed rule. Gross rent is the total of rent to owner plus any allowance for tenant paid utilities. Family share is the family-paid portion of gross rent. The definition of family share as including tenant-paid utilities is consistent with the traditional use of gross rent to determine the family rent contribution (total tenant payment) for Section 8 or public housing.

The rule provides that the HA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share (§ 982.515(b)). Payment of the family share is the responsibility of the family.

The proposed rule prescribed a specific formula for an HA determination that family rental payments are ''reasonable.'' The proposed rule would have provided that the family share of rent (tenant contribution) must leave at least 50 percent of adjusted income to meet other family expenses (''residual income''). In the proposed rule, this requirement would have applied both to an over-FMR tenancy, and to a voucher tenancy.

The final rule (§ 982.506(b)(2)) essentially tracks the statutory requirement. The HA may not approve an over-FMR tenancy unless the HA determines that the initial family share is reasonable.

> In making this determination, the HA must take into account other family expenses, such as child care, unreimbursed medical expenses, and other appropriate family expenses as determined by the HA.

The final rule does not dictate any specific formula or procedure for determining that the family will have enough money left over for non-rent expenses. The HA has discretion to develop an appropriate procedure.

Under the proposed and final rule, the requirement to determine that the family share of rent does not absorb an unreasonable share of family income only applies at initial HA approval of an over-FMR tenancy. The HA does not repeat this determination during the course of the assisted tenancy. By contrast, the rent reasonableness requirement (to determine that rent paid to owner does not exceed comparable market rents) applies both at initial lease approval and during the course of the assisted tenancy.

In the proposed rule, the requirement to assure that the family rent burden is reasonable would have been applied to the voucher program, as well as to an over-FMR tenancy in the certificate program. Under the final rule, the requirement is only applied to approval of an over-FMR tenancy, as required by law.

E. Over-FMR Tenancy: Amount of Subsidy

1. Comments

In a voucher or over-FMR tenancy, the ''payment standard'' is the maximum subsidy for a family. In an over-FMR tenancy, the payment standard is the FMR limit (''FMR/exception rent limit''). In a voucher tenancy, the HA sets the payment standard. Generally, the voucher payment standard must be in the band from 80 percent to 100 percent of the FMR limit.

Comments note that the voucher payment standard may be less than the FMR limit. Consequently the maximum subsidy in the voucher program may be less than the maximum subsidy for an over-FMR tenancy. Comments state that the same payment standard should be used for an over-FMR tenancy and a voucher tenancy. An HA should not allow over-FMR tenancies in its certificate program unless the voucher payment standard equals the FMR. Otherwise over-FMR tenancy families will get a bigger subsidy in the same kind of program.

In the regular certificate program, owner rents are adjusted annually by applying the annual adjustment factor (AAF) that is published by HUD. In the proposed rule, HUD proposed to adjust the subsidized rent for an over-FMR tenancy in the same way, by applying the published AAF. However, comments state that the proposed calculation of adjustment for an over-FMR tenancy is too complicated. Comments ask HUD to streamline the method of calculating subsidy adjustments.

2. HUD Response

For an over-FMR tenancy, the new rule provides that the payment standard is always set at the FMR/exception rent limit during the lease term (§ 982.505(c)(1)). For an over-FMR tenancy, unlike a voucher tenancy, the HA may not set a payment standard below the FMR/exception rent limit.

In a regular certificate tenancy, the FMR/exception rent limit only restricts rent at the beginning of the lease term. In such a tenancy, the FMR does not limit or affect subsequent adjustments of the rent to owner (by application of the published annual adjustment factor at the annual anniversary). Under the proposed rule for an over-FMR tenancy, the FMR/exception rent limit would have been applied in the same fashion—solely as a limit on subsidized rent at the beginning of the lease term. The FMR/exception rent limit would not have affected later adjustments by application of the AAF during the term of the lease.

Under the final rule, the FMR/exception rent limit determines the amount of the payment standard for an over-FMR tenancy, both at initial leasing and over the course of the assisted tenancy. HUD believes that this is a simpler and more readily understandable way to adjust the amount of assistance. For an over-FMR tenancy, the amount of subsidy is always set at the program limit. As in the voucher program, the maximum subsidy is treated as a ''payment standard,'' and the same rules apply to determination of payment standards for a voucher or over-FMR subsidy (§ 982.505(d)). In this way, the rule gives parallel treatment of subsidies for over-FMR and voucher tenancies. In both forms of tenancy, a family may choose a unit renting for more than the maximum subsidy, and the family's share of rent is not fixed.

3. How Subsidy Is Adjusted

Under the Section 8 statute, HUD has discretion to determine a system for adjusting the subsidized rent over the life of an assistance contract. The system for adjustment of rents may provide for annual adjustments:

> * * * to reflect changes in the fair market rentals established in the housing area * * * or, if the Secretary [of HUD] determines, on the basis of a reasonable formula. (42 U.S.C. 1437f(c)(2)(A))

In a regular certificate tenancy, the rent to owner (formerly called ''contract

rent'') is adjusted each year of the lease. Under the HUD-determined ''reasonable formula,'' the old rent to owner (contract rent) is multiplied by a HUD-published factor. (See 24 CFR, part 888, subpart B.) The adjusted rent may not exceed the reasonable rent for a comparable unassisted unit (42 U.S.C. 1437f(c)(2)(C)).

In this rulemaking, HUD proposed to adjust the subsidized rent (maximum subsidy) for an over-FMR tenancy in the same fashion as for a regular tenancy—by applying the published annual adjustment factor (AAF) to the subsidized rent for the prior year. As for a regular tenancy, the adjusted subsidized rent for an over-FMR tenancy would not exceed the reasonable rent. Thus under this proposed system, the amount of the rental subsidy would be identical for a regular tenancy and for an over-FMR tenancy, both at initial leasing and over the course of the tenancy. However, in the case of an over-FMR tenancy, the family may pay the amount by which the actual rent to the owner exceeds the FMR/exception rent limit (42 U.S.C. 1437f(c)(3)(B)).

In the final rule, HUD has adopted a different formula to adjust the subsidy for an over-FMR tenancy in the Section 8 certificate program (§ 982.505(c)(2)). For an over-FMR tenancy, the housing assistance payment equals the lesser of:

(1) The applicable over-FMR payment standard (i.e., the FMR/exception rent limit) minus the total tenant payment (the statutory formula rent), or

(2) The monthly gross rent (rent to owner plus utility allowance for any tenant-paid utilities) minus any minimum rent required by law.

This new HUD adjustment formula meets both of the alternate statutory standards for adjustment of Section 8 subsidized rents (42 U.S.C. 1437f(c)(2)(A)). Subsidy is adjusted in accordance with a HUD-determined ''reasonable formula.'' Under the formula, changes in the over-FMR payment standard are based on ''changes in the fair market rentals'' for the area.

F. Over-FMR Tenancy: Other Comments

1. HA Discretion

The proposed rule would have provided that an HA is not required to approve an over-FMR tenancy. Comments argue that an HA may not refuse if a family asks the HA to approve an over-FMR tenancy that satisfies statutory conditions (rent is reasonable, rent payments are reasonable for the family, and the number of such tenancies does not exceed 10 percent limit of the HA's incremental units).

In HUD's view, the choice to approve an over-FMR tenancy in the HA program generally, or in a particular case, rests with the HA. The language of the law explicitly allows the HA to ''approve'' family requests that meet the statutory conditions, and therefore vests in the HA the discretion whether or not to approve such requests in any or all cases (42 U.S.C. 1437f(c)(3)(B)). The law provides that the family ''may pay'' a higher rental contribution if the HA has granted approval of an over-FMR tenancy. In this way, the statute merely grants permission for the HA to approve an over-FMR tenancy in which the assisted family will ''pay a higher percentage of income'' than specified in the statutory Section 8 rental formula.

The final rule (§ 982.506(a)(1)) provides that the HA ''may approve'' an over-FMR tenancy at the request of a family. Generally, the HA is not required to approve any over-FMR tenancy (§ 982.506(a)(2)). However, the HA must approve an over-FMR tenancy in accordance with program requirements if needed as a reasonable accommodation for a person with disabilities.

2. Administrative Fee

Comments state that HUD should consider the HA's burden of administering over-FMR tenancies in setting the administrative fee.

This rule does not establish procedures for determining the HA administrative fee. Currently, administrative fees are calculated in accordance with permanent requirements enacted in the fiscal year 1997 HUD appropriation act (section 202, Pub.L. 104–204, 110 Stat. 2893–2894). (See also 62 FR 9488, March 3, 1997.)

Comments state that HAs need to educate families and the public about the over-FMR tenancy. Otherwise people will believe that the program is illegal. HUD agrees that HAs should provide information on over-FMR tenancies and other aspects of the program.

VII. Voucher Tenancy: Payment Standard

A. Voucher Payment Standard

1. Setting Payment Standard

In a voucher tenancy, as in a certificate over-FMR tenancy, the maximum monthly subsidy is based on the HA's ''payment standard'' (§ 982.505). In both cases, the assistance payment generally equals the difference between the payment standard and 30 percent of adjusted income.

In the voucher program, the HA establishes the amount of the payment standard. Under the old rule, the HA was required to set a payment standard within the band from 80 percent to 100 percent of either: (1) the published fair market rent (for each FMR area and unit size) or (2) the ''community-wide'' exception rent (i.e., a HUD-approved exception rent for the whole HA jurisdiction).

The proposed rule would have removed the 80 percent minimum. The proposed rule would have permitted the HA to establish a payment standard at any level below the FMR/exception rent limit (including HUD-approved exception rents) in effect when the payment standard is adopted. The final rule provides that an HA must ask HUD approval to establish a payment standard below 80 percent of the FMR limit (§ 982.505(b)(1)(ii)).

2. Minimum and Maximum Payment Standard: Comments

Some comments state that an HA should have discretion, as provided in HUD's proposed rule, to set the HA's voucher payment standard at any level below the FMR. HUD should not set a minimum payment standard.

However, other comments argue that HUD should require a minimum payment standard. The HA should not be allowed to set its voucher payment standard below 80 percent of the FMR. According to the comments, removing a federal minimum reduces subsidy, and harms families with the lowest income. If rent exceeds the FMR, the family pays more than 30 percent of income for rent. Reducing subsidy below the FMR increases the gap between the HA payment standard and the actual rent. The lowest income poor may not be able to cover the gap and obtain decent housing.

Comments state that if an HA lowers its voucher payment standard, an assisted family will not be able to afford the rent in spite of the housing subsidy. A low payment standard limits housing choices of assisted families. Elimination of a minimum voucher payment standard deprives participant families of the opportunity to rent decent, safe and affordable housing.

Comments also note that if HUD removes the Federally required minimum payment standard, HAs may try to stretch voucher dollars too far. Rent burdens could rise closer to 50 percent of family income, than to 30 percent of income.

Comments state that HUD should either set the minimum percent of FMR

that can be used as the voucher payment standard, or prohibit an HA setting the payment standard at a level that makes housing unaffordable to the poorest families. HUD should not allow a payment standard below the amount needed to afford decent housing in a local market.

Comments argue that the HA should be required to set the voucher payment standard at the FMR. A lower voucher payment standard has a segregative effect. The voucher program should use the same payment standard as for an over-FMR tenancy in the certificate program. For both types of tenancy, the same standard should determine the point at which a family pays more than 30 percent of income as the family share of rent.

Comments state that setting the voucher payment standard to conform with the FMR would permit more efficient and consistent program administration.

Comments state that HUD should clarify if an HA may automatically adjust payment standards when FMRs increase or decrease, or must perform a ''convoluted analysis.'' The HA should be allowed to set its payment standard up to the current FMR without the need to obtain HUD approval or to submit rent studies or documentation. Increases in the FMR have already been studied and approved by HUD.

3. Minimum and Maximum Payment Standard: HUD Response

After consideration of public comments, HUD has decided to retain the restriction, absent special HUD approval, against setting the voucher payment standard below 80 percent of the FMR/exception rent limit. An HA's voucher payment standards must be ''based on'' the fair market rent (42 U.S.C. 1437f(o)(1)), which represents HUD estimate of the amount needed to rent decent housing in the local market. The level of the voucher payment standard may not be wholly disconnected from the fair market rent limit.

Under current procedures, FMRs are set at the ''40th percentile rent'' (§ 888.113). Forty percent of units in the local market rent below the FMR. By setting a payment standard below the FMR, an HA reduces the percentage of units that can be rented below the payment standard. At a given rent, a reduction of the payment standard reduces the assistance payment, and therefore increases the share of rent that must be paid by an assisted family. A reduction of the payment standard therefore either limits family choice of rental housing in the local market, or increases family rent burden.

To assure that the voucher standard is ''based on'' the FMR, and does not unduly limit family housing choice, HUD has decided to retain the 80 percent minimum. The HA may, however, request approval of a payment standard below this amount. HUD may then consider whether the proposed payment standard level allows a reasonable housing choice in the local market, and bears a reasonable relation to the published FMR.

B. Shopping Incentive

1. Comments

In the regular certificate program, a participant family does not have an economic incentive to shop for a lower rent unit. The subsidy covers the actual rent paid to the owner (up to the FMR), and any reduction in rent reduces the amount of the subsidy. In the voucher program, however, the payment standard, not the actual unit rent, determines the amount of subsidy (except in cases when the so-called minimum rent limits the amount of subsidy). A lower rent to the owner generally does not reduce the amount of the subsidy. In the voucher program, the family has an incentive to shop for a cheaper unit.

Comments express different views on the value of a shopping incentive in the tenant-based programs. Some comments approve use of a shopping incentive, and recommend a shopping incentive for both the certificate and voucher programs. A participant should be rewarded for renting a less expensive unit. Other comments criticize the voucher shopping incentive, and assert shopping incentive should be eliminated or restricted. Comments suggest that shopping incentive should be treated the same way in the certificate and voucher programs. HUD should include or exclude shopping incentive in both programs.

Comments claim that the shopping incentive does not work. Comments state that voucher families do not shop for lower rents. Voucher families seek higher-priced housing in safer neighborhoods with better schools. The shopping incentive is paid largely to in-place families who do not shop for new apartments. The shopping incentive is inequitable, costly, and wastes subsidy resources. The voucher shopping incentive should be either eliminated or granted only to families that actually move to housing renting below the payment standard.

Under the voucher formula, the maximum assistance payment for a family is determined by an HA-established payment standard, rather than actual rent of the assisted unit (42 U.S.C. 1437f(o) (1) and (3)). For this reason, a lower rent generally does not reduce the amount of subsidy. (In some cases, a family that rents a unit substantially below the payment standard must pay a minimum share of the rent.)

Comments note that in the certificate program, subsidy is limited according to the size of unit actually rented by family. Comments recommend that this principle should also apply in the voucher program.

A comment acknowledges that a form of voucher shopping incentive is required by federal law. The comment proposes, however, that HUD delete the regulatory shopping incentive not required by the law. Under the old voucher rule, the amount of subsidy is based on size of the assisted family, not the size of the unit actually rented by the family. The comment contends that the old regulatory system in the voucher program is wasteful and inequitable. In the certificate program, a family pays the same contribution even if it rents a smaller unit. The landlord only receives rent for the size of unit actually rented by family. In the voucher program also, a family should receive subsidy for the unit size actually rented by the family.

2. HUD Response

Since the beginning of the certificate program, the Section 8 subsidy has been based on rent for the unit finally selected by a family, even if the family could have elected to rent a bigger unit within the appropriate FMR for the family size. The certificate assistance covered the actual rent for the unit selected, within the FMR for the actual size of the unit selected. In the second phase of the conforming rule, published on July 3, 1995, this principle was extended to the voucher program. In describing principles governing use of the HA ''subsidy standards'' (HA policies governing the appropriate subsidy for the family size and composition), the 1995 rule provides that the voucher payment standard may not exceed the payment standard for the unit rented by the family (§ 982.402(c)(2)).

This final stage of the conforming rule states the formulas for determining the amount of assistance in a regular certificate tenancy, and for a voucher, or an over-FMR tenancy. For all three types of assistance, the subsidy may not exceed the maximum subsidy ''for the unit size rented by the family'' (§ 982.508(a)(2)(ii) (regular tenancy);

(§ 982.505(d)(2)(ii)) (voucher or over-FMR tenancy).

In the final rule, a common provision describes how to determine the payment standard for either a voucher tenancy or an over-FMR tenancy (§ 982.505(d)(2)). The payment standard for a family is the lower of:

—the payment standard for the family unit size, or

—the payment standard for the unit size rented by the family.

VIII. Family Size: Effect on Amount of Subsidy

A. General

An HA adopts standards (''subsidy standards'') to determine the number of bedrooms for a family. ''Family unit size'' is the appropriate number of bedrooms for a family under the HA subsidy standards. The family unit size is used to determine the maximum rent subsidy for a family.

The HUD rule describes how family unit size determines the maximum rent subsidy for a family in the certificate or voucher program (§ 982.402(c); definitions of ''family unit size'' and ''subsidy standards'' in § 982.4). (These rules were contained in the second phase of this conforming rule, published 60 FR 34660, July 3, 1995). Under these existing rules, the subsidy for a family in the certificate or voucher program is the lower of the appropriate subsidy (1) for the size and composition of a particular family (family unit size); or (2) for the particular unit size rented by the family (§ 982.402(c)). The same principle is applied and clarified in this rule, and is extended to calculation of subsidy for an over-FMR tenancy.

In calculating a family's subsidy for a voucher tenancy or over-FMR tenancy, the payment standard is the lower of: the payment standard for the family unit size, or the payment standard for the unit size rented by the family (§ 982.505(d)(2)). This rule applies to each determination and redetermination of the applicable payment standard during the course of a voucher or over-FMR tenancy.

In a regular tenancy under the certificate program, the FMR/exception rent limit is the lower of the FMR/exception rent limit for the family unit size, or the FMR/exception rent limit for the unit size rented by the family (§ 982.508(a)(2)). For a regular tenancy, the FMR/exception rent limit is the maximum gross rent (and therefore the maximum rent to owner) at the beginning of the lease term. The initial rent to owner is the base for subsequent rent adjustment at each annual anniversary. The FMR/exception rent limit does not otherwise affect rent adjustments during the course of a regular tenancy.

B. Space for Live-in Aide

With HA approval, a live-in aide may reside in the unit to provide necessary supportive services for a member of the assisted family who is a person with disabilities (see § 982.316). In previously published provisions, the conforming rule provides that a live-in aide must be counted in determining the family unit size under the HA subsidy standards (§ 982.402(b)(6)). Thus the maximum subsidy increases so that the family can rent a unit with additional space for the live-in aide. In this phase of the conforming rule, the rule specifies that this general principle also applies when a person with disabilities chooses to reside in certain special housing types: congregate housing (§ 982.608(b)); a group home (§ 982.613(c)(1)(ii)); shared housing (§ 982.617(c)(3)); or a cooperative (§ 982.619(d)(2)).

IX. Over-FMR or Voucher Tenancy—Payment Standard: Changes in Subsidy During Tenancy

A. How Assistance is Adjusted

In a regular certificate tenancy, rent to owner is adjusted *at each annual anniversary* during the lease term (§ 982.509). Under the proposed rule, HUD would have used the same system to adjust HUD subsidy for an over-FMR tenancy. On each contract anniversary, the amount of subsidy would have been adjusted by applying the most recent adjustment factor published by HUD.

Under the final rule, the amount of the monthly assistance payment for an over-FMR tenancy is adjusted by the same system used for a voucher tenancy.

For a voucher or over-FMR tenancy, the amount of the monthly subsidy (assistance payment) for a participant family is the amount by which the HA ''payment standard'' exceeds the family contribution (as determined by statute and rule for each program). The payment standard is the lower of the appropriate payment standard for the family size or for the unit size actually rented by the family (§ 982.505(d)(2); § 982.402(c)(2)).

The final rule provides (§ 982.505(d)(4)) that the payment standard used to compute the subsidy during the lease term is the *higher of:* (1) the *current* payment standard, or (2) the *initial* payment standard minus any drop in rent to owner. The current payment standard is the payment standard amount determined at the most recent regular HA reexamination. The initial payment standard is the payment standard determined when the HA approves the lease (before the beginning of the lease term). If rent to owner drops during the term, the rent decrease is subtracted from the initial payment standard. Thus this amount equals the initial payment standard *minus* any amount by which the initial rent to owner exceeds the current rent to owner.

B. Protecting Family Against Drop in Subsidy

Under existing requirements for the voucher program, a participant family is protected against a drop in the monthly subsidy during the lease. The payment standard may rise (for example, if there is an increase in the published FMR). However, if family composition does not change, the payment standard may not fall below the HA payment standard at the beginning of the lease term. When deciding whether to lease a unit at the rent demanded by an owner, a family can count on receiving a subsidy calculated from the same (or higher) payment standard during the term of the lease, though the subsidy may decrease if there is a change in family composition or the family decides to move to another unit.

In an over-FMR tenancy, the payment standard for each unit size is the FMR/exception rent limit. In the voucher program, the HA may set its payment standard for each unit size at 80 to 100 percent of the FMR/exception rent limit. For a voucher or over-FMR tenancy, the payment standard for the family is the higher of (1) the payment standard at the beginning of the lease term (minus the amount of any actual drop in the rent to owner during the course of the tenancy) or (2) the payment standard determined at the most recent regular reexamination (§ 982.505(d)(4)).

In an over-FMR or voucher tenancy, the family must pay out-of-pocket any rent in excess of the payment standard. In deciding whether to lease at a given rent, the family needs assurance that the HA assistance payment will not fall during the term of the tenant's lease because of reductions in the payment standard. Under this rule, the family is protected against a drop in the payment standard during the lease term. The payment standard that is used to calculate the family's assistance does not drop below the HA payment standard in effect *at the time the lease is approved.*

During the tenancy, a family is largely insulated against a decrease in voucher or over-FMR subsidy because of a decrease in the applicable HA payment standard. In the final rule, this

protection is modified by reducing the subsidy to the extent of any actual decrease in the rent to owner since the beginning of the tenancy.

Most often, rent to owner decreases if there is a general fall in market rents, and if rent to owner is reduced by enforcement of market comparability at the annual anniversary. This rule provides that the HA must redetermine comparability if there has been a five percent decrease in the FMR in effect 60 days before the contract anniversary as compared with the FMR in effect at the prior contract anniversary. Rent to owner may also decrease in accordance with the terms of the lease, or because rent is reduced by local rent control or some other binding requirement. Regardless of the cause of any reduction in the rent to owner, the actual amount of the rent reduction is deducted from the amount of the initial payment standard in calculating the current payment standard.

The family is protected against a fall of the payment standard during the term of the lease. On the other hand, however, the payment standard for the family rises if the HA payment standard at the time of regular reexamination is higher than the HA payment standard at the beginning of the lease/contract term. If the family enters a new assisted lease (for the same or a different unit), the payment standard for the family is then conformed to the current HA payment standard in effect when the new lease is approved. The family is only protected against a fall in the HA payment standard during the HAP contract term.

C. When Payment Standard Changes

Comments state that an HA should only change the payment standard at the annual recertification. The HA should not change the payment standard as soon as there is a change in the family size.

Under the payment standard formula in the final rule, the payment standard is adjusted if there is a change in the payment as determined at the most recent ''regular'' reexamination, the annual recertification of family income and composition.

X. Regular Tenancy—Rent to Owner: Annual Rent Adjustment During Tenancy

A. Comments

Some comments approve allowing downward adjustment of certificate program contract rents—now called ''rent to owner.'' An HA should adjust rent as market conditions change.

Other comments object to decrease of contract rent by annual adjustment. Generally, a conventional landlord does not lower rent on an ongoing lease. Conventional rents increase or remain steady. The comments claim that negative rent adjustments are a disincentive to owner participation. The owner runs a risk of rent reduction. If area rents are falling, Section 8 rent to owner should not increase by application of the AAF. However, rents should not be reduced. Rent reasonableness should be used to control excess rents, rather than adjustment by a negative AAF.

The new rule deletes the old provision that prohibited annual adjustment below the initial rent (at the beginning of the lease term). Comments state that this change will discourage owner participation. The rule should not permit adjustment below the initial rent.

Comments recommend that so long as rent is reasonable, rent should be adjusted up to the FMR exception rent limit at time of adjustment. The increase in the FMR is greater than the AAF. Because of the AAF system, an HA cannot approve adjusted rent that is reasonable and within the FMR.

The rule provides that an owner must request an annual adjustment at least sixty days in advance (§ 982.509(b)(5)). Adjustments are not retroactive. The annual adjustment for a contract anniversary must be requested at least sixty days before the next anniversary (§ 982.509(b)(6)).

Comments ask HUD to clarify requirements concerning an owner request for adjustment. An HA points out that the requirement to submit a written request for rent adjustment is burdensome, and creates paperwork for administration of the program. The HA prefers to contact owners personally or by telephone. Other comments state that the rule should require an HA to give an owner advance notice of an available increase in rent, and that the increase must be requested in writing. Rules that deny owner rent increases because of their lack of sophistication contribute to growing owner hostility. Because of such hostility, families experience greater difficulty locating housing. Comment suggests that an owner should be permitted to terminate the tenancy if dissatisfied with the adjustment.

Some comments assert that annual adjustments should only be granted when the owner requests. HUD should require written notice of rent increases (both in the certificate and voucher programs). This requirement would reduce confusion for landlords with tenants in both programs. Requiring an owner to give notice of a rent increase may delay or reduce rent increase requests. Another HA currently requires the owner and tenant to submit request for lease approval 60 days before the anniversary date. By this process, an HA can determine if a proposed rent increase is consistent with the annual adjustment factor and rent reasonableness.

Comments state that an adjustment should be effective a month after the HA receives the owner's written request. The owner should not receive a retroactive adjustment. Other comment says that owners will object if adjustment is not retroactive when the owner request is late. The current regulation causes incredible paperwork processing rent increases.

Comments recommend that the rule should state whether HA is allowed to supply forms for requesting adjustment.

B. New Rule

In a regular certificate tenancy, rent to owner is adjusted each year. The new rule provides (§ 982.509(b)) that the adjusted rent is the lower of:

—The pre-adjustment rent (minus any previously approved special adjustments) multiplied by the annual adjustment factor (AAF) published by HUD, or

—The reasonable rent.

Rent to owner may be increased or decreased by applying the two elements of the regulatory adjustment formula (§ 982.509(b)(3)).

An AAF may be positive or negative. The published AAF for the area is based on objective data concerning changes in residential rental costs for the area (see 60 FR 12594, March 7, 1995). In addition, the adjusted rent may not exceed the reasonable rent for comparable units rented on the private unassisted market.

HUD has not adopted recommendations to hold owner harmless against a rent decrease either because of a negative published factor (however rare), or because the market rent is less than rent adjusted by the formula factor. The regulatory adjustment formula for a regular certificate tenancy is a reasonable basis for determining changes in rent to owner during the assisted lease, and thereby determining the appropriate amount of Federal subsidy.

For a regular tenancy, the family does not negotiate the procedure for adjusting rent received by the owner. Changes in rent are not controlled by normal constraints of the private unassisted market. The family's share of the rent is determined by the amount of family income, and is not affected at all by the amount of the adjusted rent to owner.

The family therefore lacks any incentive to limit the rent paid to the owner from HA assistance payments.

For this reason, the program must supply another formula to determine rent adjustments during the assisted tenancy. The adjustment formula in this rule substantially restates the formula successfully used since the beginning of the Section 8 certificate program (with some technical modifications). Section 8 rents must provide an adequate incentive for participation by private owners at competitive private market rents. In general, massive participation by private landlords shows that existing certificate rent mechanisms, including procedures for adjustment of owner rent, have largely afforded adequate compensation for private landlords. In addition, HUD believes that the procedures for determining initial rent and rent adjustments reflect a reasonable balance between rents that open housing opportunities for program participants, and limitations to maximize the number of families assisted with available funds.

In the final rule, HUD has revised proposed language that states when an owner must request an annual adjustment. The proposed rule would have provided that the rent will only be increased prospectively, and that an increase for any anniversary date must be requested by the next anniversary. These provisions are modified to allow at least sixty days for HA action on the owner request.

The owner must give the HA written notice requesting an increase in the rent (§ 982.509(b)(4)). The rent is not increased unless the owner has complied with the HAP contract. To receive a rent increase, the request must be submitted at least sixty days before the increase is effective, and at least sixty days before the next annual anniversary (§ 982.509(b)(5) and (6)).

XI. Regular Tenancy—Rent to Owner: Special Rent Adjustment During Tenancy

A. General

In a regular certificate tenancy, rents are adjusted annually by a published factor. If formula adjustments are not sufficient, HUD may approve additional increases in the rent to owner. Such increases are called ''special adjustments.'' By law (42 U.S.C. 1437f(c)(2)(B)), HUD has discretion to approve special adjustments:

> * * * necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by [formula adjustments] * * *.

In accordance with the law, the rule provides that special adjustments may only be granted because of ''substantial and general increases'' of unit costs (§ 982.510(a)(1)). Comments approve these requirements. By law, special adjustments are subject to comparability. Adjusted rent, including any special adjustment, may not exceed reasonable rent for comparable unassisted units (42 U.S.C. 1437f(c)(2)(C); § 982.510(b)).

An owner does not have any right to receive a special adjustment of the rent to owner (previously called ''contract'' rent). A special adjustment must be approved by HUD (§ 982.510(a)(2)). HUD has ''sole discretion'' whether to approve or withhold a special adjustment requested by an owner (§ 982.510(a)(1)).

B. Purpose

The old rule allowed special adjustments only for the following specific cost categories: real property taxes and assessments, and regulated or non-regulated utility costs. The proposed rule would have enlarged the list of covered cost categories, by permitting HUD approval of special adjustments for ''security costs'' as well as a broad authorization for approval of costs ''similar'' to the enumerated cost categories. The proposed rule would also have provided that HUD must approve a special adjustment to cover increases in ownership and maintenance cost that results from expiration of a real property tax exemption.

The final rule does not expand the purpose of special adjustments allowed under the old rule. In this respect, the new rule substantially restates the grounds for special adjustment in the old rule. The final rule permits special adjustments to cover increases in utility costs or in real property taxes and special governmental assessments (§ 982.510(a)(1) and § 983.255(b)). The final rule does not include authority to approve special adjustments for ''security costs'' or ''similar costs.'' Special adjustments may only be approved by HUD for the specific purposes enumerated in the rule.

At this time, HUD knows no persuasive justification for expansion of special adjustments. First, any increase in special adjustments would draw on limited program funds in a time of severe budgetary restrictions. Second, HUD knows of no persuasive showing or evidence that a loosening of policy on special adjustments is necessary to provide adequate housing choice for assisted families. Third, while owners will always seek maximum rents, it is hard for HAs to determine when special adjustments are really necessary in a particular case, and for HUD to evaluate relative need for special adjustments in particular cases. Fourth, special adjustments significantly complicate HA administration and control of program rents. HUD believes that HAs should primarily rely on formula adjustments by published factors, as a universal process for adjusting program rents.

The law provides that HUD may approve rent adjustments HUD determines necessary to cover increases in ownership and maintenance expenses ''. . . that have resulted from the expiration of a real property tax exemption'' (42 U.S.C. 1437f(c)(2)(B)). Such adjustments may only be approved if appropriations are available.

The proposed rule would have provided that HUD must approve a special adjustment to cover increased expenses when a real property tax exemption expires. Although some comments endorse this provision, the final rule does not require or authorize special adjustments at expiration of a real property tax exemption. At this time, appropriated funds are not available for this purpose. The final rule therefore removes a proposed provision reciting the authority to grant a special adjustment for this purpose.

Comments state that the rule should allow special adjustments for security costs, and for increases in insurance cost because of crime. The final rule does not authorize HUD approval of special adjustments for ''security costs.'' HUD believes that such costs should be met from market rents in accordance with program requirements. In the certificate and voucher programs, HAs do not review owner budgets. It would be difficult to determine if proposed increases are really required, or if crime-related costs can be met from assisted rental revenues. If increases were granted for security costs, there is no existing mechanism to assure that the owner would actually use the additional money for this purpose. For efficient administration of the tenant-based programs, the HA should not attempt to micro-manage owner expenditures for particular costs.

Comments state that HUD should allow special adjustments because of major property upgrades that benefit the tenant. This recommendation is not adopted. This proposal would evade the fair market rent (for the family size and for the size of the unit rented) as the central statutory and regulatory control on unit rent. Moreover, the law does not

permit special adjustments for improvement of the particular project. As noted above, special adjustments may only be granted because of ''general increases'' in real property costs—i.e., common increases that broadly affect landlord operating costs in the market area.

HA comments state that the special adjustment rules are confusing. HUD should give a better description of the cases when special adjustments are warranted. HUD believes that the final rule contains a clear and straight-forward list of the types of expenses for which HUD may approve a special adjustment of the rent paid to owner.

Comments recommend eliminating special adjustments, and substituting adjustment to level of the current FMR. In the current system, HAs negotiate new HAP contracts to avoid the need for HUD approval of special adjustments. HUD has not adopted this recommendation.

C. Comparability

In accordance with the law, the rule provides that adjusted rent must be reasonable in comparison with rent of unassisted units in the local market. This principle applies to both the tenant-based and the project-based certificate programs. The reasonableness limit applies to special adjustments, as well as regular annual adjustments of the rent.

HUD may not approve a special adjustment if the adjusted rent to owner would exceed the reasonable rent for comparable unassisted units (§ 982.510(b) and § 983.255(c)(2)). (For PBC, reasonable rent is determined by a comparability study in accordance with special PBC requirements.) HUD may not consider granting a special adjustment over the amount of rent as adjusted by applying the published formula factor (AAF), unless reasonable rent exceeds the factor adjusted rent.

Application of comparability for special adjustments satisfies two statutory requirements. First, the law provides that regular and special adjustments may not result in material difference between rents charged ''* * * for assisted units and unassisted units of similar quality, type and age in the same market area. * * *'' (42 U.S.C. 1437f(c)(2)(C)). Second, the law also provides that special adjustments may only be granted for costs ''not adequately compensated'' by regular annual formula adjustments (42 U.S.C. 1437f(c)(2)(B)).

In the project-based and tenant-based certificate programs, market rent for comparable unassisted units is used as a regulatory standard for determining whether owner is ''adequately compensated'' by the unit rent. Under the law, special adjustments are not designed to meet special or unique needs of a particular landlord. Special adjustments may only be approved to cover ''substantial general increases'' in costs common to owners in the locality, such as a general increase in real property tax rates (42 U.S.C. 1437f(c)(2)(B)). Thus levels of comparable unassisted market rents are used to gauge rents generally needed to adequately compensate landlords for increased costs to maintain and operate rental housing in the market area.

D. Required Documentation

The old rule provides that an owner who seeks a special adjustment must submit ''financial statements'' which ''clearly support'' the owner's request for a special adjustment. This requirement applied both to the tenant-based and project-based certificate programs. In this rulemaking, HUD proposed to continue this requirement for both programs.

In the final rule, the financial statement requirement is retained only for PBC (§ 983.255(d)), but is not included in the special adjustment requirements for a regular tenancy in the tenant-based certificate program (§ 982.510). The final PBC rule (§ 983.255(c)(1)) provides that an owner must demonstrate that rent to owner ''is not sufficient for proper operation of the housing''. The PBC rule (§ 983.255(d)) also states that:

> The owner must submit financial information, as requested by the HA, that support the grant or continuance of a special adjustment. For HAP contracts of more than twenty units, such financial information must be audited.

In the tenant-based certificate program, the grant or denial of a special adjustment only affects rent during the present lease term of a particular assisted family. Conversely the special adjustment will not affect rent under a new lease for the same family or for any other family. In PBC, the grant or denial of a special adjustment may affect the level of rents during the remaining term of the project-based HAP contract, and may apply to all units covered by the project-based HAP contract.

For the tenant-based program, the owner will not be required to submit a ''financial statement'' showing that costs are not adequately compensated by regular annual adjustments. To receive a special adjustment, the owner must show that a requested adjustment meets the regulatory standard—that the adjustment is appropriate to cover increases in actual and necessary costs for eligible cost items. However, the rule does not specify any particular format or procedure for documenting this fact.

For PBC, however, the rule provides owner must ''demonstrate'' that cost increases are not adequately compensated for by the annual factor adjustment (§ 983.255(c)(1)). The PBC owner must submit ''financial information'' that support grant or continuance of a special adjustment (§ 983.255(d)). For PBC HAP contracts covering more than 20 units, the financial information must be audited.

E. HUD Approval

Comments state that HUD should allow an HA to approve special adjustments without HUD approval. HAs are qualified to approve special adjustments.

Under the law, HUD may not adopt this recommendation. HUD itself must approve all special adjustments. The HAP contract must provide ''for the *Secretary to make*'' special adjustments. The Secretary may make special adjustments to the extent ''* * * *[the Secretary] determines* such adjustments are necessary. * * *'' (42 U.S.C. 1437f(c)(2)(B)). By these provisions, HUD has statutory authority to determine that a special adjustment is necessary, and the authority to make a special adjustment in accordance with the Secretary's determination. This authority is clearly assigned to HUD, and may not be delegated to the HA.

Comments state that an HA should have opportunity to comment before HUD decides to grant or deny a special adjustment. HUD believes there is no need to modify the rule in this respect. Ordinarily, a special adjustment is not granted without the HA's support. The HA submits the owner's request for special adjustment to HUD. The HA has ample opportunity to present its views. The HA provides supporting documentation and justification. The HA may submit any comments or information in support of, or in opposition to, the owner's request for a special adjustment. There is no need or advantage to complicate the adjustment process with additional procedural requirements.

Comments state that HUD should be required to respond in 30 days when an HA asks HUD to approve a special adjustment. This recommendation is not adopted. HUD will try to respond promptly to special adjustment or other HA or owner concerns. However, HUD cannot undertake to comply with an arbitrary deadline that may not fit the facts of individual cases.

A special adjustment must be approved by HUD. The special

adjustment provisions are revised to emphasize that HUD has sole discretion whether to grant or deny a special adjustment. The final rule states that HUD may approve a special adjustment ''* * * at HUD's sole discretion * * *.'' (§ 982.510(a)(1) and § 983.255(a)(1)). The rule also provides that the Section 8 owner ''does not have any right to receive a special adjustment'' (§ 982.510(a)(2) and § 983.255(a)(2)).

F. Term

Comments state that HUD should not require an HA to track rent increases for a one-time special adjustment. A special adjustment for ongoing costs should not be treated as a one-time adjustment. Comments note that it is burdensome and unnecessary to track special adjustments, and require re-justification of approved special adjustments. Comments assert that the cost of deducting approved special adjustments may not exceed the saving. The deduction of special adjustments must be calculated, tracked and explained to owners.

The final rule re-states and substantially simplifies proposed provisions on special adjustments for temporary or one-time costs (§ 982.510(c)(2) and § 983.255(e)(2)). The HA may withdraw or limit the term of a special adjustment. If HUD approves a special adjustment to cover temporary or one-time costs (e.g., a one-time special assessment for drainage improvements), the special adjustment is only a temporary or one-time increase of the rent to owner.

The rule also clarifies the relation between a special adjustment, and a subsequent regular annual adjustment by application of HUD's published annual adjustment factor (AAF). In an annual adjustment, the owner's pre-adjustment rent is multiplied by the AAF (§ 982.509(b)(1)(i) and § 983.254(b)(1)(i)). The rule now states that the pre-adjustment rent to owner—the base for the annual adjustment, does not include any previously approved special adjustment (§ 982.509(b)(2) and § 983.254(b)(3)).

XII. Fees and Charges to Family for Meals, Supportive Services or Other Items

The final rule contains new provisions that state restrictions on owner charges to the family. These provisions largely codify and clarify HUD's construction of the existing program rules.

The rule (§ 982.513) provides that:

—Rent to owner may not include the cost of meals or supportive services. Reasonable rent (comparable rent) does not include the value of meals or supportive services.

—The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for eviction.

—The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to the unsubsidized tenants in the premises.

XIII. Utility Allowance

A. Objections to Utility Allowance

1. Comments

Comments state that HUD should eliminate the utility allowance in the certificate and voucher programs. Comments claim that elimination of utility allowances would unify the certificate and voucher programs.

Comments assert that the utility allowance promotes dependence and reliance on federal subsidy. Because of the utility allowance, the HA must pay a tenant without countable income to live in an assisted unit. The utility allowance does not encourage conservation and reduce tenant consumption.

2. HUD Response

The utility allowance is used when the family is responsible for paying the cost of utilities or other housing services that are not included in the rent to owner. The HA's utility allowance is the HA's estimate of the monthly cost for reasonable utility consumption (see definition of ''utility allowance'' at § 5.603). The utility allowance performs different roles in the certificate and voucher programs. In the certificate program, the utility allowance is used so that a family does not pay more than the maximum rent. In the voucher program, the utility allowance is used so that a family does not pay less than the minimum rent.

In the certificate program, the utility allowance is deducted from the family's total rent (''total tenant payment'') to calculate the amount payable to the owner (''tenant rent''). The utility allowance is used so that all families pay the same rental contribution (''total tenant payment''), regardless of whether utilities for a particular unit are paid by the owner or the family. The utility allowance is necessary for equivalent and equitable treatment of families that rent units with or without tenant-paid utilities.

In the certificate program, the amount of ''rent'' paid by a family is specified by law. If the utility allowance is more than the total tenant payment, the family receives a ''utility reimbursement'' from the HA. The utility reimbursement is paid so that the family's out of pocket utility cost to live in the unit does not exceed rent payable under the statutory rent formula. The HA utility reimbursement provides money the family can use to pay for utilities not included in the rent to owner.

The amount of the utility allowance and utility reimbursement are not determined by the actual utility costs of a particular assisted family. Rather, the utility allowance is based on reasonable consumption by an ''energy conservative household of modest circumstances'' (§ 5.603) in the community. A family that wastes or over-uses utilities does not get a higher utility allowance or utility reimbursement. The family pays for any excess consumption of tenant-paid utilities and benefits from its own funds.

In the voucher program, the utility allowance only affects calculation of the statutory maximum subsidy (''minimum rent''). Under the voucher law, the family must pay a minimum share of the actual rent for the unit ''*including the amount allowed for utilities in the case of a unit with separate utility metering*'' (42 U.S.C. 1437f(o)(2)). Thus the voucher statute explicitly requires use of a utility allowance for separately metered utilities that are not included in rent to owner. The utility allowance increases the base for calculation of the minimum rent, and therefore *increases* the minimum rent paid by affected voucher families.

B. Administration of Utility Allowance

1. Comments

Comments state that the utility allowance requirement forces an HA to review utility costs annually and submit cumbersome utility calculations for HUD approval. Comments state that the rule should require HUD to act on the HA utility allowance submission within 30 days. Comments ask if an HA should use the new utility allowance schedule if the HA is conducting a interim reexamination because of a change in family income. Comments state that an HA should maintain separate utility allowance schedules for areas with significant difference in utility costs.

2. HUD Response

Under the rule, the HA is not required to seek HUD approval before adopting the utility allowance schedule. The HA must give HUD a copy of the utility allowance schedule, and—if requested by HUD—must provide any information

or procedures the HA used to prepare the schedule (§ 982.517(a)(2)). At HUD's direction, the HA must revise the schedule, to correct any errors, or as necessary to update the schedule (§ 982.517(c)(2)).

As in the past, the HA must review its utility allowance schedule each year (§ 982.517(c)(1)). Under the old rule, the HA was required to revise the schedule if there was a ''substantial change'' in utility rates. Some HAs have failed to keep their allowance schedules up to date. The new rule establishes a more objective and definite standard triggering the requirement for revision of the utility allowance schedule. The new rule now provides that the HA must revise the allowance for a particular utility category if there is a ten percent or more change in the utility rate since the last revision (§ 982.517(c)(1)).

An HA must maintain information that supports its annual utility allowance review and any revisions of the utility allowance schedule (§ 982.517(c)(1)).

Sometimes, there may be significant differences in utility cost levels in different parts of an HA jurisdiction. This difference may occur because the HA has a large operating area, such as a State with different climatic regions, or because there are different utility suppliers for portions of the HA jurisdiction. The rule does not seek to specify when an HA should or must issue separate schedules for different portions of the HA jurisdiction. In general, the HA retains discretion to decide when it is necessary to set up separate schedules. However, an HA's utility allowances must meet the regulatory standard—that the allowances must be based on utility costs for households ''in the same locality'' (§ 982.517(b)(1)).

At any regular or interim reexamination of family income, the HA must determine the appropriate utility allowance from the current utility allowance schedule (§ 982.517(d)(2)). At the effective date of the reexamination, the HA must make appropriate adjustments in the housing assistance payment, including adjustments reflecting revision of the utility allowance. In the certificate program, changes in the utility allowance may affect the amount of the assistance payment to owner, the rent remaining to be paid by the family (''tenant rent''), utility reimbursement, and maximum rent to owner for a new rental. In the voucher program, changes in the utility allowance only affect calculation of the minimum rent.

C. Services Included in Utility Allowance

1. Comments

The utility allowance schedule covers tenant-paid utilities and other tenant-paid housing services. Comments state that HUD should carefully review what is included in the utility allowance. Comments ask what other ''services'' are covered.

Comments ask if the utility allowance must include garbage service and sewer service, though not mentioned in the rule. Comments state that the utility allowance should cover sewer and trash removal expenses.

The rule allows a utility allowance for air conditioning of the unit. Comments ask if air conditioning is mandatory. Comments ask if the HA must grant a utility allowance for air conditioning if air conditioning is not commonly used for residential rentals in the HA area. Comments recommend that HUD should clarify that the utility allowance does not include ''non-essential utility mediums'' such as cable and satellite television.

2. HUD Response

The HUD Office of Policy Development and Research has found that HAs throughout the United States use a wide variety of utility allowance schedules and formats. Many schedules are internally inconsistent, or at wide variance to the schedules of other jurisdictions using the same utility suppliers.

HUD believes that the use of a common format will help HAs improve the quality and consistency of HA-adopted utility allowance schedules, so that the schedules more accurately represent utility consumption and costs in different localities. The final rule provides that the utility allowance schedule must be prepared and submitted on the form prescribed by HUD (§ 982.517(b)(4)).

An HA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the HA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television. (§ 982.517(b)(2)(i))

The HA utility schedule must classify covered utilities and other services according to specified categories (§ 982.517(b)(2)(ii)). The final rule refines and supplements the list of covered categories:

heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services.

The utility allowance must cover tenant-paid fees or costs for trash collection and sewage.

The housing quality standards do not require air conditioning. The final rule provides that the HA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners (§ 982.517(b)(2)(ii)).

D. Determining Utility Allowance: Unit Size and Size of Family

1. Comments

The rule provides that a utility allowance is based on the unit actually leased by family, not on the family unit size (appropriate size unit for family under the HA ''subsidy standards'') (§ 982.517(d)(1)). According to comments, the utility allowance should be based on the family unit size.

Comments note that an elderly family that wants to stay in the same unit rent may rent a unit larger than necessary (larger than the family unit size). If the HA uses the utility allowance for the actual size unit, the rent exceeds FMR, and the family must move.

Comments state that an HA should have the option to give a utility allowance based either on the number of occupants or on the unit size. Other comments state that the family should receive a utility allowance for the larger of family unit size or actual unit leased.

Comments state that the utility allowance should be based on actual need for the particular utility by the actual family configuration. Comments claim that utility expenses reflect the size of family, not the size of the unit. Comments state that using the utility allowance for a smaller unit penalizes a family for renting a smaller unit to reduce family rent.

2. HUD Response

The final rule provides that the HA must use the utility allowance for the actual unit size rented. HUD has not accepted the recommendation to use the utility allowance for the family unit size under the HA subsidy standards, or the greater of the utility allowance for the family unit size or actual unit size.

In occupancy of a particular unit, the family needs to pay utilities for the actual unit rented. In general, utility costs will be higher if a family leases a unit with more bedrooms. Furthermore,

utility cost is primarily affected by the character of the unit rather than the character of the family.

For a regular tenancy in the certificate program, the initial gross rent may not exceed the FMR/exception rent limit. The maximum gross rent includes the appropriate utility allowance for the actual unit rented by the family.

E. Reasonable Accommodation

The final rule adds a new provision allowing the HA to establish a special higher utility allowance, on a case-by-case basis, as a reasonable accommodation for a disabled person. The rule provides that on request from a family that includes a person with disabilities, the HA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability (§ 982.517(e)).

F. Direct HA Payment of Tenant Utility Cost

1. Comments

Comments state that there is a risk of unit damage or harm to other residents if the tenant does not pay the utility bill. HUD should require the HA to pay utility reimbursement directly to the utility company, or should permit direct payment with family consent.

Comments recommend that HUD should eliminate utility reimbursement. Comments state that the term ''utility reimbursement'' should be used for the voucher program, and indicates that the family receives the same utility reimbursement in both programs.

2. HUD Response

The rule provides that if the housing assistance payment exceeds rent to owner, the HA may pay the balance of the payment either to the family or directly to the utility supplier to pay the utility bill (§ 982.514(b)). In the certificate program, this case occurs when there is a utility reimbursement (because the utility allowance exceeds the total tenant payment). In the voucher program, this case occurs when the amount of the voucher subsidy (as calculated by the statutory formula) exceeds the rent to owner; there is no utility reimbursement (i.e., no payment based on the difference between the utility allowance and the family contribution).

The rule does not, as suggested by comment, require the HA to pay certificate utility reimbursement directly to the utility company. The rule also does not require that the HA must secure family assent for direct payment. The HA has the election whether to remit the payment to the family or the utility supplier.

XIV. Reexamination of Family Income

A. Comments

Comments state that HUD should set a uniform policy on interim reexamination. Comments state that the HA should be required to process any request for reexamination because of change in income or composition since the last determination. Income of low income families, particularly employment income, fluctuates. The HA must respond quickly to decrease in family income. If a family reports a decrease in income, HUD should require an HA to promptly increase the assistance payments.

Comments state that changes should be effective for the month after the action that results in the decrease. The HA should reduce the family contribution even if the family delays reporting a decrease in income, or cannot immediately verify loss of income, e.g., because a former employer will not verify unemployment.

Comments state that an increase in the family contribution should not be effective before the second month after family income increases, or after 30 days notice to the family. A family needs a delay to adjust and budget for an increase in family income.

An HA asks for authority to require interim re-examination when family income increases, not just when adding a new family member. Comment notes that HAs are currently required to process reductions no matter how small the change in tenant contribution. The HA should be permitted to limit the number of interim adjustments each year, or to set a minimum dollar limit.

For families that claim little or no income, a comment recommends reexamination more frequent than annually.

B. HUD Response

At any time, the HA may conduct an interim examination of family income and composition (§ 982.516(b)(1)). At any time, a family may ask the HA to conduct a recertification if there is a change in family income or composition since the last determination (§ 982.516(b)(2)).

Reexamination affects the amount of the subsidy and the family share of rent. The HA must conduct reexamination in accordance with policies in the HA administrative plan.

The proposed rule would have provided that the HA must determine ''whether a change should be made'' in response to a change of family income or composition between annual reexaminations. The final rule provides that the HA ''must make'' an interim determination effective ''within a reasonable time'' after the family request (§ 982.516(b)(2)). The rule has not adopted the proposal that HAs be allowed to limit the number of interim reexaminations at the family's request.

The final rule provides that an HA must adopt policies prescribing when and under what circumstances the family must report a change in family income or composition (§ 982.516(c)). The rule clarifies that HAs have authority to initiate an interim reexamination when family income increases (§ 982.516(b)(1)). However, HAs are not required to initiate an interim reexamination not requested by the family.

The rule also provides that the HA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment because of an interim determination (§ 982.516(d)(1)). At the effective date of a regular or interim reexamination, the HA must make appropriate adjustments in the housing assistance payment and family unit size (§ 982.516(d)(2)).

If a reexamination is requested by the family, the HA must make the interim reexamination effective within a ''reasonable time'' after the family request (§ 982.516(b)(2)). Within this broad standard, HAs have broad authority to set local policies on when to increase the assistance payment because of a reduction of family income. HUD does not wish to set a rigid national standard on timing of changes in the family contribution and assistance payment as a result of an interim reexamination.

The law provides that ''reviews of family income shall be made no less frequently than annually'' (42 U.S.C. 1437f(c)(3)(A)). The law does not prescribe requirements for interim reexaminations between the annual review. HUD believes that HA's should have broad discretion to determine policies on conducting interim reexaminations. Over the years, the interim reexamination policies adopted in HA administrative plans have seldom been a source of contention. HAs have almost always acted responsibly in adopting policies on when to hold an interim reexamination, and when to make effective a change in the family share and housing assistance payment as a result of the reexamination.

Common rules for the Section 8 and public housing programs provide that an HA must reexamine family income and composition at least annually (§ 5.617(a)). A family must submit information or documentation necessary to determine the family's adjusted income (§ 5.617(b)(2)). This rule confirms that the HA must obtain verification of factors affecting the family's adjusted income, or must document why verification was not available (§ 982.516(a)).

XV. Project-based Certificate (PBC) Program: Rent to Owner

A. PBC: Comparability Procedures

During the term of a HAP contract, PBC rents must be reasonable (§ 983.256(a)(2)). Comparability applies both to HA determination of initial rent to owner (§ 983.256(a)(1)), and to regular or special adjustments during the HAP contract term (§ 983.254(b)(1) (regular); § 983.255(c)(2) (special)). For PBC housing, the HA must redetermine that the current rent to owner is reasonable at least annually during the HAP contract term (§ 983.256(a)(3)). The final rule modifies procedures for analysis of comparability.

The existing and proposed rule did not specify the form of comparability analysis for tenant-based or project-based certificate assistance. For PBC, but not for the tenant-based program, the final rule provides that the HA must use a standard HUD form to document comparability of the initial rent (§ 983.256(c)(1)(ii)) and adjusted rent (§ 983.256(c)(2)(iii)). For both purposes, HA records must show the calculation of comparable rent (''correlated subject rent'') on HUD Form 92273—''Estimates of Market Rent by Comparison.'' Form 92273 lists property ''characteristics,'' and provides a format to enter the plus or minus dollar value of the differences (adjustments) between the subject and the comparable units for each characteristic. A separate Form 92273 must be prepared for each ''unit type'' in the PBC project: e.g., apartment, row-house, town house or single-family detached.

In determining initial rent, the comparability analysis must use at least three comparable units in the private unassisted market (§ 983.256(c)(1)(ii)). However, the rule does not specify the minimum number of comparables that must be used in determining comparability of the adjusted rent.

The existing and proposed rule do not specify minimum qualifications of the person who performs a comparability analysis for determination of initial or adjusted rent. For PBC only, the final rule provides that the HA must use a qualified ''State-certified appraiser'' (§ 983.256(c)(1)(i)) for determination of initial rent. The term ''State-certified appraiser'' is defined at § 983.2 (added by rule published July 3, 1995), but was not previously used in the rule. A State-certified appraiser must meet minimum certification requirements established by the Appraisal Foundation. To assure objectivity, the rule provides that the appraiser may not have any direct or indirect interest in the property or otherwise (§ 983.256(c)(2)(iii)).

For determination of rent during the term of a PBC HAP contract, the HA is not required to use a State-certified appraiser. The comparability study may be prepared by HA staff or by another qualified person (§ 983.256(c)(2)(iii)).

B. PBC: Approval of Rent; HA Certification That Rent Is Reasonable

Under the old rule, all PBC rents were approved by HUD. Under the new rule HUD must approve initial rent for HA-owned PBC units or PBC units financed with a HUD-insured multifamily mortgage (§ 983.253(b)). The HA approves the initial rent to owners for PBC units that are not financed with a HUD-insured multifamily mortgage, and are not owned by the HA (§ 983.253(a)).

In all cases, the HA must certify to HUD that the initial PBC rent to owner is reasonable (§ 983.256(c)(1)(iii)).

C. PBC: Rent to Owner: Annual Adjustments

1. Adjustment by Published Factor

At each annual anniversary, rent to owner is adjusted upon a timely request by the owner. Adjusted rent is the lesser of:

—The pre-adjustment rent to owner multiplied by the applicable factor published by HUD,
—The reasonable rent as shown by an HA ''comparability study''; or
—The rent requested by the owner.

(§ 983.254(b)(1); § 983.256(c)(2)).

Previously, program rules provided that the rent is adjusted by applying the most recently published factor: the HUD factor that is in effect on the contract anniversary date (when the adjustment is effective). For future HAP contracts, the final rule provides that rent will be adjusted by the published AAF factor in effect *60 days before* the HAP contract anniversary (§ 983.254(b)(2)). This new rule applies if the Agreement to enter housing assistance payments contract is entered on or after the effective date of this rule. For earlier contracts, the applicable factor remains the factor in effect at the contract anniversary date—since this date is specified in the existing contract documents.

2. Adjustment Comparability: Comparability Studies

By law and contract, the adjusted rent of housing assisted under the certificate program may not exceed the reasonable rent for comparable unassisted units. This limitation is now separately and independently expressed both in 42 U.S.C. 1437f(c)(2) (A) and (C).

This final rule contains HUD's regulations for conducting comparability studies under § 1437f(c)(2)(C) in the Section 8 PBC program (§ 982.206(c)(2)). To apply the comparability limitation under § 1437f(c)(2)(C), the HA must conduct an adjustment comparability study if requested by the owner of a Section 8 PBC project. If the owner requests a comparability study under § 1437f(c)(2)(C), the comparability study must be submitted to the owner at least 60 days before the HAP contract anniversary. Unless the comparability study is submitted by this deadline, the rent to owner (formerly ''contract rent'') is adjusted by applying the annual adjustment factor.

The proposed rule would have provided that rent reasonableness only applies to PBC annual adjustments if the requested rent (gross rent, including the allowance for tenant-paid utility) is 110 percent or more of the FMR limit. Under the final PBC rule, as in the rule for the tenant-based certificate program, rent reasonableness always applies at the annual adjustment of rent to owner (see § 983.254(b)(1); § 983.256(c)(2)). Factor-adjusted rent may never exceed the comparable rent.

By law, adjusted rent for a unit assisted in the certificate program ''shall not exceed'' rent for a comparable unassisted unit in the market area (42 U.S.C. 1437f(c)(2)(A)). Moreover, rent adjustments may not result in ''material differences'' between rents for assisted and unassisted units (42 U.S.C. 1437f(c)(2)(C)). HUD has determined that any excess over the reasonable rent for comparable unassisted units is a material difference, and should not be permitted. Any excess rent is a waste of scarce funds.

Under the proposed rule, the adjustment system would have wholly ignored rent reasonableness if the factor-adjusted rent did not exceed 110 percent of the FMR. In such cases, the proposed rule afforded no means of limiting the discrepancy between the factor-adjusted rent and the reasonable rent for a unit. Under the final rule, the comparability analysis must be conducted without regard to the relation

between the adjusted rent and the published FMR. The FMR determines the general level of market rents in the area. By contrast, the comparability study determines the rental value of the particular unit, and is therefore a more precise way of determining the appropriate rent and subsidy for the particular unit.

The HA must conduct a comparability study to limit PBC rent increases over the initial rent. The adjusted rent for a contract unit may not exceed the reasonable rent as shown by a comparability study. A comparability study analyzes rents charged for comparable unassisted units (§ 982.206(c)(2)(ii)).

The final rule provides that an adjustment comparability study must be prepared on the standard HUD multifamily appraisal form (HUD Form 92273) (§ 982.206(c)(2)(iii)). The same form is also used to determine comparability of the initial rent at the beginning of the PBC HAP contract term. For determination of adjustment comparability, the rule also provides that a comparability study must show how the reasonable rent was determined. The appraisal must state major differences between the contract units and comparable unassisted units (§ 982.206(c)(2)(iv)).

3. When Owner Requests Rent Increase; HA Comparability Study

As indicated above, the proposed rule would have required the HA to conduct a comparability analysis only if the rent requested by an owner is 110 percent or more of the FMR limit. The proposed rule would have also provided that the HA must first notify the owner in writing of its intention to conduct a rent reasonableness study, and then also notify owner of the study result 30 days after owner requests an increase of the rent.

The old rule did not specify when the owner must submit a request for adjustment of the rent. The proposed rule would have provided:

—That rent will not be adjusted retroactively—for the period before owner's request.
—That rent will not be adjusted for the 60 days following the owner's request.
—That the adjustment for any anniversary is lost unless requested by the owner at least 60 days before the *following* anniversary.

Comments question the need to notify an owner that the HA intends to conduct a comparability study. Comments state that the notice requirement is an administrative burden, and will not improve the PBC program. Under the final rule, HUD has eliminated the regulatory directive requiring HAs to provide notice of the annual comparability study. (Of course, HAs may elect to remind owners at appropriate points in the annual cycle.)

Under the new rule, an owner must request the adjustment (increase) for any contract anniversary at least 120 days before that contract anniversary (§ 983.254(a)(1)). The annual adjustment is wholly lost unless requested by this deadline.

The final rule establishes a fixed timetable both for owner's request for adjustment, and for the HA submission of a statutory comparability study in response to the owner request. The rule provides that:

—A PBC owner must request a rent increase at least 120 days before the HAP contract anniversary. The owner's request for increase must be submitted in writing, and ''in the form and manner required by the HA'' (§ 983.254(a)(1)).
—If the owner properly requests a rent increase by the 120 day deadline, the HA must submit a comparability study to the owner at least 60 days before the contract anniversary (§ 983.256(c)(2)(v)).

If the owner misses the 120 day deadline, the owner does not receive any increase in the rent at the annual adjustment (§ 983.254(a)(2)). If the HA misses the 60 day deadline, an increase in rent by application of the published factor is not subject to comparability (§ 983.256(c)(2)(v)). In this case, the owner receives the full annual adjustment by application of the published factor to the pre-adjustment rent.

The HA may not grant a rent increase unless the owner has complied with obligations under the HAP contract. The final rule (§ 983.254(a)(2)(ii)) prohibits an increase in the rent unless:

during the year before the contract anniversary, the owner complied with all requirements of the HAP contract, including compliance with the HQS for all contract units.

4. Rent Decrease at Annual Adjustment

Rent may increase or decrease by application of the published annual adjustment factor (AAF) and comparability at the contract anniversary (see § 983.254(b)). The old rent is multiplied by the published factor. Rent to owner increases if the factor is positive (a factor of more than one) and if the increased rent is reasonable. Rent decreases if the published factor is negative (a factor of less than one). The owner must submit a written request for a ''rent increase'' (§ 983.254(a)(1)). The request must be submitted by the 120 day deadline. A rent decrease by application of the published factor or comparability occurs automatically, without any owner request.

Rent may decrease at annual adjustment: either by application of a negative factor, or by application of comparability. However, under the old rule, rent could not be adjusted below the initial rent—the contract rent (rent to owner) at the beginning of the PBC HAP contract term. The proposed rule would have removed this limitation for both tenant-based and PBC. For PBC alone, the final rule retains this limitation. The final rule provides that the amount of the initial rent—if correctly determined—is the limit on any downward adjustment of the rent. The PBC rule provides that, except as necessary to correct errors in establishing the initial rent in accordance with HUD requirements, the adjusted rent to owner must not be less than the initial rent (§ 983.254(d)).

Comments state that the rule should not allow an HA to decrease the rent by applying a negative adjustment factor. This recommendation is not adopted. The final rule provides that rent to the owner must be adjusted ''up or down'' by applying the published factor in accordance with regulatory requirements (§ 982.204(b)(4)). The amount of rent should not be insulated from rent reduction by application of the factor, which is designed to reflect the best currently available data on market changes in residential rent and utility cost levels. Furthermore, the rule clarifies that rents will be reduced, by application of a negative factor or by comparability, regardless of whether owner requests an adjustment of the rent. Obviously, owners who expect a reduction will not request a rent adjustment.

D. PBC: Rent to Owner: Special Adjustments

HUD may approve a ''special adjustment'' of the rent paid to a PBC project owner (§ 983.255(a)). A special adjustment may only be granted if there are ''substantial and general increases'' in owner costs for any of four specified purposes: real property taxes, special government assessments, utility rates or costs of unregulated utilities (§ 983.255(b); see 42 U.S.C. 1437f(c)(2)(B)).

The owner does not have any right to receive a special adjustment (§ 983.255(a)(2)). HUD has discretion to grant or deny owner's request for a special adjustment (§ 983.255(a)(1)).

The owner must justify a special adjustment. Comments recommended that owners should be required to submit sworn or certified financial statements to justify requests for special rent adjustments. Comments recommended that special adjustment requests should be automatically approved if the HUD field office review is not completed within 30 days.

The rule provides that a PBC special adjustment may only be granted ''if and to the extent the owner demonstrates that cost increases are not adequately compensated by application of the published annual adjustment factor at the contract anniversary'' (§ 983.255(c)(1)). The owner must demonstrate that the rent to owner is not sufficient for proper operation of the housing. The owner must submit financial information, as required by the HA, that supports the grant or continuance of a special adjustment (§ 983.255(d)).

For PBC HAP contracts covering 20 or more units, the owner must submit audited financial information to support the request for a special adjustment. In establishing this 20 unit threshold, HUD has balanced the benefit of additional assurance provided by the audit against the cost and burden for the owner. The rule does not require submission of sworn or certified information as suggested by comment. However, any program submission by an owner or auditor is subject to Federal criminal penalties for misrepresentation or fraud in connection with Federal financial assistance.

HUD declines to grant AN automatic special adjustment rent increase if the HUD field office review is not completed within 30 days. HUD may need a longer period for review and determination on the owner's request and materials submitted by the HA and owner. The expiration of an arbitrary period does not show that owner needs an adjustment that meets the statutory and regulatory standard. Moreover, the owner is never entitled to a special adjustment. There is no contractual or moral commitment to provide a special adjustment under any circumstance.

If HUD finds that a special adjustment is justified, special adjustments may be made effective to cover past owner costs. In general, it has been HUD's practice that a special adjustment is made effective on the later of the first day of the month following the date of: (1) the owner's request or (2) the tax rate increase or other cost triggering the special adjustment. This practice avoids damage to the owner from necessary delay in processing a request for special adjustment.

E. PBC: Rent to Owner: Correcting Mistakes

The proposed rule would have provided that errors in establishing or adjusting the rent are subject to ''post-audit changes.'' The final rule provides that the HA may, ''at any time,'' correct any errors in establishing or adjusting rent in accordance with HUD requirements (§ 983.259). The HA may recover any excess payment from the owner.

F. PBC: Rent to Owner: HA-Owned Units

A 1990 law provides that an HA that administers the Section 8 program may enter into a HAP contract with itself to pay assistance for HA-owned units (42 U.S.C. 1437f(a)). The rule provides that HUD must approve initial rents (§ 983.253(b), and annual rent adjustments (§ 983.254(c))) for HA-owned PBC units.

XVI. Special Housing Types

A. General

Subpart M of the rule gathers provisions on special housing types in the tenant-based programs. The special housing types are program variants designed to meet special housing needs within the structure of the Section 8 tenant-based programs. The special housing types are:

—Single room occupancy (SRO) housing;
—Congregate housing;
—Group home (replacing prior provisions on Individual Group Residences);
—Shared housing;
—Cooperative;
—Manufactured home.

A single individual or other family has the choice whether to use a special housing type offered in the HA program, or to rent other eligible housing (§ 982.601(c)). The HA may not restrict the family's freedom to choose among available units in the local housing market (§ 982.601(c)).

Except for program modifications explicitly stated in subpart M, all of the regulatory requirements for other tenant-based assistance also apply to the special housing types (§ 982.601(d)). The rule separately states the requirements for each special housing type.

In the proposed rule, provisions on special housing types were left largely unchanged, with some technical clarification and reorganization. In the final rule, HUD has restated the rules to follow a more consistent and parallel organization that addresses the basic questions about each special housing type:

—Who may reside in the housing,
—Whether there is a separate assistance contract and lease for each assisted individual,
—How to determine the maximum rent paid to an owner and the amount of the housing assistance payment, and
—Special housing quality standards (HQS).

For each special housing type, the rule states modifications of the standard program HQS.

B. HA Choice

1. HA Discretion to Offer Special Housing Type

In the past, HA's were generally required to offer each of the special housing types permitted under HUD program rules. HAs were only given the option whether to allow shared housing.

HUD has now decided to allow an HA maximum discretion in deciding whether to offer each of the special housing types permitted under program rules. With two exceptions as described below, the HA may now choose whether to offer any particular special housing type in its program (§ 982.601(b)). This decision rests wholly in the discretion of the individual HA, and HUD does not second-guess or review the HA decision. The HA administrative plan must state the HA policy choice whether to offer particular special housing types in the HA tenant-based program (§ 982.54(d)(17)). HUD does not approve the administrative plan.

2. Person With Disabilities: Reasonable Accommodation

An HA's Section 8 program must be readily accessible to persons with disabilities (Section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulation (24 CFR part 8)). The rule provides that an HA must permit a family to use any special housing type if needed as a reasonable accommodation so that the program is readily accessible for persons with disabilities (in accordance with 24 CFR part 8 (§ 982.601(b)(3)).

3. Manufactured Home

The HA must also allow a family *to rent a manufactured home (with the space on which the home* is located) (§ 982.620(a)(2)).

The regulations also permit HAs to provide Section 8 assistance for a family that *owns a manufactured home* and leases only a manufactured home space (§ 982.620(a)(3) and §§ 982.622 to 982.624). For such families, the assistance only covers the cost of space rental. The HA may elect whether to provide such space rental assistance in

the tenant-based program (§ 982.620(a)(3)).

Both for rental of a manufactured home and space, or for manufactured home space rental, the HA must comply with special manufactured home housing quality standards (HQS) (§ 982.621). The basic Section 8 Housing Quality Standards (HQS) describe the physical characteristics of housing that can be rented under the program (see § 982.401). HAs must use these HQS standards, and must allow rental of housing that meet the HQS standards. The HQS for manufactured homes describe the physical characteristics of manufactured housing that can be rented under the program (§ 982.621). HAs must use these HQS standards, and must allow families to rent manufactured homes that meet the standards. If the HA elects to offer space rental assistance, the HA must also use the physical HQS for manufactured homes for such housing (§ 982.620(b)(1) and § 982.621).

C. Family Choice

In an HA's tenant-based program, all families have freedom to shop for eligible housing that is available for rent in the local market (§ 982.353 (a) and (f)). An HA may not restrict family choice by requiring the family to rent housing that qualifies as a special housing type, or to rent any specific unit.

If an HA has decided to offer a special housing type in its program, a family has the choice whether to rent housing that qualifies as a special housing type or as any specific special housing type, or to rent other eligible housing in accordance with requirements of the program. The HA may not set aside program funding for special housing types in general, or for a specific special housing type. (§ 982.601(c).)

D. Group Homes for Elderly or Disabled

The final rule substantially reforms and simplifies the old rules on ''Independent Group Residences'' (IGR) for persons who are elderly or disabled. The proposed rule would have largely codified and continued IGR requirements under the old certificate and voucher rules. Under the old rule, an elderly or disabled participant who cannot live independently may live in group housing with necessary supportive services. The IGR must be approved or licensed by the State. A State-recognized service agency determines the supportive service needs of IGR residents and coordinates services for the residents. The State approves the agreement between the landlord and the agency that provides supportive services.

Under the old IGR program rules, the HA must determine that prospective IGR residents are unable to live independently. The HA must assure that IGR residents receive necessary services. In this respect, the treatment of IGRs differs from all other housing that may be selected by a certificate or voucher holder under the HQS. For non-IGR housing, the HA does not ask whether the family has the capacity for independent living.

In the final rule, HUD has reshaped and simplified the old IGR requirements. First, HUD eliminates the requirement that group housing is only available for individuals who *cannot* live independently. Second, HUD wholly eliminates the Federally-imposed supportive services requirements.

The new rule dramatically simplifies the role of the HA. The HA does not assess the nature and character of the occupant's disability in order to match the occupant with requirements for occupancy in a group home, or to assure that the occupant will benefit from appropriate supportive services.

As in the past, the new rules provide that a group home must be licensed by the State. The State may or may not require supportive services or other protections or benefits for group home residents.

An elderly or disabled Section 8 participant chooses whether to live in a group home or in other housing that satisfies the HUD housing quality standards. The HA may not bar access to group housing because the HA believes that the participant can live independently, and does not need supportive services. Conversely, the HA may not bar access to group housing because the HA believes that the participant needs supportive services that are not available at the housing.

If a family seeks admission to certain units, the owner—not the HA—determines whether the family qualifies to reside in the housing. In all Section 8 housing, the selection of tenants is the function of the owner (42 U.S.C. 1437f(d)(1)(A)). The owner may determine qualifications for occupancy.

For group housing, as for other housing that meets the Section 8 housing quality standards, the HA has no responsibility or authority to act as a gatekeeper who determines whether the assisted family has or lacks the capacity to live independently. A Section 8 family may choose to live in a group home or other eligible housing. The HA may not inquire into the nature or extent of disability.

The existing and proposed rule would have provided that IGR residents must be ''ambulatory'' and capable of taking appropriate actions for their own safety in an emergency. These provisions have been excised. Such safety concerns are critical, but are better handled by State and local authorities than by imposing a layer of Federal regulatory requirements enforced through local housing authorities. Further, safety should be a concern for residents of all housing or all assisted housing, not just for residents of Section 8 group homes.

In the final rule, HUD has retained provisions confirming that residents of a group home must not require continual medical or nursing care. Since the beginning of the Section 8 program, HUD has construed the Section 8 statute as precluding assistance in facilities that provide continual medical or nursing care. Section 8 was designed to provide rental assistance, rather than as a subsidy for nursing homes or other medical facilities.

In a Section 8 group home, up to twelve elderly or disabled individuals live together in a single unit (which may be an apartment or a home) (§ 982.610). Group homes serve a vulnerable population. The rule therefore provides, as in the past, that group homes must be licensed by the State (§ 982.612). The State may devise and enforce its own scheme of protections for elderly and disabled group home residents. However, such protections are not required by HUD, and are not enforced by the HA in administering Section 8 assistance for a group home resident.

In the proposed rule (as in the existing regulation), the HQS for Independent Group Residences would have provided that sanitary facilities must accommodate the needs of ''physically handicapped occupants with wheelchairs or other special equipment.'' The final rule provides that sanitary facilities in a group home must be accessible to and usable by the residents, including residents with disabilities. (§ 982.614(c)(1)(iv)). The group home must contain sanitary facilities readily accessible to and usable by residents, including persons with disabilities.

This special housing type is now called a ''group home,'' rather than ''Independent Group Residence'' (or IGR) (§ 982.4(b)).

E. Other Changes

1. Congregate Housing

The proposed rule would have provided across-the-board that subsidy for an elderly or disabled person in congregate housing is controlled by the

zero bedroom FMR/exception rent limit. The final rule provides that if there are two or more rooms (not including kitchen or sanitary facilities), the one bedroom FMR/exception rent limit determines the maximum subsidy (§ 982.608(a)(2)). (As indicated above, additional space is allowed if an HA-approved live-in aide also lives in the unit to care for an elderly or disabled member of the family.)

2. Shared Housing

In shared housing, an assisted family shares a home or apartment with other assisted or unassisted residents. The unit includes both common and private space. The assisted family has exclusive right to use its private space. The final rule amends the minimum private space requirement in the HQS for shared housing.

Under the HQS, all housing must meet so-called ''performance'' requirements, the minimum program requirements. In addition, housing must also meet ''acceptability'' standards unless HUD has approved acceptability variations because of local conditions. The final rule revises acceptability requirements defining the minimum private space for residents of shared housing.

The existing acceptability criteria would have provided that the private space for each assisted family must contain enough space ''so that children of opposite sex, other than very young children are not required to occupy the same bedroom.'' This private space acceptability requirement is now deleted.

The amount of private space is now solely governed by the performance standard, requiring that the private space for an assisted family must contain at least one bedroom for each two persons (§ 982.618(d)). The final rule is revised to provide that the number of bedrooms in the family's private space may not be less than the ''family unit size''—the appropriate number of bedrooms for the family under the HA subsidy standards (§ 982.618(d)(2)(ii)).

The old rule provided that two assisted individuals may share a one bedroom unit in shared housing. The new rule provides that a zero or one bedroom unit may not be used for shared housing (§ 982.618(2)(iii)). Such units are too small for sharing by several families—whether the families consist of individual persons or of multi-person families.

The rule is amended to clarify that the assisted family may reside in a shared housing unit with other assisted and unassisted persons (§ 982.615(b)(2)). However, as noted above, the assisted family has the exclusive right to use of its private space.

XVII. Live-in Aide for Disabled Resident

The 1937 Act provides that an assisted family may consist of one or more elderly or disabled persons living with one or more ''persons . . . essential to their care or well being'' (42 U.S.C. 1437a(b)(3)(B); see § 982.201(c)(3)). The final rule is revised (by adding a new § 982.316) to restate and clarify authority for HA-approved live-in aides in the certificate and voucher programs (including live-in aides for elderly or disabled persons assisted in special housing types under part 982, subpart M).

With approval of the HA, a live-in aide resides with the family to provide essential supportive services for an elderly person or person with disabilities (42 U.S.C. 1437a(b)(3)(B); definition of ''live-in aide'' at 24 CFR § 5.403). The live-in aide is not a member of the assisted family, but is counted in determining the appropriate unit size, and therefore the amount of subsidy for the family (§ 982.402(b)(6)).

The new rule provides that a family that consists of one or more elderly or disabled persons may request that the HA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities (§ 982.316(a)). The HA must approve a live-in aide if needed as a reasonable accommodation to make the program accessible to and usable by persons with disabilities in accordance with HUD regulations at 24 CFR part 8 (implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)).

Under existing regulatory provisions, occupancy by a live-in aide is counted in determining the ''family unit size''—the appropriate unit size for the family size and composition under the HA subsidy standards (§ 982.402(b)(6); see definition of ''family unit size'' and ''subsidy standards'' in § 982.4). For ordinary rental housing or for a special housing type, the family unit size is used to determine the maximum subsidy. This rule confirms that occupancy by an HA-approved live-in aide is also counted in determining family unit size for special housing types: § 982.608(b) (congregate housing); § 982.613(c)(1)(ii) (group home); § 982.617(c)(3) (shared housing); § 982.619(d)(2) (cooperative); § 982.620(c)(2) (manufactured housing).

The final rule specifies circumstances in which the HA may decline to approve a particular person as a live-in aide for a person with disabilities (§ 982.316(b)). The rule provides that an HA may refuse to approve, or may withdraw such approval, if a proposed live-in aide:

—Commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
—Commits drug-related criminal activity or violent criminal activity, or
—Currently owes rent or other amounts to the HA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

XVIII. Streamlining of Part 982

As part of the Department's effort to reinvent its regulations, this rulemaking includes changes to 24 CFR parts 5 and 982.

Part 982 is amended to remove some provisions that are explanatory in nature but that neither impose obligations nor confer benefits on program participants. The information stated in such provisions either is available elsewhere or may be made available in HUD guidance documents.

In addition, part 982 is amended to delete some provisions which duplicate provisions in regulations for other programs administered pursuant to the United States Housing Act of 1937 (1937 Act). Cross-cutting provisions are consolidated in HUD regulations at 24 CFR part 5 and cross-referenced in part 982. Part 5 contains general provisions applicable to more than one of the Department's programs, and, specifically, contains definitions of terms used in HUD programs. It is the Department's intent to include in part 5 as many as possible of the definitions that are used in more than one program, removing the need to restate these definitions in numerous program regulations.

This rule moves some of the definitions in part 982 to part 5. An introductory paragraph is added to the definitions section at § 982.4, listing the definitions applicable to the certificate and voucher programs that are found in part 5. The remaining program definitions are stated in full in part 982.

XIX. Other Changes

To reflect the consolidation of provisions of the former part 813, which had been referenced in § 982.4, into 24 CFR part 5 (which took place by a final rule published on October 18, 1996), this rule revises the cross references in § 982.4 to part 813 to correctly reference part 5.

The revised § 982.205(c)(3) makes clear that an HA has the authority, if the

HA states this policy in its administrative plan, to remove an applicant's name from a tenant-based assistance waiting list if the applicant has refused offers of the types of tenant-based assistance offered by the HA. (Section 982.204(c)(1) is revised to remove a duplicative ''example'' of the same principle.) (Even if an HA operates a waiting list that covers public housing, as well as Section 8, this rule only affects an applicant's selection for Section 8 assistance, but does not affect the applicant's selection for public housing.)

In general, an HA may remove from its waiting list the name of an applicant family that does not timely respond to HA requests for information or updates (e.g., information on current family income). However, the rule is now amended to specify that in communicating such HA requests to an applicant, the HA must provide reasonable accommodation, in accordance with 24 CFR part 8, for a family member who is a person with disabilities. The HA may not remove the applicant's name without providing such accommodation. The final rule provides that if an applicant does not respond to the HA request for information or updates because of the family member's disability, the HA must reinstate the applicant in the family's former position on the waiting list (§ 982.204(c)(2)).

The rule is amended to provide that an HA may give preference for admission of families that include a person with disabilities. However, the HA may not give preference for admission of persons with a specific disability (§ 982.207(c)).

Ordinarily, the HA may not extend the term of a certificate or voucher to more than 120 days (§ 982.303(b)(1)). The rule is amended to give the HUD field office authority to approve an additional term extension if needed as a reasonable accommodation to make the program accessible to and usable by a person with a disability (§ 982.303(b)(2)). This amendment removes the need to obtain a Headquarters regulation waiver for such extensions.

XX. Findings and Certifications

A. Impact on the Environment

A Finding of No Significant Impact (FONSI) with respect to the environment was made in connection with the proposed rule 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. Since the final rule does not contain additional provisions or requirements affecting the environment, a new FONSI is not required, and the FONSI for the proposed rule is still valid. The FONSI is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions, 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. The rule merely completes the process of combining and conforming the regulations for tenant-based rental assistance under the Section 8 certificate and voucher programs and continues the Department's efforts to streamline regulations.

C. Unfunded Mandates Reform Act

The Secretary, in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, has reviewed this rule before publication and by approving it certifies that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners. The rule just simplifies the operation of two similar programs by combining and conforming their provisions.

E. Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW, Washington, DC 20410–0500.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.855 and 14.857.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 8

Administrative practice and procedure, Civil Rights, Equal employment opportunity, Grant programs—housing and community development, Housing, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Housing, Homeless, Lead poisoning, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations parts 5, 8, 882, 982, and 983 are amended as follows:

PART 5—GENERAL HUD REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

2. In § 5.100, definitions for ''Indian'' and ''Indian Housing Authority (IHA)'' are removed; and definitions for ''Housing agency (HA)'', and ''MSA'', are added in appropriate alphabetical order, to read as follows:

§ 5.100 Definitions.

* * * * *

Housing agency (HA) means a State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (''PHA'' and ''HA'' mean the same thing.)

* * * * *

MSA means a metropolitan statistical area.

* * * * *

Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

3. Section 5.214 is amended by:

a. Revising paragraph (1) in the definition of ''Assistance applicant'';

b. Revising paragraph (1)(i) in the definition of ''Entity applicant'';

c. Removing the definition of ''HA'';

d. Revising paragraph (1)(i) in the definition of ''Individual owner applicant''; and

e. Revising paragraph (1) in the definition of ''Participant'', to read as follows:

§ 5.214 Definitions.

* * * * *

Assistance applicant. * * *

(1) For any program under 24 CFR parts 215, 221, 236, 290, or 891, or any program under Section 8 of the 1937 Act: A family or individual that seeks rental assistance under the program.

* * * * *

Entity applicant. * * *

(1) * * *

(i) The project-based assistance programs under Section 8 of the 1937 Act;

* * * * *

Individual owner applicant. * * *

(1) * * *

(i) The project-based assistance programs under Section 8 of the 1937 Act; or

* * * * *

Participant. * * *

(1) For any program under 24 CFR Part 891, or Section 8 of the 1937 Act: A family receiving rental assistance under the program;

* * * * *

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

4. In § 5.403, paragraph (a) is revised, and in paragraph (b), the definition for ''Annual contributions contract'' is added in appropriate alphabetical order, to read as follows:

§ 5.403 Definitions.

(a) The terms *displaced person, elderly person, low income family, near-elderly person, person with disabilities, and* very low income family are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)). For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term ''person with disabilities'' means ''individual with handicaps'' as defined in 24 CFR 8.3.

(b) * * *

Annual contributions contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

* * * * *

Subpart E—Restrictions on Assistance to Noncitizens

5. In § 5.520, paragraphs (c)(1)(ii) and (c)(2)(i) are revised, to read as follows:

§ 5.520 Proration of assistance.

* * * * *

(c) * * *

(1) * * *

(ii) *Step 1.* Determine total tenant payment in accordance with § 5.613. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.

* * * * *

(2) * * *

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR 982.505. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.

* * * * *

PART 8—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

6. The authority citation for part 8 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

7. In § 8.28, paragraph (a)(5) is revised to read as follows:

§ 8.28 Housing certificate and housing voucher programs.

(a) * * *

(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under § 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

8. The heading for part 882 is revised to read as set forth above.

9. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

10. Section 882.101 is revised to read as follows:

§ 882.101 Applicability.

(a) The provisions of this part apply to the Section 8 Moderate Rehabilitation program.

(b) This part states the policies and procedures to be used by a PHA in administering a Section 8 Moderate Rehabilitation program. The purpose of this program is to upgrade substandard rental housing and to provide rental subsidies for low-income families.

(c) Subpart H of this part only applies to the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals.

11. Section 882.102 is revised to read as follows:

§ 882.102 Definitions.

(a) The definitions in 24 CFR part 5 apply to this part.

(b) In addition, the following definitions apply to this part:

ACC reserve account (or ''project account''). The account established and maintained in accordance with § 882.403(b).

Agreement to enter into Housing Assistance Payments Contract (''Agreement''). A written agreement between the Owner and the PHA that,

upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

Annual Contributions Contract (''ACC''). The written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the 1937 Act.

Assisted lease (or ''lease''). A written agreement between an Owner and a Family for the leasing of a unit by the Owner to the Family with housing assistance payments under a Housing Assistance Payments Contract between the Owner and the PHA.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing.

Contract. See definition of Housing Assistance Payments Contract.

Contract rent. The total amount of rent specified in the Housing Assistance Payments Contract as payable to the Owner by the Family and by the PHA to the Owner on the Family's behalf.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it satisfies the applicable housing quality standards.

Drug-related criminal activity means the illegal manufacture, sale, distribution, use, or the 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)).

Drug-trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell or distribute, of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Gross rent. The total monthly cost of housing an eligible Family, which is the sum of the Contract Rent and any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide).

Housing Assistance Payment. The payment made by the PHA to the Owner of a unit under lease by an eligible Family, as provided under the Contract. The payment is the difference between the Contract Rent and the tenant rent. An additional payment (the ''utility reimbursement'') is made by the PHA when the utility allowance is greater than the total tenant payment.

Housing Assistance Payments Contract (''Contract''). A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an eligible Family.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 moderate rehabilitation program. See § 882.404 and 24 CFR 982.401. For SRO housing, see 24 CFR 982.605; and for the Section 8 moderate rehabilitation SRO program under subpart H of this part, see § 882.803(b). For congregate housing HQS, see 24 CFR 982.609; for group housing HQS, see 24 CFR 982.614.

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of $1000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to:

(1) Upgrade to decent, safe and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below these standards (improvements being of a modest nature and other than routine maintenance); or

(2) Repair or replace major building systems or components in danger of failure.

Owner. Any person or entity, including a cooperative, having the legal right to lease or sublease existing housing.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities.

Statement of Family responsibility. An agreement in the form prescribed by HUD, between the PHA and a Family to be assisted under the Program, stating the obligations and responsibilities of the Family.

Violent criminal activity. Any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

§§ 882.106, 882.108, 882.109, 882.110, 882.111, 882.118 [Removed and reserved]

12. In Subpart A, §§ 882.106, 882.108, 882.109, 882.110, 882.111 and 882.118 are removed and reserved.

§ 882.112 [Redesignated as § 882.414]

13. Section 882.112 is redesignated as § 882.414 in subpart D.

§ 882.217 [Redesignated as § 882.517]

14. Section 882.217 is redesignated as § 882.517 in subpart E.

Subpart B—[Removed and Reserved]

14a. Subpart B is removed and reserved.

Subparts C, F, and G—[Removed and Reserved]

15. Subparts C, F, and G are removed and reserved.

16. Section 882.401 is revised to read as follows:

§ 882.401 Eligible properties.

(a) *Eligible properties.* Except as provided in paragraph (b) of this section, housing suitable for moderate rehabilitation as defined in § 882.402 is eligible for inclusion under the Moderate Rehabilitation Program. Existing structures of various types may be appropriate for this program, including single-family houses, multi-family structures and group homes.

(b) *Ineligible properties.* (1) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services are not eligible for assistance under the Moderate Rehabilitation Program.

(2) Housing owned by a State or unit of general local government is not eligible for assistance under this program.

(3) High rise elevator projects for families with children may not be utilized unless HUD determines there is no practical alternative. (HUD may make this determination for a locality's Moderate Rehabilitation Program in whole or in part and need not review each building on a case-by-case basis.)

(4) Single room occupancy (SRO) housing may not be utilized unless:

(i) The property is located in an area in which there is a significant demand for such units as determined by the HUD Field Office; and

(ii) The PHA and the unit of general local government in which the property is located approve of such units being utilized for such purpose.

(5) No Section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives will be considered as rental housing for purposes of the Moderate Rehabilitation Program.

§ 882.402 [Removed and reserved]

17. Section 882.402 is removed and reserved.

18. Section 882.404 is revised to read as follows:

§ 882.404 Housing quality standards.

(a) *Compliance with housing quality standards.* Housing used in the Section

8 moderate rehabilitation program must meet the housing quality standards in 24 CFR 982.401.

(b) *Energy performance requirement.* Caulking and weatherstripping are required as energy conserving improvements.

(c) *Special housing types.* In 24 CFR part 982, subpart M (Special Housing Types), the following provisions on HQS for special housing types apply to the Section 8 moderate rehabilitation program:

(1) 24 CFR 982.605 (HQS for SRO housing). (For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also § 882.803(b).)

(2) 24 CFR 982.609 (HQS for congregate housing).

(3) 24 CFR 982.614 (HQS for group home).

19. Section 882.407 is revised to read as follows:

§ 882.407 Other Federal requirements.

The moderate rehabilitation program is subject to applicable federal requirements in 24 CFR 5.105.

§ 882.411 [Amended]

20. In § 882.411, paragraph (c) is amended by removing the phrase ''under § 882.112'' and adding in its place ''under § 882.414''.

§ 882.413 [Amended]

21. Section 882.413 is amended by removing paragraph (c).

§§ 882.501, 882.502, 882.503, 882.504, 882.505, 882.506, 882.508 [Removed and reserved]

22. In Subpart E, §§ 882.501, 882.502, 882.503, 882.504, 882.505, 882.506, and 882.508 are removed and reserved.

§ 882.511 [Amended]

23. In § 882.511, the section heading is revised, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f) respectively, and a new paragraph (a) is added, to read as follows:

§ 882.511 Lease and termination of tenancy.

(a) *Lease.* The lease must include all provisions required by HUD, and must not include any provisions prohibited by HUD.

* * * * *

24. Section 882.514 is amended by:

a. Amending paragraph (a)(1) to remove ''parts 812 and 813 of this chapter, and'';

b. Amending paragraph (d)(1) introductory text to remove ''(§ 882.504(e))'';

c. Amending paragraph (d)(1)(iv) to remove ''and'' at the end of the paragraph and amending paragraph (d)(1)(v) to remove the period at the end of the paragraph and add ''; and'' in its place.

d. Redesignating paragraph (d)(2)(vi) as paragraph (d)(1)(vi); and

e. Revising paragraph (e), to read as follows:

§ 882.514 Family participation.

* * * * *

(e) *Continued participation of Family when Contract is terminated.* If an Owner evicts an assisted family in violation of the Contract or otherwise breaches the Contract, and the Contract for the unit is terminated, and if the Family was not at fault and is eligible for continued assistance, the Family may continue to receive housing assistance through the conversion of the Moderate Rehabilitation assistance to tenant-based assistance under the Section 8 certificate or voucher program. The Family must then be issued a certificate or voucher, and treated as any participant in the tenant-based programs under 24 CFR part 982, and must be assisted by the PHA in finding a suitable unit. All requirements of 24 CFR part 982 will be applicable except that the term of any housing assistance payments contract may not extend beyond the term of the initial Moderate Rehabilitation Contract. If the Family is determined ineligible for continued assistance, the certificate or voucher may be offered to the next Family on the PHA's waiting list. The unit will remain under the Moderate Rehabilitation ACC which provides for such a conversion of the units; therefore no amendment to the ACC will be necessary to convert to the Section 8 tenant-based assistance programs.

* * * * *

25. Section 882.515 is amended by:

a. Removing the first sentence from paragraph (b);

b. Redesignating paragraph (c) as paragraph (d); and

c. Adding a new paragraph (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

* * * * *

(c) *Obligation to supply information.* The family must supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status, submission of social security numbers and verifying documentation, submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, and submissions required for an annual or interim reexamination of family income and composition. See 24 CFR part 5.

* * * * *

26. In § 882.802, the definition for ''Eligible individual (''individual'') is revised to read as follows:

§ 882.802 Definitions.

* * * * *

Eligible individual (''individual''). An individual who is capable of independent living and is authorized for admission to assisted housing under 24 CFR part 5.

* * * * *

27. In § 882.803, paragraph (b) is revised to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b) *Housing quality standards.* (1) Section 882.404 (HQS for Moderate Rehabilitation) and 24 CFR 982.605 (HQS standards for SRO) are applicable to the Section 8 Moderate Rehabilitation SRO Program for Homeless Individuals (except that § 882.404(c)(2) (congregate housing) and (c)(3) (group home) are not applicable).

(2) In accordance with § 882.404(a), the SRO program must meet the HQS standards in 24 CFR 982.401. However, 24 CFR 982.401(j) (lead-based paint) and 982.401(l) (site and neighborhood) do not apply to this program.

(3)(i) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)

(ii) The site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), E.O. 11063 (as amended by E.O. 12259; 3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), and HUD regulations issued pursuant thereto.

(iii) The site must be accessible to social, recreational, educational, commercial and health facilities, and other appropriate municipal facilities and services.

* * * * *

28. In § 882.805, paragraph (d)(1)(i)(B) is amended by removing reference to ''§ 882.803(b)(2)'' and adding in its place reference to ''24 CFR 982.605(b)(4)'',

and paragraph (c) is revised, to read as follows:

§ 882.805 HA application process, ACC execution, and pre-rehabilitation activities.

* * * * *

(c)(1) If an owner is proposing to accomplish at least $3000 per unit of rehabilitation by including work to make the unit(s) accessible to a person with disabilities occupying the unit(s) or expected to occupy the unit(s), the PHA may approve such units not to exceed 5 percent of the units under its Program, provided that accessible units are necessary to meet the requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973. The rehabilitation must make the unit(s), and access and egress to the unit(s), barrier-free with respect to the disability of the individual in residence or expected to be in residence.

(2) The PHA must take the applications and determine the eligibility of all tenants residing in the approved units who wish to apply for the Program. After eligibility of all the tenants has been determined, the Owner must be informed of any adjustment in the number of units to be assisted. In order to make the most efficient use of housing assistance funds, an Agreement may not be entered into covering any unit occupied by a family which is not eligible to receive housing assistance payments. Therefore, the number of units approved by the PHA for a particular proposal must be adjusted to exclude any unit(s) determined by the PHA to be occupied by a family not eligible to receive housing assistance payments. Eligible Families must also be briefed at this stage as to their rights and responsibilities under the Program.

(3) Should the Owner agree with the assessment of the PHA as to the work that must be accomplished, the preliminary feasibility of the proposal, and the number of units to be assisted, the Owner, with the assistance of the PHA where necessary, must prepare detailed work write-ups including specifications and plans (where necessary) so that a cost estimate may be prepared. The work write-up will describe how the deficiencies eligible for amortization through the Contract Rents are to be corrected including minimum acceptable levels of workmanship and materials. From this work write-up, the Owner, with the assistance of the PHA, must prepare a cost estimate for the accomplishment of all specified items.

(4) The owner is responsible for selecting a competent contractor to undertake the rehabilitation. The PHA must propose opportunities for minority contractors to participate in the program.

(5) The PHA must discuss with the Owner the various financing options available. The terms of the financing must be approved by the PHA in accordance with standards prescribed by HUD.

(6) Before execution of the Agreement, the HA must:

(i)(A) Inspect the structure to determine the specific work items that need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see § 882.803(b)) or other standards approved by HUD;

(B) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added;

(C) Ensure that the owner prepares the work write-ups and cost estimates required by paragraph (c)(3) of this section;

(D) Determine initial base rents and contract rents;

(ii) Assure that the owner has selected a contractor in accordance with paragraph (c)(4) of this section;

(iii) After the financing and a contractor are obtained, determine whether the costs can be covered by initial contract rents, computed in accordance with paragraph (d) of this section; and, if a structure contains more than 50 units to be assisted, submit the base rent and contract rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner;

(iv) Obtain firm commitments to provide necessary supportive services;

(v) Obtain firm commitments for other resources to be provided;

(vi) Determine that the $3,000 minimum amount of work requirement and other requirements in paragraph (c)(1) of this section are met;

(vii) Determine eligibility of current tenants, and select the units to be assisted, in accordance with paragraph (c)(2) of this section;

(viii) Comply with the financing requirements in paragraph (c)(5) of this section;

(ix) Assure compliance with all other applicable requirements of this subpart; and

(x) If the HA determines that any structure proposed in its application is infeasible, or the HA proposes to select a different structure for any other reason, the HA must submit information for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of funding availability. The HA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the HA that HUD has approved the proposed alternative structure and that all requirements have been met.

* * * * *

29. Section 882.806 is amended by:

a. Revising the section heading;

b. Amending paragraph (a)(2) to remove the first sentence;

c. Amending paragraph (a)(2) to remove the phrase ''In addition, the'' and in place of this language add ''The'';

d. Designating the text of paragraph (a)(2) following the heading as paragraph (a)(2)(ii);

e. Adding a new paragraph (a)(2)(i); and

f. Revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 882.806 Agreement to enter into housing assistance payments contract.

(a) * * *

(2) *Timely performance of work.* (i) After execution of the Agreement, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. If the work is not so commenced, diligently continued, or completed, the PHA will have the right to rescind the Agreement, or take other appropriate action.

* * * * *

(3) *Inspections.* The PHA must inspect, as appropriate, during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement, particularly that the work meets the acceptable levels of workmanship and materials specified in the work write-up.

(4) *Changes.* (i) The Owner must submit to the PHA for approval any changes from the work specified in the Agreement which would alter the design or the quality of the required rehabilitation. The PHA may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior PHA approval, the PHA may determine that Contract Rents must be reduced or that the Owner must remedy any deficiency as a condition for acceptance of the unit(s).

(ii) Contract rents may not be increased except in accordance with §§ 882.408(d) and 882.805(d)(2).

* * * * *

30. In § 882.807, paragraphs (a) and (d) are revised to read as follows:

§ 882.807 Housing assistance payments contract.

(a) *Time of execution.* Upon PHA acceptance of the unit(s) and certifications pursuant to § 882.507, the

Contract will be executed by the Owner and the PHA. The effective date must be no earlier than the PHA inspection which provides the basis for acceptance as specified in § 882.507(e).

* * * * *

(d) *Unleased unit(s).* At the time of execution of the Contract, the Owner will be required to submit a list of dwelling unit(s) leased and not leased as of the effective date of the Contract.

* * * * *

31. Section 882.808 is amended by:

a. Amending paragraph (d) to remove reference to ''882.112'' and add in its place reference to ''882.414'';

b. Amending paragraph (i)(1) to remove reference to ''part 813'' and add in its place reference to ''part 5, subpart F'';

c. Amending paragraph (i)(3) to remove reference to ''Section 882.515(c)'' and add in its place reference to ''Section 882.515(d)'';

d. Amending paragraph (o) to remove reference to ''Section 882.217'' and add in its place reference to ''Section 882.517''; and

e. Revising paragraphs (b)(4), (c), and (i)(2), to read as follows:

§ 882.808 Management.

* * * * *

(b) * * *

(4) *Continued participation of individual when contract is terminated.* Section 882.514(e) applies to this program.

* * * * *

(c) *Lease.* Sections 882.403(d) and 882.511(a) apply to this program. In addition, the lease must limit occupancy to one eligible individual.

* * * * *

(i) * * *

(2) *Interim reexaminations.* The individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of individual income and determinations as to whether only one individual is occupying the unit. In addition § 882.515(b) shall apply.

* * * * *

§ 882.810 [Removed and reserved]

32. Section 882.810 is removed and reserved.

§ 882.406 [Redesignated as § 882.810]

33. Section 882.406 is redesignated as § 882.810 in subpart H, and newly redesignated paragraph § 882.810(g)(1)(iii)(C) is further amended by removing reference to ''24 CFR 813.107'' and adding in its place reference to ''24 CFR 5.613''.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

34. The authority citation for part 982 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

35. In part 982, the table of contents is amended by adding an entry for § 982.316 under subpart G and adding entries for subparts K and M, to read as follows:

* * * * *

Subpart G—Leasing a Unit

* * * * *

Sec.

982.316 Live-in aide.

* * * * *

Subpart K—Rent and Housing Assistance Payment

982.501 Overview.
982.502 Negotiating rent to owner.
982.503 Rent to owner: Reasonable rent.
982.504 Maximum subsidy: FMR/exception rent limit.
982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.
982.506 Over-FMR tenancy: HA approval.
982.507 Regular tenancy: How to calculate housing assistance payment.
982.508 Regular tenancy: Limit on initial rent to owner.
982.509 Regular tenancy: Annual adjustment of rent to owner.
982.510 Regular tenancy: Special adjustment of rent to owner.
982.511 Rent to owner: Effect of rent control.
982.512 Rent to owner in subsidized projects.
982.513 Other fees and charges.
982.514 Distribution of housing assistance payment.
982.515 Family share: Family responsibility.
982.516 Family income and composition: Regular and interim examinations.
982.517 Utility allowance schedule.

* * * * *

Subpart M—Special Housing Types

982.601 Overview.

Single Room Occupancy (SRO)

982.602 SRO: General.
982.603 SRO: Lease and HAP contract.
982.604 SRO: Rent and housing assistance payment.
982.605 SRO: Housing quality standards.

Congregate Housing

982.606 Congregate housing: Who may reside in congregate housing.
982.607 Congregate housing: Lease and HAP contract.
982.608 Congregate housing: Rent and housing assistance payment; FMR/exception rent limit.
982.609 Congregate housing: Housing quality standards.

Group Home

982.610 Group home: Who may reside in a group home.
982.611 Group home: Lease and HAP contract.
982.612 Group home: State approval of group home.
982.613 Group home: Rent and housing assistance payment.
982.614 Group home: Housing quality standards.

Shared Housing

982.615 Shared housing: Occupancy.
982.616 Shared housing: Lease and HAP contract.
982.617 Shared housing: Rent and housing assistance payment.
982.618 Shared housing: Housing quality standards.

Cooperative

982.619 Cooperative housing.

Manufactured Home

982.620 Manufactured home: Applicability of requirements.
982.621 Manufactured home: Housing quality standards.

Manufactured Home Space Rental

982.622 Manufactured home space rental: Rent to owner.
982.623 Manufactured home space rental: Housing assistance payment.
982.624 Manufactured home space rental: Utility allowance schedule.

36. Section 982.4 is revised to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere:*

(1) Statutory definitions. The terms *displaced person, elderly person, low-income family, person with disabilities, public housing agency, State,* and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)). For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term *person with disabilities* means *individual with handicaps* as defined in 24 CFR 8.3.

(2) *General definitions.* The terms *1937 Act, Housing agency (HA), HUD,* and *MSA,* are defined in 24 CFR part 5, subpart A.

(3) *Definitions under the 1937 Act.* The terms *annual contributions contract (ACC),* and *live-in aide* are defined in 24 CFR part 5, subpart D.

(4) *Definitions concerning family income and rent.* The terms *adjusted income, annual income, tenant rent, total tenant payment, utility allowance,* and *utility reimbursement* are defined in 24 CFR part 5, subpart F.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Absorption. In portability (under subpart H of this part 982): the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability family. The receiving HA uses funds available under the receiving HA consolidated ACC.

Administrative fee. Fee paid by HUD to the HA for administration of the program. See § 982.152.

Administrative fee reserve (formerly ''operating reserve''). Account established by HA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

Administrative plan. The plan that describes HA policies for administration of the tenant-based programs. See § 982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Amortization payment. In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in an HA program, budget authority is the maximum amount that may be paid by HUD to the HA over the ACC term of the funding increment.

Certificate. A document issued by an HA to a family selected for admission to the certificate program. The certificate describes the program and the procedures for HA approval of a unit selected by the family. The certificate also states obligations of the family under the program.

Certificate program. The rental certificate program.

Certificate or voucher holder. A family holding a certificate or voucher with unexpired search time.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see § 982.606 to § 982.609.

Contiguous MSA. In portability (under subpart H of this part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial HA is located.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the certificate or voucher program.

Contract authority. The maximum annual payment by HUD to an HA for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see § 982.619.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Drug-related criminal activity. As defined in 42 U.S.C. 1437f(f)(5).

Drug-trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Exception rent. An amount that exceeds the published FMR. See § 982.504(b). See also definition of FMR/exception rent limit.

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the **Federal Register** in accordance with 24 CFR part 888.

Family self-sufficiency program (FSS program). The program established by an HA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the HA under the HA subsidy standards.

FMR/exception rent limit. The Section 8 existing housing fair market rent published by HUD Headquarters, or any exception rent. For a regular tenancy in the certificate program, the initial rent to owner plus any utility allowance may not exceed the FMR/exception rent limit (for the selected dwelling unit or for the family unit size). For a tenancy in the voucher program, the HA may adopt a payment standard up to the FMR/exception rent limit. For an over-FMR tenancy in the certificate program, the payment standard is the FMR/exception rent limit.

Funding increment. Each commitment of budget authority by HUD to an HA under the consolidated annual contributions contract for the HA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see § 982.610 to § 982.614.

HAP contract. Housing assistance payments contract.

Housing assistance payment. The monthly assistance payment by an HA, which includes:

(1) A payment to the owner for rent to the owner under the family's lease; and

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Initial HA. In portability, the term refers to both:

(1) An HA that originally selected a family that later decides to move out of the jurisdiction of the selecting HA; and

(2) An HA that absorbed a family that later decides to move out of the jurisdiction of the absorbing HA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Jurisdiction. The area in which the HA has authority under State and local law to administer the program.

Lease. (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the HA.

(2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the HA.

For purposes of this part 982, the cooperative is the Section 8 ''owner'' of the unit, and the cooperative member is the Section 8 ''tenant.''

Lease addendum. In the lease between the tenant and the owner, the lease language required by HUD.

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see § 982.620 and § 982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See § 982.622 to § 982.624.

Mutual housing. Included in the definition of ''cooperative.''

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the **Federal Register** document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Over-FMR tenancy. In the certificate program: A tenancy for which the initial gross rent exceeds the FMR/exception rent limit.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant (participant family). A family that has been admitted to the HA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the HA for the family (first day of initial lease term).

Payment standard. In a voucher or over-FMR tenancy, the maximum subsidy payment for a family (before deducting the family contribution). For a voucher tenancy, the HA sets a payment standard in the range from 80 percent to 100 percent of the current FMR/exception rent limit. For an over-FMR tenancy, the payment standard equals the current FMR/exception rent limit.

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial HA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Reasonable rent. A rent to owner that is not more than rent charged:

(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Receiving HA. In portability: An HA that receives a family selected for participation in the tenant-based program of another HA. The receiving HA issues a certificate or voucher and provides program assistance to the family.

Regular tenancy. In the certificate program: A tenancy other than an over-FMR tenancy.

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Set-up charges. In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see § 982.615 to § 982.618.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see § 982.602 to § 982.605.

Special admission. Admission of an applicant that is not on the HA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Subsidy standards. Standards established by an HA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's certificate or voucher, for such period as determined by the HA, from the time when the family submits a request for HA approval to lease a unit, until the time when the HA approves or denies the request.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent. In the certificate program: The total tenant payment minus any utility allowance. (This term applies both to a regular tenancy and an over-FMR tenancy.)

Utility hook-up charge. In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher (rental voucher). A document issued by an HA to a family selected for admission to the voucher program. This document describes the program and the procedures for HA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Voucher program. The rental voucher program.

Waiting list admission. An admission from the HA waiting list.

37. In Section 982.53, paragraph (a) is revised to read as follows:

§ 982.53 Equal opportunity requirements.

(a) The tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*

* * * * *

38. Section 982.54 is amended by:

a. Revising paragraph (d)(7);

b. Redesignating paragraphs (d)(15) through (d)(19) as paragraphs (d)(18) through (d)(22) respectively; and

c. Adding new paragraphs (d)(15) through (d)(17), to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(7) Providing information about a family to prospective owners;

* * * * *

(15) For the certificate and voucher programs, the method for determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

(16) Approval and administration of over-FMR tenancies in the HA certificate program;

(17) HA choice whether to offer particular special housing types (see § 982.601(b));

* * * * *

§ 982.102 [Amended]

39. Section 982.102 is amended by removing paragraph (d).

40. In § 982.152, a new paragraph (a)(3) is added and paragraph (c)(1) is revised to read as follows:

§ 982.152 Administrative fee.

(a) * * *

(3) HA administrative fees may only be used to cover costs incurred to perform HA administrative responsibilities for the program in accordance with HUD regulations and requirements.

* * * * *

(c) * * *

(1) A one-time preliminary fee, in the amount of $500, is paid by HUD in the first year an HA administers a tenant-based assistance program under the 1937 Housing Act. The fee is paid for each new unit added to the HA program by the initial funding increment.

* * * * *

§ 982.153 [Amended]

41. Section 982.153 is amended by removing paragraph (b) and by removing the paragraph designation ''(a)''.

42. Section 982.158 is amended by removing ''and'' at the end of paragraph (f)(6), by redesignating paragraph (f)(7) as paragraph (f)(8), and by adding new paragraph (f)(7) to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(7) Records to document the basis for HA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and

* * * * *

43. In § 982.204, paragraph (c) is revised to read as follows:

§ 982.204 Waiting list: Administration of waiting list.

* * * * *

(c) *Removing applicant names from the waiting list.* (1) The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. The policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates.

(2) An HA decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation in accordance with 24 CFR part 8. If the applicant did not respond to the HA request for information or updates because of the family member's disability, the HA must reinstate the applicant in the family's former position on the waiting list.

* * * * *

44. In § 982.205, the section heading and paragraph (c) are revised to read as follows:

§ 982.205 Waiting list: Different programs.

* * * * *

(c) *Other housing assistance: Effect of application for, receipt or refusal.* (1) For purposes of this section, ''other housing assistance'' means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing.

(2) The HA may not take any of the following actions because an applicant has applied for, received, or refused other housing assistance:

(i) Refuse to list the applicant on the HA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the HA selection policy; or

(iv) Remove the applicant from the waiting list.

(3) Notwithstanding paragraph (c)(2) of this section, the HA may remove the applicant from the waiting list for tenant-based assistance if the HA has offered the applicant assistance under both the certificate program and the voucher program.

45. Section 982.206 is amended by removing Example A and Example B from paragraph (b)(1) and by revising paragraph (a)(2) to read as follows:

§ 982.206 Waiting list: Opening and closing; public notice.

(a) * * *

(2) The HA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means. The notice must comply with HUD fair housing requirements.

* * * * *

46. In § 982.207, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§ 982.207 Waiting list: Use of preferences.

* * * * *

(c) The HA may give preference for admission of families that include a person with disabilities. However, the HA may not give preference for admission of persons with a specific disability.

* * * * *

47. In § 982.302, paragraph (a) is revised to read as follows:

§ 982.302 Issuance of certificate or voucher; Requesting HA approval to lease a unit.

(a) When an applicant family is selected, or when a participant family wants to move to a new unit with continued tenant-based assistance (see § 982.314), the HA issues a certificate or voucher to the family. The family may search for a unit.

* * * * *

48. Section 982.303 is amended by:

a. Amending paragraph (b)(1) by removing from the second sentence the phrase ''The initial term'' and adding in its place ''Except as provided in paragraph (b)(2)(ii) of this section, the initial term''; and

b. Revising paragraph (b)(2), to read as follows:

§ 982.303 Term of certificate or voucher.

* * * * *

(b) *Extensions of term.* * * *

(2) If the family needs and requests an extension of the initial certificate or voucher term as a reasonable accommodation, in accordance with 24 CFR part 8, to make the program accessible to and usable by a family member with a disability:

(i) The HA must extend the term of the certificate or voucher up to 120 days from the beginning of the initial term;

(ii) The HUD field office may approve an additional extension of the term.

* * * * *

49. A new § 982.316 is added to subpart G to read as follows:

§ 982.316 Live-in aide.

(a) A family that consists of one or more elderly or disabled persons may request that the HA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The HA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability. (See § 982.402(b)(6) concerning effect of live-in aide on family unit size.)

(b) At any time, the HA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

(1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(2) The person commits drug-related criminal activity or violent criminal activity; or

(3) The person currently owes rent or other amounts to the HA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

50. Section 982.352 is amended by:

a. Revising paragraph (c)(7);

b. Redesignating paragraph (c)(9) as paragraph (c)(12);

c. Removing ''or'' after paragraph (c)(8);

d. Adding new paragraphs (c)(9), (c)(10), and (c)(11), to read as follows:

§ 982.352 Eligible housing.

* * * * *

(c) * * *

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

* * * * *

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

* * * * *

§ 982.401 [Amended]

51. Section 982.401 is amended by removing the last sentence from paragraph (a)(1).

52. In § 982.402, paragraph (c) is revised to read as follows:

§ 982.402 Subsidy standards.

* * * * *

(c) *Effect of family unit size—maximum subsidy.* The family unit size, as determined for a family under the HA subsidy standards is used to determine the maximum rent subsidy for the family:

(1) *Certificate program: Regular tenancy.* HUD establishes fair market rents by number of bedrooms. For a regular tenancy, the initial gross rent (sum of the initial rent to owner plus any utility allowance) may not exceed either:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The FMR/exception rent limit for the unit size rented by the family.

(2) *Certificate program: Over-FMR tenancy.* For an over-FMR tenancy, the HA establishes payment standards by number of bedrooms. The payment standard for the family must be the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(3) *Voucher program.* For a voucher tenancy, the HA establishes payment standards by number of bedrooms. The payment standards for the family must be the lower of:

(i) The payment standards for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

* * * * *

§ 982.451 [Amended]

53. Section 982.451 is amended by removing paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

54. In § 982.452, paragraph (b)(2) is revised to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

(b) * * *

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance. For provisions on family maintenance responsibilities, see § 982.404(a)(4).

55. A new subpart K is added, to read as follows:

Subpart K—Rent and Housing Assistance Payment

§ 982.501 Overview.

(a) There are three types of tenancy in the Section 8 tenant-based programs:

(1) A regular tenancy under the certificate program;

(2) An over-FMR tenancy under the certificate program; and

(3) A tenancy under the voucher program.

(b) Some requirements of this subpart are the same for all three types of tenancy. Some requirements only apply to a specific type of tenancy. Unless specifically stated, requirements of this subpart are the same for all tenancies in the tenant-based programs.

§ 982.502 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the HA must help the family negotiate the rent to owner.

§ 982.503 Rent to owner: Reasonable rent.

(a) *HA determination.* (1) The HA may not approve a lease until the HA determines that the initial rent to owner is a reasonable rent.

(2) The HA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary; or

(iii) If directed by HUD.

(3) The HA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the HA.

(b) *Comparability.* The HA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the HA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the HA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the HA information requested by the HA on rents charged by the owner for other units in the premises or elsewhere.

§ 982.504 Maximum subsidy: FMR/exception rent limit.

(a) *Purpose.* (1) Fair market rents (FMRs) are published by HUD. In the tenant-based programs, the FMR/exception rent limit is used to determine the maximum subsidy for a family.

(2) For a regular tenancy under the certificate program, the FMR/exception rent limit is the maximum initial gross rent under the assisted lease.

(3) For the voucher program, the FMR/exception rent limit is the maximum ''payment standard'' (maximum subsidy) for a family.

(4) For an over-FMR tenancy under the certificate program, the FMR/exception rent limit is the ''payment standard'' (maximum subsidy) for a family.

(b) *Determining exception rent.*—(1) *Area exception rent: HUD approval.* (i) At HUD's sole discretion, HUD may approve an area exception rent for all units, or all units of a given size (number of bedrooms), leased by program families in a part of the fair market rent area that is designated as an ''exception rent area.'' A HUD-approved area exception rent applies to all HAs with jurisdiction of the exception rent area.

(ii) An area exception rent may not exceed 120 percent of the FMR.

(iii) HUD will determine the area exception rent by either of the two following methods:

(A) *Median rent method.* In the median rent method, HUD determines the area exception rent by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception rent area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from

the most recent decennial United States census, and the exception rent area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census data products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception rent area. HUD determines the 40th percentile rent in accordance with the methodology described in 24 CFR 888.113 for determining fair market rents. An HA that asks HUD to approve an area exception rent determined by the 40th percentile rent method must present statistically representative rental housing survey data that justify exception rent approval by HUD.

(iv) An area exception rent will not be approved unless HUD determines that an exception rent is needed either:

(A) To help families find housing outside areas of high poverty; or

(B) Because certificate or voucher holders have trouble finding housing for lease under the program within the term of the certificate or voucher.

(v) The total populations of exception rent areas in an FMR area may not include more than 50 percent of the population of the fair market rent area.

(vi) At any time, HUD may withdraw or modify any approved area exception rent.

(2) *Regular certificate tenancy: Exception rent as reasonable accommodation for person with disabilities: HA approval.* For a regular tenancy in the certificate program, on request from a family that includes a person with disabilities, the HA must approve an exception rent of up to 120 percent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

§ 982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.

(a) *Use of payment standard.* For a voucher tenancy or for an over-FMR tenancy under the certificate program, a ''payment standard'' is used to calculate the monthly housing assistance payment for a family. The ''payment standard'' is the maximum monthly subsidy payment for a family.

(b) *Voucher program: Amount of assistance.*—(1) *Voucher payment standard: Maximum and minimum.* (i) The HA must adopt a payment standard schedule that establishes payment standards for the HA voucher program. For each FMR area and for each exception rent area, the HA must establish voucher payment standard amounts by unit size (zero-bedroom, one-bedroom, and so on).

(ii) For a voucher tenancy, the payment standard for each unit size may not be:

(A) More than the current FMR/exception rent limit; or

(B) Less than 80 percent of the current FMR/exception rent limit, unless a lower percent is approved by HUD.

(2) *Voucher assistance formula.* (i) For a voucher tenancy, the housing assistance payment for a family equals the lesser of:

(A) The applicable payment standard minus 30 percent of monthly adjusted income; or

(B) The monthly gross rent minus the minimum rent.

(ii) The minimum rent is the higher of:

(A) 10 percent of monthly income (gross income); or

(B) A higher minimum rent as required by law.

(3) *Voucher payment standard schedule.* (i) A voucher payment standard schedule is a list of the payment standard amounts used to calculate the voucher housing assistance payment for each unit size in an FMR area. The payment standard schedule for an FMR area includes payment standard amounts for any HUD-approved exception rent area in the FMR area.

(ii) The voucher payment standard schedule establishes a single payment standard for each unit size in an FMR area and, if applicable, in a HUD-approved exception rent area within an FMR area.

(iii) Payment standard amounts on the payment standard schedule must be within the maximum and minimum limits stated in paragraph (b)(1)(ii) of this section. Within these limits, payment standard amounts on the schedule may be adjusted annually, at the discretion of the HA, if necessary to assure continued affordability of units in the HA jurisdiction.

(iv) To calculate the housing assistance payment for a family, the HA must use the applicable payment standard from the HA payment standard schedule for the fair market rent area (including the applicable payment standard for any HUD-approved exception rent area) where the unit rented by the family is located.

(4) *Payment standard for certain subsidized projects.* For a voucher tenancy in an insured or noninsured Section 236 project, a Section 515 project of the Rural Development Administration, or a Section 221(d)(3) below market interest rate project, the payment standard may not exceed the basic rental charge (as defined in 12 U.S.C. 1715z–1(f)(1)), including the cost for tenant-paid utilities.

(c) *Over-FMR tenancy: Determining amount of assistance.*—(1) *Payment standard.* For an over-FMR tenancy, the payment standard for the unit size is the FMR/exception rent limit.

(2) *Over-FMR tenancy assistance formula.* For an over-FMR tenancy, the housing assistance payment for a family equals the lesser of:

(i) The applicable payment standard minus the total tenant payment; or

(ii) The monthly gross rent minus the minimum rent as required by law.

(d) *Payment standard for family.* (1) This paragraph (d) applies to both a voucher tenancy and an over-FMR tenancy.

(2) The payment standard for a family is the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(3) If the unit rented by a family is located in an exception rent area, the HA must use the appropriate payment standard for the exception rent area.

(4) During the HAP contract term for a unit, the amount of the payment standard for a family is the higher of:

(i) The initial payment standard (at the beginning of the lease term) minus any amount by which the initial rent to owner exceeds the current rent to owner; or

(ii) The payment standard as determined at the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.

(5) If there is a change in family size or composition during the HAP contract term, paragraph (d)(4)(i) of this section does not apply at the next regular reexamination following such change, or thereafter during the term.

§ 982.506 Over-FMR tenancy: HA approval.

(a) *HA discretion to approve.* (1) At the request of the family, the HA may approve an over-FMR tenancy in accordance with this section.

(2) Generally, the HA is not required to approve any over-FMR tenancy. However, the HA must approve an over-FMR tenancy in accordance with this section, if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(b) *Requirements.*—(1) *Ten percent limit.* The HA may not approve

additional over-FMR tenancies if the number of such tenancies currently is ten percent or more of the number of incremental certificate units under the HUD-approved budget for the HA certificate program. ''Incremental units'' means the number of budgeted certificate units minus any units for which HUD provided tenant-based program funding designated for families previously residing in housing with Section 8 project-based assistance.

(2) *Affordability of family share.* The HA may not approve an over-FMR tenancy unless the HA determines that the initial family share is reasonable. In making this determination, the HA must take into account other family expenses, such as child care, unreimbursed medical expenses, and other appropriate family expenses as determined by the HA.

(c) *Amount of assistance.* During an over-FMR tenancy, the amount of the housing assistance payment is determined in accordance with § 982.505(c).

(d) *HA administrative plan.* (1) The administrative plan must cover HA policies on approval and administration of over-FMR tenancies.

(2) The plan must state how the HA decides whether to approve an over-FMR tenancy at the family's request (within the program limit stated in paragraph (b)(1) of this section). Such policy may be based on first-come, first-served; on an HA determined system of preferences; or on discretionary case-by-case consideration of individual requests.

§ 982.507 Regular tenancy: How to calculate housing assistance payment.

The monthly housing assistance payment equals the gross rent, minus the higher of:

(a) The total tenant payment; or

(b) The minimum rent as required by law.

§ 982.508 Regular tenancy: Limit on initial rent to owner.

(a) *FMR/exception rent limit.* (1) The initial gross rent for any unit may not exceed the FMR/exception rent limit on the date the HA approves the lease.

(2) The FMR/exception rent limit for a family is the lower of:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The FMR/exception rent limit for the unit size rented by the family.

(b) *Reasonable rent.* The initial rent to owner may not exceed a reasonable rent as determined in accordance with § 982.503.

§ 982.509 Regular tenancy: Annual adjustment of rent to owner.

(a) *When rent is adjusted.* At each annual anniversary date of the HAP contract, the HA must adjust the rent to owner at the request of the owner in accordance with this section.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor, published by HUD in the **Federal Register**, that is in effect 60 days before the HAP contract anniversary;

(ii) The reasonable rent (as most recently determined or redetermined by the HA in accordance with § 982.503); or

(iii) The amount requested by the owner.

(2) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(3) The rent to owner may be adjusted up or down in accordance with this section.

(4) Notwithstanding paragraph (b)(1) of this section, the rent to owner for a unit must not be increased at the annual anniversary date unless:

(i) The owner requests the adjustment by giving notice to the HA; and

(ii) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

(5) The rent to owner will only be increased for housing assistance payments covering months commencing on the later of:

(i) The contract anniversary date; or

(ii) At least sixty days after the HA receives the owner's request.

(6) To receive an increase resulting from the annual adjustment for an annual anniversary date, the owner must request the increase at least sixty days before the next annual anniversary date.

§ 982.510 Regular tenancy: Special adjustment of rent to owner.

(a) *Substantial and general cost increases.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner to reflect increases in the actual and necessary costs of owning and maintaining the unit because of substantial and general increases in:

(i) Real property taxes;

(ii) Special governmental assessments;

(iii) Utility rates; or

(iv) Costs of utilities not covered by regulated rates.

(2) An HA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

§ 982.511 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

§ 982.512 Rent to owner in subsidized projects.

(a) *Subsidized rent.* (1) The rent to owner in an insured or noninsured Section 236 project, a Section 515 project of the Rural Development Administration, a Section 202 project or a Section 221(d)(3) below market interest rate project is the subsidized rent.

(2) During the assisted tenancy, the rent to owner must be adjusted to follow the subsidized rent, and must not be adjusted by applying the published Section 8 annual adjustment factors. For such units, special adjustments may not be granted. The following sections do not apply to a tenancy in a subsidized project described in paragraph (a)(1) of this section: § 982.509 (annual adjustment) and § 982.510 (special adjustment).

(b) *HOME.* For units assisted under the HOME program, rents are subject to requirements of the HOME program (24 CFR 92.252).

(c) *Other subsidy: HA discretion to reduce rent.* In the case of a regular tenancy, the HA may require the owner to reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants or other subsidized financing.

§ 982.513 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges

for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

(a) The HA pays the owner the lesser of the housing assistance payment or the rent to owner.

(b) If the housing assistance payment exceeds the rent to owner, the HA may pay the balance of the housing assistance payment either to the family or directly to the utility supplier to pay the utility bill on behalf of the family.

§ 982.515 Family share: Family responsibility.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The HA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share. Payment of the family share is the responsibility of the family.

§ 982.516 Family income and composition: Regular and interim examinations.

(a) *HA responsibility for reexamination and verification.* (1) The HA's responsibilities for reexamining family income and composition are specified in 24 CFR part 5, subpart F.

(2) The HA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income.

(b) *When HA conducts interim reexamination.* (1) At any time, the HA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The HA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the HA administrative plan.

(c) *Family reporting of change.* The HA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(d) *Effective date of reexamination.* (1) The HA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the HA must make appropriate adjustments in the housing assistance payment and family unit size.

(e) *Family member income.* Family income must include income of all family members, including family members not related by blood or marriage. If any new family member is added, family income must include any income of the additional family member. The HA must conduct a reexamination to determine such additional income, and must make appropriate adjustments in the housing assistance payment and family unit size.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577–0169.)

§ 982.517 Utility allowance schedule.

(a) *Maintaining schedule.* (1) The HA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

(2) The HA must give HUD a copy of the utility allowance schedule. At HUD's request, the HA also must provide any information or procedures used in preparation of the schedule.

(b) *How allowances are determined.* (1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the HA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)(i) An HA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the HA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(ii) In the utility allowance schedule, the HA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The HA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.* (1) An HA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The HA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the HA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* (1) The HA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family (rather than the family unit size as determined under the HA subsidy standards).

(2) At reexamination, the HA must use the HA current utility allowance schedule.

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a family that includes a person with disabilities, the HA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577–0169.)

56. In § 982.552, paragraph (a)(1) is revised to read as follows:

§ 982.552 HA denial or termination of assistance for family.

(a) * * *

(1) An HA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

* * * * *

57. A new subpart M is added, to read as follows:

Subpart M—Special Housing Types

§ 982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Cooperative (including mutual housing);

(6) Manufactured home.

(b) *HA choice to offer special housing type.* (1) The HA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy housing, congregate housing, group home, shared housing or cooperative housing.

(2) In general, the HA is not required to permit use of any of these special housing types in its program.

(3) The HA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(4) For occupancy of a manufactured home, see § 982.620(a).

(c) *Family choice of housing and housing type.* The HA may not set aside program funding for special housing types, or for a specific special housing type. The family chooses whether to rent housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to rent other eligible housing in accordance with requirements of the program. The HA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

(d) *Applicability of requirements.* Except as modified by this subpart, requirements in the other subparts of this part apply to the special housing types. Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

Single Room Occupancy (SRO)

§ 982.602 SRO: General.

(a) *Who may reside in an SRO?* A single person may reside in an SRO housing unit.

(b) *When may a person rent an SRO housing unit?* A single person may rent a unit in SRO housing only if:

(1) HUD determines there is significant demand for SRO units in the area;

(2) The HA and the unit of general local government approve providing assistance for SRO housing under the program; and

(3) The unit of general local government and the HA certify to HUD that the property meets applicable local health and safety standards for SRO housing.

§ 982.603 SRO: Lease and HAP contract.

For SRO housing, there is a separate lease and HAP contract for each assisted person.

§ 982.604 SRO: Rent and housing assistance payment.

(a) *SRO FMR/exception rent limit.* The FMR/exception rent limit for SRO housing is 75 percent of the zero-bedroom FMR/exception rent limit.

(b) *Regular tenancy: Limit on initial gross rent.* For a regular tenancy in the certificate program, the initial gross rent may not exceed the FMR/exception rent limit for SRO housing.

(c) *Voucher program: Payment standard.* The HA must adopt a payment standard for persons who occupy SRO housing with assistance under the voucher program. The SRO payment standard may not exceed the FMR/exception rent limit for SRO housing. While an assisted person resides in SRO housing, the SRO payment standard must be used to calculate the housing assistance payment.

(d) *Over-FMR tenancy: Payment standard.* While the assisted person resides in SRO housing with assistance under an over-FMR tenancy in the certificate program, the payment standard for the person is the SRO FMR/exception rent limit.

(e) *Utility allowance.* The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

§ 982.605 SRO: Housing quality standards.

(a) *HQS standards for SRO.* The HQS in § 982.401 apply to SRO housing. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), and § 982.401(d) (space and security). Since the SRO units will not house children, the housing quality standards in § 982.401(j), concerning lead-based paint, do not apply to SRO housing.

(b) *Performance requirements.* (1) SRO housing is subject to the additional performance requirements in this paragraph (b).

(2) Sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

(i) *Sanitary facilities.* (A) At least one flush toilet that can be used in privacy, lavatory basin, and bathtub or shower, in proper operating condition, must be supplied for each six persons or fewer residing in the SRO housing.

(B) If SRO units are leased only to males, flush urinals may be substituted for not more than one-half the required number of flush toilets. However, there must be at least one flush toilet in the building.

(C) Every lavatory basin and bathtub or shower must be supplied at all times with an adequate quantity of hot and cold running water.

(D) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(E) Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them. These facilities may not be located more than one floor above or below the SRO unit. Sanitary facilities may not be located below grade unless the SRO units are located on that level.

(ii) *Space and security.* (A) No more than one person may reside in an SRO unit.

(B) An SRO unit must contain at least one hundred ten square feet of floor space.

(C) An SRO unit must contain at least four square feet of closet space for each resident (with an unobstructed height of at least five feet). If there is less closet space, space equal to the amount of the deficiency must be subtracted from the area of the habitable room space when determining the amount of floor space

in the SRO unit. The SRO unit must contain at least one hundred ten square feet of remaining floor space after subtracting the amount of the deficiency in minimum closet space.

(D) Exterior doors and windows accessible from outside an SRO unit must be lockable.

(3) *Access.* (i) Access doors to an SRO unit must have locks for privacy in proper operating condition.

(ii) An SRO unit must have immediate access to two or more approved means of exit, appropriately marked, leading to safe and open space at ground level, and any means of exit required by State and local law.

(iii) The resident must be able to access an SRO unit without passing through any other unit.

(4) *Sprinkler system.* A sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require must be installed in each building. The term ''major spaces'' means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

Congregate Housing

§ 982.606 Congregate housing: Who may reside in congregate housing.

(a) An elderly person or a person with disabilities may reside in a congregate housing unit.

(b)(1) If approved by the HA, a family member or live-in aide may reside with the elderly person or person with disabilities.

(2) The HA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

§ 982.607 Congregate housing: Lease and HAP contract.

For congregate housing, there is a separate lease and HAP contract for each assisted family.

§ 982.608 Congregate housing: Rent and housing assistance payment; FMR/exception rent limit.

(a) Unless there is a live-in aide:

(1) The FMR/exception rent limit for a family that resides in a congregate housing unit is the zero-bedroom FMR/exception rent limit.

(2) However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the FMR/exception rent limit for a family that resides in a congregate housing unit is the one-bedroom FMR/exception rent limit.

(b) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

§ 982.609 Congregate housing: Housing quality standards.

(a) *HQS standards for congregate housing.* The HQS in § 982.401 apply to congregate housing. However, the standards in this section apply in place of § 982.401(c) (food preparation and refuse disposal). Congregate housing is not subject to the HQS acceptability requirement in § 982.401(d)(2)(i) that the dwelling unit must have a kitchen area.

(b) *Food preparation and refuse disposal: Additional performance requirements.* The following additional performance requirements apply to congregate housing:

(1) The unit must contain a refrigerator of appropriate size.

(2) There must be central kitchen and dining facilities on the premises. These facilities:

(i) Must be located within the premises, and accessible to the residents;

(ii) Must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(iii) Must be used to provide a food service that is provided for the residents, and that is not provided by the residents; and

(iv) Must be for the primary use of residents of the congregate units and be sufficient in size to accommodate the residents.

(3) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

Group Home

§ 982.610 Group home: Who may reside in a group home.

(a) An elderly person or a person with disabilities may reside in a State-approved group home.

(b)(1) If approved by the HA, a live-in aide may reside with a person with disabilities.

(2) The HA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(c) Except for a live-in aide, all residents of a group home, whether assisted or unassisted, must be elderly persons or persons with disabilities.

(d) Persons residing in a group home must not require continual medical or nursing care.

(e) Persons who are not assisted under the tenant-based program may reside in a group home.

(f) No more than 12 persons may reside in a group home. This limit covers all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

§ 982.611 Group home: Lease and HAP contract.

For assistance in a group home, there is a separate HAP contract and lease for each assisted person.

§ 982.612 Group home: State approval of group home.

A group home must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, or Social Services) as a group home for elderly persons or persons with disabilities.

§ 982.613 Group home: Rent and housing assistance payment.

(a) *Meaning of pro-rata portion.* For a group home, the term ''pro-rata portion'' means the ratio derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home. The number of persons in the assisted household equals one assisted person plus any HA-approved live-in aide.

(b) *Rent to owner: Reasonable rent limit.* (1) The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home.

(2) The reasonable rent for a group home is determined in accordance with § 982.503. In determining reasonable rent for the group home, the HA must consider whether sanitary facilities, and facilities for food preparation and service, are common facilities or private facilities.

(c) *Maximum subsidy.*—(1) *Family unit size.* (i) Unless there is a live-in aide, the family unit size is zero or one bedroom.

(ii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(2) *Regular tenancy: Limit on initial gross rent.* For a person who resides in a group home under a regular tenancy in the certificate program, the initial gross rent may not exceed either:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The pro-rata portion of the FMR/exception rent limit for the group home size.

(3) *Voucher tenancy: Payment standard.* For a voucher tenancy, the

payment standard for a person who resides in a group home is the lower of:

(i) The payment standard for the family unit size; or

(ii) The pro-rata portion of the payment standard for the group home size.

(4) *Over-FMR tenancy: Payment standard.* For an over-FMR tenancy, the payment standard for a person who resides in a group home is the lower of:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The pro-rata portion of the FMR/exception rent limit for the group home size.

(d) *Utility allowance.* The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

§ 982.614 Group home: Housing quality standards.

(a) *Compliance with HQS.* The HA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets the housing quality standards.

(b) *Applicable HQS standards.* (1) The HQS in § 982.401 apply to assistance in a group home. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), § 982.401(d) (space and security), § 982.401(g) (structure and materials) and § 982.401(l) (site and neighborhood).

(2) The entire unit must comply with the HQS.

(c) *Additional performance requirements.* The following additional performance requirements apply to a group home:

(1) *Sanitary facilities.* (i) There must be a bathroom in the unit. The unit must contain, and an assisted resident must have ready access to:

(A) A flush toilet that can be used in privacy;

(B) A fixed basin with hot and cold running water; and

(C) A shower or bathtub with hot and cold running water.

(ii) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(iii) The unit may contain private or common sanitary facilities. However, the facilities must be sufficient in number so that they need not be shared by more than four residents of the group home.

(iv) Sanitary facilities in the group home must be readily accessible to and usable by residents, including persons with disabilities.

(2) *Food preparation and service.* (i) The unit must contain a kitchen and a dining area. There must be adequate space to store, prepare, and serve foods in a sanitary manner.

(ii) Food preparation and service equipment must be in proper operating condition. The equipment must be adequate for the number of residents in the group home. The unit must contain the following equipment:

(A) A stove or range, and oven;

(B) A refrigerator; and

(C) A kitchen sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

(iii) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

(iv) The unit may contain private or common facilities for food preparation and service.

(3) *Space and security.* (i) The unit must provide adequate space and security for the assisted person.

(ii) The unit must contain a living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space. The unit must contain at least one bedroom of appropriate size for each two persons.

(iii) Doors and windows that are accessible from outside the unit must be lockable.

(4) *Structure and material.* (i) The unit must be structurally sound to avoid any threat to the health and safety of the residents, and to protect the residents from the environment.

(ii) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other significant damage. The roof structure must be firm, and the roof must be weathertight. The exterior or wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or large holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., must not present a danger of tripping or falling. Elevators must be maintained in safe operating condition.

(iii) The group home must be accessible to and usable by a resident with disabilities.

(5) *Site and neighborhood.* The site and neighborhood must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the residents. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mud slides, abnormal air pollution, smoke or dust, excessive noise, vibrations or vehicular traffic, excessive accumulations of trash, vermin or rodent infestation, or fire hazards. The unit must be located in a residential setting.

Shared Housing

§ 982.615 Shared housing: Occupancy.

(a) *Sharing a unit.* An assisted family may reside in shared housing. In shared housing, an assisted family shares a unit with the other resident or residents of the unit. The unit may be a house or an apartment.

(b) *Who may share a dwelling unit with assisted family?* (1) If approved by the HA, a live-in aide may reside with the family to care for a person with disabilities. The HA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) Other persons who are assisted under the tenant-based program, or other persons who are not assisted under the tenant-based program, may reside in a shared housing unit.

(3) The owner of a shared housing unit may reside in the unit. A resident owner may enter into a HAP contract with the HA. However, housing assistance may not be paid on behalf of an owner. An assisted person may not be related by blood or marriage to a resident owner.

§ 982.616 Shared housing: Lease and HAP contract.

For assistance in a shared housing unit, there is a separate HAP contract and lease for each assisted family.

§ 982.617 Shared housing: Rent and housing assistance payment.

(a) *Meaning of pro-rata portion.* For shared housing, the term ''pro-rata portion'' means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

(b) *Rent to owner: Reasonable rent.* (1) The rent to owner for the family may

not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit.

(2) The reasonable rent is determined in accordance with § 982.503.

(c) *Maximum subsidy.*—(1) *Regular tenancy: Limit on initial gross rent.* For a regular tenancy under the certificate program, the initial gross rent may not exceed either:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The pro-rata portion of the FMR/exception rent limit for the shared housing unit size.

(2) *Voucher or over-FMR tenancy: Payment standard.* For a voucher tenancy or an over-FMR tenancy, the payment standard is the lower of:

(i) The payment standard for the family unit size; or

(ii) The pro-rata portion of the payment standard for the shared housing unit size.

(3) *Live-in aide.* If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(d) *Utility allowance.* The utility allowance for an assisted family residing in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

§ 982.618 Shared housing: Housing quality standards.

(a) *Compliance with HQS.* The HA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

(b) *Applicable HQS standards.* The HQS in § 982.401 apply to assistance in shared housing. However, the HQS standards in this section apply in place of § 982.401(d) (space and security).

(c) *Facilities available for family.* The facilities available for the use of an assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with § 982.401(b), and food preparation and refuse disposal facilities in accordance with § 982.401(c).

(d) *Space and security: Performance requirements.* (1) The entire unit must provide adequate space and security for all its residents (whether assisted or unassisted).

(2)(i) Each unit must contain private space for each assisted family, plus common space for shared use by the residents of the unit. Common space must be appropriate for shared use by the residents.

(ii) The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family may not be less than the family unit size.

(iii) A zero or one bedroom unit may not be used for shared housing.

Cooperative

§ 982.619 Cooperative housing.

(a) *When cooperative housing may be used.* A family may reside in cooperative housing if the HA determines that:

(1) Assistance under the program will help maintain affordability of the cooperative unit for low-income families; and

(2) The cooperative has adopted requirements to maintain continued affordability for low-income families after transfer of a cooperative member's interest in a cooperative unit (such as a sale of the resident's share in a cooperative corporation).

(b) *Rent to owner.* (1) The reasonable rent for a cooperative unit is determined in accordance with § 982.503. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(2) The carrying charge consists of the amount assessed to the member by the cooperative for occupancy of the housing. The carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. However, the carrying charge does not include down-payments or other payments to purchase the cooperative unit, or to amortize a loan to the family for this purpose.

(3) Gross rent is the carrying charge plus any utility allowance.

(4) For a regular tenancy under the certificate program, rent to owner is adjusted in accordance with § 982.509 (annual adjustment) and § 982.510 (special adjustments). For a cooperative, adjustments are applied to the carrying charge as determined in accordance with this section.

(5) The occupancy agreement/lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner.

(c) *Housing assistance payment.* The amount of the housing assistance payment is determined in accordance with subpart K of this part.

(d) *Live-in aide.* (1) If approved by the HA, a live-in aide may reside with the family to care for a person with disabilities. The HA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

Manufactured Home

§ 982.620 Manufactured home: Applicability of requirements.

(a) *Assistance for resident of manufactured home.* (1) A family may reside in a manufactured home with assistance under the program.

(2) The HA must permit a family to lease a manufactured home and space with assistance under the program.

(3) The HA may provide assistance for a family that owns the manufactured home and leases only the space. The HA is not required to provide such assistance under the program.

(b) *Applicability.* (1) The HQS in § 982.621 always apply when assistance is provided to a family occupying a manufactured home (under paragraph (a)(2) or (a)(3) of this section).

(2) Sections 982.622 to 982.624 only apply when assistance is provided to a manufactured home owner to lease a manufactured home space.

(c) *Live-in aide.* (1) If approved by the HA, a live-in aide may reside with the family to care for a person with disabilities. The HA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

§ 982.621 Manufactured home: Housing quality standards.

A manufactured home must meet all the HQS performance requirements and acceptability criteria in § 982.401. A manufactured home also must meet the following requirements:

(a) *Performance requirement.* A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.

(b) *Acceptability criteria.* A manufactured home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

Manufactured Home Space Rental

§ 982.622 Manufactured home space rental: Rent to owner.

(a) *What is included.* (1) Rent to owner for rental of a manufactured home space includes payment for maintenance and services that the owner must provide to the tenant under the lease for the space.

(2) Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

(b) *Reasonable rent.* (1) During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent as determined in accordance with this section. Section 982.503 is not applicable.

(2) The HA may not approve a lease for a manufactured home space until the HA determines that the initial rent to owner for the space is a reasonable rent. At least annually during the assisted tenancy, the HA must redetermine that the current rent to owner is a reasonable rent.

(3) The HA must determine whether the rent to owner for the manufactured home space is a reasonable rent in comparison to rent for other comparable manufactured home spaces. To make this determination, the HA must consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to the rent).

(4) By accepting each monthly housing assistance payment from the HA, the owner of the manufactured home space certifies that the rent to owner for the space is not more than rent charged by the owner for unassisted rental of comparable spaces in the same manufactured home park or elsewhere. The owner must give the HA information, as requested by the HA, on rents charged by the owner for other manufactured home spaces.

§ 982.623 Manufactured home space rental: Housing assistance payment.

(a) *Fair market rent.* The FMR for a manufactured home space is determined in accordance with 24 CFR 888.113(e). Exception rents do not apply to rental of a manufactured home space.

(b) *Housing assistance payment: For regular certificate tenancy.* (1) *Limit on initial rent.* For a regular tenancy, the initial rent to owner for leasing a manufactured home space may not exceed the published FMR for a manufactured home space.

(2) *Formula.* (i) During the term of a regular tenancy, the amount of the monthly housing assistance payment equals the lesser of paragraphs (b)(2)(i)(A) or (b)(2)(ii)(B) of this section:

(A) Manufactured home space cost minus the higher of:

(*1*) The total tenant payment; or

(*2*) The minimum rent as required by law.

(B) The rent to owner for the manufactured home space.

(ii) ''Manufactured home space cost'' means the sum of:

(A) The amortization cost;

(B) The utility allowance; and

(C) The rent to owner for the manufactured home space.

(c) *Housing assistance payment: For voucher tenancy or over-FMR tenancy.* (1) *Payment standard.* For a voucher tenancy or an over-FMR tenancy, the payment standard is used to calculate the monthly housing assistance payment for a family. The payment standard for a family renting a manufactured home space is the published FMR for rental of a manufactured home space. The amount of the payment standard is determined in accordance with § 982.505(d)(4) and (d)(5).

(2) *Subsidy calculation for voucher tenancy.* During the term of a voucher tenancy, the amount of the monthly housing assistance payment for a family equals the lesser of paragraphs (c)(2)(i) or (c)(2)(ii) of this section:

(i) An amount obtained by subtracting 30 percent of the family's monthly adjusted gross income from the sum of:

(A) The amortization cost;

(B) The utility allowance; and

(C) The payment standard.

(ii) The monthly gross rent for the manufactured home space minus the minimum rent. For a voucher tenancy, the minimum rent is the higher of:

(A) 10 percent of monthly income (gross income); or

(B) A higher minimum rent as required by law.

(3) *Subsidy calculation for over-FMR tenancy.* During the term of an over-FMR tenancy, the amount of the monthly housing assistance payment for a family equals the lesser of paragraphs (c)(3)(i) or (c)(3)(ii) of this section:

(i) An amount obtained by subtracting the family's total tenant payment from the sum of:

(A) The amortization cost;

(B) The utility allowance; and

(C) The payment standard.

(ii) The monthly gross rent for the manufactured home space minus the minimum rent as required by law.

(d) *Amortization cost.* (1) In calculating the subsidy payment for a voucher tenancy, an over-FMR tenancy, or a regular tenancy under the certificate program, the amortization cost may include debt service to amortize costs (other than furniture costs) included in the purchase price of the manufactured home. The debt service includes the payment for principal and interest on the loan. The debt service amount must be reduced by 15 percent to exclude debt service to amortize the cost of furniture, unless the HA determines that furniture was not included in the purchase price.

(2) The amount of the amortization cost is the debt service established at time of application to a lender for financing purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home is not included in the amortization cost.

(3) Debt service for set-up charges incurred by a family that relocates its home may be included in the monthly amortization payment made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize such charges.

(e) *Annual income.* In determining a family's annual income, the value of equity in the manufactured home owned by the assisted family, and in which the family resides, is not counted as a family asset.

§ 982.624 Manufactured home space rental: Utility allowance schedule.

The HA must establish utility allowances for manufactured home space rental. For the first twelve months of the initial lease term only, the allowances must include a reasonable amount for utility hook-up charges payable by the family if the family actually incurs the expenses because of a move. Allowances for utility hook-up charges do not apply to a family that leases a manufactured home space in place. Utility allowances for manufactured home space must not cover costs payable by a family to cover the digging of a well or installation of a septic system.

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

58. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

59. In part 983, the table of contents entries for subparts A and E are revised, and the table of contents entries for subpart F are added to read as follows:

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

SUBPART A—GENERAL INFORMATION

983.1 Purpose and applicability.
983.2 Additional definitions.
983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.
983.4 HUD review of HA plans to attach assistance to units.
983.5 Housing quality standards.
983.6 Site and neighborhood standards.
983.7 Eligible and ineligible properties and HA-owned units.
983.8 Rehabilitation: Minimum expenditure requirement.
983.9 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP contract.
983.10 Displacement, relocation, and acquisition.
983.11 Other Federal requirements.
983.12 Program accounts and records.
983.13 Special housing types.

* * * * *

SUBPART E—MANAGEMENT

983.201 Responsibilities of the HA.
983.202 Responsibilities of the owner.
983.203 Family participation.
983.204 Maintenance, operation and inspections.
983.205 Overcrowded and underoccupied units.
983.206 Assisted tenancy and termination of tenancy.
983.207 Informal review or hearing

SUBPART F—RENT AND HOUSING ASSISTANCE PAYMENT

983.251 Applicability.
983.252 Limits on initial rent to owner.
983.253 Initial rent: Who approves.
983.254 Annual adjustment of rent to owner.
983.255 Special adjustment of rent to owner.
983.256 Reasonable rent.
983.257 Other subsidy: Effect on rent to owner.
983.258 Rent to owner: Effect of rent control
983.259 Correction of rent.
983.260 Housing assistance payment: Amount and distribution.
983.261 Family share: Family responsibility to pay.
983.262 Other fees and charges.

60. Section 983.1 is revised to read as follows:

§ 983.1 Purpose and applicability.

(a) This part 983 applies to the Section 8 Project-based Certificate (PBC) program, authorized under section 8(d)(2) of the 1937 Act (42 U.S.C. 1437f(d)(2)).

(b)(1) Except as otherwise expressly modified or excluded by this part 983, provisions of 24 CFR part 982 apply to the PBC program.

(2) The following provisions of 24 CFR part 982 do not apply to the PBC program:

(i) Provisions on tenant-based assistance, on issuance or use of a voucher or certificate; and on portability;

(ii) Provisions on voucher tenancy or over-FMR tenancy;

(iii) In subpart D, § 982.158(e) (retention of lease, HAP contract and family application);

(iv) In subpart E, § 982.202(b)(3) (where family will live); § 982.204(d) (family size); § 982.205(a) (waiting lists);

(v) Subpart G, except that the following provisions of subpart G are applicable to the PBC Program: § 982.308 (lease); § 982.311(a), (b), (c) and (d)(1) (when assistance is paid); § 982.312 (absence from unit); and § 982.313 (security deposit);

(vi) Subpart H (where family can live and move);

(vii) In subpart I, § 982.402(a)(3), § 982.402(c) and (d) (effect of family unit size—subsidy and size of unit); and § 982.403 (termination of HAP contract when unit is too big or too small);

(viii) In subpart J, § 982.451(a), § 982.451(b)(2) (term of HAP contract same as lease); § 982.454 (termination of HAP contract because of insufficient funding); § 982.455 (termination of HAP contract; termination notice);

(ix) Subpart K, except that the following provisions of Subpart K are applicable to the PBC Program: § 982.504 (for determination of the FMR/exception rent limit); § 982.516 (family income and composition; regular and interim examinations), § 982.517 (utility allowance schedule);

(x) In subpart M, all provisions authorizing assistance for shared housing (including § 982.615 through § 982.618); or assistance for a family occupying a manufactured home (including § 982.620 through § 982.624).

(3) This part does not apply to the voucher program, or to an over-FMR tenancy under the certificate program. Every tenancy assisted in the PBC program is a regular tenancy under the certificate program.

§ 983.2 [Amended]

61. In § 983.2, the introductory text is amended by removing the reference to ''§ 982.3 of this chapter'' and adding in its place ''24 CFR 982.4''.

62. Section 983.3 is amended by adding new paragraph (d), to read as follows:

§ 983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.

* * * * *

(d) *Amount of assistance.* The HA must ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

63. Section 983.5 is revised to read as follows:

§ 983.5 Housing quality standards.

24 CFR 982.401 (*housing quality standards*) applies to the PBC program. For special housing types, housing quality standards in 24 CFR part 982, subpart M, apply to the PBC program.

64. Section 983.7 is amended as follows:

a. By revising the introductory text of paragraph (b);

b. By removing ''or'' at the end of paragraph (b)(5) and by the removing the period at the end of paragraph (b)(6) and adding a semicolon in its place.

c. By removing paragraph (b)(7), and by adding new paragraphs (b)(7) and (b)(8);

d. By removing paragraph (d);

e. By redesignating paragraph (c) as paragraph (d);

f. By removing paragraph (f);

g. By redesignating paragraph (g) as paragraph (f); and

h. By adding paragraph (c), to read as follows:

§ 983.7 Eligible and ineligible properties and HA-owned units.

* * * * *

(b) An HA may not attach or pay PBC assistance to units in the following types of housing:

* * * * *

(7) College or other school dormitories; or

(8) A manufactured home.

* * * * *

(c) An HA may not attach or pay PBC assistance to units in any of the following types of subsidized housing:

(1) Public housing;

(2) A unit subsidized by any other form of Section 8 assistance (tenant-based or project-based);

(3) A unit subsidized with any local or State rent subsidy;

(4) A Section 236 project (insured or noninsured); or a unit subsidized with Section 236 rental assistance payments;

(5) A Rural Development Administration Section 515 project;

(6) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949 (a Rural Development Administration Program);

(7) Housing assisted under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(8) A Section 221(d)(3) project;

(9) A project with a Section 202 loan;

(10) A Section 202 project for non-elderly persons with disabilities (Section 162 assistance);

(11) Section 202 supportive housing for the elderly;

(12) Section 811 supportive housing for persons with disabilities;

(13) A Section 101 rent supplement project;

(14) A unit subsidized with tenant-based assistance under the HOME program; or

(15) Any unit with any other duplicative Federal State, or local housing subsidy, as determined by HUD. For this purpose, ''housing subsidy'' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

* * * * *

§ 983.10 [Amended]

65. In § 983.10, paragraph (g)(1)(iii)(B) is amended by removing the reference to ''24 CFR 813.107'' and adding in its place ''24 CFR 5.613''.

66. Section 983.12 is revised to read as follows:

§ 983.12 Program accounts and records.

(a) During the term of each assisted lease, and for at least three years thereafter, the HA must keep:

(1) A copy of the executed lease; and

(2) The application from the family.

(b) During the HAP contract term, and for at least three years thereafter, the HA must keep a copy of:

(1) The HAP contract; and

(2) Records to document the basis for determination of the initial rent to owner, and for the HA determination that rent to owner is a reasonable rent (initially and during the term of the HAP contract).

67. Section 983.13 is revised to read as follows:

§ 983.13 Special housing types.

(a) *Applicability.* For applicability of rules on special housing types at 24 CFR part 982, subpart M, see § 983.1(b)(2)(x). In the PBC program, the HA may not provide assistance for shared housing or for manufactured homes.

(b) *Group homes.* A group home may include one or more group home units. There must be a single PBC HAP contract for units in the group home. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

§ 983.14 [Removed]

68. Section 983.14 is removed.

69. In § 983.51, the introductory text of paragraph (d) is revised to read as follows:

§ 983.51 HA unit selection policy, advertising, and owner application requirements.

* * * * *

(d) *Owner application.* The owner's application submitted to the HA must contain the following:

* * * * *

§ 983.52 [Amended]

70. Section 983.52 is amended by:

a. Removing the second and third sentences from paragraph (a);

b. Removing the reference to ''§ 982.8 of this chapter'' from paragraph (a) and adding in its place ''§ 983.8''; and

c. Removing the reference to ''§ 983.12'' from paragraph (c) and adding in its place reference to ''§ 983.202''.

§ 983.55 [Amended]

71. Section 983.55 is amended by removing from paragraphs (a) and (b) the reference to ''§ 983.12'' and by adding in its place a reference to ''§ 983.202''.

§ 983.101 [Amended]

72. Section 983.101 is amended by removing from paragraph (b)(3) the reference to ''§ 983.12'' each place it appears and by adding in its place a reference to ''§ 983.202''.

§ 983.103 [Amended]

73. Section 983.103 is amended by removing from paragraph (d) the reference to ''§ 983.203'' and by adding in its place a reference to ''§ 983.253''.

§ 983.151 [Amended]

74. Section 983.151 is amended by removing the last sentence from paragraph (b)(3).

75. Section 983.201 is revised to read as follows:

§ 983.201 Responsibilities of the HA.

The HA must:

(a) Inspect the project before, during and upon completion of new construction or rehabilitation; and

(b) Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 983.202 [Amended]

76. Section 983.202 is amended by removing from the second sentence the phrase ''disclosing information and submitting certifications as required by 24 CFR part 12 and implementing instructions,'' and by removing the additional phrase ''that accessibility'' and adding in place of this latter phrase the term ''accessibility''.

§ 983.203 [Amended]

77. Section 983.203 is amended by:

a. Removing from paragraph (a)(1) the phrase ''and 24 CFR 5.410 through 5.430'';

b. Removing from paragraph (b) the next to the last sentence, which is in parentheses;

c. Removing from paragraph (d)(6) the parenthetical phrase ''(under § 983.208)'' and adding in its place ''(under § 983.207)''; and

d. Removing from paragraph (g)(1) reference to ''§ 983.207'' and adding in its place ''§ 983.206''.

78. In § 983.204, a new paragraph (e) is added to read as follows:

§ 983.204 Maintenance, operation and inspections.

* * * * *

(e) *Enforcement of HQS.* 24 CFR part 982 and this part 983 do not create any right of the family, or any party other than HUD or the HA, to require enforcement of the HQS requirement by HUD or the HA, or to assert any claim against HUD or the HA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

§ 983.205 [Removed]

§§ 983.206 through 983.208 [Redesignated as §§ 983.205 through 983.207]

79. In subpart E, § 983.205 is removed and §§ 983.206 through 983.208 are redesignated as §§ 983.205 through 983.207, respectively.

80. In newly redesignated § 983.205, paragraph (a) is revised to read as follows:

§ 983.205 Overcrowded and underoccupied units.

(a) 24 CFR 982.403, *Terminating HAP contract: When unit is too big or too small,* does not apply.

* * * * *

81. Newly redesignated § 983.207 is revised to read as follows:

§ 983.207 Informal review or hearing.

24 CFR 982.554 (Informal review for applicants) and 24 CFR 982.555 (Informal hearing for participants) are applicable.

82. In part 983, a new subpart F is added, to read as follows:

SUBPART F—RENT AND HOUSING ASSISTANCE PAYMENT

§ 983.251 Applicability.

(a) This subpart describes how to determine the amount of the rent to owner and the housing assistance payment in the PBC program.

(b) In subpart K of 24 CFR part 982 (rent and housing assistance payment for tenant-based program), the following are the only sections that apply to the PBC program under this Part: § 982.504 (for determination of the FMR/exception rent limit); § 982.516 (regular and interim examinations of family income and composition); and § 982.517 (utility allowance schedule).

§ 983.252 Limits on initial rent to owner.

(a) *Reasonable rent.* The initial rent to owner for a unit may not exceed the reasonable rent as determined by the HA in accordance with § 983.256.

(b) *FMR/exception rent limit.* The initial gross rent for a unit (rent to owner plus utility allowance) may not exceed the FMR/exception rent limit on the date the Agreement is executed. The FMR/exception rent limit is determined by the HA in accordance with 24 CFR 982.504.

§ 983.253 Initial rent: Who approves.

(a) *For units that are not HUD-insured or HA-owned.* The HA approves the initial rent to owners for PBC units that are not financed with a HUD-insured multifamily mortgage, and are not owned by the HA.

(b) *For units that are insured or HA-owned.* For HA-owned PBC units or PBC units financed with a HUD insured multifamily mortgage, the initial rents must be approved by HUD.

§ 983.254 Annual adjustment of rent to owner.

(a) *Owner request for adjustment and compliance with contract.* At each annual anniversary date of the HAP contract, the HA must adjust the rent to owner in accordance with the following requirements:

(1) The owner must request a rent increase (including a comparability study to determine the amount of such increase) by written notice to the HA at least 120 days before the HAP contract anniversary. The request must be submitted in the form and manner required by the HA.

(2) The HA may not increase the rent at the annual anniversary unless:

(i) The owner requested the increase by the 120 day deadline; and

(ii) During the year before the contract anniversary, the owner complied with all requirements of the HAP contract, including compliance with the HQS for all contract units.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor published by HUD in the **Federal Register**;

(ii) The reasonable rent as determined by the HA in accordance with § 983.256; or

(iii) The rent requested by owner.

(2) For a HAP contract under an Agreement executed on or after June 1, 1998, the applicable factor is the published annual adjustment factor in effect 60 days before the HAP contract anniversary. For a HAP contract under an Agreement executed before June 1, 1998, the applicable factor is the published annual adjustment factor in effect on the contract anniversary date.

(3) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(4) The rent to owner may be adjusted up or down in accordance with this section.

(c) *Rent adjustments for HA-owned units.* For HA-owned PBC units, the HA must request HUD approval of the annual adjustment. The HA may not increase the rent at the annual anniversary until and unless HUD has reviewed the HA comparability study, and has approved the adjustment.

(d) *Initial rent.* Except as necessary to correct errors in establishing the initial rent in accordance with HUD requirements, the adjusted rent to owner must not be less than the initial rent.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577–0169.)

§ 983.255 Special adjustment of rent to owner.

(a) *HUD discretion.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner. An HA may only make a special adjustment of the rent to owner if the adjustment has been approved by HUD.

(2) The owner does not have any right to receive a special adjustment.

(b) *Purpose of special adjustment.* A special adjustment may only be approved to reflect increases in the actual and necessary costs of owning and maintaining the contract units because of substantial and general increases in:

(1) Real property taxes;

(2) Special governmental assessments;

(3) Utility rates; or

(4) Costs of utilities not covered by regulated rates.

(c) *Limits on special adjustment.* (1) A special adjustment may only be approved if and to the extent the owner demonstrates that cost increases are not adequately compensated by application of the published annual adjustment factor at the contract anniversary (see § 983.254). The owner must demonstrate that the rent to owner is not sufficient for proper operation of the housing.

(2) The adjusted rent may not exceed the reasonable rent as determined by a comparability study in accordance with § 983.256.

(d) *Financial information.* The owner must submit financial information, as requested by the HA, that supports the grant or continuance of a special adjustment. For HAP contracts of more than twenty units, such financial information must be audited.

(e) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577–0169.)

§ 983.256 Reasonable rent.

(a) *Requirement.* (1) The HA may not enter an agreement to enter into housing assistance payments contract until the HA determines that the initial rent to owner under the HAP contract is a reasonable rent.

(2) During the term of a HAP contract, the rent to owner may not exceed the reasonable rent as determined by the HA.

(3) At least annually during the HAP contract term, the HA must redetermine that the current rent to owner does not exceed a reasonable rent.

(b) *Comparability.* The HA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the HA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Appraisal.* (1) *Determining initial rent.* (i) To determine that the initial rent to owner is reasonable, the HA must use a qualified State-certified appraiser who has no direct or indirect interest in the property or otherwise.

(ii) For each unit type, the appraiser must submit a completed comparability analysis on Form HUD–92273 (Estimates of Market Rent by Comparison—the form is available at the Department of Housing and Urban Development, HUD Custom Service Center, 451 7th Street, SW, Room B–100, Washington, DC 20410) for HA review and approval. The appraisal

must use at least three comparable units in the private unassisted market.

(iii) The HA must certify to HUD that the initial rent to owner for a unit does not exceed the reasonable rent.

(2) *Annual Adjustment: Comparability study.* (i) In determining the annual adjustment of rent to owner (in accordance with § 983.254), the adjusted rent to owner must not exceed a reasonable rent as determined by an HA ''comparability study.''

(ii) The comparability study is an analysis of rents charged for comparable units. The HA comparability study must determine the reasonable rent for the contract units as compared with rents for comparable unassisted units. The adjusted rent for a contract unit may not exceed the reasonable rent as shown by the comparability study.

(iii) The comparability study must include a completed comparability analysis for each unit type on Form HUD–92273 (Estimates of Market Rent by Comparison). The comparability study may be prepared by HA staff or by another qualified appraiser. The appraiser may not have any direct or indirect interest in the property or otherwise.

(iv) The comparability study must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(v) If the owner requests a rent increase by the 120 day deadline (in accordance with § 983.254(a)), the HA must submit a comparability study to the owner at least 60 days before the HAP contract anniversary. If the HA does not submit the comparability study to the owner by this deadline, an increase of rent by application of the annual adjustment factor (in accordance with § 983.254(b)) is not subject to the reasonable rent limit.

(d) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the HA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the HA information requested by the HA on rents charged by the owner for other units in the premises or elsewhere.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577–0169.)

§ 983.257 Other subsidy: Effect on rent to owner.

(a) *HOME.* For units assisted under the HOME program, rents are subject to requirements of the HOME program (24 CFR 92.252).

(b) *Combining subsidy.* The HA may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other Federal, State or local agencies, or with low income housing tax credits. (See 42 U.S.C. 3545(d) and section 3545 note.)

(c) *Other subsidy: HA discretion to reduce rent.* The HA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants or other subsidized financing.

(d) *Prohibition of other subsidy.* For provisions prohibiting PBC assistance to units in certain types of subsidized housing, see § 983.7(c).

§ 983.258 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit, and other rent limits under this rule, the amount of rent to owner also may be subject to rent control limits under State or local law.

§ 983.259 Correction of rent.

At any time during the life of the HAP contract, the HA may revise the rent to owner to correct any errors in establishing or adjusting rent to owner in accordance with HUD requirements. The HA may recover any excess payment from the owner.

§ 983.260 Housing assistance payment: Amount and distribution.

(a) *Amount.* The monthly housing assistance payment equals the gross rent, minus the higher of:

(1) The total tenant payment; or

(2) The minimum rent as required by law.

(b) *Distribution.* The monthly housing assistance payment is distributed as follows:

(1) The HA pays the owner the lesser of the housing assistance payment or the rent to owner.

(2) If the housing assistance payment exceeds the rent to owner, the HA may pay the balance of the housing assistance payment either to the family or directly to the utility supplier to pay the utility bill.

§ 983.261 Family share: Family responsibility to pay.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The HA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share. Payment of the family share is the responsibility of the family.

§ 983.262 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenants in the premises.

Dated: April 13, 1998.

Andrew M. Cuomo,

Secretary.

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Part III

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for Economic Development and Empowerment Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4363–N–01]

Super Notice of Funding Availability (SuperNOFA) for Economic Development and Empowerment Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for Economic Development and Empowerment Programs.

SUMMARY: This Super Notice of Funding Availability (SuperNOFA) announces the availability of approximately $176,000,000 in HUD program funds covering ten (10) Economic Development and Empowerment Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Housing-Federal Housing Administration (FHA), Public and Indian Housing (PIH), and the Office of Lead Hazard Control (OLHC). The General Section of this SuperNOFA contains the procedures and requirements applicable to all programs. The applications for funding for these programs have been consolidated into four applications. The Programs Section of this SuperNOFA contains a description of the specific programs for which funding is made available under this SuperNOFA and additional procedures and requirements that are applicable to each.

APPLICATION DUE DATES: *The information contained in this ''APPLICATION DUE DATES'' section applies to all programs contained in this SuperNOFA.* Completed applications must be submitted to HUD no later than the deadline established for the program for which you are seeking funding. Applications may not be sent by facsimile (FAX). See the Program Chart for specific application due dates.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses.* Completed applications must be submitted to the location specified in the Programs Section of this SuperNOFA. When submitting your application, please refer to the program name for which you are seeking funding.

For Applications to HUD Headquarters. Applications to be submitted to HUD Headquarters are due at: Department of Housing and Urban Development, 451 Seventh Street, SW, Room _____ (See Program Chart or Programs Section for room location), Washington DC 20410.

For Applications to HUD Field Offices. For those programs for which applications are due to the HUD Field Offices, please see the Programs Section for the locations for submission.

Applications Procedures—Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. For applications submitted to HUD Headquarters, hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm until 12:00 midnight, Eastern time. Applications due to HUD Field Office or Area Office of Native American Programs locations must be delivered to the appropriate HUD Field Office or Area Office of Native American Programs in accordance with the instructions specified in the Programs Section of the SuperNOFA.

For applications submitted to the HUD Field Offices or Area Offices of Native American Programs, hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm. (Please see the Appendix A to this SuperNOFA listing the hours of operations for the HUD Field Offices.) COPIES OF APPLICATIONS TO HUD OFFICES. The Programs Section of this SuperNOFA may specify that, to facilitate processing and review of your submission, a copy of the application also be sent to an additional HUD location (for example, a copy to the HUD Field Office or Area Office of Native American Programs if the original application is to be submitted to HUD Headquarters, or a copy to HUD Headquarters, if the original application is to be submitted to a HUD Field Office or Area Office of Native American Programs). Please follow the requirements of the Programs Section to ensure that you submit your application to the proper location. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that for those applications for which copies are being submitted to the local HUD Offices and HUD Headquarters, timeliness of submission will be based on the time the application is received at HUD Headquarters.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information contained in this section is applicable to all programs contained in this SuperNOFA, unless otherwise specifically provided in the applicable programs section.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with application kits and/or a guidebook to all HUD programs. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which HUD Office(s) should receive a copy of your application. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209.

Consolidated Application Submissions. Where an applicant can apply for funding under more than one program in this SuperNOFA, the applicant need only submit one originally signed SF–424 and one set of original signatures for the other required assurances and certifications, accompanied by the matrix contained in each application kit (provided that the required assurances and certifications are identical). As long as the applicant submits one originally signed set of these documents with an application, only copies of these documents are required to be submitted with any additional application submitted by the applicant. The application should identify the program for which the original signatures for assurances and certifications is being submitted.

For Further Information. For answers to your questions about this

SuperNOFA, you have several options. You may call the HUD Office or Processing Center serving your area at the telephone number listed in your program area section to this SuperNOFA, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209. Information on this SuperNOFA also may be obtained through the HUD web site on the Internet at http://www.HUD.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide general guidance and technical assistance about this SuperNOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Introduction To The SuperNOFA Process

To further HUD's objective, under the direction of Secretary Andrew Cuomo, of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities, HUD will publish three SuperNOFAs in 1998, which coordinate program funding for 40 competitive programs and cut across traditional program lines.

(1) The first is the SuperNOFA and consolidated application process for Housing and Community Development Programs, covering 19 Housing and Community Development Programs. This SuperNOFA was published in the **Federal Register** on March 31, 1998.

(2) The second is the SuperNOFA and consolidated application process for Economic Development and Empowerment Programs, published in today's **Federal Register**. This second SuperNOFA includes funding for the following programs and initiatives: Brownfields; Economic Development Initiative; Youthbuild; three Tenant Opportunity Programs; Economic Development and Supportive Services; Mark to Market Outreach and Training; Mark to Market Technical Assistance Intermediaries Grant Administration; and the Local Lead Hazard Awareness Campaign.

(3) The third is the SuperNOFA and consolidated application process for Targeted Housing and Homeless Assistance Programs. This third SuperNOFA includes the following programs and initiatives: Housing Opportunities for Persons with AIDS; Continuum of Care Homeless Assistance Programs; Section 202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities. This third SuperNOFA is published elsewhere in today's **Federal Register**.

All three SuperNOFAs and all consolidated applications, to the greatest extent possible, given statutory, regulatory and program policy distinctions, will have one set of rules that, together, offer a ''menu'' of approximately 40 programs. From this menu, communities will be made aware of funding available for their jurisdictions. Nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations, faith-based organizations and others will be able to identify the programs for which they are eligible for funding.

The National Competition NOFA

In addition to the three SuperNOFAs, HUD is publishing elsewhere in today's **Federal Register** a single NOFA for three national competitions: the Fair Housing Initiatives Program National Competition; the National Lead Hazard Awareness Campaign; and the Housing Counseling National Competition.

Assisting Communities To Make Better Use of Available Resources

These SuperNOFAs represent a marked departure from, and HUD believes a significant improvement over, HUD's past approach to the funding process. In the past, HUD has issued as many as 40 separate NOFAs, all with widely varying rules and application processing requirements. This individual program approach to funding, with NOFAs published at various times throughout the fiscal year, did not encourage and, at times, unintentionally impeded local efforts directed at comprehensive planning and development of comprehensive local solutions. Additionally, the old approach seemed to require communities to respond to HUD's needs rather than HUD responding to local needs. Secretary Cuomo brings to the leadership of HUD the experience of successfully implementing a consolidated planning process in HUD's community development programs. As Assistant Secretary for Community Planning and Development, Secretary Cuomo consolidated the planning, application, and reporting requirements of several community development programs. The Consolidated Plan rule, published in 1995, established a renewed partnership among HUD, State, and local governments, public and private agencies, tribal governments, and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems.

The SuperNOFA approach builds upon Consolidated Planning implemented by Secretary Cuomo in HUD's community development programs, and also reflects the Secretary's organizational changes for HUD, as described in the Secretary's management reform plan. On June 26, 1997, Secretary Cuomo released the HUD 2020 Management Reform Plan, which calls for significant consolidation of like programs to maximize efficiency and dramatically improve customer service. The plan also calls for HUD to improve customer service by adopting a principle of ''menus not mandates.''

By announcing the funding of these ten programs in one NOFA, HUD hopes to assist communities in making better use of available resources to address their economic development needs and the needs of those living within the communities in a holistic and effective fashion. These funds are available for eligible applicants to support individual program objectives, as well as cross-cutting and coordinated approaches to improving the overall effective use of available HUD program funds.

To date, HUD has been consolidating and simplifying the submission requirements of many of its formula grant and discretionary grant programs to offer local communities a better opportunity to shape available resources into effective and coordinated neighborhood housing and community development strategies that will help revitalize and strengthen their communities, physically, socially and economically. To complement this overall consolidation and simplification effort, HUD designed this process to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs in response to a single NOFA. Everyone interested in HUD's grant programs can benefit from having this information made available in one NOFA.

Coordination, Flexibility, and Simplicity in the HUD Funding Process

The SuperNOFA approach places heavy emphasis on the coordination of activities to provide (1) greater flexibility and responsiveness in meeting local housing and community development needs, and (2) greater flexibility to eligible applicants to determine what HUD program resources

best fit the community's needs, as identified in local Consolidated Plans and Analysis of Impediments to Fair Housing Choice (''Analysis of Impediments'' (AI)).

The SuperNOFA approach is designed to simplify the application process; promote effective and coordinated use of program funds in communities; reduce duplication in the delivery of services and economic development and empowerment programs; allow interested applicants to seek to deliver a wider, more integrated array of services; and improve the system for potential grantees to be aware of, and compete for program funds.

HUD encourages applicants to work together to coordinate and, to the maximum extent possible, join their activities to form a seamless and comprehensive program of assistance to meet identified needs in their communities, and address barriers to fair housing and equal opportunity that have been identified in the community's Consolidated Plan and Analysis of Impediments in the geographic area(s) in which they are seeking assistance.

As part of the simplification of this funding process, and to avoid duplication of effort, the SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this NOFA. HUD programs that provide assistance for, or complement similar activities, for example, the economic development initiative (EDI) and the brownfields economic development initiative (BEDI), or the tenant opportunity and economic development supportive services programs, have consolidated applications that reduce the administrative and paperwork burden applicants may otherwise encounter in submitting an application for each program.

The funding of these ten programs through this SuperNOFA will not affect the ability of eligible applicants to seek HUD funding. *Eligible applicants are able, as they have been in the past, to apply for funding under as few as one or as many as all programs for which they are eligible.*

The specific statutory and regulatory requirements of each of the ten separate programs continue to apply to each program. The SuperNOFA reflects, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the individual program requirements that are identified for each program. Also, you will note that not all applicants are eligible to receive assistance under all ten programs identified in this SuperNOFA.*

The SuperNOFA contains two major sections. The General Section of the SuperNOFA contains the procedures and requirements applicable to all applications. The Programs Section of the SuperNOFA describes each program for which funding is made available in the NOFA. As in the past, each program provides a description of eligible applicants, eligible activities, factors for award, and any additional requirements or limitations that apply to the program. Please read carefully both the General Section and the Programs Section of the SuperNOFA for the program(s) to which you are applying. This will ensure that you apply for program funding for which your organization is eligible to receive funds and you fulfill all the requirements for that program(s).

The Programs of This SuperNOFA and the Amount of Funds Allocated

The ten programs for which funding availability is announced in this SuperNOFA are identified in the following chart. The approximate available funds for each program are listed as expected funding levels based on appropriated funds. Should recaptured or other funds become available for any program, HUD reserves the right to increase the available program funding amounts by the amount available.

The chart also includes the application due date for each program, the OMB approval number for the information collection requirements contained in the specific program, and the Catalog of Federal Domestic Assistance (CFDA) number.

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Program Name	Funding Available	Due Date	Submission Location and Room
ECONOMIC DEVELOPMENT INITIATIVES			
Brownfields Initiative CFDA No.:14.246 OMB Approval No.:2506-0153	$ 25,000,000	August 10, 1998	Headquarters, Processing and Control Unit, Room 7255
Economic Development Initiative CFDA No:14.246 OMB Approval No.:2506-0153	$ 38,000,000	July 30, 1998	Headquarters, Processing and Control Unit, Room 7255

Program Name	Funding Available	Due Date	Submission Location and Room
TENANT OPPORTUNITY AND SUPPORTIVE SERVICES			
Economic Development and Supportive Services CFDA No.:14.863 OMB Approval No.:2577-0211	$ 47,211,223	July 31, 1998	Appropriate Local HUD Field Office, or Area ONAP Administrator, as noted in the Programs Section
Tenant Opportunity Program CFDA No.:14.853 OMB Approval No.:2577-0877	$ 16,884,530	July 31, 1998	Appropriate Local HUD Field Office, as noted in the Programs Section
TOP Economic Self-Sufficiency Grant (ESSG) CFDA No.:14.853 OMB Approval No.:2577-0877	$ 10,884,530		
TOP Organizational Development Grant (ODG) CFDA No.:14.853 OMB Approval No.:2577-0877	$ 3,000,000		
TOP Mediation Grant CFDA No.:14.853 OMB Approval No.:2577-0877	$ 3,000,000		

Program Name	Funding Available	Due Date	Submission Location and Room
YOUTHBUILD CFDA No.:14.243 OMB Approval No.:2506-0142	$ 33,000,000	July 14, 1998	HUD Headquarters, Room 7255

Program Name	Funding Available	Due Date	Submission Location and Room
MARK-TO-MARKET PROGRAMS			
Intermediaries Technical Assistance Grant Program CFDA No.:14.194 OMB Approval No.:pending	$ 9,000,000	July 21, 1998	Headquarters, Office of Portfolio Reengineering, Room 6130
Outreach and Training Grants for Technical Assistance Program CFDA No.:14.194 OMB Approval No.:pending	$ 6,000,000	June 30, 1998	Headquarters, Office of Portfolio Reengineering, Room 6130

LEAD HAZARD CONTROL PROGRAM	Funding Available	Due Date	Submission Location and Room
LOCAL LEAD HAZARD AWARENESS CAMPAIGN CFDA No: 14.900 OMB Approval No: Pending	$ 700,000	June 26, 1998	Postal Service: HUD Headquarters, Office of Lead Hazard Control, Room B-133 Courier Service or Hand Carried: HUD Office of Lead Hazard Control, 490 East L'Enfant Plaza, S.W., Suite 3206, Washington, DC 20024

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Paperwork Reduction Act Statement

For those programs listed in the chart above which have OMB approval numbers, the information collection requirements contained in this SuperNOFA for those programs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). For those programs listed in the chart for which an OMB approval number is pending, the approval number when received will be announced by HUD in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Section of the SuperNOFA

I. Authority; Purpose; Amount Allocated; Eligible Applicants and Eligible Activities

(A) Authorities

Unless otherwise specified in the Programs Section of the SuperNOFA, the authority for Fiscal Year 1998 funding availability under this SuperNOFA is the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub.L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act). Where applicable, additional authority for each program in this SuperNOFA is identified in the Programs Section.

(B) Purpose

The purpose of this SuperNOFA is to:

(1) Make funding available through a variety of programs to empower communities and their residents, particularly the poor and disadvantaged, to develop viable communities, provide decent housing and a suitable living environment for all citizens, without discrimination in order to improve themselves both as individuals and as a community.

(2) Simplify and streamline the application process for funding under HUD programs. By making available to State and local governments, public housing agencies, tribal governments, non-profit organizations and others, the application requirements for HUD housing and community development programs in one NOFA, HUD hopes that the result will be a less time consuming and less complicated application process. This new process also allows an applicant to submit one application for funds for several programs. Except where statutory or regulatory requirements or program policy mandate differences, the SuperNOFA strives to provide for one set of rules, standardized rating factors, and uniform and consolidated application procedures.

(3) Enhance the ability of applicants to make more effective and efficient use of housing and community development funding when addressing community needs and implementing coordinated housing and community development strategies established in local Consolidated Plans, which is the single application for HUD housing and community development and other formula funds submitted by the local or State government. Through this SuperNOFA process, applicants are encouraged to: (i) create opportunities for strategic planning and citizen participation in a comprehensive context at the local level in order to establish a full continuum of housing and services; and (ii) promote methods for developing more coordinated and effective approaches to dealing with urban, suburban, and rural problems by recognizing the interconnections among the underlying problems and ways to address them through layering of available HUD programs;

(4) Promote the ability of eligible non-profit organizations to participate in many of the programs contained in this SuperNOFA; provide an increased opportunity to assist communities in developing job training, economic development and empowerment programs, directed at revitalizing neighborhoods and obtaining self-sufficiency for low and moderate income families; and

(5) Recognize and make better use of the expertise that each of the programs, and organizations eligible for funding under this SuperNOFA, can contribute when developing and implementing local housing and community development plans, the Consolidated Plan, and the HUD required Analysis of Impediments to Fair Housing Choice.

(C) Amounts Allocated

The amounts allocated to specific programs in this SuperNOFA are based on appropriated funds. Should recaptured funds become available in any program, HUD reserves the right to increase the available funding amounts by the amount of funds recaptured.

(D) Eligible Applicants and Eligible Activities

The eligible applicants and eligible activities for each program are identified and described for the program in the Programs Section of the SuperNOFA.

II. Requirements and Procedures Applicable to all Programs

Except as may be modified in the Programs Section of this Super NOFA, or as noted within the specific provisions of this Section II, the following principles apply to all programs. Please be sure to read the program area section of the SuperNOFA for additional requirements or information.

(A) Statutory Requirements

All applicants must meet and comply with all statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. Copies of the regulations are available from the SuperNOFA Information Center or through the Internet at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed are ineligible, or HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(B) Threshold Requirements—Compliance With Fair Housing and Civil Rights Laws

All applicants, with the exception of Federally recognized Indian tribes, must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this SuperNOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(C) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(D) Affirmatively Furthering Fair Housing

Unless otherwise specified in the Programs Section of this SuperNOFA, each successful applicant will have a duty to affirmatively further fair housing. Where directed by the applicable program section, applicants should include in their work plans the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in the Programs Section of this SuperNOFA.

(E) Economic Opportunities for Low and Very Low-Income Persons (Section 3).

Certain programs in this SuperNOFA require recipients of HUD assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons) and the HUD regulations at 24 CFR part 135, including the reporting requirements subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons. Section 3 is applicable to the following programs in this SuperNOFA: Brownfields Economic Development; Economic Development Initiative; Economic Development and Supportive Services; Tenant Opportunity Program; and Youthbuild.

(F) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD assistance is covered by the relocation requirements of the URA and the governmentwide regulation.

(G) Forms, Certifications and Assurances

Each applicant is required to submit signed copies of the standard forms, certifications, and assurances, listed in this section, unless the Programs Section specifies otherwise. Additionally, the Programs Section may specify additional forms, certifications, assurances, or other information, that may be required for a particular program in this SuperNOFA.

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL); (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are not required to submit this certification. Tribes and TDHEs established under State law are required to submit this certification.)

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(H) OMB Circulars

The policies, guidances, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations), 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments) apply to the award, acceptance and use of assistance under the programs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this SuperNOFA. Compliance with additional OMB Circulars may be specified for a particular program in the Programs Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(I) Environmental Requirements

For programs under this SuperNOFA that assist physical development activities or property acquisition, grantees are generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these program activities, until one of the following has occurred: (1) HUD has completed an environmental review in accordance with 24 CFR part 50; or (2) for programs subject to 24 CFR part 58, HUD has approved a grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review. Applicants should consult the Programs Section for the applicable program to determine the procedures for, timing of, and any exclusions from environmental review under a particular program.

(J) Conflicts of Interest

Consultants or experts assisting HUD in rating and ranking applicants for funding under this SuperNOFA are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and

to the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, individuals who have assisted or plan to assist applicants with preparing applications for this SuperNOFA may not serve on a selection panel or as a technical advisor to HUD for this SuperNOFA. All individuals involved in rating and ranking this SuperNOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. If the selection or non-selection of any applicant under this NOFA affects the individual's financial interests set forth in 18 U.S.C. 208 or involves any party with whom the individual has a covered relationship under 5 CFR 2635.502, that individual must, prior to participating in any matter regarding this NOFA, disclose this fact to the General Counsel or the Ethics Law Division.

III. Application Selection Process

(A) General

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* All applications for funding in each program listed in this SuperNOFA will be evaluated and rated against the criteria in this SuperNOFA. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

(2) *Ranking.* Applicants will be ranked within each program. Applicants will be ranked only against others that applied for the same program funding and where there are set-asides within the competition, the applicant would only compete against applicants in the same set-aside competition.

(B) Threshold Requirements

HUD will review each application to determine whether the application meets all of the threshold criteria described for program funding made available under this SuperNOFA. Applications that meet all of the threshold criteria will be eligible to be rated and ranked, based on the criteria described, and the total number of points to be awarded.

(C) Factors for Award Used To Evaluate and Rate Applications

For all of the programs for which funding is available under this SuperNOFA, the points awarded for the factors total 100. Where applicable (as provided in the Programs Section of the SuperNOFA), applicants may be eligible for additional points as discussed in this Section III(C).

(1) *Bonus Points.* The SuperNOFA provides for the award of up to two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones, Enterprise Communities, or Urban Enhanced Enterprise Communities, and serve the EZ/EC residents, and are certified to be consistent with the strategic plan of the EZs and ECs. The application kit contains a certification which must be completed for the applicant to be considered for EZ/EC bonus points. In the BEDI competition, two bonus points are available for federally designated Brownfields Showcase Communities. (Please see BEDI section of this SuperNOFA for additional information). A listing of the federally designated EZs, ECs, Enhanced ECs and Brownfields Showcase Communities are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov.

(2) *Court-Ordered Consideration.* Due to an order of the U.S. District Court for the Northern District of Texas, Dallas, Division, with respect to any application by the City of Dallas, Texas, for HUD funds, HUD shall consider the extent to which the strategies or plans in an application or applications submitted by the City of Dallas for any program under this SuperNOFA will be used to eradicate the vestiges of segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score for any program based on this consideration, as provided in Factor 3 by the individual programs in the Programs Section of this SuperNOFA. (The points provided in this Section III(C)(2) is limited to applications submitted by the City of Dallas.)

(3) *The Five Standard Rating Factors.* The factors for rating and ranking applicants are listed in this Section III(c)(2) and maximum points for each factor, are provided in the Programs Section of the SuperNOFA. Each applicant should carefully read the factors for award as described in the program area section that they are seeking funding. While HUD has established the following basic factors for award, these may have been modified or adjusted to take into account specific program needs, or statutory or regulatory limitations imposed on a program. The standard factors for award, except as modified in the program area section are:

Factor 1: Capacity of the Applicant and Relevant Organizational Staff
Factor 2: Need/Extent of the Problem
Factor 3: Soundness of Approach
Factor 4: Leveraging Resources
Factor 5: Comprehensiveness and Coordination

(D) Negotiation

After all applications have been rated and ranked and a selection has been made HUD may require that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(E) Adjustments to Funding

HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of the programs contained in this SuperNOFA are met. HUD may choose not to fund portions of the applications that are ineligible for funding under applicable program statutory or regulatory requirements, or which do not meet the requirements of this General Section of this SuperNOFA or the requirements in the Programs Section for the specific program, and fund eligible portions of the applications.

If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program area. If the applicant turns down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program area where there is a balance of funds.

Additionally, in the event of a HUD procedural error that, when corrected,

would result in selection of an otherwise eligible applicant during the funding round of this SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees

Performance and compliance actions of grantees will be measured and addressed in accordance with applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed earlier in the introductory section of this SuperNOFA, part of the simplification of this funding process, is to reduce the duplication of effort involved in completing and submitting similar applications for HUD funded programs. This SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Promoting Comprehensive Approaches to Housing and Community Development

(A) General

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. By making HUD's Economic Development and Empowerment funding available in one NOFA, applicants may be able to relate the activities proposed for funding under this SuperNOFA to the recent and upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. A complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html.

(B) Linking Program Activities With AmeriCorps

Applicants are encouraged to link their proposed activities with AmeriCorps, a national service program engaging thousands of Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training. For information about AmeriCorps, call the Corporation for National Service at (202) 606–5000.

(C) Encouraging Visitability in New Construction and Substantial Rehabilitation Activities

In addition to applicable accessible design and construction requirements, applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects involving housing. Visitability standards allow a person with mobility impairments access into the home, but does not require that all features be made accessible. Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. Allowing use of 2′10″ doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units. A visitable home also serves persons without disabilities, such as a mother pushing a stroller, or a person delivering a large appliance. Copies of the UFAS are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–5404 or the TTY telephone number, 1–800–877–8399 (Federal Information Relay Service).

(D) Developing Healthy Homes

HUD's Healthy Homes Initiative is one of the initiatives developed by the White House Task Force on Environmental Health Risks and Safety Risks to Children that was established under Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks''). HUD encourages the funding of activities (to the extent eligible under specific programs) that promote healthy homes, or that promote education on what is a healthy home. These activities may include, but are not limited to the following: educating homeowners or renters about the need to protect children in their home from dangers that can arise from items such as curtain cords, electrical outlets, hot water, poisons, fire, and sharp table edges, among others; incorporating child safety measures in the construction, rehabilitation or maintenance of housing, which include but are not limited to: child safety latches on cabinets, hot water protection devices, properly ventilated windows to protect from mold, window guards to protect children from falling, proper pest management to prevent cockroaches which can cause asthma, and activities directed to control of lead-based paint hazards. The National Lead Information Hotline is 1–800–424–5323.

VII. Findings and Certifications

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(B) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this SuperNOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the SuperNOFA solicits applicants to

expand their role in addressing community development needs in their localities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the SuperNOFA is not subject to review under the Order.

(C) Prohibition Against Lobbying Activities

Applicants for funding under this SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(D) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

VIII. The FY 1998 SuperNOFA Process and Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step at changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination may be considered for FY 1998. The three SuperNOFAs to be published for FY 1998 represent the additional step taken by HUD to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new SuperNOFA process was developed based on comments received from HUD clients and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years. For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process, and how it may be improved in future years.

The description of program funding available under this second SuperNOFA for Economic Development and Empowerment Programs follows.

Dated: April 23, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE (BEDI)

BILLING CODE 4210–22–C

Funding Availability for the Brownfields Economic Development Initiative (BEDI)

Program Description: Approximately $25 million is available for Brownfields Economic Development Initiative (BEDI) grants under Section 108(q) of the Housing and Community Development Act of 1974, as amended. BEDI funds are used to enhance the security of the Section 108 guaranteed loan for the same project or to improve the viability of a project financed with a Section 108-guaranteed loan. A BEDI grant is required to be used in conjunction with a new Section 108 guaranteed loan commitment.

Application Due Date: Completed applications (one original and two copies) must be submitted no later than 12:00 midnight, Eastern time, on August 10, 1998 to the addresses shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications

To HUD Headquarters. The completed application (an original and one copy) must be submitted to: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, Attention: BEDI Grant, by mail or hand delivery.

To the Appropriate CPD Field Office. An additional copy should be submitted to the Community Planning and Development Division of the appropriate HUD Field Office for the applicant's jurisdiction.

When submitting your application, please refer to BEDI, and include your name, mailing address (including zip code) and telephone number (include area code).

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call HUD's SuperNOFA Information line toll free at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209 to obtain an application kit. The application kit will also be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to BEDI. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. Contact either Stan Gimont or Paul Webster, Financial Management Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7178, Washington, DC 20410, telephone (202) 708–1871 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

See the General Section of this SuperNOFA for guidance on technical assistance. With respect to the Section 108 Loan Guarantee program, which is not a competitive program and thus not subject to those provisions of the HUD Reform Act pertaining to competitions, HUD staff will be available to provide advice and assistance to develop Section 108 loan applications.

Additional Information

I. Authority; Definitions; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 108(q), Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (the Act); 24 CFR part 570.

(B) Definitions

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this program section of this SuperNOFA shall have the respective meanings given thereto in that part.

Brownfield means abandoned, idled, or under-used real property (including industrial and commercial facilities) where expansion or redevelopment is complicated by real or suspected contamination.

Brownfields Economic Development Initiative (BEDI) means the competitive award of up to $25 million, as appropriated in the FY 1998 HUD Appropriations Act, for economic development grant assistance under section 108(q) of the Act for the purpose of assisting public entities in the redevelopment of brownfields.

CDBG funds means those funds as defined at 24 CFR 570.3, including grant funds received pursuant to section 108(q) and this program section of this SuperNOFA.

Economic Development Initiative (EDI) means the provision of economic development grant assistance under section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 11, 1994).

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR 570.703, and that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization in connection with brownfields.

Empowerment Zone or Enterprise Community means an urban area so designated by the Secretary of HUD pursuant to 24 CFR part 597, or a rural area so designated by the Secretary of Agriculture pursuant to 7 CFR part 25, subpart B.

EPA means the U.S. Environmental Protection Agency.

Showcase Community means an applicant chosen by the Federal Government's Brownfields National Partnership for inclusion in Federal Government's Brownfields Showcase Communities program.

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for an Empowerment Zone or Enterprise Community designated pursuant to 24 CFR part 597.

(C) Purpose

(1) *Background.* HUD has multiple programs which are intended to stimulate and promote economic and community development and can be effectively employed to address and remedy brownfield conditions. Primary among HUD's resources are the Community Development Block Grant (CDBG) program and the Section 108 loan guarantee program.

The CDBG program provides grant funds ($4.195 billion in FY 1998) to local governments (either directly or through States) to carry out community and economic development activities. The Section 108 loan guarantee program provides local governments with a source of financing for economic development, housing rehabilitation, and other eligible large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and non-entitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M. It must be noted that the Section 108 program is subject to the

regulations of 24 CFR part 570 applicable to the CDBG program with the exception of changes embodied in 24 CFR part 570, subpart M.

For FY 1998, the Section 108 program is authorized at $1.261 billion in loan guarantee authority. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. Under this program, communities (and States, if applicable) pledge their future years' CDBG allocations as security for loans guaranteed by HUD. The Section 108 program, however, does *not* require CDBG funds to be escrowed for loan repayment (unless such an arrangement is specifically negotiated as loan security). This means that a community can continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment.

(2) *EDI Program*. The EDI program was enacted in 1994 and is intended to complement and enhance the Section 108 Loan Guarantee program. The purpose of EDI (and BEDI) grant funds is to further minimize the potential loss of future CDBG allocations:

(a) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan);

(b) By directly enhancing the security of the guaranteed loan; or

(c) Through a combination of these or other risk mitigation techniques.

(3) *BEDI Program*. For FY 1998, the Congress made a specific appropriation of approximately $25 million for the EDI program to assist in financing ''brownfields'' redevelopment. HUD intends the $25 million in Brownfields EDI (BEDI) funds available pursuant to this program section of this SuperNOFA to be used with a particular emphasis upon the redevelopment of brownfield sites consistent with the statutory purpose of the FY 1998 HUD Appropriations Act. Accordingly, BEDI funds shall be used as the stimulus for local governments and private sector parties to commence redevelopment or continue phased redevelopment efforts on brownfield sites where contamination is known or suspected and redevelopment plans exist. HUD desires to see BEDI and Section 108 funds used to finance projects and activities that will provide near-term results and demonstrable economic benefits, such as job creation and increases in the local tax base. HUD does not encourage applications whose scope is limited only to site acquisition and/or remediation (i.e., land banking).

(4) *Redevelopment Focus*. The redevelopment focus for BEDI-assisted projects is also prompted by the need to provide additional security for the Section 108 loan guarantee pursuant to 24 CFR 570.705(b)(3). While public entities are required by the Act to pledge their current and future CDBG funds as a source of security for the Section 108 loan guarantee, the public entity will usually be required to furnish additional collateral which, ideally, will be the assets financed with the Section 108 loan funds. Clearly, a redevelopment focus for the BEDI funds will help achieve this goal by enhancing the value and improving the viability of projects assisted with Section 108 financing.

(5) *Integration of Other Government Brownfield Programs*. HUD expects and encourages local governments which are designated through the Federal Government's Brownfields Showcase Community program or other brownfields programs (i.e., EPA's Assessment Pilot or Revolving Loan Fund programs) or a State-supported brownfields program or related economic development program to integrate efforts arising from those programs in developing projects for assistance under HUD's BEDI and Section 108 programs. Such applicants should elaborate upon these ties in their response to the rating factors, where appropriate (e.g. ''Capacity of the Applicant,'' ''Soundness of Approach,'' or ''Leveraging Resources,''—Rating Factors 1, 3, and 4 respectively.)

(6) *Typical Project Structures*. Provided that proposals are consistent with other CDBG requirements, including national objectives, HUD envisions that the following project structures could be typical:

(a) *Land Writedowns*. Local governments may use a combination of Section 108 and BEDI funds to acquire a brownfield site for purposes of reconveying the site to a private developer at a discount from its purchase price. This approach would provide the developer with an asset of enhanced value which could be used as collateral for other sources of funding. Such other sources of financing could be used to finance environmental remediation or other development costs. In theory, the level of BEDI assistance would approximate the difference between the original cost of the site and its remediation in comparison to the market value of the remediated property.

(b) *Site Remediation Costs*. Local governments may use BEDI funds in any of several ways to address site remediation costs. If the local government used Section 108 funds to acquire real property, BEDI funds could be used to address assessment and site remediation costs as part of demolition, clearance, or site preparation activities. If the local government used Section 108 funds to make a loan to a developer, BEDI funds could be granted to the developer for the purpose of addressing remediation costs as part of an economic development activity.

(c) *Funding Reserves*. The cash flow generated by an economic development project may be expected to be relatively ''thin'' in the early stages of the project, i.e. potentially insufficient cash flows to meet operating expenses and debt service obligations. The BEDI grant can make it possible for reserves to be established in a way that enhances the economic feasibility of the project.

(d) *Over-Collateralizing the Section 108 Loan*.

(i) The use of BEDI grant funds may be structured in appropriate cases so as to improve the likelihood that project-generated cash flow will be sufficient to cover debt service on the Section 108 loan and directly to enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

(ii) An example is the creation of a loan pool made up of Section 108 and BEDI grant funds. The community would make loans to various businesses from the combined pool at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan.

(e) *Direct Enhancement of the Security of the Section 108 Loan*. The BEDI grant can be used to cover the cost of providing enhanced security. An example of how the BEDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

(f) *Provision of Financing to For-Profit Businesses at a Below Market Interest Rate*.

(i) While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely economically distressed neighborhoods. The BEDI grant can be used to make Section 108 financing affordable.

(ii) BEDI grant funds could serve to ''buy down'' the interest rate up front,

or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial/retail project in a distressed neighborhood to act as a catalyst for other development in the area.

(g) *Combination of Techniques.* An applicant could employ a combination of these or other techniques in order to implement a strategy that carries out an economic development project.

(D) Amount Allocated

HUD has available a maximum of $25 million for the BEDI program, as appropriated in the FY 1998 HUD Appropriations Act for the purpose of assisting public entities in the redevelopment of brownfields.

(E) Eligibility to Apply for Grant Assistance

Any public entity eligible to apply for Section 108 loan guarantee assistance in accordance with 24 CFR 570.702 may apply for BEDI grant assistance under section 108(q). *Eligible applicants are CDBG entitlement units of general local government and non-entitlement units of general local government eligible to receive loan guarantees under 24 CFR part 570, subpart M.* Note that effective January 25, 1995, non-entitlement public entities in the states of New York and Hawaii were authorized to apply to HUD for Section 108 loans (see 59 FR 47510, December 27, 1994). Thus non-entitlement public entities in all 50 states and Puerto Rico are eligible to participate in the Section 108 and BEDI programs.

(F) Related Section 108 Loan Guarantee Application

(1) Each BEDI application must be accompanied by a request for new Section 108 loan guarantee assistance. Both the BEDI and Section 108 funds must be used in conjunction with the same economic development project. This request may take any of several forms as defined below.

(a) A formal application for new Section 108 loan guarantee(s), including the documents listed at 24 CFR 570.704(b);

(b) A brief description (not to exceed three pages) of a new Section 108 loan guarantee application(s). Such 108 application(s) will be submitted within 60 days, with HUD reserving the right to extend such period for good cause on a case-by-case basis, of a notice of BEDI selection. BEDI awards will be conditioned on approval of actual Section 108 loan commitments. This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance. (See Section I(G) of this program section of this SuperNOFA.);

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this SuperNOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment (analogous to Section I(F)(1) (a) or (b) of this BEDI section of the SuperNOFA) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved *before* the date of this SuperNOFA is not eligible to be used in conjunction with a BEDI grant under this SuperNOFA.

(2) Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this SuperNOFA, is not eligible for a BEDI award under this SuperNOFA. For example, if a public entity has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the public entity had previously been awarded an EDI grant of $1 million and had certified that it will submit a Section 108 loan application for $10 million in support of that EDI grant, the public entity's application under this program section of this SuperNOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(G) Eligible Activities and National Objectives

BEDI grant funds may be used for activities listed at 24 CFR 570.703, provided such activities are carried out as part of an economic development project as defined in Section I(B) of this BEDI section of this SuperNOFA. Each activity assisted with Section 108 loan guarantee or BEDI funds must meet a national objective of the CDBG program as described in 24 CFR 570.208. In the aggregate, a grantee's use of CDBG funds, including any Section 108 loan guarantee proceeds and section 108(q) (EDI) funds provided pursuant to this program section of this SuperNOFA, must comply with the CDBG primary objectives requirements as described in section 101(c) of the Housing and Community Development Act of 1974, as amended, and 24 CFR 570.200(c)(3) or 570.484 in the case of State grantees. The foregoing eligible activities may also include:

(1) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided that the proceeds of such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by 24 CFR 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes; and

(2) The payment of interest due (and other costs such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed by HUD pursuant to the Section 108 loan guarantee program.

(H) Limitations on Use of BEDI and Section 108 Funds

Certain restrictions shall apply to the use of BEDI and Section 108 funds:

(1) BEDI grants shall not be used as a resource to immediately repay the principal of a loan guaranteed under Section 108. Repayment of principal is only permissible with BEDI grant funds as a matter of security if other sources projected for repayment of principal prove to be unavailable.

(2) BEDI grant funds shall not be used in any manner by grantees to provide public or private sector entities with funding to remediate conditions caused by their actions, where the public entity (or other known prospective beneficiary of the proposed BEDI grant) has been determined responsible for causation and remediation by order of a court or a Federal, State, or local regulatory agency, or is responsible for the remediation as part of a settlement approved by such a court or agency.

(3) Applicants may not propose projects on sites which are listed or proposed to be listed on EPA's National Priority List (NPL). Further, applicants are cautioned against proposing projects on sites where the nature and degree of environmental contamination is not well quantified or which are the subject of on-going litigation or environmental enforcement action.

(4) Applicants are cautioned against using Section 108 funds to finance activities which also include financing generated through the issuance of federally tax exempt obligations. Pursuant to Office of Management and Budget (OMB) Circular A–129 (Policies

for Federal Credit Programs and Non-Tax Receivables), Section 108 guaranteed loan funds may not directly or indirectly support federally tax-exempt obligations.

(I) Limitations on Grant Amounts

(1) HUD expects to approve BEDI grant amounts for approvable applications at a range of ratios of BEDI grant funds awarded to new Section 108 loan guarantee commitments but the minimum ratio will be $1 of Section 108 loan guarantee commitments for every $1 of BEDI grant funds. However, applicants that propose a leverage ratio of 1:1 will not receive any points under the Rating Subfactor 4(1): ''Leverage of Section 108 Funds.''

For example, an applicant requesting a BEDI grant of $1 million will be required to leverage a minimum of at least $1 million in new Section 108 loan guarantee commitments. This will be a special condition of the BEDI grant award. Of course, even though there is a minimum ratio of 1:1, applications with higher ratios will receive more points under Rating Factor 4, ''Leveraging Resources/Financial Need'' and, all other things being equal, will be more competitive. Applicants are encouraged to propose projects with a greater leverage ratio of new Section 108 to BEDI grant funds (assuming such projects are financially viable). For example $1 million of BEDI could leverage $12 million of new Section 108 loan commitments. HUD intends that the BEDI funds will be used for projects which leverage the greatest possible amount of Section 108 loan guarantee commitments.

(2) HUD expects that the average grant size will be approximately $1 million.

(3) In the event the applicant is awarded a BEDI grant that has been reduced below the original request (e.g. the application contained some activities that were ineligible or there were insufficient funds to fund the last competitive application at the full amount requested), the applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement. HUD reserves the right to reduce or de-obligate the BEDI award if approvable Section 108 loan guarantee applications are not submitted by the grantee in the required amounts on a timely basis. Any requested modifications must be within the scope of the original BEDI application.

(4) In the case of requested amendments to a previously approved Section 108 loan guarantee commitment (as further discussed in section I(F)(1)(d) above), the BEDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(J) Timing of Grant Awards

(1) To the extent a full Section 108 application is submitted with the BEDI grant application, the Section 108 application will be evaluated concurrently with the request for BEDI grant funds. Note that BEDI grant assistance cannot be used to support a Section 108 loan guarantee approved prior to the date of the publication of this SuperNOFA. However, the BEDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act.

(2) HUD notification to the grantee of the amount and conditions (if any) of BEDI funds awarded based upon review of the BEDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement. BEDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements.

(A) CDBG Program Regulations

The requirements of 24 CFR part 570, including subpart K (Other Program Requirements).

(B) Environmental Review

After the completion of this competition and after HUD's award of BEDI grant funds, pursuant to 24 CFR 570.604, each project or activity assisted under this program is subject to the provisions of 24 CFR part 58, including limitations on the EDI grant and Section 108 public entity's commitment of HUD and non-HUD funds prior to the completion of environmental review, notification and release of funds. No such assistance will be released by HUD until a request for release of funds is submitted and the requirements of 24 CFR part 58 have been met. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification, pursuant to 24 CFR part 58, to the appropriate HUD field office for each project to be assisted.

(C) Environmental Justice

(1) Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations directs Federal agencies to develop strategies to address environmental justice. Environmental justice seeks to rectify the disproportionately high burden of environmental pollution that is often borne by low-income, minority, and other disadvantaged communities, and to ensure community involvement in policies and programs addressing this issue.

(2) Brownfields are often located in distressed neighborhoods, contribute to neighborhood blight, and lower the quality of social, economic, and environmental health of communities. The BEDI program is intended to promote the clean up and redevelopment of brownfield sites and, to this end, HUD expects that projects presented for BEDI funding will integrate environmental justice concerns and provide demonstrable benefits for affected communities and their residents.

(D) Compliance With Applicable Laws

Applicants are advised that an award of BEDI funding does not in any way relieve the applicant or third parties users of BEDI funds from compliance with all applicable Federal, State and local laws, particularly those addressing the environment. Applicants are further advised that HUD may require evidence that any project involving remediation has been or will be carried out in accordance with State law, including voluntary clean up programs.

III. The Application Selection Process

(A) Rating and Ranking

(1) Each rating factor and the maximum number of points is provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points as described in the General Section of the SuperNOFA, or two bonus points for having received a federal designation as a Brownfields Showcase Community.

(2) Once scores are assigned, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order.

(3) If HUD determines that an application rated, ranked and fundable could be funded at a lesser BEDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act,

HUD reserves the right to reduce the amount of the BEDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination. An application in excess of $1 million may be reduced below the amount requested by the applicant if HUD determines that such a reduction is appropriate.

(4) HUD may decide not to award the full amount of BEDI grant funds available under this program section of this SuperNOFA and may make any remaining amounts available under a future SuperNOFA.

(B) Narrative Statement

Each applicant shall provide a narrative statement describing the activities that will be carried out with the BEDI grant funds and explaining the nature and extent of the Brownfield's problems(s) affecting the project. The narrative statement shall not exceed three (3) 8.5'' by 11'' pages for the description of the activities to be carried out with the BEDI grant funds. The description of activities should include a statement of how the proposed uses of BEDI funds will meet the national objectives for the CDBG program under 24 CFR 570.208 and qualify as eligible activities under 24 CFR 570.703. Citations to the specific regulatory subsections supporting eligibility are recommended, but a narrative description will be accepted. See Section I(G) of this program section of this SuperNOFA. The applicant shall also provide a narrative response to the rating factors below. Each of the listed rating factors (or, where applicable, each subfactor) below also has a separate page limitation specified. Narrative statements must be printed in 12 point type/font, and have sequentially numbered pages.

(C) Factors for Award Used to Evaluate and Rate Applications

All applications will be considered for selection based on the following factors that demonstrate the quality of the proposed project or activities, and the applicant's creativity, capacity and commitment to obtain maximum benefit from the BEDI funds, in accordance with the purposes of the Act.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any faculty, subcontractors, consultants, subrecipients, and members of consortia which are firmly committed (i.e. has a written agreement or a signed letter of understanding with the applicant agreeing in principle to its participation and role in the project). In rating this factor, HUD will consider the following:

(1) With regard to the BEDI/Section 108 project proposed by the applicant, the applicant should demonstrate that it has the capacity to implement the specific steps required to successfully carry out the proposed BEDI/Section 108 project. This includes factors such as the applicant's:

(a) Performance in the administration of its CDBG, HOME or other programs;

(b) Previous experience, if any, in administering a Section 108 loan guarantee;

(c) Performance and capacity in carrying out economic development projects;

(d) Performance and capacity to carry out Brownfields redevelopment projects;

(e) Ability to conduct prudent underwriting;

(f) Capacity to manage and service loans made with the guaranteed loan funds or previous EDI grant funds;

(g) Capacity to carry out its projects and programs in a timely manner; and,

(h) If applicable, the applicant's capacity to manage projects under this program section of this SuperNOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation.

(2) If an applicant has previously received an EDI grant award(s), the applicant must describe the status of the implementation of that EDI-assisted project(s), any delays that have been encountered and the actions the applicant is taking to overcome any such delays in order to carry out the project in a timely manner. For such previously funded EDI grant projects, HUD will consider the extent to which the awarded EDI grant funds and the associated Section 108-guaranteed loan funds have been utilized.

(3) The capacity of subrecipients, nonprofit organizations and other entities that have a role in implementing the proposed program will be included in this review. HUD may also rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this factor.

Rating Factor 2: Distress/Extent of the Problem (15 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which there is need for funding the proposed activities based on levels of distress, and an indication of the urgency of meeting the need/distress in the target area.

(1) In applying this factor, HUD will consider current levels of distress in the immediate community to be served by the project and the jurisdiction applying for assistance. Applicants who are able to indicate a level of distress in the immediate project area that is greater than the level of distress in the applicant's jurisdiction as a whole will receive a higher score under this factor than those who do not. HUD requires that applicants use sound and reliable data that is verifiable to support the level of distress claimed in the application. The applicant shall provide a source for the information it uses.

(2) In previous EDI competitions, the poverty rate was often considered the best indicator of distress; however, the applicant may demonstrate the level of distress with other factors such as income levels and unemployment rates.

(3) HUD will consider a project to have maximum distress if the project(s) is located within the boundaries of a federally-designated Empowerment Zone or Enterprise Community (Applicants will be responsible for demonstrating that the project site is within the boundaries of the applicant's EZ/EC area).

(4) To the extent that the applicant's Consolidated Plan and its Analysis of Impediments to Fair Housing choice (AI) identifies the level of distress in the community and the neighborhood in which the project is being carried out, the applicant should include references to such documents in preparing its response to this factor.

Rating Factor 3: Soundness of Approach (25 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the quality and cost-effectiveness of the applicant's proposed plan. There must be a clear relationship between the proposed activities, community needs and purposes of the program funding for an applicant to receive points for this factor. In rating this factor, HUD will consider the following:

(1) HUD will consider the quality of the applicant's plan/proposal for the use

of BEDI funds and Section 108 loan funds, including the extent to which the applicant's proposed plan for the effective use of BEDI grant/Section 108 loan guarantee will address the needs described in Rating Factor 2 above regarding the distress and extent of the problem in the applicant's immediate community and/or its jurisdiction.

(2) HUD will consider the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose. HUD's desire is to fund projects and activities which will quickly produce demonstrable results and advance the public interest including the number of jobs to be created by the project. An applicant should demonstrate that it has a clear understanding of the steps required to implement its project, the actions that it and others responsible for implementing the project must complete and shall include a reasonable time schedule for carrying out the project.

(3) The applicant's response to this factor should take into account certain site selection, planning, and environmental issues. Further, applicants are cautioned against proposing projects on sites where the nature and degree of environmental contamination is not well quantified or which are the subject of on-going litigation or environmental enforcement. To reiterate, HUD's desire is to fund projects and activities which will quickly produce demonstrable results and advance the public interest. Sites with unknown or exceptionally expensive contamination problems may be beyond the scope of the BEDI program's financial resources and sites subject to pending and current litigation may not be available for remediation and development in a timeframe consistent with HUD's desire for rapid progress in the use of BEDI and Section 108 funds.

(4) The BEDI program is intended to promote the clean up and redevelopment of brownfield sites and, to this end, HUD expects that projects presented for BEDI funding will integrate environmental justice concerns and provide demonstrable benefits for affected communities and their residents.

(5) HUD will evaluate the extent to which the applicant's project incorporates one or more elements that facilitate a successful transition of welfare recipients from welfare to work. Such an element could include, for example, linking the proposed project or loan fund to social and/or other services needed to enable welfare recipients to successfully secure and carry out full-time jobs in the private sector; provision of job training to welfare recipients who might be hired by businesses financed through the proposal; and/or incentives for businesses financed with BEDI/section 108 funds to hire and train welfare recipients.

(6) Up to two (2) additional points will be awarded to any application submitted by the City of Dallas, Texas, to the extent this subfactor is addressed. Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of the applicant's response to this factor, ''Soundness of Approach'' will include the extent to which the applicant's plan for the use of BEDI funds and Section 108 loans will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

Rating Factor 4: Leveraging Resources/Financial Need (35 Points)

[Page limits for the response to this factor are listed separately for each subfactor under this factor.]

In evaluating this factor, HUD will consider the extent to which the applicant's response demonstrates the financial need and feasibility of the project and the leverage ratio of Section 108 loan proceeds to BEDI grant funds. This factor has three subfactors, each with its own maximum point total:

(1) *Leverage of Section 108 funds* (20 points). [Your response to this subfactor is limited to one (1) page.] The minimum ratio of Section 108 funds to BEDI funds in any project may not be less than 1:1. The extent to which the proposed project leverages an amount of Section 108 funds beyond the 1:1 ratio will be considered a positive factor. Applicants that have a ratio of 1:1 will not receive any points under this subfactor. Applicants that use their BEDI grant to leverage more Section 108 commitments will receive more points under this subfactor.

(2) *Financial feasibility* (10 points). [Your response to this subfactor is limited to three (5) pages.] HUD will consider the extent to which the applicant demonstrates that the project is financially feasible. This may include factors such as:

(a) Project costs and financial requirements. Applicants should provide a funding sources and uses statement (not included in 5 page narrative limit) as well as justifications for project costs.

(b) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project.

(c) The reasonableness of the costs of any credit enhancement paid with BEDI grant funds.

(d) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan.

(e) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate).

(f) Underwriting criteria that will be used in determining project feasibility.

(3) *Leverage of other financial resources* (5 points). [Your response to this subfactor is limited to one (1) page plus supporting documentation evidencing third party commitment (written and signed) of funds.] HUD will evaluate the extent to which the applicant leverages other funds (public or private) with BEDI grant funds and section 108 guaranteed loan funds and the extent to which such other funds are firmly pledged to the project. This could include the use of CDBG funds, other Federal or state grants or loans, a grantee's general funds, project equity or commercial financing provided by private sources or funds from non-profits or other sources. Funds will be considered pledged to the project if there is evidence of the third party's written commitment to make the funds available for the BEDI/108 project, subject to approval of the BEDI and Section 108 assistance and completion of any environmental clearance required under 24 CFR part 58 for the project. Note that with respect to CDBG funds, the applicant's pledge of its CDBG funds will be considered sufficient commitment.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

[Your response to this factor is limited to two (2) pages.]

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in the applicant's or a State's Consolidated Planning process, and is working towards addressing a need in a comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written

agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Developed linkages, or the specific steps it will take to develop linkages with other activities, programs or projects through meetings, information networks, planning processes or other mechanisms to coordinate its activities so solutions are holistic and comprehensive, including linkages with other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan.

(3) Coordinated its efforts with other Federal, State or locally supported activities, including EPA's various Brownfields initiatives, and those proposed or on-going in the community.

IV. Application Submission Requirements

(A) Public entities seeking BEDI assistance must make a specific request for that assistance, in accordance with the requirements of this program section of this SuperNOFA.

(B) The application should include an original and one copy of the items listed below submitted to HUD Headquarters (see the section ''Addresses For Submitting Applications in this program section of this SuperNOFA), with one additional copy submitted directly to the Community Planning and Development Division of the cognizant HUD Field Office for the applicant's jurisdiction.

(C) A BEDI application shall consist of the following items:

(1) Transmittal letter from applicant;

(2) Table of contents;

(3) Application check list (supplied in application kit);

(4) A request for loan guarantee assistance under Section 108, as further described in Section I(F) of this program section of this SuperNOFA. Application guidelines for the Section 108 program are found at 24 CFR 570.704;

(5) As described in Section III(B) of this program section of this SuperNOFA, a narrative statement (3 page limit) describing the activities that will be carried out with the BEDI grant funds;

(6) Responses to each of the rating factors (within the page limits provided for each factor or subfactor as applicable);

(7) Completion of a funding sources and uses statement and a BEDI and Section 108 eligibility statement (see the application kit);

(8) Written agreements or signed letters of understanding in support of Rating Factor 1: ''Capacity of the Applicant and Relevant Organizational Experience'';

(9) Signed third party commitment letters pledging funds in support of subfactor 4(2): ''Leverage of other financial resources'';

(10) Required certifications; and

(11) Acknowledgement of Application Receipt form.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ECONOMIC DEVELOPMENT INITIATIVE (EDI)

BILLING CODE 4210–32–C

Funding Availability for the Economic Development Initiative (EDI)

Program Description: Approximately $38 million is available for Economic Development Initiative (EDI) grants under Section 108(q) of the Housing and Community Development Act of 1974, as amended. (Please see Section I(D) of this EDI section of the SuperNOFA for possible set-aside.) EDI funds are used to enhance the security of the Section 108 guaranteed loan for the same project or to improve the viability of a project financed with a Section 108-guaranteed loan. An EDI grant is required to be used in conjunction with a new Section 108 guaranteed loan commitment.

Application Due Date: Completed applications (one original and two copies) must be submitted no later than 12:00 midnight, Eastern time, on July 30, 1998 to the addresses shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications

To HUD Headquarters. The completed application (an original and one copy) must be submitted to: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: EDI Grant, by mail or hand delivery.

To the Appropriate CPD Field Office. An additional copy should be submitted to the Community Planning and Development Division of the appropriate HUD Field Office for the applicant's jurisdiction.

When submitting your application, please refer to EDI, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call HUD's SuperNOFA Information line toll free at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209 to obtain an application kit. The application kit will also be available on the Internet through the HUD web site at http://www.hud.gov. When requesting the application kit, please refer to EDI. Please make sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. Contact either Stan Gimont or Paul Webster, Financial Management Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7178, Washington, DC 20410; telephone (202) 708–1871 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

See the General Section of this SuperNOFA for guidance on technical assistance. With respect to the Section 108 Loan Guarantee program, which is not a competitive program and thus not subject to those provisions of the HUD Reform Act pertaining to competitions, HUD staff will be available to provide advice and assistance to develop Section 108 loan applications.

Additional Information

I. Authority; Definitions; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 108(q), Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320) (the Act); 24 CFR part 570.

(B) Definitions

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this program section of this SuperNOFA shall have the respective meanings given thereto in that part.

CDBG funds means those funds as defined at 24 CFR 570.3, including grant funds received pursuant to section 108(q) of the Act and this program section of this SuperNOFA.

Economic Development Initiative (EDI) means the provision of economic development grant assistance under section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub.L. 103–233, approved April 11, 1994).

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR 570.703, and that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization.

Empowerment Zone or Enterprise Community means an urban area so designated by the Secretary of HUD pursuant to 24 CFR part 597, or a rural area so designated by the Secretary of Agriculture pursuant to 7 CFR part 25, subpart B.

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for an Empowerment Zone or Enterprise Community designated pursuant to 24 CFR part 597.

(C) Purpose

(1) *Background.* HUD has multiple programs which are intended to stimulate and promote economic and community development. Primary among HUD's resources are the Community Development Block Grant (CDBG) program and the Section 108 loan guarantee program.

The CDBG program provides grant funds ($4.195 billion in FY 1998) to local governments (either directly or through States) to carry out community and economic development activities. The Section 108 loan guarantee program provides local governments with a source of financing for economic development, housing rehabilitation and other eligible large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and non-entitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M. It must be noted that the Section 108 program is subject to the regulations of 24 CFR part 570 applicable to the CDBG program with the exception of changes embodied in 24 CFR part 570, subpart M.

For FY 1998, the Section 108 program is authorized at $1.261 billion in loan guarantee authority. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. Under this program, communities (and States, if applicable) pledge their future years' CDBG allocations as security for loans guaranteed by HUD. The Section 108 program, however, does not require CDBG funds to be escrowed for loan repayment (unless such an arrangement is specifically negotiated as loan security). This means that a community can continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment.

(2) *EDI Program.* The EDI program was enacted in 1994 and is intended to complement and enhance the Section 108 Loan Guarantee program. The

purpose of EDI grant funds is to further minimize the potential loss of future CDBG allocations:

(a) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan);

(b) By directly enhancing the security of the guaranteed loan; or

(c) Through a combination of these or other risk mitigation techniques.

(3) *Purpose of EDI Funding.* HUD intends the approximately $38 million in EDI funds to stimulate economic development by local governments and private sector parties. HUD desires to see EDI and Section 108 funds used to finance projects and activities that will provide near-term results and demonstrable economic benefits, such as job creation and increases in the local tax base.

(4) *Additional Security for Section 108 Loan Guarantee.* Public entities should be mindful of the need to provide additional security for the Section 108 loan guarantee pursuant to 24 CFR 570.705(b)(3). Although a public entity is required by the Act to pledge its current and future CDBG funds as security for the Section 108 loan guarantee, the public entity will usually be required to furnish additional collateral. In most cases, the additional collateral consists (in whole or in part) of the asset financed with the Section 108 loan funds (e.g., a loan made to a business as part of an economic development project). Applications proposing uses for EDI funding that enhance the viability of projects will help ensure that the project-based asset(s) will satisfy the additional collateral requirements.

(5) *Typical Project Structures.* Provided that proposals are consistent with other CDBG requirements, including national objectives, HUD envisions that the following project structures could be typical:

(a) *Funding Reserves.* The cash flow generated by an economic development project may be expected to be relatively ''thin'' in the early stages of the project, i.e. potentially insufficient cash flows to meet operating expenses and debt service obligations. The EDI grant can make it possible for reserves to be established in a way that enhances the economic feasibility of the project.

(b) *Over-Collateralizing the Section 108 Loan.*

(i) The use of EDI grant funds may be structured in appropriate cases so as to improve the likelihood that project-generated cash flow will be sufficient to cover debt service on the Section 108 loan and directly to enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

(ii) An example is the creation of a loan pool funded with Section 108 and EDI grant funds. The community would make loans to various businesses from the combined pool at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan.

(c) *Direct Enhancement of the Security of the Section 108 Loan.* The EDI grant can be used to cover the cost of providing credit enhancements. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

(d) *Provision of Financing to For-Profit Businesses at a Below Market Interest Rate.*

(i) While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely economically distressed neighborhoods. The EDI grant can be used to make Section 108 financing affordable.

(ii) EDI grant funds could serve to ''buy down'' the interest rate up front, or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial/retail project in a distressed neighborhood to act as a catalyst for other development in the area.

(e) *Combination of Techniques.* An applicant could employ a combination of these or other techniques in order to implement a strategy that carries out an economic development project.

(D) Amount Allocated

HUD has available a maximum of approximately $38 million for the EDI program, as appropriated in the FY 1998 HUD Appropriations Act. If any additional EDI grant monies for this SuperNOFA become available, HUD may either fund additional applicants in accordance with this SuperNOFA during Fiscal Year 1998 or may add any funds that become available to funds available for any future EDI competitions.

As part of EDI, HUD is developing a program enhancement designed to reduce the risk that CDBG funds will have to be used to repay Section 108 loans that finance economic development projects. This mechanism will allow public entities to pool economic development loans and related reserves. The diversification created by the pooling of loans and reserves will reduce the risk that a public entity will incur a catastrophic loss to its CDBG program if a business defaults on an economic development loan made with Section 108 funds. The CDBG Risk Reduction Pool will also assist public entities in satisfying the collateral requirements for Section 108 loans. The pool's reserves and incremental cash flows will provide an additional credit enhancement for the Section 108 loan and thereby satisfy Section 108 additional collateral requirements. The HUD budget for FY 1999 has requested $400 million for an enhanced EDI program that includes features of this mechanism.

HUD is developing this pooling mechanism in consultation with other Federal agencies and outside experts. HUD is considering a $10 million demonstration in FY 1998. If the demonstration occurs, then $28 million will be available for the EDI competition announced in this SuperNOFA. In this event, HUD will publish a supplementary notice to the EDI program section of this SuperNOFA announcing the availability of the $10 million for an FY 1998 demonstration of this mechanism. Should there be no demonstration in FY 1998, then HUD reserves the right to utilize the $10 million for the EDI competition announced in this SuperNOFA, making the total amount available $38 million.

(E) Eligibility to Apply for Grant Assistance

Any public entity eligible to apply for Section 108 loan guarantee assistance pursuant to 24 CFR 570.702 may apply for EDI grant assistance under Section 108(q). *Eligible applicants are CDBG entitlement units of general local government and non-entitlement units of general local government eligible to receive loan guarantees under 24 CFR part 570, subpart M.* Note that effective January 25, 1995, non-entitlement public entities in the states of New York and Hawaii were authorized to apply to HUD for Section 108 loans (see 59 FR 47510, December 27, 1994). Thus, non-entitlement public entities in all 50 states and Puerto Rico are eligible to

participate in the Section 108 and EDI programs.

(F) Related Section 108 Loan Guarantee Application

(1) Each EDI application must be accompanied by a request for new Section 108 loan guarantee assistance. Both the EDI and Section 108 funds must be used in conjunction with the same economic development project. This request may take any of several forms as defined below.

(a) A formal application for new Section 108 loan guarantee(s), including the documents listed at 24 CFR 570.704(b);

(b) A brief description (not to exceed three pages) of a new Section 108 loan guarantee application(s). Such 108 application(s) will be submitted within 60 days, with HUD reserving the right to extend such period for good cause on a case-by-case basis, of a notice of EDI selection. EDI awards will be conditioned on approval of actual Section 108 loan commitments. This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance. (See Section I(G) of this program section of this SuperNOFA.);

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this SuperNOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment (analogous to Section I(G)(1)(a) or (b) above) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved *before* the date of this SuperNOFA is not eligible to be used in conjunction with a EDI grant under this SuperNOFA.

(2) Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this SuperNOFA, is not eligible for an EDI award under this SuperNOFA. For example, if a public entity has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the public entity had previously been awarded an EDI grant of $1 million and had certified that it will submit a Section 108 loan application for $10 million in support of that EDI grant, the public entity's EDI application under this SuperNOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(G) Eligible Activities and National Objectives

EDI grant funds may be used for activities listed at 24 CFR 570.703, provided such activities are carried out as part of an economic development project as defined in Section I(B) of this EDI section of this SuperNOFA. Each activity assisted with Section 108 loan guarantee or EDI funds must meet a national objective of the CDBG program (see 24 CFR 570.208). In the aggregate, a grantee's use of CDBG funds, including any Section 108 loan guarantee proceeds and section 108(q) (EDI) funds provided pursuant to this program section of this SuperNOFA, must comply with the CDBG primary objectives requirement as described in section 101(c) of the Housing and Community Development Act of 1974, as amended, and 24 CFR 570.200(c)(3) or 24 CFR 570.484 in the case of State grantees. The foregoing eligible activities may also include:

(1) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided that the proceeds of such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by 24 CFR 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes; and

(2) The payment of interest due (and other costs such as servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed by HUD pursuant to the Section 108 loan guarantee program.

(H) Limitations on Use of EDI and Section 108 Funds

Certain restrictions shall apply to the use of EDI and Section 108 funds:

(1) EDI grants shall not be used as a resource to immediately repay the principal of a loan guaranteed under Section 108. Repayment of principal is only permissible with EDI grant funds as a matter of security if other sources projected for repayment of principal prove to be unavailable.

(2) Applicants are cautioned against using Section 108 funds to finance activities which also include financing generated through the issuance of federally tax exempt obligations. Pursuant to Office of Management and Budget (OMB) Circular A–129 (Policies for Federal Credit Programs and Non-Tax Receivables), Section 108 guaranteed loan funds may not directly or indirectly support federally tax-exempt obligations.

(I) Limitations on Grant Amounts

(1) HUD expects to approve EDI grant amounts for approvable applications at a range of ratios of EDI grant funds awarded to new Section 108 loan guarantee commitments, but the minimum ratio will be $1 of Section 108 loan guarantee commitments for every $1 of EDI grant funds. However, applicants that propose a leverage ratio of 1:1 will not receive any points under Ration Subfactor 4(1): ''Leverage of Section 108 Funds.'' For example, an applicant requesting a EDI grant of $1 million will be required to leverage a minimum of at least $1 million in new Section 108 loan guarantee commitments. This will be a special condition of the EDI grant award. Of course, even though there is a minimum ratio of 1:1, applications with higher ratios will receive more points under Rating Factor 4, ''Leveraging Resources/ Financial Need'' and, all other things being equal, will be more competitive. Applicants are encouraged to propose projects with a greater leverage ratio of new Section 108 to EDI grant funds (assuming such projects are financially viable). For example, $1 million of EDI could leverage $12 million of new Section 108 loan commitments. HUD intends that the EDI funds will be used for projects which leverage the greatest possible amount of Section 108 loan guarantee commitments.

(2) HUD expects that the average grant size will be approximately $1 million.

(3) If additional EDI grant funds become available to HUD as the result of recaptures prior to the date of this NOFA, HUD reserves the right to award grants under this SuperNOFA whose aggregate total may exceed the $38 million announced in this SuperNOFA, up to the maximum amount authorized by law.

(4) In the event the applicant is awarded an EDI grant that has been reduced below the original request (e.g. the application contained some activities that were ineligible or there were insufficient funds to fund the last competitive application at the full amount requested), the applicant will be required to modify its project plans and application to conform to the terms of HUD's approval before execution of a grant agreement. HUD reserves the right to reduce or de-obligate the EDI award if approvable Section 108 loan guarantee applications are not

submitted by the grantee in the required amounts on a timely basis. Any requested modifications must be within the scope of the original EDI application.

(5) In the case of requested amendments to a previously approved Section 108 loan guarantee commitment (as further discussed in Section I(F)(1)(d), above), the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(J) Timing of Grant Awards

(1) To the extent a full Section 108 application is submitted with the EDI grant application, the Section 108 application will be evaluated concurrently with the request for EDI grant funds. Note that EDI grant assistance cannot be used to support a Section 108 loan guarantee approved prior to the date of the publication of this SuperNOFA. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act.

(2) HUD notification to the grantee of the amount and conditions (if any) of EDI funds awarded based upon review of the EDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement. EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements.

(A) CDBG Program Regulations

The requirements of 24 CFR part 570, including subpart K (Other Program Requirements).

(B) Environmental Review

After the completion of this competition and after HUD's award of EDI grant funds, pursuant to 24 CFR 570.604, each project or activity assisted under this program is subject to the provisions of 24 CFR part 58, including limitations on the EDI grant and Section 108 public entity's commitment of HUD and non-HUD funds prior to the completion of environmental review, notification and release of funds. No such assistance will be released by HUD until a request for release of funds is submitted and the requirements of 24 CFR part 58 have been met. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification, required pursuant to 24 CFR part 58, to the appropriate HUD field office for each project to be assisted.

(C) Environmental Justice

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) directs Federal agencies to develop strategies to address environmental justice. Environmental justice seeks to rectify the disproportionately high burden of environmental pollution that is often borne by low-income, minority, and other disadvantaged communities, and to ensure community involvement in policies and programs addressing this issue.

III. Application Selection Process

(A) Rating and Ranking

(1) Each rating factor and the maximum number of points is provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points as described in the General Section of this SuperNOFA.

(2) Once scores are assigned, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order.

(3) If HUD determines that an application rated, ranked and fundable could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination. An application in excess of $1 million may be reduced below the amount requested by the applicant if HUD determines that such a reduction is appropriate.

(4) HUD may decide not to award the full amount of EDI grant funds available under this program section of this SuperNOFA and may make any remaining amounts available under a future SuperNOFA, or under a supplementary notice.

(B) Narrative Statement

Each applicant shall provide a narrative statement describing the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the rating factor identified below. The narrative statement shall not exceed three (3) 8.5″ by 11″ pages for the description of the activities to be carried out with the EDI grant funds. The description of activities should include a statement of how the proposed uses of EDI funds will meet the national objectives under 24 CFR 570.208 for the CDBG program and qualify as eligible activities under 24 CFR 570.703. Citations to the specific regulatory subsections supporting eligibility are recommended, but a narrative description will be accepted. See Section I(G) of this program section of this SuperNOFA. Each of the listed rating factors (or, where applicable, each subfactor) below also has a separate page limitation specified. Narrative statements must be printed in 12 point type/font, and have sequentially numbered pages.

(C) Factors for Award Used to Evaluate and Rate Applications

All applications will be considered for selection based on the following factors that demonstrate the quality of the proposed project or activities, and the applicant's creativity, capacity and commitment to obtain maximum benefit from the EDI funds, in accordance with the purposes of the Act.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any faculty, subcontractors, consultants, subrecipients, and members of consortia which are firmly committed (i.e., has a written agreement or a signed letter of understanding with the applicant agreeing in principle to its participation and role in the project). In rating this factor, HUD will consider the following:

(1) With regard to the EDI/Section 108 project proposed by the applicant, the applicant should demonstrate that it has the capacity to implement the specific steps required to successfully carry out the proposed EDI/Section 108 project. This includes factors such as the applicant's:

(a) Performance in the administration of its CDBG, HOME or other programs;

(b) Previous experience, if any, in administering a Section 108 loan guarantee;

(c) Performance and capacity in carrying out economic development projects;

(d) Ability to conduct prudent underwriting;

(e) Capacity to manage and service loans made with the guaranteed loan funds or previous EDI grant funds;

(f) Capacity to carry out its projects and programs in a timely manner; and,

(g) If applicable, the applicant's capacity to manage projects under this program section of this SuperNOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation.

(2) If an applicant has previously received an EDI grant award(s), the applicant must describe the status of the implementation of that EDI-assisted project(s), any delays that have been encountered and the actions the applicant is taking to overcome any such delays in order to carry out the project in a timely manner. For such previously funded EDI grant projects, HUD will consider the extent to which the awarded EDI grant funds and the associated Section 108 guaranteed loan funds have been utilized.

(3) The capacity of subrecipients, nonprofit organizations and other entities that have a role in implementing the proposed program will be included in this review. HUD may also rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this factor.

Rating Factor 2: Distress/Extent of the Problem (15 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which there is need for funding the proposed activities based on levels of distress, and an indication of the urgency of meeting the need/distress in the target area.

(1) In applying this factor, HUD will consider current levels of distress in the immediate community to be served by the project and the jurisdiction applying for assistance. Applicants who are able to indicate a level of distress in the immediate project area that is greater than the level of distress in the applicant's jurisdiction as a whole will receive a higher score under this factor than those who do not. HUD requires that applicants use sound and reliable data that is verifiable to support the level of distress claimed in the application. The applicant shall provide a source for the information it uses.

(2) In previous EDI competitions, the poverty rate was often considered the best indicator of distress; however, the applicant may demonstrate the level of distress with other factors such as income levels and unemployment rates.

(3) HUD will consider a project to have maximum distress if the project(s) is located within the boundaries of a federally-designated Empowerment Zone or Enterprise Community (Applicants will be responsible for demonstrating that the project site is within the boundaries of the applicant's EZ/EC area).

(4) To the extent that the applicant's Consolidated Plan and its Analysis of Impediments to Fair Housing choice (AI) identifies the level of distress in the community and the neighborhood in which the project is being carried out, the applicant should include references to such documents in preparing its response to this factor.

Rating Factor 3: Soundness of Approach (25 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the quality and cost-effectiveness of the applicant's proposed plan. There must be a clear relationship between the proposed activities, community needs and purposes of the program funding for an applicant to receive points for this factor. In rating this factor, HUD will consider the following:

(1) HUD will consider the quality of the applicant's plan/proposal for the use of EDI funds and Section 108 loan funds, including the extent to which the applicant's proposed plan for the effective use of EDI grant/Section 108 loan guarantee will address the needs described in Rating Factor 2 above regarding the distress and extent of the problem in the applicant's immediate community and/or its jurisdiction.

(2) HUD will consider the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose. HUD's desire is to fund projects and activities which will quickly produce demonstrable results and advance the public interest including the number of jobs to be created by the project and the impact of the project on job creation that will benefit individuals on or previously on welfare. An applicant should demonstrate that it has a clear understanding of the steps required to implement its project, the actions that it and others responsible for implementing the project must complete and shall include a reasonable time schedule for carrying out the project.

(3) HUD will consider the extent to which the applicant's proposed project addresses the applicant's Analysis of Impediments and the needs identified in Factor 2 and the extent to which such project activities will result in the physical and economic improvement for the residents in the neighborhood in which the project will be carried out.

(4) HUD will evaluate the extent to which the applicant's project incorporates one or more elements that facilitate a successful transition of welfare recipients from welfare to work. Such an element could include, for example, linking the proposed project or loan fund to social and/or other services needed to enable welfare recipients to successfully secure and carry out full-time jobs in the private sector; provision of job training to welfare recipients who might be hired by businesses financed through the proposal; and/or incentives for businesses financed with EDI/section 108 funds to hire and train welfare recipients.

(5) Up to two (2) additional points will be awarded to any application submitted by the City of Dallas, Texas, to the extent this subfactor is addressed. Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of the applicant's response to this factor, ''Soundness of Approach,'' will include the extent to which the applicant's plan for the use of EDI funds and Section 108 loans will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

Rating Factor 4: Leveraging Resources/Financial Need (35 Points)

[Page limits for the response to this factor are listed separately for each subfactor under this factor.]

In evaluating this factor, HUD will consider the extent to which the applicant's response demonstrates the financial need and feasibility of the project and the leverage ratio of Section 108 loan proceeds to EDI grant funds. This factor has three subfactors, each with its own maximum point total:

(1) *Leverage of Section 108 funds* (20 points). Your response to this subfactor is limited to one (1) page. The minimum ratio of Section 108 funds to EDI funds in any project may not be less than 1:1. The extent to which the proposed project leverages an amount of Section 108 funds beyond the 1:1 ratio will be considered a positive factor. Applicants that have a ratio of 1:1 will not receive

any points under this subfactor. Applicants that use their EDI grant to leverage more Section 108 commitments will receive more points under this subfactor.

(2) *Financial feasibility* (10 points). [Your response to this subfactor is limited to five (5) pages.] HUD will consider the extent to which the applicant demonstrates that the project is financially feasible. This may include factors such as:

(a) Project costs and financial requirements. Applicants should provide a funding sources and uses statement (not included in 5 page narrative limit) as well as justifications for project costs.

(b) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project.

(c) The reasonableness of the costs of any credit enhancement paid with EDI grant funds.

(d) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan.

(e) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate).

(f) Underwriting criteria that will be used in determining project feasibility.

(3) *Leverage of other financial resources* (5 points). [Your response to this subfactor is limited to one (1) page plus supporting documentation evidencing third party commitment (written and signed) of funds.] HUD will evaluate the extent to which the applicant leverages other funds (public or private) with EDI grant funds and Section 108 guaranteed loan funds and the extent to which such other funds are firmly pledged to the project. This could include the use of CDBG funds, other Federal or state grants or loans, a grantee's general funds, project equity or commercial financing provided by private sources or funds from non-profits or other sources. Funds will be considered pledged to the project if there is evidence of the third party's written commitment to make the funds available for the EDI/108 project, subject to approval of the EDI and Section 108 assistance and completion of any environmental review required under 24 CFR part 50 for the project. Note, that with respect to CDBG funds, the applicant's pledge of its CDBG funds will be considered sufficient commitment.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

[Your response to this factor is limited to two (2) pages.]

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in the applicant's or a State's Consolidated Planning process, and is working towards addressing a need in a comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Developed linkages, or the specific steps it will take to develop linkages with other activities, programs or projects through meetings, information networks, planning processes or other mechanisms to coordinate its activities so solutions are holistic and comprehensive, including linkages with other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan.

IV. Application Submission Requirements

(A) Public entities seeking EDI assistance must make a specific request for that assistance, in accordance with the requirements of this program section of this SuperNOFA.

(B) The application should include an original and one copy of the items listed below, with one additional copy submitted directly to the Community Planning and Development Division of the cognizant HUD Field Office for the applicant's jurisdiction.

(C) An EDI application shall consist of the following items:

(1) Transmittal letter from applicant;

(2) Table of contents;

(3) Application check list (supplied in application kit);

(4) A request for loan guarantee assistance under Section 108 as further described in Section I(F) of this program section of the SuperNOFA. Application guidelines for the Section 108 program are found at 24 CFR 570.704;

(5) A described in Section III(B) of this program section of this SuperNOFA, a narrative statement (3 page limit) describing the activities that will be carried out with the EDI grant funds;

(6) Responses to each of the rating factors (within the page limits provided for each factor or subfactor as applicable);

(7) Completion of a funding sources and uses statement and a EDI and Section 108 eligibility statement (see the application kit);

(8) Written agreements or signed letters of understanding in support of Rating Factor 1: ''Capacity of the Applicant and Relevant Organizational Experience;''

(9) Signed third party commitment letters pledging funds in support of subfactor 4(2): ''Leverage of other financial resources;''

(10) Required certifications; and

(11) Acknowledgement of Application Receipt form.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONSOLIDATED ECONOMIC DEVELOPMENT AND SUPPORTIVE SERVICES AND TENANT OPPORTUNITIES PROGRAM

BILLING CODE 4210–32–C

Consolidated Economic Development and Supportive Services and Tenant Opportunities Programs

Program Description: Approximately $64.1 million in funding is made available for two programs: Public and Indian Housing Economic Development and Supportive Services Program (EDSS) and the Tenant Opportunities Program (TOP). In general, although both programs fund similar activities, Housing Authorities, Indian tribes, and Tribally Designated Housing Entities are the recipients under EDSS while resident associations are the recipients under TOP. Therefore, although the funding availability announcements for these two programs have been combined, the application processes will remain separate.

This program section of the SuperNOFA combines TOP and EDSS to highlight HUD's parallel restructuring of these complementary programs. The restructuring represents a major HUD initiative to improve the targeting and management of limited resources for resident self-sufficiency. The goal is to most effectively focus these resources on ''welfare to work'' and on independent living for the elderly and persons with disabilities. HUD believes that it is imperative that housing authorities and residents work together to meet the challenge of welfare reform.

Application Due Date: Completed applications (one original and two copies) must be submitted, at the address shown below, no later than 6:00 pm local time on:

July 31, 1998 for the EDSS Program; and

July 31, 1998 for the TOP Program.

Please see the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried) and the time by which the application must be received by HUD and/or postmarked in order to meet the deadline for submission.

Address for Submitting Applications: An original and two copies of the application must be received by the application due date at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public or Assisted Housing, or, in the case of the Native American population, to the Administrator, Area Office of Native American Programs (AONAP), as appropriate.

For Application Kits, Further Information and Technical Assistance

For Application Kits. For an application kit and any supplemental information please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to EDSS/TOP and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may call the local HUD field office with delegated responsibilities over the pertinent housing agency/authority, or in the case of an Indian tribe or a Tribally Designated Housing Entity (TDHE) applying for EDSS grants, the AONAP with jurisdiction over the tribe/TDHE. Answers may also be obtained by calling the Public and Indian Housing Information and Resource Center at 1–800–955–2232. Information on this SuperNOFA may also be obtained through the HUD web site on the Internet at http://www.HUD.gov.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

The Authority, Purpose of the Program, Amount Allocated, Program Award Period, Eligible Applicants; Grants Amounts; Eligible and Ineligible Activities, and *Additional* Program Requirements, as applicable, are delineated under each technical assistance program area for which funding is being made available. Applicants should take care in reviewing this section to ensure they are eligible to apply for funds and that they meet the additional program requirements and limitations described for each program.

(A) Authority

(1) *For the EDSS Program,* the Community Development Block Grant section of the FY 1998 HUD Appropriations Act.

(2) *For TOP,* section 20 of the U.S. Housing Act of 1937. The TOP regulations are found in 24 CFR part 964.

(3) *Common Definitions.* Please see Appendix A to this EDSS/TOP section of the SuperNOFA for common definitions.

(B) Purpose

The purposes of the two programs are as follows:

(1) *EDSS.* The purpose of the EDSS program is to provide grants to Public Housing Authorities (PHAs), Tribes or their Tribally Designated Housing Entities (TDHEs) to enable them to establish and implement programs that increase resident self-sufficiency, and support continued independent living for elderly and disabled residents.

(2) *TOP.* TOP provides grants to public housing Site-Based Resident Councils, Resident Management Corporations and Intermediary Resident Organizations to provide resident training such as improving resident educational, professional, and economic levels by providing skills to make them more employable in the local community; organizational capacity-building for newly created resident associations; and training residents to resolve disputes in public housing.

(C) Amount Allocated for EDSS

(1) *Amount Allocated.* For EDSS, $47,211,223 is available in funds for eligible PHAs, Tribes/TDHEs. This amount includes the FY 98 EDSS appropriation of $30 million and FY 97 carryover funds of $17,211,223. HUD is setting aside $5 million of this amount to fund applications from Tribes/TDHEs with the remaining available to fund applications from PHAs.

(a) Both the amount for Tribes/TDHEs and PHAs will be allocated as follows: 60% will be allocated to Family Economic Development and Supportive Services category grants; and the remaining 40% will be allocated to Elderly and Disabled Supportive Services category grants.

(b) A PHA, Tribe/TDHE may submit one application under the Family Economic Development and Supportive Services grant category and/or one application under the Elderly and Disabled Supportive Services grant category.

The maximum number of applications that a HA may submit is two. If an applicant is applying for both funding categories, then it must submit two separate applications in which the total amount requested must not exceed the maximum grant amount available for its size under the Family Economic Development and Supportive Services category.

(2) *Maximum Grant Awards.* The maximum grant awards are limited as follows:

(a) For Family Economic Development and Supportive Services category—no more than $250 per unit up to the below listed maximums:

(i) For PHAs, Tribes/TDHEs with 1 to 780 units, the maximum grant award is $150,000.

(ii) For PHAs, Tribes/TDHEs with 781 to 7,300 units, the maximum grant award is $500,000.

(iii) For PHAs, Tribes/TDHEs with 7,301 or more units, the maximum grant award is $1,000,000.

(b) For elderly or Disabled Supportive Services category—no more than $250 per unit up to the below listed maximums:

(i) For PHAs, Tribes/TDHEs with 1 to 217 units occupied by Elderly residents or persons with disabilities, the maximum grant award is $54,250.

(ii) For PHAs, Tribes/TDHEs with 218 to 1,155 units occupied by Elderly residents or persons with disabilities, the maximum grant award is $200,000.

(iii) For PHAs, Tribes/TDHEs with 1,156 or more units occupied by Elderly residents or persons with disabilities, the maximum grant award is $300,000.

(3) Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1998 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Act should count housing units under management that are owned and operated by the tribe and are identified in their housing inventory as of September 30, 1997.

(D) Amount Allocated for TOP

$16,884,530 ($5 million in FY 98 appropriations and $11,884,530 in carry over funds) is available for awards to qualified applicants to provide technical assistance and training activities under the TOP program. The TOP funding will be distributed to the three grant categories as follows: Economic Self-Sufficiency Grants—$10.9 million, Organizational Development Grants—$3 million, and Mediation Grants—$3 million. If all funds are not awarded in one category, funds are transferable to the other grant categories for use by qualified applicants.

(1) *TOP Grant Categories.* TOP funding is allocated to the following grant categories:

(a) *Economic Self-Sufficiency Grant (ESSG)* provides assistance to Site-Based Resident Associations (RAs) and Intermediary Resident Organizations (IROs), to move welfare dependent families to work. The applicant must provide evidence that at least 51% of those served are households affected by welfare reform. The funds can be used for training and technical assistance which will provide educational, job, business, and life skills to enable residents to move towards self-sufficiency and consistent with a needs assessment. For elderly/disabled developments, TOP funds can be used for stipends and training (including business development training, if appropriate) for residents to: engage in day care for children, provide professional and personal mentoring, raise grandchildren, and provide other intergenerational service. When TOP funds are utilized in this manner, the elderly residents providing these services need not be affected by welfare reform; however, at least 51 percent of those to be assisted by the services to be provided by elderly residents must be affected by welfare reform.

(b) *Organizational Development Grants (ODG)* provide assistance to Site-Based Resident Associations who do not yet have the capacity to administer a welfare-to-work program or conduct management activities. The funds will be targeted to help establish new resident organizations or enhance the capacity of existing organizations to assist residents, participate in Housing Authority decision-making, manage all or a portion of their developments, and/or apply for and administer grants. An additional grant applicant is not eligible to apply for this grant.

(c) *Mediation Grant* provides assistance to Intermediary Resident Organizations (IROs) partnering with professional mediators to resolve conflicts involving public housing residents and/or Site-Based Resident Associations. The skilled mediator/partners, under the auspices of an IRO, will bridge impasses between residents and/or factions within specific developments, among active participants of a Site-Based Resident Association (RA), or between an RA and its partners, especially local Housing Authorities. The grant applicant must apply in partnership with a recognized professional mediation organization. All applicants must have entered into at least one referral agreement with judicial, law enforcement or social services agencies to mediate for public housing residents served by the agency. After awarding the grants, HUD would refer cases requiring mediation to the grantee. Also conflicting parties, on their own initiative, could request mediation services directly to the grantee. While mediating for residents and their partners, the professional mediators would also train IRO grantee staff in mediation principles and skills for mediation in the future.

(2) *TOP Grant Categories' Amounts.*

(a) *Basic Grants.* Any eligible Site-Based RA in the development that has not previously received up to the following amount for an ESS grant or Organizational Development grant.

(i) ESS grant—Site-Based RAs may receive up to $100,000 less the value of any TOP assistance previously received by the development from an IRO.

(ii) Organizational Development grant—Site-Based RA may receive up to $40,000.

(b) *Additional Grants (ESS Grant Only).* Any eligible RA selected for a Resident Management (RM) or a TOP grant in FYs 1988–1997 (including a mini grant for start-up activities) that received less than a total of $100,000 may apply for an Additional Grant for economic self sufficiency, provided that the total cumulative RM/TOP funding for a project site, including Citywide or Intermediary Grant funds benefiting the project does not exceed (including previous grants) the total statutory maximum of $100,000. Additional Grant applicants may not apply for an Organizational Development grant.

(c) *Intermediary Grants.* (i) Any eligible NRO, RRO, or SRO may apply for a single ESS, Organizational Development or Mediation grant for up to $250,000. These organizations may also apply for one grant each in two or more of the grant categories provided that the combined amount requested by the IRO this year does not exceed $350,000.

(ii) A Jurisdiction-wide Resident Organization may apply for an ESS, OD or Mediation grant for an amount of up to $100,000. A Jurisdiction-wide Organization may not apply in more than one grant category.

(iii) An IRO cannot assist RAs that have already received RM/TOP grants totaling $100,000 and cannot propose to provide assistance to a given project that would result in the project exceeding its statutory maximum for RM/TOP funding.

(d) *Housing Authority Jurisdiction Maximum.* The amount of funding available for all applicants that are not Intermediary Resident Organizations, that are located within the jurisdiction of a single housing authority is limited to the following amounts based on the size of the housing authority.

(i) For Housing Authorities with one to 780 units the maximum funding amount is $700,000.

(ii) For Housing Authorities with 781 to 7,300 units the maximum funding amount is $1,400,000.

(iii) For Housing Authorities with more than 7,301 units the maximum funding amount is $2,100,000.

(E) Eligible Applicants

(1) *EDSS Eligible Applicants.*

PHAs, Tribes or their TDHEs that have not received a previous EDSS grant are eligible applicants.

(2) *TOP Eligible Applicants.* (a) Public housing Site-Based Resident Councils,

Resident Management Corporations and Intermediary Resident Organizations which include National Resident Organizations, Statewide Resident Organizations, Regional Resident Organizations, and Jurisdiction wide Resident Organizations.

(b) Please see Appendix A to this TOP/EDSS section of the SuperNOFA for the definition of Intermediary Resident Organization. Additionally, Intermediary Resident Organizations must be registered with the state as non-profit corporations and have applied for or received 501(c) status with the U.S. Internal Revenue Service. Eligible Intermediary Resident Organizations must list in their application the name of the RAs that will receive training or technical assistance, and submit letters of support from each entity identified in the application.

(3) Indian Housing Resident Organizations are now ineligible to apply for TOP funding. The President signed into law the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) on October 26, 1996, which terminated Indian Housing Assistance under the U.S. Housing Act of 1937.

(F) EDSS Eligible Activities

EDSS Program funds may be used for the activities as described below. At least 75 percent of the persons participating and receiving benefits from these activities must be residents of conventional Public or Indian Housing. Any other persons (up to 25 percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance.

(1) *Family Economic Development and Supportive Services category.*

(a) *Economic Development activities.* Activities essential to facilitate economic uplift and provide access to the skills and resources needed for self-development and business development. Economic development activities may include:

(i) *Entrepreneurship Training* (literacy training, computer skills training, business development planning).

(ii) *Entrepreneurship Development* (entrepreneurship training curriculum, entrepreneurship courses).

(iii) *Micro/Loan Fund.* Developing a strategy for establishing a revolving micro/loan fund and/or capitalizing a loan fund.

(iv) *Developing credit unions.* Developing a strategy to establish and/or create onsite credit union(s) to provide financial and economic development initiatives to PHA/Tribal/TDHE residents. (EDSS grant funds cannot be used to capitalize a credit union.) The credit union could support the normal financial management needs of the community (i.e., check cashing, savings, consumer loans, micro-businesses and other revolving loans).

(v) *Employment training and counseling* (e.g., job training (such as Step-Up programs), preparation and counseling, job search assistance, job development and placement, and continued follow-up assistance).

(vi) *Employer linkage and job placement.*

(b) *Supportive Services.* The provision of services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Supportive services may include:

(i) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities.

(ii) Computer based educational opportunities, skills training, and entrepreneurial activities.

(iii) Homeownership training and counseling, development of feasibility studies and preparation of homeownership plans/proposals.

(iv) Education including but not limited to: Remedial education; Literacy training; Assistance in the attainment of certificates of high school equivalency; Two-year college tuition assistance; Trade school assistance; Youth leadership skills and related activities (activities may include peer leadership roles training for youth counselors, peer pressure reversal, life skills, goal planning).

(vi) Youth mentoring of a type that mobilizes a potential pool of role models to serve as mentors to public or Indian housing youth. Mentor activities may include after-school tutoring, help with problem resolution issues, illegal drugs avoidance, job counseling or mental health counseling.

(vii) Transportation costs, as necessary to enable any participating family member to receive available services to commute to his or her training or supportive services activities or place of employment.

(viii) Personal wellbeing (e.g., family/parental development counseling, parenting skills training for adult and teenage parents, and self-development counseling, etc.).

(ix) Supportive health care services (e.g., outreach and referral services to substance and alcohol abuse treatment and counseling, for example, mental health).

(x) Contracting for case management services contracts or employment of case managers, either of which must ensure confidentiality about resident's disabilities.

(2) *Elderly or Disabled Supportive Services category.* Supportive Services for the elderly and for persons with disabilities include:

(a) Meal service adequate to meet nutritional need;

(b) Assistance with daily activities;

(c) Housekeeping aid;

(d) Transportation services;

(e) Wellness programs, preventive health education, referral to community resources;

(f) Personal emergency response; and

(g) Congregate services—includes supportive services that are provided in a congregate setting at a conventional HA development.

(3) *For both Family Economic Development and Supportive Services category and Elderly or Disabled Supportive Services category grants:*

(a) The employment of or contracting for service coordinators. For the purposes of this program section of the SuperNOFA, a service coordinator is any person who is responsible for one or more of the following functions:

(i) Assessing the training and supportive service needs of eligible residents (for Family Economic Development and Supportive Service category grants);

(ii) Working with community service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(iii) Establishing a system to monitor and evaluate the delivery, impact, effectiveness and outcomes of supportive services under this program;

(iv) Coordinating this program with other independent living or self-sufficiency, education and employment programs;

(v) Performing other duties and functions that are appropriate to assist eligible public and Indian housing residents to become economically self-sufficient;

(vi) Performing other duties and functions to assist residents to remain independent, and to prevent unnecessary institutionalization; and

(vii) Mobilizing other national and local public/private resources and partnerships.

(viii) Any other services and resources, proposed by the applicant and approved by HUD and authorized by the 1998 Appropriations Act that are determined to be appropriate in assisting eligible residents.

(b) Administrative costs not to exceed 15% of the grant amount.

(c) Stipends. No more than $200 per participant per month of the grant award may be used for stipends for active trainees and EDSS program participants to cover the reasonable costs related to participation in training and other EDSS activities.

(G) EDSS Ineligible Activities

Activities for which costs are ineligible for funding under the EDSS Program include:

(1) Payment of wages and/or salaries to participants receiving supportive services and/or training programs, except that grant funds may be used to hire a resident(s) to coordinate/provide training program activities.

(2) Purchase or rental of land of buildings or any improvements to land or buildings.

(3) Building materials and construction costs.

(4) The hiring of service coordinators under the Elderly/Disabled EDSS category if applicant is also applying for a Service Coordinators program grant.

(H) TOP Eligible Activities

The following activities have been categorized based on their general appropriateness for the requirements of each grant category. Activities for which funding under TOP may be provided to an eligible Site-Based RA or Intermediary include any combination of, but are not limited to, the following:

(1) *Economic Self-Sufficiency Grant Applicants.*

(a) Social Support Needs (such as Self-Sufficiency and Youth Initiatives) including:

(i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, and similar skills;

(iii) Management-related employment training and counseling including job search assistance, job development assistance, job placement assistance and follow up assistance;

(iv) Coordination of support services including: child care services; educational services remedial education, literacy training, assistance in attaining a GED; vocational training including computer training; health care outreach and referral services; meal services for the elderly or persons with disabilities; personal assistance to maintain hygiene/appearance for the elderly or persons with disabilities; housekeeping assistance for the elderly or persons with disabilities; transportation services; congregate services for the elderly or persons with disabilities: and case management;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition, safety and substance abuse;

(vii) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, and goal planning. The workshops could be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc.

(viii) 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 councils on youth initiatives and program activities; and

(b) Resident Management Business Development including:

(i) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(ii) Technical assistance and training in resident managed business development through: Feasibility and market studies; Development of business plans; Outreach activities; and Innovative financing methods including revolving loan funds and the development of credit unions; and Legal advice in establishing a resident managed business entity.

(iii) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(iv) Training residents with respect to fair housing requirements; and

(v) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(2) *ESS/Organizational Development Applicants.*

(a) Training Board members in community organizing, Board development, and leadership training;

(b) Determining the feasibility of and training existing resident groups for resident management or for a specific resident management project or projects; and

(c) Assisting in the creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(d) Develop the management capabilities of existing resident organizations.

(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) Resident Capacity Building.

(3) *Mediation Applicants.*

(a) Training programs on mediation and communication skills;

(b) Training programs on dispute resolution and reconciliation, including training addressing racial, ethnic and other forms of diversity;

(c) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, and goal planning. The workshops could be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc.

(d) 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 councils on youth initiatives and program activities; and

(4) *General (All TOP Applicants).*

(a) Training on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project and property management; and training in accessing other funding sources;

(b) Hiring trainers or other experts. By law, resident grantees must ensure that all training is provided by a qualified public or management specialist (Consultant/Trainer), HUD Headquarters or Field staff or the local HA. To ensure the successful implementation of the TOP Work Plan activities, the RAs are required to determine the need to contract for outside consulting/training services. The RA and the HA must jointly select and approve the consultant/trainer. Each RA should make maximum use of its HA, nonprofits, or other Federal, State or local government resources for technical assistance and training needs. The amount allowed for hiring an individual consultant for this purpose shall not

exceed 30% of the total grant award or $30,000, whichever is less. The amount available for all individual consultants (not including training firms) and contracts shall not exceed 50% of the grant or $50,000 whichever is less. HUD Field Offices will monitor this process to ensure compliance with program and OMB requirements, and particularly the requirement for competitive bidding.

(c) Stipends, as follows: Trainees and TOP program participants of a RA may only receive stipends for participating in or receiving training under the TOP to cover the reasonable costs related to participation in training and other activities in the TOP program, subject to the availability of funds. The stipends should be used for additional costs incurred during the training programs, such as child care and transportation costs. The cost of stipends may not exceed $200 per month per trainee without written HUD authorization.

(d) Reimbursement of reasonable expenses incurred by Officers and Board members in the performance of their fiduciary duties and/or training related to the performance of their official duties.

(e) Travel directly related to the successful completion of the required TOP Work Plan. All grantees must adhere to the travel policy established by HUD. The policy sets travel costs at a maximum amount of $5,000 per RA (not applicable to intermediaries) without special HUD approval.

(f) Child care expenses for individual staff, board members, or residents in cases where those who need child care are involved in training-related activities associated with grant activities. No more than two percent of the grant amount may pay for child care expenses.

(g) Costs directly related to establishing an RA as a nonprofit corporation or 501(c) tax exempt status.

(5) *Administrative Costs.* These costs are necessary for the implementation of grant activities. Administrative costs are not to exceed 25% of the grant unless the grantee is unable to obtain the services of a Contract Administrator without cost in which case administrative costs are not to exceed 30% of the grant. Appropriate administrative costs include, but are not limited to, the following items or activities:

(a) Purchase or lease of telephone, computer, printing, copying, and sundry non-dwelling equipment (such as office supplies, software, and furniture). A grantee must justify the need for this equipment in relationship to implementing its approved grant activities. Every effort must be made to acquire discounted or donated hardware.

(b) Grant contract and financial management audit. If a grantee is unable to obtain the services of a Contract Administrator or accountant without charge, the cost for a Contract Administrator and or accountant is eligible. The grantee is required to maintain documentation on file showing what efforts it made to obtain the services of a Contract Administrator cost-free. The cost for an independent audit should be budgeted separately from this item.

(c) Technical assistance regarding any other service and/or resource, including case management that are proposed by applicants and approved by HUD.

(d) Rental or lease of a car, van, or bus by resident grantees to attend training;

(I) TOP Ineligible Activities

Ineligible activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the TOP Work Plan. (See TOP Travel Notice for more specific guidance.)

(2) Purchase or rental of land or buildings (including the community facility) or any improvements to land or buildings.

(3) Activities not directly related to the welfare-to-work initiatives (e.g., lead-based paint testing and abatement and operating capital for economic development activities).

(4) Purchase of any vehicle (car, van, bus, etc.) or any other property, other than as described under Section VII(e)(1) (Eligible Activities) of this program section of the SuperNOFA, unless approved by HUD Headquarters or the local HUD Field Office.

(5) Architectural and engineering fees.

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RA staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the TOP grant activities or coordinate on-site social services.

(7) Payment of fees for lobbying services.

(8) Any expenditures that are fraudulent, wasteful or otherwise incurred contrary to HUD or OMB directives.

(9) Any cost otherwise eligible under this program section of the SuperNOFA for which funds are being provided from any other source.

(10) Entertainment equipment such as televisions, radios, stereos, and VCRs. A waiver of this item may be granted by the HUD Field Office or if funding is being utilized specifically and explicitly for the purposes of establishing a business directly related to radio, television or film or some other form or technical communication, and equipment is being utilized for training of residents or RAs. All such waivers must be authorized in writing by the HUD Field Office before purchases may be made.

(11) *For Intermediaries Only.* In addition to the other ineligible activities listed in this EDSS/TOP section of the SuperNOFA, intermediaries cannot provide training and technical assistance to RAs that have received TOP funds of $100,000 or that would result in exceeding the statutory ceiling by providing more than $100,000 of training or technical assistance to a given project site.

(J) Grant Term

For both TOP and EDSS, the grantee must complete its grant activities within two years of the execution of the grant agreement.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) Compliance With Civil Rights Requirements

In addition to compliance with the civil rights requirements at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*

(B) Adhere to the Grant Agreement

After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form 1044 and attachments) incorporating the entire application except as modified by HUD and setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism (which except under extraordinary conditions will operate under HUD's Line of Credit Control System (LOCCS)) and special conditions, including requiring adherence to the appropriate OMB circulars and other government wide requirements and specifying sanctions for violation of the agreement. The grant

agreement will include additional information regarding Insurance/Indemnification, Freedom of Information Act, grant staff personnel, exclusion period, earning and benefits, reports, closeouts, and treatment of income.

(C) Prior to the initial draw down, all TOP and EDSS grantees shall have secured online access to the internet as a means to communicate with HUD on grant matters, and EDSS grantees shall have provided 75% of the required MTCS data to HUD.

(D) Within three months of HUD grant approval, successful TOP applicants who are site-based RAs must have applied for 501(c) status with the United States Internal Revenue Service.

(E) Risk Management

Grantees and subgrantees are required to implement, administer and monitor programs so as to minimize the risk of fraud, waste, abuse, and liability for losses from adversarial legal action.

III. Application Selection Process

Three types of reviews will be conducted: a screening to determine if the application submission is complete and on time (see General Section of the SuperNOFA and Section IV of this TOP/EDSS section of the SuperNOFA); a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this Section III.

(A) Additional Threshold Criteria for Funding Consideration

Under the threshold review, the applicant will be rejected from the competition if the applicant is not in compliance with the threshold requirements of the General Section of the SuperNOFA and if the following additional standards are not met:

EDSS

(1) *Focus on Residents Affected by Welfare Reform*. The family EDSS application must demonstrate evidence from the HA that at least 51% or more of the public or Indian housing residents to be included in the proposed program are affected by the welfare reform legislation, including Temporary Assistance for Needy Families (TANF) recipients, legal immigrants, and disabled SSI recipients.

(2) *Accessible Community Facility*. The application must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA/Tribe/TDHE) that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the HA. The community facilities must also meet the structural accessibility requirements of Section 504 of the Rehabilitation Act and the Americans With Disabilities Act.

(3) *Leveraging Other Resources*. The budget, the work plan, and commitments from resources and services other than the grant for which the applicant is applying to support the grant (including Comprehensive Grant, other governmental units/agencies of any type and/or private sources, whether for-profit or not-for-profit) must clearly evidence that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal the ED/SS grant amount proposed in this application. Firmly committed means there must be a written agreement to provide the resources. The written agreement may be contingent upon an applicant receiving a grant award. At least 25% of the match amount must consist of monetary contribution of funds and the remaining 75% in in-kind or other types of contributions. Salaries paid for with ED/SS funds do not qualify as funds from sources outside HUD. The following are guidelines for valuing certain types of contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and service involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the EDSS activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or ED/SS activity is located, as appropriate.

(4) *Compliance with Current Programs*. The applicant must provide certification in the format provided in the application kit that it is not in default at the time of application submission with respect to grants for the following programs: The Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; The Youth Apprenticeship Program; The Apprenticeship Demonstration in the Construction Trades Program; The Urban Youth Corps Program; The HOPE 1 Program; The Public Housing Service Coordinator Program; The Public Housing Drug Elimination Program; and The Youth Sports Program.

(5) In the case of an HA that is designated as ''troubled'' as a result of its PHMAP score the HA must provide documentation that a Contract Administrator (or equivalent organization that is qualified to administer federal grants; contracts; or cooperative agreements as evidence by information submitted in this document) will be deployed in the administration of this proposed grant.

(6) *PHMAP Score*. An applicant cannot have a PHMAP score less than a C for either Indicator #6, Financial Management or Indicator #8, Resident Initiatives on its most recent PHMAP.

TOP

(1) *Economic Self-Sufficiency Grant*

(a) *Focus on Residents Affected by Welfare Reform*. The application must contain written evidence provided by the HA to the RA that at least 51% or more of the public housing residents to be included in the proposed program are affected by the welfare reform legislation, including TANF recipients and, if affected, legal immigrants and SSI recipients. Elderly or disabled residents not otherwise affected by welfare reform may be included towards meeting the fifty one percent requirement if, under the grant, they will provide services such as child care or mentoring to persons affected by welfare reform.

(b) *Partnership between the Resident Association and the Housing Authority*.

(i) The application must contain a signed MOU between the RA and the HA which describes the specific roles, responsibilities and activities to be undertaken between the two entities.

(ii) The MOU, at a minimum must identify the principal parties (i.e. the name of the HA and RA), the terms of the agreement (expectations or terms for each party), and an indication that the agreement pertains to the support of the RA TOP grant application. This document is the basis for foundation of the relationship between the RA and HA. It must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA and HA upon submission of the application. A sample MOU will be provided in the application kit.

This threshold requirement is not applicable to Intermediary Resident Organization applicants.

(c) *Accessible Community Facility*—The applicant must provide evidence (e.g. through an executed use agreement and/or in the MOU with the HA) that a majority of the proposed activities will be administered at community facilities within easy access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the RA. The community facility must also meet the structural accessibility requirements of section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

(d) *Contract Administrator*. Unless HUD or an Independent Public Accountant have determined that the applicant's financial management system and procurement procedures fully comply with 24 CFR part 84, the application must contain evidence that the RA will use the services of a Contract Administrator in administering the grant. Troubled HAs are not eligible to be Contract Administrators. In cases where the Contract Administrator is the HA, the contract administration responsibilities can be incorporated into the MOU discussed in paragraph (g)(3) above. This requirement does not apply to Intermediary Resident Organization applicants.

(e) *Applicant Non-Profit Status*

(i) RCs/RMCs—Applicant must submit evidence that the applicant is registered with the State as a nonprofit corporation.

(ii) Intermediary Resident Organizations must submit evidence of being registered with the State as a nonprofit corporation; and having applied for 501(c) status with the United States Internal Revenue Services.

(f) *Certification of Elections*—Applicant must submit certification of the RA board election as required by HUD, signed by the local HA and/or an independent third-party monitor and notarized. (Not applicable to IROs)

(g) *Compliance with Current Programs*. The applicant must provide a valid certification on the format provided in the application kit that it is not the subject of unresolved HUD Office of Inspector General findings and that it and the contract administrator are not in default at the time of application submission with respect to any previous HUD funded grant programs the applicant or another party has received.

(h) Applicants which are Intermediary Resident Organizations must list in the application the name of the RAs that will receive training, technical assistance and/or coordinated supportive services and must provide letters of support from each entity identified in the application. The intermediary can not list RAs that have been previously awarded Resident Management and/or TOP funds at the maximum limit of $100,000.

(2) *Organizational Development Grant*.

(a) *Certification of Elections*—Applicant must submit certification of the RA board election as required by HUD, signed by the local HA and/or an independent third-party monitor and notarized. (Not applicable to IROs)

(b) *Contract Administrator* Unless HUD or an Independent Public Accountant have determined that the applicant's financial management system and procurement procedures comply with 24 CFR part 84, the application must contain evidence that the RA will use the services of a Contract Administrator in administering the grant. Troubled HAs are not eligible to be Contract Administrators. In cases where the Contract Administrator is the HA, the contract administration responsibilities can be incorporated into the MOU discussed in paragraph (g)(3) above. This requirement does not apply to Intermediary Resident Organization applicants.

(c) *Compliance with Current Programs*. The applicant must provide certification on the format provided in the application kit that it and the contract administrator are not in default at the time of application submission with respect to any previous HUD funded grant programs the applicant or any other party has received and that there are no unresolved Office of Inspector General findings against the applicant or contract administrator.

(d) Applicants which are Intermediary Resident Organizations must list in the application the name of the RAs that will receive training, technical assistance and/or coordinated supportive services and must provide letters of support from each entity identified in the application. The intermediary can not list RAs that have been previously awarded Resident Management and/or TOP funds at the maximum limit of $100,000.

(3) *Mediation Grant*. For mediation grants, the applicant must meet the following requirements:

(a) *Written Agreement with Mediator*. Have a written agreement with professional mediator or mediation organization (mediator/partner) with roles and responsibilities of each party, as well as any compensation to the mediator/partner (which must be reasonable and based on the work to be performed) defined. The written agreement must specify, consistent with the work plan, that the mediator/partner will train IRO staff and/or volunteers such that the IRO will be capable of providing mediation assistance independently by the end of the grant term;

(b) *Mediation Experience/Referral Agreement*. Provide evidence that its mediator/partner have at least three years of experience in providing mediation services and at least two years of experience in mediation training; and include one referral agreement with a judicial, law enforcement or social service agency such as the court system or Welfare Department for mediation referral of public housing residents.

(c) *Applicant Non-Profit Status*. Intermediary Resident Organizations must be registered with the State as a nonprofit corporation; and have applied for 501(c) status with the United States Internal Revenue Services.

(d) *Compliance with Current Programs*. The applicant must provide certification on the format provided in the application kit that it and the mediation partner are not in default at the time of application submission with respect to any previous HUD funded grant programs the applicant has received and that there are no unresolved Office of Inspector General findings against the applicant or mediation partner.

(B) Factors for Award Used to Evaluate and Rate EDSS and TOP Applications

The following information does not apply to TOP organizational development applicants which will be selected by lottery.

The factors for rating and ranking applicants and maximum points for each factor are provided below. The points awarded for the factors total 100. Applicants are eligible two EZ/EC bonus points, as described in the General Section of the SuperNOFA. An EDSS application must receive a total of 75 points out of 100 and a TOP application must receive a total of 65 points out of 100 in order to be eligible for funding.

EDSS Selection Factors

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing* (7 Points)

(a) *Experience*. (4 Points): The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities.

(b) *Sufficiency*. (3 Points): The applicant, its sub-recipients, and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management* (7 Points)

(a) *Program Administration*. (4 Points): The soundness of the proposed management of the proposed ED/SS program. In order to receive a high score an applicant must provide a comprehensive description of the project management structure, including the use of a contract administrator, if applicable. The narrative must provide a description of how any co-applicants, subgrantees and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of the proposed program.

(b) *Fiscal Management*. (3 Points): The soundness of the applicant's proposed fiscal management. In order to receive a high score an applicant must provide comprehensive description of the fiscal management structure, including but not limited to budgeting, fiscal controls and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record* (6 Points): Based on the applicant's or if a Contract Administrator is proposed, the Administrator's prior performance in successfully carrying out grant programs designed to assist residents in increasing their self-sufficiency, security or independence. In order to receive a high score the applicant must demonstrate its (or the proposed Administrator's) program compliance and successful implementation of any of resident self-sufficiency, security or independence oriented grants (including those listed below) awarded to the applicant or overseen by the Administrator. Applicants or Administrators with no prior experience in operating programs that foster resident self-sufficiency, security or independence will receive a score of 0 on this factor. The applicant's past experience may include but is not limited to administering the following grants: The Family Investment Center Program; The Youth Development Initiative under the Family Investment Center Program; The Youth Apprenticeship Program; The Apprenticeship Demonstration in the Construction Trades Program; The Urban Youth Corps Program; The HOPE 1 Program; The Public Housing Service Coordinator Program; The Public Housing Drug Elimination Program; and The Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

Family EDSS applicants will be rated on (1) (a)(i)—(a)(vi). Elderly/Disabled applicants will be rated on (2)(a)-(c).

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. Applicants will be evaluated on the extent to which they document a critical level of need in the development or the proposed activities in the area where activities will be carried out. In responding to this factor, applicants will be evaluated on:

(1) *A Needs Assessment Document* (18 Points): HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. In order to obtain maximum points *for* Family Economic Development and Supportive Services Category applications, this document must contain statistical data which provides:

(a) A thorough socioeconomic profile of the eligible residents in relationship to HA-wide and national public and Indian housing data on residents:

(i) Who are on TANF, SSI benefits, or other fixed income arrangements;

(ii) In job training, entrepreneurship, or community service programs; and

(iii) Who are employed.

(iv) Specific information should be provided on training, contracting and employment through the HA.

(v) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use,

(vi) A description of the goals, objectives, and program strategies that will result in successful transition of residents from welfare-to-work.

(2) In order to obtain maximum points for Elderly and Disabled Supportive Services Category applications, this document should contain statistical data which provides:

(a) The numbers of residents indicating need for assistance for activities of daily living.

(b) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use.

(c) A description of the goals, objectives, and program strategies that will result in increased independence for proposed program participants.

(2) *Level of Priority in Consolidated Plan*. (2 Points): Documentation of the level of priority the locality's, or in the case of small cities, the State's Consolidated Plan has placed on addressing the needs. Applicants may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing choice (AI) to further fair housing. Applicants that address needs that are in the community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, will receive a greater number points than applicants which do not relate their proposed program to the approved Consolidated Plan or Analysis of Impediments to Fair Housing Choice or court action. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. For Tribes/TDHEs, the Indian Housing Plan would be the document to review for this information.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which the applicant can realistically accomplish the goals of the proposed EDSS program; the soundness of the applicant's plan to evaluate the

success of its proposed EDSS program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address the needs of residents* (19 Points): The score in this factor will be based on the viability and comprehensiveness of strategies to address the needs of residents. HUD will award up to 19 points based on the following:

(a) *Services* (13 Points for Family EDSS applicants and 19 Points for Elderly/Disabled applicants; more points are awarded in the Elderly/Disabled application in order to balance other sections of the rating criteria where points are not applicable to an Elderly/Disabled applicant): The score in this factor will be based on the following:

(i) For Family Economic Development and Supportive Services Category applications, applicant provides a comprehensive description of how the applicant's plan provides services that specifically address the successful transition from welfare to work of non-elderly families. To receive a high score, the applicant should include case management/counseling, job training/development/placement (and/or business training/development/startup), child care and transportation. Also, in order to receive maximum points, goals, and objectives of the proposed plan, the plan must represent significant achievements related to welfare-to-work and other self-sufficiency/independence goals. Specifically for those residents affected by welfare reform, the number of residents employed or resident businesses started are preferable to the number of residents receiving training.

(ii) For Elderly and Disabled Supportive Services Category applications, applicant could include case management, health care, congregate services and transportation. To obtain maximum points the services must be located in a community facility and be available on a 12 hour basis or as needed by the eligible residents.

(b) *Resident Contracting and Employment* (3 Points): The score in this factor will be based on the extent to which residents will achieve self-sufficiency through the applicant contracting with resident owned businesses and through resident employment. A high score will be awarded where there is documentation (letter or resolution) describing the HA's commitment to hire at least 15% of residents or contract at least 15% of residents and a narrative describing the reasonable number of jobs or contracts, as well as the training processes related to the comprehensive plan. Elderly and Disabled Supportive Services Category applications will not be scored on this criterion.

(c) *Rent Reform and Occupancy Incentives* (3 Points): The score in this factor will be based on the degree to which the applicant has implemented, proposes to implement or collaborates with a public welfare department to implement incentives designed to promote resident self-sufficiency including but not limited to: ceiling rents, rent exclusions, rent escrows, occupancy preferences for applicants who work or who are in a self-sufficiency program, stipends, or income disregards. A high score is received if the applicant can show how the incentives complement the purposes of the program activities for which the applicant is seeking funding. Elderly and Disabled Supportive Services Category applications will not be scored on this criterion.

(2) *Budget appropriateness/efficient use of grant* (5 Points): Up to 5 points based on the extent to which the proposed ED/SS program will result in a lower total ED/SS program cost per dwelling unit to be served in the program in comparison to other applications under ED/SS. For the purposes of this selection factor, applicants may only count dwelling units currently under an annual contributions contract at the time of application submission.

Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1998 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Act should count housing units under management that are owned and operated by the tribe and are identified in their housing inventory as of September 30, 1997. The procedure for determining the score is outlined below.

(a) HUD will combine all of the per-unit amounts, rounded to the nearest whole dollar, into a single nationwide list in order from the lowest cost per unit to the highest cost per unit. HUD will take the total number of grant applications that have met the prerequisites to be scored and divide them by the score for this factor (i.e. 5) to establish a scoring increment.

(b) HUD will start at the lowest per-unit amount and count one scoring increment into the list (i.e. 1/5th of the way into the list). The per-unit amount at that location will constitute a breakpoint. HUD will count the next scoring increment into the list and establish another breakpoint. The process will be repeated to establish 5 segments of per-unit costs. In the event that multiple applications share the same per-unit cost at a breakpoint, the breakpoint will be adjusted by $1 higher or lower than that of the initial breakpoint to achieve as close as possible a 1/5th segment.

(c) Once all of the breakpoints have been established as outlined, HUD will enter the score. All applications with a cost per unit below that of the first breakpoint will receive a score of 5; those with a cost per unit lower than the second breakpoint will receive a score of 4; etc.

(3) *Reasonableness of the timetable* (2 Points for Family EDSS applicants and 4 Points for Elderly/Disabled applicants); (more points are awarded in the Elderly/Disabled application in order to balance other sections of the rating criteria where points are not applicable to Elderly/Disabled applicant):

The score in this factor will be based on the speed at which the applicant can realistically accomplish the goals of the proposed ED/SS program. To receive a high score, the applicant must demonstrate that it will make substantial progress within the first six months after grant execution including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals and achieving other milestones that are prerequisites for implementation of the program. In addition the applicant must demonstrate that the proposed timetable for all components of the proposed program is reasonable considering the size of the grant and its activities and that it can accomplish its objectives within the 24 month time limit.

(4) *Program Assessment.* (3 Points): The score in this factor will be based on the soundness of the applicant's plan to evaluate the success of its proposed EDSS program both at the completion of the program and during program implementation. At a minimum, the applicant must track the goals and objectives of the proposed work plan program. HUD will rate more favorably applicants which can track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

(5) *Resident and Other Partnerships* (11 Points for Family EDSS applicants and 9 Points for Elderly/Disabled applicants)

(a) *Resident Involvement in ED/SS Activities* (3 Points for Family EDSS applicants and 4 Points for Elderly/Disabled applicants); more points are awarded in the Elderly/Disabled application in order to balance other sections of the rating criteria where points are not applicable to Elderly/Disabled applicants): The score in this factor will be based on the extent of resident involvement in developing the proposed EDSS program as well as the extent of proposed resident involvement in implementing the proposed EDSS program. In order to receive a high score on this factor the applicant must provide documentation that describes the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. In order to receive maximum points a memorandum of understanding or other written agreement between the applicant and the appropriate Resident Associations must be included.

(b) *Other Partnerships* (3 Points): The score in this factor will be based on the successful integration of partners into implementation of the proposed EDSS program. In order to receive a high score an applicant must provide a signed Memorandum of Understanding (MOU) (or other equivalent signed documentation provided that it delineates the roles, responsibilities of each of the parties and the benefits they will receive) that delineates specific partnerships related to the components in the comprehensive plan. In assessing this factor HUD will examine a number of aspects of the proposed partnership including:

(i) The division of responsibilities/management structure of the proposed partnership relative to the expertise and resources of the partners;

(ii) The extent to which the partnership as a whole addresses a broader level of unmet resident needs: the extent to which the addition of the partners provides the ability to meet needs that the applicant could not otherwise meet without the partner(s).

(c) *Overall Relationship/TOP Coordination* (3 Points): For Family EDSS applicants, the score in this factor will be based on the extent of coordination between the applicant's proposed EDSS program and any/all existing or proposed TOP programs sponsored by RAs within the applicant's jurisdiction. In order to receive a high score the application must contain an MOU that describes collaboration between HA staff and residents on all of the specific components related to the work plan of both the proposed or current TOP and EDSS programs. If there are no existing and no proposed TOP grants within the jurisdiction of the applicant, the score for this factor will be 0. Elderly/Disabled applications will not be scored on this criterion. In addition, if all of the resident groups eligible to apply for TOP within the applicant's jurisdiction have already received TOP grants and will have completed the activities, the applicant will not be scored on this criterion.

(6) *Policy Priorities* (2 Points): Documentation of the extent to which policy priorities of the Department are furthered by the proposed activities. Such Department policy priorities are: (1) Affirmatively furthering fair housing by promoting greater opportunities for housing choice for minorities and the disabled; (2) Promoting healthy homes; (3) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; (4) Providing enhanced economic, social and/or living environments in Empowerment Zones or Enterprise communities; and (5) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking programs to AmeriCorps activities. To obtain the full two points in this category, at least three of these five policy priorities must be addressed.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

For programs which have a matching requirement, rating points for this factor will be allocated based upon the extent to which an applicant has exceeded the program's minimum match requirement. If the applicant meets the match requirement they will receive up to an additional 5 points; depending on the extent to which the match requirement is exceeded.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement to provide the resources. The written agreement may be contingent upon an applicant receiving a grant award. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider:

(1) *Coordination with the Consolidated Plan* (2 Points for Family EDSS applicants and 6 points for Elderly/Disabled applicants; more points are awarded in the Elderly/Disabled application in order to balance other sections of the rating criteria where points are not applicable to an Elderly/Disabled application.)

The extent to which the application demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially further fair housing choice in the community. For tribes/TDHEs the Indian Housing Plan would be the document to review for information.

(2) *For Family EDSS Applications, Coordination with the State or Tribal Welfare Plan* (4 Points): Provide evidence that the proposed EDSS program has been coordinated with and supports the housing authority's efforts to increase resident self-sufficiency and

is coordinated and consistent with the State or Tribal Welfare Plan.

(3) *Coordination with Other Activities* (4 Points): The extent to which the application demonstrates that the applicant in carrying out program activities will develop linkages with: other HUD funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the needs.

TOP Selection Factors for Economic Self-Sufficiency Grants

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 points)

This factor addresses the extent to which the applicant has assembled the organizational resources necessary to successfully implement the proposed activities in a timely manner. Since TOP grantees are generally prohibited from hiring staff with TOP funds, Site-Based Resident Association applicants will be rated based largely on the capacity of the Contract Administrator and partners contributing additional resources. In rating this factor HUD will consider the applicant's:

(1) *Staffing.* (7 Points)

(a) *Experience.* (4 Points): The knowledge and experience of the overall proposed applicant's, Contract Administrator's and/or partners' project director and staff, including the day-to-day program manager, in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities.

(b) *Sufficiency.* (3 Points): The applicant, Contract Administrator (if any) and partners have sufficient personnel or will be able to access quickly qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that, the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management* (7 points)

(a) *Program Administration* (4 Points): The soundness of the proposed management of the proposed TOP program. In order to receive a high score an applicant must provide a comprehensive description of the project management structure, including the use of a contract administrator, if applicable. The narrative must provide a description of how any co-applicants, subgrantees and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of the proposed program.

(b) *Fiscal Management* (3 Points): The soundness of the applicant's proposed fiscal management. In order to receive a high score an applicant must provide comprehensive description of the fiscal management structure, including but not limited to budgeting, fiscal controls and accounting. The application must explain the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record/Capability* (6 Points): In assessing this factor, HUD will consider the soundness of the prior experience of the Applicant and the Contract Administrator (if applicable) in successfully carrying out resident services programs designed to assist residents in increasing their self-sufficiency, security or independence. A high score is received if the Applicant or Administrator can demonstrate compliance and successful implementation (i.e., completion of grant implementation plan tasks) of prior resident services programs. Applicants and Contract Administrators with no prior experience in operating programs that foster resident self-sufficiency, security or independence will receive a score of 0 on this factor.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. Applicants will be evaluated on the extent to which they document a well specified and critical need in the development of the proposed activities in the area where activities will be carried out. In responding to this factor, applicants will be evaluated on:

(1) *Needs Assessment Document* (18 Points): HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. In order to obtain maximum points this document must contain statistical data which provides:

(a) A thorough socioeconomic profile of the eligible residents in relationship to HA-wide and national public housing data on residents. The profile should include residents: on TANF, SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed;

(b) Specific information should be provided on training, contracting and employment through the HA;

(c) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use.

(2) *Level of Priority in Consolidated Plan* (2 Points): Documentation of the level of priority the locality's, or in the case of small cities, the State's Consolidated Plan has placed on addressing the needs. Applicants may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing choice (AI) to further fair housing. Applicants that address needs that are in the community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, will receive a greater number points than applicants which do not relate their proposed program to the approved Consolidated Plan or Analysis of impediments to Fair Housing Choice or court action. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which the applicant can realistically accomplish the goals of the proposed TOP program; the soundness of the applicant's plan to evaluate the success of its proposed TOP program at completion and during program implementation; and resident and other partnerships. Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1998 as defined in 24 CFR 1000.316. Tribes that have not previously received funds from the Department under the 1937 Act should count housing units

under management that are owned and operated by the tribe and are identified in their housing inventory as of September 30, 1997.

(1) *Viability and comprehensiveness of the strategies to address the needs of residents* (11 Points): The score in this factor will be based on the extent and comprehensiveness of the training and related services that will be provided as well as the extent that the proposed training and related services will contribute to providing for unmet resident needs identified in the required Needs Assessment Report.

To receive a high score applicants must provide a comprehensive description of how the proposed plan provides training and related services that specifically address the successful transition from welfare to work and/or maintaining independence of elderly families and persons with disabilities by avoiding institutionalization. To obtain maximum points the training and related services must be located in the community facility and be available as needed by the eligible residents. Also, in order to receive maximum points, goals and objectives of the proposed plan must represent significant achievements related to welfare-to-work and other self-sufficiency/independence goals. Specifically, for residents affected by welfare reform, the number of residents employed or resident businesses started are preferable to the number of residents receiving training.

Intermediary Resident Organizations will receive points under this Viability and Comprehensiveness factor (as outlined above) based on the training and related services for each of the project sites the Intermediary Resident Organization proposes to assist.

(2) *Budget Appropriateness/Efficient Use of Grant Funds* (6 Points): The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out:* The extent to which the application includes a detailed budget break-out for each budget category in the SF–424A.

(b) *Reasonable administrative costs.* The extent to which the application includes reasonable administrative costs within the 25%–30% administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which the application requests funds commensurate with the level of effort necessary to accomplish the goals and objectives and the estimated costs to the government are reasonable in relationship to the anticipated results.

(3) *Reasonableness of the timetable* (1 Point): The score in this factor will be based on the speed at which the applicant can realistically accomplish the goals of the proposed TOP program. To receive a high score, the applicant must demonstrate that the proposed timetable for all components of the proposed program is reasonable (i.e., a given task is allotted the amount of time it would normally take to accomplish such a task) and that the applicant can accomplish the proposed implementation plan objectives within the 24 month time limit. The applicant must also demonstrate that it will make substantial progress within the first six months after grant execution.

(4) *Policy Priorities* (2 Points): Documentation of the extent to which policy priorities of the Department are furthered by the proposed activities. Such Department policy priorities are: (1) Affirmatively furthering fair housing by promoting greater opportunities for housing choice for minorities and the disabled; (2) Promoting healthy homes; (3) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; (4) Providing enhanced economic, social and/or living environments in Empowerment Zones or Enterprise communities; and (5) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking programs to AmeriCorps activities. To obtain the full two points in this category, at least three of these five policy priorities must be addressed.

(5) *Housing Authority-Resident Association Partnership* (8 Points)

(a) The score in this factor will be based on the extent of coordination between the applicant's proposed TOP program and any/all existing or proposed HA resident services programs that assist residents in increasing their self-sufficiency, security or maintaining their independence by avoiding institutionalization. In order to receive a high score the application must contain an MOU (between the HA and the RA) which describes collaboration between HA staff and residents on all of the specific components related to the implementation plans of both the proposed TOP program and the resident services programs of the housing authority.

(b) Intermediary Resident Organizations will receive points under this Housing Authority-Resident Association Program Partnership factor based on the extent to which the Intermediary Resident Organization can demonstrate that the housing authorities for each of the project sites the Intermediary Resident Organization proposes to assist have agreed to support and coordinate their efforts with those of the Intermediary Resident Organization in assisting the project sites.

(6) *Other Partnerships* (4 Points): The score in this factor will be based on the successful integration of partners into implementation of the proposed TOP program. In order to receive a high score an applicant must provide an MOU or other equivalent documentation that delineates specific partnerships related to the components in the comprehensive plan. In assessing this factor HUD will examine a number of aspects of the proposed partnership including:

(a) The soundness of the division of responsibilities/management structure of the proposed partnership relative to the expertise and resources of the partners;

(b) The extent to which the partnership as a whole addresses a broader range of resident needs: the extent to which the addition of the partners provides the ability to meet needs more cost effectively or efficiently than the applicant or its partners could achieve individually without forming the partnership.

(7) *Resident Involvement* (4 Points)

(a) The score in this factor will be based on the extent of resident involvement in developing the proposed TOP program as well as the extent of proposed resident involvement in implementing the proposed TOP program. In order to receive a high score on this factor the applicant must provide verifiable documentation which describes the involvement of affected residents in the planning phase for this program, and a commitment by the Resident Association to provide continued involvement in grant implementation. In order to receive maximum points the application must contain a resolution from the appropriate RA(s) which includes signatures from the resident community.

(b) Intermediary Resident Organizations will receive points under this Resident Involvement factor based on the demonstrated level of coordination of efforts between the RA for each of the project sites the Intermediary Resident Organization proposes to assist and the Intermediary Resident Organization. Higher points will be awarded to the extent that RAs proposed to be assisted have taken the preliminary steps to take advantage of the assistance proposed for their site by the Intermediary Resident Organization. For example, the RA for the proposed site has organized itself and selected its leadership and obtained basic training from the HA or other community organizations.

(8) *Program Assessment.* (4 Points): The score in this factor will be based on the soundness of the applicant's plan to evaluate the success of its proposed EDSS program both at the completion of the program and during program implementation. At a minimum, the applicant must track the goals and objectives of the proposed work plan program. HUD will rate more favorably applicants which can track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources. In evaluating this factor HUD will consider: The extent to which the commitment letters or the equivalent can demonstrate that resources outside the TOP Program (including existing Federal, state, local, non-profit, and/or private resources) are to be utilized in the applicant's proposed program. The resources will be measured based on a ratio of applicant's value of in-kind contributions and funds committed for the proposed effort.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memorandum of understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed, there must be a written agreement to provide the resources. The written agreement may be contingent upon an applicant receiving a grant agreement. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider:

(1) *Coordination with the Consolidated Plan* (2 Points): The extent to which the application demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially further fair housing choice in the community.

(2) *Coordination with the State Welfare Plan* (4 points): Provide evidence that the proposed TOP has been coordinated with and supports the housing authority's efforts to increase resident self-sufficiency and is coordinated and consistent with the State Welfare Plan.

(3) *Coordination with Other Activities* (4 Points): The extent to which the application demonstrates that the applicant, in carrying out program activities, will develop linkages with: other HUD funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which taken as a whole support and sustain a comprehensive system to address the needs.

Selection Factors for TOP Organizational Development Grant

Applicants are not required to address selection factors for the Organizational Development Grant category. HUD will use a lottery system to select applicants for this category.

Selection Factors for TOP Mediation Grant

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant and mediation partner have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the applicant's:

(1) *Staffing* (7 points)

(a) *Experience.* (4 Points): The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager(s), for both the applicant and mediation partner in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the staff to undertake eligible program activities.

(b) *Sufficiency.* (3 Points): The applicant and mediation partner have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each geographical territory in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management* (13 points)

(a) *Program Administration.* (4 Points): The soundness of the proposed management of the proposed TOP program. In order to receive a high score an applicant must provide a comprehensive description of the project management structure. The narrative must provide a description of how the mediation partner relates to the applicant as well as the lines of authority and accountability among all components of the proposed program.

(b) *Fiscal Management* (3 Points): The soundness of the applicant's proposed fiscal management. In order to receive a high score an applicant must provide comprehensive description of the fiscal management structure including but not limited to budgeting, fiscal controls and accounting. The application must explain the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(c) *Applicant/Administrator Track Record/Capability* (6 Points): In assessing this factor, HUD will consider the soundness of the prior experience of the applicant and the mediation partner in successfully carrying out programs with similar purposes and/or constituency. A high score is received if the applicant and/or partner can demonstrate compliance and successful implementation (i.e. completion of grant implementation plan tasks) of prior such programs. Applicants and mediation partners with no prior experience in operating such programs will receive a score of 0 on this factor.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. Applicants will be evaluated on the extent to which they document a well specified and critical level of need in

the development or the proposed activities in the geographical territory where activities will be carried out. In responding to this factor, applicants will be evaluated on:

(1) *A Needs Assessment Document* (18 Points): HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. In order to obtain maximum points, this document must contain statistical and other data which provides:

(a) A thorough description of the current public housing community as it relates to the need for mediation, for example, describe human relations problems related to illegal gang activity in the community and other crimes; relations among various racial, ethnic and socio-economic groups; and relations between residents, resident leaders and community institutions such as the police, schools and welfare department.

(b) Specific information should be provided on the relationship between the HA and the resident groups; and

(c) An assessment of any current services related to the mediation needs of the target population in the geographical territory defined by the applicant, including the number and type of services, the location of services, and community facilities currently in use.

(2) *Level of Priority in Consolidated Plan* (2 Points): Documentation of the level of priority the locality's, or in the case of small cities, the State's Consolidated Plan has placed on addressing the needs. Applicants may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing choice (AI) to further fair housing. Applicants that address needs that are in the community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, will receive a greater of number of points than applicants which do not relate their proposed program to the approved Consolidated Plan or Analysis of Impediments to Fair Housing Choice or court action. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of strategies to address the mediation needs of residents; budget appropriateness/efficient use of grants; the speed at which the applicant can realistically accomplish the goals of the proposed TOP program; the soundness of the applicant's plan to evaluate the success of its proposed TOP program at completion and during program implementation; and resident and other partnerships.

(1) *Viability and comprehensiveness of the strategies to address the mediation needs of residents* (19 Points): The score in this factor will be based on the extent and comprehensiveness of the mediation and related services that will be provided as well as the extent that the proposed mediation and related services will contribute to providing for unmet needs identified in the required Needs Assessment Report.

To receive a high score, applicants must provide a comprehensive description of how the proposed plan provides training and related services that specifically address the mediation needs and will improve the environment of public housing developments in the geographic territory designated by the applicant.

(2) *Budget Appropriateness/Efficient Use of Grant Funds* (6 Points): The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out.* The extent to which the application includes a detailed budget break-out for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs.* The extent to which the application includes reasonable administrative costs within the 15% administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which the application requests funds commensurate with the level of effort necessary to accomplish the goals and objectives and the estimated costs to the government are reasonable in relationship to the work performed and the anticipated results.

(3) *Reasonableness of the Timetable* (2 Points): The score in this factor will be based on the speed at which the applicant can realistically accomplish the goals of the proposed TOP program. To receive a high score, the applicant must demonstrate that the proposed timetable for all components of the proposed program is reasonable (i.e. a given task is allotted the amount of time it would normally take to accomplish such a task) and that the applicant can accomplish the proposed implementation plan objectives within the 24 month time limit. The applicant must also demonstrate that it will make substantial progress within the first six months after grant execution.

(4) *Policy Priorities* (2 Points): Documentation of the extent to which policy priorities of the Department are furthered by the proposed activities. Such Department policy priorities are: (1) Affirmatively furthering fair housing by promoting greater opportunities for housing choice for minorities and the disabled; (2) Promoting healthy homes; (3) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; (4) Providing enhanced economic, social and/or living environments in Empowerment Zones or Enterprise communities; and (5) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking programs to AmeriCorps activities. To obtain the full two points in this category, at least three of these five policy priorities must be addressed.

(5) *Other Partnerships* (5 Points): The score in this factor will be based on the successful integration of partners into implementation of the proposed TOP program. In order to receive a high score an applicant must provide an MOU or other equivalent documentation that delineates specific partnerships related to the components in the comprehensive plan. In assessing this factor HUD will examine a number of aspects of the proposed partnership including:

(a) The appropriateness of the level of expertise of the partners related to activities proposed in the application;

(b) The soundness of the division of responsibilities/management structure of the proposed partnership relative to the expertise and resources of the partners;

(6) *Program Assessment.* (6 Points): The score in this factor will be based on the soundness of the applicant's plan to evaluate the success of its proposed EDSS program both at the completion of the program and during program implementation. At a minimum, the applicant must track the goals and objectives of the proposed work plan program. HUD will rate more favorably applicants which can track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the commitment letters or the equivalent can demonstrate that resources outside the TOP Program (including existing Federal, state, local, non-profit, and/or private resources) are to be utilized in the applicant's proposed program. The resources will be measured based on the ratio of the applicant's value of in-kind contributions and funds committed for the proposed effort.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memorandum of understanding, or agreements to participate from those entities identified as partners in the application. Firmly committed means there must be a written agreement to provide the resources. The written agreement may be contingent upon an applicant receiving an award. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying mediation needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider:

(1) *Coordination with the Consolidated Plan* (2 Points): The extent to which the application demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially further fair housing choice in the community.

(2) *Coordination with the State Welfare Plan* (1 Point): Provide evidence that the proposed TOP must have been coordinated with and supports the housing authority's efforts to increase resident self-sufficiency and is coordinated and consistent with the State Welfare Plan.

(3) *Coordination with Other Activities* (7 Points): The extent to which the application demonstrates that the applicant in carrying out program activities will develop linkages with: other HUD funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which taken as a whole support and sustain a comprehensive system to address the mediation needs.

(C) *Selections.* In order to be considered for funding under the EDSS program, an applicant must receive a minimum score of 75. In order to be funding under the TOP program, an applicant must receive a minimum score of 65.

If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach shall be selected. If there is still a tie, the application with the most points for Factor 4, Leveraging Resources shall be selected.

IV. Application Submission Requirements

Please refer to the General Section of this SuperNOFA. In addition, the applicant must submit the following, which are further described in the application kit.

(A) Needs Assessment Report which includes statistical or survey information on the needs of the recipient population; please use the appropriate format provided in the application kit. (Note: This does not apply to TOP Organizational Development grant applicants.)

(B) A two-year work plan for implementing EDSS/TOP activities which includes goals, budget, timetable and strategies. In addition to a narrative, please use the formats provided in the application kits to chart the following:

(1) Activity plan summary;
(2) Activity breakout;
(3) Budget breakout;
(4) Summary budget;
(5) Program resources; and
(6) Program staffing;

(C) Information on the Applicant and/or administrator track record. Please provide the chart and/or certification format provided in the application kit;

(D) Certifications and assurances referenced in this program section of the SuperNOFA. TOP applicants who are IROs must also submit a list of Site-Based Resident Associations they intend to assist and Site-Based Resident Associations must certify as to the amount of RM/TOP funding received to date by their development.

(E) Memorandum of Understanding/Agreement; commitment letters; and other required documentation of partnerships.

V. Correction to Deficient Applications

The General Section of this NOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(3), (9), (12) and (14) of the HUD regulations, activities assisted under the EDSS/TOP programs are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under related laws and authorities.

Appendix A To EDSS/TOP Section of SuperNOFA

Common Definitions

Community Facility means a non-dwelling structure that provides space for multiple supportive services for the benefit of public and Indian housing residents (as well as others eligible for the services provided) that may include but are not limited to:

(1) Child care;
(2) After-school activities for youth;
(3) Job training;
(4) Campus of Learner activities; and
(7) English as a Second Language (ESL) classes.

Contract Administrator means an overall administrator and/or a financial management agent that oversees the financial aspects of a grant and assists in the entire implementation of the grant. Examples of qualified organizations that can serve as a Contract Administrator are:

(1) Local housing authorities; and
(2) Community based organizations such as Community Development Corporations (CDCs), community churches, and State/Regional Associations/Organizations.

Development has the same meaning as the term ''Project'' below.

Firmly Committed means there must be a written agreement to provide the resources. This written agreement may be contingent upon an applicant receiving an award.

Elderly person means a person who is at least 62 years of age.

Jurisdiction-Wide Resident Organization means an incorporated nonprofit organization or association that meets the following requirements:

(1) Most of its activities are conducted within the jurisdiction of a single housing authority;
(2) There are no incorporated Resident Councils or Resident Management Corporations within the jurisdiction of the single housing authority;
(3) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(4) Public housing residents representing unincorporated Resident Councils within the jurisdiction of the single housing authority must comprise the majority of the board of directors.

Intermediary Resident Organizations means Jurisdiction-Wide Resident Organizations, State-wide Resident Organizations, Regional Resident Organizations and National Resident Organizations.

National Resident Organization (NRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Person with disabilities means an adult person who:

(1) Has a condition defined as a disability in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act. Such a term shall not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; or

(3) Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(4) The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in Section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

Project is the same as ''low-income housing project'' as defined in section 3(b)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*) (1937 Act).

Resident Association (RA) means any or all of the forms of resident organizations as they are defined elsewhere in this Definitions section and includes Resident Councils (RC), Resident Management Corporations (RMC), Regional Resident Organizations (RRO), Statewide Resident Organizations (SRO), Jurisdiction-Wide Resident Organizations and National Resident Organizations (NRO).

Resident Council (RC) means (as provided in 24 CFR 964.115) an incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for RC activities and stipends for officers for their related costs for volunteer work in public housing. (Although 24 CFR part 964 defines an RC as an incorporated or unincorporated nonprofit organization, HUD requires RC applicants for TOP Economic Self-Sufficiency Grants to be registered with the State at the time of application submission):

(1) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the public housing residents. The elections must be held on a regular basis, but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the percentage of voting membership (''threshold'') which must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(2) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appear on a lease for the unit in the public housing that the resident council represents.

(3) It may represent residents residing in:

(i) Scattered site buildings in areas of contiguous row houses;

(ii) One or more contiguous buildings;

(iii) A development; or

(iv) A combination of the buildings or developments described above.

Regional Resident Organization (RRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Resident Management Corporation (RMC) (See 24 CFR 964.7, 964.120) means an entity that consists of residents residing in public housing and must have each of the following characteristics in order to receive official recognition by the HA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one RC, so long as each such council:

(i) Approves the establishment of the corporation; and

(ii) Has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each RC involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired;

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appear on the lease of a unit in public housing represented by the RMC;

(6) Where an RC already exists for the development, or a portion of the development, the RMC shall be approved by the RC board and a majority of the residents. If there is no RC, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the RMC and the RC, so long as the corporation meets the requirements of this part for an RC.

Secretary means the Secretary of Housing and Urban Development.

Site-Based Resident Associations means Resident Councils and Resident Management Corporations.

Statewide Resident Organization (SRO) means a Site-Based incorporated nonprofit organization or association for public housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

YOUTHBUILD PROGRAM

BILLING CODE 4210–32–C

Funding Availability for Youthbuild Program

Program Description: Approximately $33,000,000 is available for the Youthbuild Program. The Youthbuild Program provides disadvantaged young adults with education, employment, and leadership skills.

Application Due Dates: Completed applications (one original and one copy) no later than 12:00 midnight, Eastern time, on July 14, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: To HUD Headquarters. The completed application (one original and one copy) must be submitted, by hand or mail delivery, to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7255, Washington, D.C. 20410, Attention: Youthbuild Grant.

To the Appropriate CPD Field Office. An additional copy should be submitted to the Community Planning and Development Division of the appropriate HUD Field Office for the applicant's jurisdiction.

When submitting your application, please refer to Youthbuild, and include your name, mailing address (including zip code) and telephone number (include area code).

For Application Kits, Further Information and Technical Assistance: For Application Kits. For an application kit and any supplemental information please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. An application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to Youthbuild and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. Phyllis Williams, Office of Economic Development in the Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7140, Washington, DC 20410, telephone (202) 708–2035. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the ''800'' number, these numbers are not toll-free.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

This program is authorized under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (the Act), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3723, 42 U.S.C. 12899). The Youthbuild Program regulations are found in 24 CFR part 585.

(B) Purpose

The purposes of the Youthbuild program are:

(1) To provide economically-disadvantaged young adults with opportunities to obtain education, employment skills, and meaningful on-site construction work experience as a service to their communities and a means to achieve self-sufficiency;

(2) To foster the development of leadership skills and commitment to community; and

(3) To expand the supply of permanent affordable housing for homeless and low–and very low-income persons by providing implementation grants for carrying out a Youthbuild program.

(4) Provide disadvantaged young adults with meaningful on-site training experiences in housing construction and rehabilitation to enable them to provide a service to their communities by helping to meet the housing needs of homeless and low-income families;

(5) Give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulation, job training, employment, contracting and other economic opportunities to low-income persons and business concerns.

(C) Amount Allocated

Approximately $33,000,000 is available for the Youthbuild Program. The net available program funds will be divided between two categories of grants (as further specified in Section III(C)):

1. $ 8,312,500—Grants for new applicants for up to $350,000; and

2. $24,937,500—Grants for up to $700,000.

(D) Eligible Applicants

Eligible applicants are public or private nonprofit agencies, State or local housing agencies or authorities, State or local units of general local government, or any entity eligible to provide education and employment training under other Federal employment training programs, as further defined in 24 CFR 585.4.

(E) Eligible Activities

Eligible activities are as follows:

(1) Work and activities associated with the acquisition, rehabilitation or construction of the housing and related facilities to be used in the program;

(2) Relocation payments and other assistance required to comply with 24 CFR 585.308;

(3) Costs of ongoing training and technical assistance needs related to carrying out a Youthbuild program;

(4) Education, job training, counseling, employment leadership development services and activities;

(5) Wages, benefits, and need-based stipends for participants; and

(6) Administrative costs—Youthbuild funds for these costs should not exceed 15 percent of the total amount of Youthbuild assistance, unless a higher amount is justified to support capacity development by a private nonprofit organization.

Please refer to 24 CFR 585.305 for further details on eligible activities.

(F) Eligible Participants

Participants in a Youthbuild program must be very low-income high school dropouts between the ages of 16 and 24, inclusive, at the time of enrollment. Up to 25 percent of participants may be above very low-income or high school graduates (or equivalent), but must have educational needs that justify their participation in the program.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Resources From Other Federal, State, Local or Private Entities

Applicants are strongly encouraged to use existing housing and homeless assistance programs administered by HUD or other Federal, State, local, or private housing programs as part of their Youthbuild program. Use of other non-Youthbuild funds available for vocational, adult, and bilingual education programs or for job training under the Job Training Partnership Act (JTPA) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is also strongly encouraged. The selection process described in this Youthbuild Program section of the SuperNOFA provides for applicants to

receive points where grant applications contain firm commitments from Federal, State, local, or private sources to provide resources to carry out Youthbuild activities.

(B) Grant Period

Funds awarded should be expended within 30 months of the effective date of the grant agreement, or such other period specified.

(C) Locational Limitations

Each application for a grant may only propose activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed program's participant recruitment and housing areas are in different jurisdictions.

(D) Youthbuild Program Components

Youthbuild programs receiving assistance under this Youthbuild Program section of the SuperNOFA must contain the three components described in paragraphs (1), (2), and (4) below. Other activities described in paragraph (3) are optional.

(1) Educational and job training services.

(2) Leadership training, counseling, and other support activities.

(3) Special activities such as entrepreneurial training, drivers' education, internships, programs for those with learning disabilities, and in-house staff training. (Optional)

(4) On-site training through actual housing rehabilitation and/or construction work, including the provision of alternative training experiences for students with physical disabilities. Each program must be structured so that 50 percent of each participant's time is spent in on-site training.

(E) Desirable Elements of a Youthbuild Program

Documentation of the extent to which HUD's policy priorities are furthered by the proposed activities. Such policy priority areas are:

(1) Affirmatively furthering fair housing by promoting greater opportunities for housing choice for minorities and the disabled;

(2) Promoting healthy homes;

(3) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(4) Providing educational and job training opportunities and linking programs to Americorps activities;

(5) Promoting welfare reform. Refer to 24 CFR 585.3 for a detailed description of program components.

III. Application Selection Process

HUD will review each application and assign points in accordance with the selection criteria described in this section. The maximum number of points to be awarded is 102 (except for an application submitted by the City of Dallas, Texas, which would be eligible for a maximum of 104 points, in accordance with Rating Factor 3, paragraph (3), below). This includes two EZ/EC bonus points as described in the General Section of the SuperNOFA.

In order to afford applicants every opportunity to submit a ratable application, while at the same time ensuring the fairness, integrity and timeliness of the selection process, HUD is adopting the following application submission and selection procedures:

(A) Rating and Ranking

Each eligible application will be rated based upon the rating factors described in Section III of this Youthbuild Program section of the SuperNOFA. Using the scores assigned, the application will be placed in rank order within each category. Applications will be selected for funding in accordance with their rank order. An application must receive a combined score of at least 50 points for Rating Factor 1, Rating Factor 2, and Rating Factor 3, paragraph (1), under this Section III in order to be eligible for EZ/EC bonus points and for the Housing Program Priority points in Rating Factor 3, paragraph (2) of this Section III.

If two or more applications are rated fundable, and have the same score, but there are insufficient funds to fund all of them, the application(s) with the highest score for Rating Factor 3(1) under Soundness of Approach shall be selected.

(B) Initial Screening

During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they:

(1) Are submitted by ineligible applicants, or

(2) Propose a program for which significant activities are ineligible.

(C) Categories of Grants

HUD will award Youthbuild implementation grants only to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D of title IV of the Act. Applications will be selected in a competition in accordance with the grant selection process described in Section V of this Youthbuild Program section of the SuperNOFA.

Two categories of grants will be made:

(1) Grants for new applicants that have not previously received Youthbuild Implementation Grants and that have elected not to apply under category (2), below. These grants will be limited to $350,000, for a period of 18 months, with a maximum of 20 students.

(2) Grants for up to $700,000 to implement a full range of Youthbuild activities for up to a 30-month period. Half of the funding in this category will be awarded to applicants that propose grants of $450,000 or less for up to 24 months. A previously unfunded applicant can apply in either category. A previous implementation grantee can apply only in category (2). Applicants in category (1) will receive one-quarter of the funds available. Applicants in category (2) will receive the remainder of the funds available, which in turn will be split evenly between grants for up to and including $450,000, and grants over $450,000.

(D) Maximum Awards

Under the competition established by this Youthbuild Program section of the SuperNOFA, the maximum award for a Youthbuild grant is $700,000. HUD reserves the right to determine the maximum or minimum of any Youthbuild award per application, project, program or budget line item. No amendments will be made to awards under this competition that will increase previously approved grant amounts. In order to ensure reasonable geographic diversity, a CDBG entitlement jurisdiction may not receive more than $2.1 million in Youthbuild grants.

(E) Potential Environmental Disqualification

HUD reserves the right to disqualify an application where one or more environmental thresholds are exceeded if it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (See 24 CFR 585.307.)

(F) Notification of Approval or Disapproval

HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to a selected applicant of the amount of the grant award based on the approved application will constitute a preliminary approval by HUD, subject to HUD and

recipient execution of the grant agreement to initiate program activities.

(G) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is applicable to Youthbuild implementation grant recipients. Please see Section II(E) of the General Section of the SuperNOFA.

(I) Factors for Award Used To Evaluate and Rate Applications

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

This factor addresses the qualification and experience of the applicant and participating parties, to implement a successful young adult education and training program within a reasonable time period. HUD will review and evaluate the information provided documenting capability. In assigning points for this criterion, evidence in the application that demonstrates the following will be considered:

(1) Experience in implementing a comprehensive, integrated, multidisciplinary program with the following components:

(a) Young adult education and training programs, including programs for low-income persons from economically distressed neighborhoods.

(b) Young adult leadership development training and related activities for young adults.

(c) Young adult on-site training in housing construction or rehabilitation for the production of sound and affordable housing for the homeless and low-income families.

(2) The extent to which the applicant or participating parties have been successful in past education, training, and employment programs and activities, including Federally-funded Youthbuild programs. Previous Youthbuild grant recipients must submit a performance narrative as outlined in the application package, and copies of its last two progress reports. The performance (including meeting target dates and schedules) of the applicant as reported will be taken into consideration in applying the rating criteria.

(3) The extent to which the applicant, including program director, principal staff, or participating parties have demonstrated past ability to leverage other resources to cover administrative, educational, and training costs.

(4) Staff capacity should address the extent to which the applicant demonstrates that the proposed Staff and Program Manager possess the background, experience, and capacity to conduct the proposed project, as evidenced by recent work experience in managing projects of the same or similar size, dollar amount, and types of activities as those proposed in the application.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. Documentation of need should address the extent to which the applicant documents a critical level of need for the proposed activities in the area where activities will be implemented. The documentation must apply to the targeted area rather than the entire locality. If the target area is an entire locality or State, then documenting need at this level is appropriate.

Documentation of need should demonstrate the extent and urgency of the problem being addressed by the proposed activities. To the extent that the applicant's community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. HUD will review more favorably those applicants that use these documents to identify need, when applicable. Examples of data that might be used to demonstrate need include, but are not limited to, economic and demographic data relevant to the target area, including poverty and unemployment rates; levels of homelessness; extent of drug usage and crime statistics; lead poisoning rates; housing market data available from HUD or other data sources including the Public Housing Authorities Five Year Comprehensive Plan, State or local Welfare Department's Welfare Reform Plan (including, where applicable, the Welfare to Work Plan Addendum); and/or lack of other Federal, State, or local funding that could be or are used to address the problem HUD program funds are designed to address. If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, etc.

Rating Factor 3: Soundness of Approach (40 Points)

(1) (30 points) HUD will consider the overall quality and feasibility of the proposed program as measured by the principles and goals of the proposed program, whether proposed program activities meet the overall objectives of the Youthbuild program, whether the proposed program activities will be accomplished within the projected time frame, whether the proposed program activities are comprehensive and integrated, and the potential for success of the proposed program. Areas to be considered in the evaluation of the overall quality of the proposed program are:

(a) Outreach, recruitment and selection activities including:

(i) Specific steps to be taken to attract potential eligible participants who are unlikely to be aware of this program (because of race, ethnicity, sex or disability) and selection strategies;

(ii) Special outreach efforts to recruit eligible young women, young women with dependent children, and persons receiving public assistance; and

(iii) Recruitment arrangements made with public agencies, courts, homeless shelters, local school systems, local workforce development systems, community-based organizations, etc.;

(b) Educational and job training services and activities including:

(i) The types of instructional services to be provided;

(ii) The number and qualification of program instructors and ratio of instructors to participants;

(iii) Realistic scheduling plan for classroom and on-the-job training; and

(iv) Reasonable payments of participants' wages, stipends, and incentives.

(c) Leadership development, including the leadership development training to be offered to participants, and including the strategies, activities, and plans to build group cohesion and peer support.

(d) Support services, including documentation of counseling and referral services to be offered to participants, including the type of counseling, social services, and/or need-based stipends to be provided (supported by letters of commitments from providers).

(e) On-site training, including:

(i) The housing construction or rehabilitation activities to be undertaken by participants at the site(s) to be used

for the on-site training component of the program;

(ii) The qualification and number of on-site supervisors;

(iii) The ratio of trainers to students;

(iv) The number of students per site; and

(v) The amounts, reasonable wages, and/or stipends to be paid to participants during on-site work.

(f) Job placement assistance, including the applicant's commitments, strategies, and procedures for:

(i) Participant placement in meaningful employment, enrollment in postsecondary education programs, job development, starting business enterprises, or other opportunities leading to economic independence; and

(ii) Follow-up assistance and support activities to program graduates.

(g) Americorps support or participation as evidenced by approval of Americorps or appropriate State agency.

(2) (10 points) Housing Program Priority Points will be assigned to all applications that contain evidence that housing resources from other Federal, State, local, or private sources that are available to cover the cost, in full, for the following housing activities for the proposed Youthbuild program: acquisition, architectural and engineering fees, construction, and rehabilitation. It is also imperative that the applicants' proposed housing sites provide quality training. The number of units an applicant proposes to rehabilitate or construct is secondary in rating this factor. Applications that do not include proper documentation of commitment of non-Youthbuild resources or propose to use Youthbuild grant funds, in whole or in part, for any one of the housing activities listed above will not be entitled to the full priority points. Housing resources will not be used in evaluation of the Leveraging Resources factor.

It must be stressed that in proposing housing sites for Youthbuild training, the quality of the training to be provided is more important than the number of units per se.

(3) Up to two (2) additional points will be awarded to any application submitted by the City of Dallas, Texas, to the extent this subfactor is addressed. Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD will consider the extent to which the application's proposed activities will eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the extent to which firm commitment of resources are obtained from other Federal, State, local, and private sources. In assigning points for this criterion, HUD will consider the level of nonhousing resources obtained for cash or in-kind contribution to cover the following kinds of areas:

(1) Social services (i.e., counseling and training);

(2) Use of existing vocational, adult, and bilingual educational courses;

(3) Donation of labor, resource personnel, supplies, materials, classroom, and/or meeting space;

(4) Other commitments.

In rating this element, HUD will consider only those contributions for which current firm commitments have been provided. The level of nonhousing resources proposed will be evaluated based on their importance to the total program. HUD will also take into consideration the size of the community and the resource base from which funds can be leveraged.

Rating Factor 5: Comprehensiveness and Coordination (5 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations in order to best complement, support, and coordinate all known activities, and the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or those that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes, or other mechanisms with:

(a) Other HUD funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other activities funded by HUD, Federal, State, or local sources, including those proposed or on-going in the community(s) served.

IV. Application Submission Requirements

Applicants must complete and submit applications for Youthbuild grants in accordance with instructions contained in the FY 1998 Youthbuild application kit. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations. The application package requires a description of the applicant's and participating parties' experiences in young adult and housing programs; a description of the proposed Youthbuild program; a description and documentation of other public and private resources to be used for the program, including other housing resources; a schedule for the program; budgets; identification of housing sites; and demonstration of site access. The application package also contains necessary certifications regarding Federal requirements. Applicants must also certify that the proposed activities are consistent with the HUD-approved Consolidated Plan in accordance with 24 CFR part 91. Applicants should refer to the Youthbuild application package for further instructions and take into account the uniform guidebook available to all applicants.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

Environmental procedures apply to HUD approval of grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property proposed for housing project development. Environmental procedures do not apply to HUD approval of applications when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and support services.

For those applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit

all relevant environmental information in its application to support HUD decisionmaking in accordance with the environmental procedures and standards set forth in 24 CFR 585.307.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

INTERMEDIARIES TO ADMINISTER TECHNICAL ASSISTANCE GRANTS (ITAG) FOR THE MARK-TO-MARKET (M2M) PROGRAM

BILLING CODE 4210–32–C

Funding Availability for Intermediaries to Administer Technical Assistance Grants (ITAG) for the Mark-to-Market (M2M) Program.

Program Description: Approximately $9.0 million is being competed in Intermediary Technical Assistance Grant (ITAG) funds for Intermediaries to administer the ITAG Mark-to-Market technical assistance grant program ($1.0 million is available in FY 1998; it is anticipated that $8.0 million may be available in FY 1999, subject to appropriations). The purpose of the M2M program is to reduce the cost of above market Section 8 assistance, preserve affordable housing stock, and streamline the administration of federal housing subsidies. The Intermediary will award technical assistance grants to sub-recipients consisting of resident groups, tenant affiliated community-based nonprofit organizations or public entities. These grants will be in the form of either Resident Capacity or Predevelopment Grants to groups affiliated with projects that are eligible under the M2M program, or Public Entity Grants available to public entities who will carry out M2M related activities for M2M projects throughout its jurisdiction.

Application Due Date: Completed applications must be received no later than 12:00 midnight, Eastern time on July 21, 1998 to HUD Headquarters. Please the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: the Office of Portfolio Reengineering, Room 6130, HUD Headquarters, 451 Seventh Street, SW, Washington, DC 20410. When submitting your application, please refer to ITAG, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance: *For Application Kits.* For an application kit and any supplemental information please call the SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to ITAG and provide your name, address (including zip code), and telephone number (including area code).

For Further Information. Arthur Goldstein at (202) 708–2300, extension 2657. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the ''800'' number, these numbers are not toll-free. Mr. Goldstein can also be reached via the Internet at arthur—d.—goldstein@HUD.gov.

For Technical Assistance. An information broadcast via satellite will be held for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of the broadcast, please consult the HUD web site at the web address listed above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

Applicants should take care in reviewing this section to ensure they are eligible to apply for funds and that they meet the program requirements described.

(A) Authority

Section 514(f)(3) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Pub.L. 105–65, 111 Stat. 1394, October 27, 1997) authorizes not more than $10,000,000 annually for technical assistance under the M2M program from amounts made available under appropriations Acts for the M2M program or previously made available for technical assistance under the Preservation program. This ITAG program is one element of the M2M technical assistance.

(B) Purpose

The ITAG program provides technical assistance grants through Intermediaries to sub-recipients consisting of: (1) resident groups or tenant affiliated community-based nonprofit organizations in properties that are eligible under the M2M program to help tenants participate meaningfully in the M2M process, and have input into and set priorities for project repairs; or (2) public entities to carry out M2M related activities for M2M-eligible projects throughout its jurisdiction.

(C) Amount Allocated

The competition in this program is to select intermediaries to administer grants to eligible subrecipients. During FY 1998, $1.0 will be available for grants. Subject to the availability of appropriations, $8.0 million may be made available in FY 1999.

(D) Grant Amount, Terms

HUD will accept applications from Intermediaries that propose a term of two years. The term begins on the date of the execution of the grant agreement. The amount of funding that an Intermediary can receive depends on the funding level associated with the state-grouping for which an applicant has applied. A specific amount of funds have been allocated to each state-grouping (See Appendix B). Activities must be completed in a timely manner and may not, in any case exceed a two-year time period. HUD reserves the right to reallocate funds allocated to the Interimediary under the grant agreement if there is insufficient need.

Three forms of technical assistance grants will be made available through Intermediaries:

(1) Resident Capacity Grants (RCG), with a maximum dollar amount of $20,000;

(2) Predevelopment Grants (PDG), with a maximum of $70,000; and

(3) Public Entity Grants (PEG), with a maximum of $20,000.

(E) Eligible Applicants

Eligible applicants to serve as Intermediaries are: (1) A national nonprofit. Applicant must have been in existence for at least five years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) A regional, State or local nonprofit. Applicant must have been in existence for at for at least three years and either be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or be recognized otherwise as a tax-exempt entity; or

(3) A State or local agency.

An eligible intermediary applicant must have as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low- and moderate income residents. Applicants must not receive direct Federal appropriations for operating support. In addition, all intermediaries should have a record of at least one year of service to low-income individuals or community-based nonprofit housing developers in multiple communities and must have at least one year of experience with the allocation and administration of grant or loan funds.

(F) Intermediary Fees

Each selected intermediary will receive processing fees. The fees will include a start-up fee of $40,000 and an additional fee of five percent of each

technical assistance grant voucher that the intermediary submits, which will be disbursed conterminous with the voucher draw-downs of the RCGs, PDGs and PEGs. These fees are based on the intermediary performing the specific tasks listed in the Program Requirements section.

All intermediaries will receive the start-up fee when the intermediary contract is executed. If an intermediary reviews and rejects a technical assistance application, it will receive an administrative fee of $600. If the intermediary receives no technical assistance grant applications, it will receive only its start-up fee. On occasion, the M2M staff will review grant activity to determine if reallocation of funds between geographic regions is necessary.

(G) Ineligible Activities

Neither intermediaries, nor their employees, officers or affiliated entities, may receive payment, directly or indirectly from the proceeds of grants they have approved. In addition, intermediaries may not provide other services to grant recipients with respect to the specific properties for which the grant has been awarded.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, intermediaries must meet the following program requirements:

(A) General Requirements

Intermediaries are responsible for the award and administration of grants to sub-recipients. In order to effectively perform these responsibilities, the intermediary must, at a minimum, perform the following:

(1) Advertise fund availability for the geographic jurisdiction overseen;

(2) Seek out eligible applicants, using at least the following methods: (a) contact all of the Outreach and Training Organizations that have been selected in areas within the Intermediary's state-grouping. This list can be obtained from the M2M person in the Office of Multifamily Housing Mortgage and Housing Assistance Restructuring (OMAR), (b) contact the National Alliance of HUD Tenants who may be able to provide a list of active client groups in the state-grouping, (c) Contact the Corporation for Public Service who can provide a list of AMERICORPS Vista volunteers in properties within the state-grouping, (d) utilize the property address list of eligible M2M properties and mail ITAG grant information sheets to tenant groups in those properties.

(3) Produce and distribute grant application kits (applicant must provide a sample grant application kit with its application);

(4) Review, approve or reject grant applications;

(5) Execute grant agreements;

(6) Vouchering and disbursing grant funds;

(7) Monitor activities under the grant, including compliance under the grant agreement, throughout the term of the grant;

(8) Create an information network (e.g. newsletter, website, monthly or bi-monthly update, etc.) which information can be disbursed to subrecipients and subrecipients can ask program questions and receive responses and all recipients have access;

(9) Report to M2M staff at least quarterly on the status of grant awards, grantee activities and funds expended; and

(10) Maintain documentation for HUD monitoring and audits in accordance with 24 CFR Part 84.

(B) Reporting Requirements

(1) Intermediaries must comply with all requirements of 24 CFR Part 84.

(2) Intermediaries must submit a quarterly performance report to the Director of the Office of Mortgage and Housing Assistance Restructuring (OMAR).

(3) These reports are to list the properties and number of tenants assisted by the activities being performed that quarter, including a narrative indicating issues that need to be resolved and tangible benefits resulting from the assistance. Please provide a sample report with your application.

(4) Administrative fees may be frozen until receipt of an acceptable performance report.

(C) Records Retention and Access Requirements

All accounting and other records associated with Grant Administration must be retained and made available to HUD or its designee in accordance with 24 CFR § 84.53.

(D) Auditing Requirements

Intermediaries must comply with the audit requirements set forth in 24 CFR Part 45.

(E) Conflict of Interest (CI) Requirements

Funds received under this SuperNOFA shall not be used to supplant or duplicate other resources for the proposed activities. In carrying out its duties, any intermediary must avoid even the appearance of a conflict of interest. All executives, board members, key management personnel, or any other person or entity with direct or indirect control, is required to execute a CI Certification at the time of execution of a grant agreement and on each anniversary date of execution.

III. Application Selection Process

Two types of reviews will be conducted: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this Section III.

(A) Additional Threshold Criteria For Funding Consideration

Under the threshold review, the applicant will be rejected from the competition if the applicant is not in compliance with the requirements of the General Section of the SuperNOFA and if the applicant does not qualify as an Eligible Applicant as defined in Section I(E) of this ITAG Section of the SuperNOFA.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100. This ITAG section of the SuperNOFA does not include EZ/EC bonus points.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (40 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any faculty, subcontractors, consultants, and members of consortia which are firmly committed to the project.

Experience and Capability to administer a Intermediary Technical Assistance Grant (ITAG) program over the state-grouping area for which the applicant is applying is a threshold requirement for award. If an applicant is found to lack sufficient experience and capability, their application will be eliminated from further consideration. This is particularly important if the applicant is applying for more than one state-grouping. This criterion can be demonstrated through past performance, as evidenced by previous experience and success in administering a Federal

housing grant program, such as the Preservation ITAG program.

In rating organizational capacity and staffing to carry out activities of the kind proposed in the application, HUD will consider the extent to which the proposal demonstrates:

(a) The knowledge and direct experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors, in awarding and administering grant programs. The applicant will be judged in terms of recent, relevant and successful experience in undertaking activities similar to those required of an intermediary.

The applicant has sufficient personnel, or access to qualified experts or professionals, enabling delivery of the proposed activities in each proposed service area in a timely and effective fashion. Capacity also includes the readiness and ability of the applicant to immediately begin the proposed work program, and a communication system that allows subrecipients consistent, reliable and expeditious access to the intermediary grant administrator.

(b) The applicant's experience in managing programs similar in scope or nature directly relevant to the work activities proposed and carrying out grant management responsibilities. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information supporting this claim in their response.

(c) If the applicant received funding in previous years, the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in the implementation of their *most recent grant awards,* as measured by expenditures and measurable progress in achieving the purpose for which funds were provided. However, an applicant must also demonstrate how the applicant will successfully undertake additional activities effectively under this ITAG section of the SuperNOFA.

(d) The applicant's ability and comprehensive plan to market the ITAG grant programs to those eligible subrecipients in the geographic area(s) for which it has responsibility. The marketing plan must specify the applicant's proposed efforts for outreach to all states within their state grouping.

(e) The applicant's fiscal capability in meeting the reporting and audit requirements of 24 CFR part 84. The ability of the applicant's key staff to handle, manage, and adequately account for financial resources, and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State or local funds, or an explanation of how such capability can be obtained.

Rating Factor 2: Soundness of Approach (30 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed activities. There must be a clear relationship between the proposed activities, state-grouping needs and the purpose of the program funding for an applicant to receive points for this factor. The factor will be evaluated based on the extent to which the proposed activities will:

(a) Identify all areas within the state-grouping with M2M eligible properties and effectively promote the existence of funds to all eligible properties. HUD's goal is to disburse technical assistance funds to the widest possible geographic area. This should include rural, as well as urban areas.

(b) Achieve the purposes of the program for which funding is requested and result in measurable accomplishments that are consistent with the purposes of the program and will result in a goal being met/product produced within a timeframe appropriate and reasonable for the program.

(c) Be undertaken using technically competent methodologies for conducting the work to be performed and uses a cost effective plan for designing, organizing and carrying out the proposed activities. The proposed cost estimates should be reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area.

(d) Yield innovative strategies or ''best practices'' that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. Applicants will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this ITAG section of the SuperNOFA.

Rating Factor 3: Leveraging Resources (10 points)

This factor addresses the ability of the applicant to secure community assets, resources and/or financing to achieve program purposes. In evaluating this factor HUD will consider:

(a) The extent to which the applicant has leveraged resources, such as funding and/or in-kind services from governmental entities, private organizations, resident management organizations, educational institutions, or other entities in order to achieve the purposes of the award the applicant is requesting.

(b) The extent to which the applicant has partnered with other entities to make more effective use of available public or private resources. Partnership arrangements may include, but are not limited to, funding or in-kind services from local governments or government agencies, non-profit or for-profit entities, private organizations, educational institutional or other entity that is willing to partner with the applicant on proposed activities in order to leverage resources, or partnering with other program funding recipients to make more effective use of resources within the geographic area covered by the award either within the community or within the field office jurisdiction in which activities are occurring. Applicants may partner directly or through a consortium of applicants to more effectively address needs of underserved populations, rural areas, minority groups or other client groups that need attention either in the target area or the area covered by the field office jurisdiction in which the activities are to take place.

Evidence of commitment should include organization names, their proposed level of effort, resources, and responsibilities of these participants. Applicants must provide indications of participation by including in the application letters of firm commitments, memoranda of understanding or agreements, or letters indicating participation and levels of effort and responsibility to receive rating points for this factor. Letters of commitment, memoranda of understanding, or agreements to participate must be signed by an official of the organization legally able to make commitments for the organization.

Rating Factor 4: Comprehensiveness & Coordination (20 points)

This factor addresses the extent to which the applicant coordinates its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner

through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes. In the case of technical assistance providers, the applicant should describe the specific steps it will take to work with recipients of technical assistance services to inform them of, and get them involved in, the community's Consolidated Planning process. HUD will review more favorably those applicants who can demonstrate they are active, will become active, or in the case of technical assistance providers work with recipients of technical assistance to get them involved in the local Consolidated Planning (CP) process.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(C) *Selections.* HUD will review each Intermediary application and assign up to 100 points, in accordance with the criteria described in this Section. In order to be considered for selection, an applicant must receive a minimum score of 60. After rating, the M2M staff will rank the applications for each separate state-grouping according to score and will select the highest rated applicant in each state-grouping. If an applicant is the highest rated for two or more state-groupings, HUD will perform a second review to assure that the applicant has the capacity to effectively perform in that number of groupings. If it is determined, using the information from Rating Factor 1, that the applicant does not have sufficient capacity to adequately perform in all state-groupings for which it is the highest rated applicant, HUD will notify the applicant of the number of state-groupings for which it has been found to have capacity and will allow that applicant to choose in which state-grouping(s) it will perform. HUD will then select the second highest rated applicant for each state-grouping not selected by the highest rated applicant. If a second highest rated applicant is selected for two or more state-groupings, HUD will perform a second review of that applicant to assure that the applicant has the capacity to effectively perform in that number of groupings. HUD will perform the same review until an intermediary has been selected to perform in all five state-groupings.

If there is a state-grouping for which HUD receives no qualified applicants, HUD may request the highest ranking applicant found to have adequate capacity to perform in that state-grouping.

After all applications have been rated and ranked and selections have been made, HUD may require that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully conclude negotiations, or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

IV. Application Submission Requirements

(A) Submission Requirements

An applicant must provide a completed application, including the following, as applicable:

(1) OMB Standard Forms 424;

(2) Identification of proposed state-grouping(s) in which the applicant will perform intermediary activities;

(3) Information about how the applicant meets the Factors for Award listed in Section III(C)., ''Selection Criteria'', Rating Factors 1–4.

(4) Information about the applicant, including its history, its staff and qualifications, and its experience.

(5) Summary of plan to advertise grant availability, distribution of applications, review applications, disburse funds, set up information network, and monitor activities under the grant;

(6) Evidence of tax-exempt status, if applicable;

(7) Required Certifications relating to this grant;

(8) Other disclosures and assurances as required under this SuperNOFA;

(9) Other information/materials described in application kit.

(B) Application Selection Timeframe

HUD will publish in the **Federal Register** the list of selected intermediaries within 30 days of the date that HUD's intermediary selection process is completed. That publication will include information for potential subrecipients on how to obtain application kits and will list contact names at the intermediary organizations selected to administer the grants.

Once intermediaries are selected and agreements are executed, intermediaries will have 30 days to put the necessary mechanisms in place prior to accepting grant applications.

V. Responsibilities of Intermediary

(A) General

Intermediaries will be responsible for performing the tasks listed in Section II ''Program Requirements'' of this ITAG section of the SuperNOFA.

(B) Timeframes

Once funding availability is advertised by the intermediary for its ''state-grouping'', potential sub-recipients can submit technical assistance applications to the intermediary on an ongoing basis. If the applications are acceptable, grants must be awarded no later than 30 calendar days after a complete application is received by the intermediary (first come, first served). If the application is found to be substantially complete (i.e., there are no missing exhibits), but technically deficient (i.e., an exhibit does not adequately meet the application requirements), the intermediary will send the applicant a deficiency letter and allow 14 days for resubmission on the deficient exhibits. The intermediary will have an additional 30 days to review and approve an application, following receipt of application revisions. If the application is not substantially complete, it will be rejected.

(C) Technical Assistance Grants

(1) *Resident Capacity Grants (RCG).* An RCG can be approved for a maximum of $20,000. Resident Capacity applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided by HUD to the intermediaries. Applications will be accepted on an ongoing basis, and all acceptable applications will be approved unless there are no funds available for Resident

Capacity grants. Intermediaries must review and approve or reject applications for Resident Capacity grants based on the following threshold criteria:

(a) The applicant meets the eligible applicant criteria listed in paragraph A of Appendix A of this ITAG section of the SuperNOFA.

(b) The applicant is applying for funds for eligible activities listed in paragraph D(1) of Appendix A to this ITAG section of the SuperNOFA.

(c) The applicant has notified the residents of its application in accordance with paragraph B of Appendix A of this ITAG section of the SuperNOFA.

(d) The plan for promoting the ability of residents to participate meaningfully in the M2M process is reasonable and feasible.

(e) The budget submitted with the application reflects reasonable costs directly associated with the grant activities.

(f) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(2) *Predevelopment Grants (PDG).* A PDG can be approved for a maximum of $70,000. All PDG applicants will receive an application kit that will have been produced and distributed by the intermediary. A sample application kit will be provided by HUD to the intermediaries. Applications will be accepted on an ongoing basis, and all acceptable applications will be approved unless there are no funds available for Predevelopment grants. Intermediaries must review and approve or reject applications for Predevelopment grants based on the following threshold criteria:

(a) The applicant meets the eligible applicant criteria listed in paragraph A of Appendix A to this ITAG section of the SuperNOFA;

(b) The applicant is applying for eligible activities listed in paragraph D(2) of Appendix A to this ITAG section of the SuperNOFA;

(c) The applicant has notified the residents of its application in accordance with paragraph B of Appendix A to this ITAG section of the SuperNOFA;

(d) The plan for promoting and achieving a resident supported purchase of the property must be reasonable and feasible and in conformance with the appropriate program regulations and guidelines. This will include an evaluation of the experience and capacity of the applicant's development team;

(e) A plan for promoting and achieving the sale of the property to an eligible nonprofit organization.

(f) The budget submitted with the application reflects reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase; and

(g) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(3) *Public Entity Grant (PEG).* A PEG can be approved for a maximum of $20,000. Public entities eligible to apply for such a grant include: community action, legal services and fair housing counseling agencies; State, county or local government agencies; intermediaries and others deemed appropriate by the ITAG administrator.

The intent of the PEG program is for a public agency or organization with expertise in multifamily rental housing, tenant affairs or other preservation of affordable housing issues, to initiate activities that can further the M2M program. An example: A city or county office of landlord tenant affairs can proactively seek out those tenant groups or organizations of properties that are eligible to participate in the M2M program and initiate a conference, training sessions, direct on site training, brochures, etc., to facilitate the persons in the property understanding the procedures in dealing with and the landlord of the property and general property management. A second example is: An office of building permits and code enforcement could give training or technical assistance to tenant groups in eligible M2M properties who are dealing with property repairs.

(4) *Competing Grant Applications.* If a second technical assistance application is received within 30 days of receipt of the first application for any property, and if that application is for the same grant category, the intermediary shall have an additional 20 days to review both applications. The total review time for any grant cannot exceed 50 days after receipt of a complete application. If the competing applications are for Resident Capacity grants, resident groups and Resident Councils shall have priority over other applicants. If the competing applications are for Predevelopment grants, and both are found technically acceptable, the Intermediary will return the applications with instructions that the applicants meet together and with the residents to reach a resolution for a final application. If no compromise is reached, the intermediary will approve the applicant that the intermediary finds most capable of performing grant and nonprofit sponsor activities. In addition, in the case of any application, if there is an indication that a majority of the residents oppose the applicant's selection, that application shall be denied.

(5) *Decision Not To Fund.* In any denial of award letter, the intermediary shall be required to explain the reasons for its determination. In addition, if the intermediary makes a determination that results in a reduction of proposed grant funds, that determination shall also be explained in writing.

(6) *Appeals.* If an application for either an RCG, PDG or PEG is denied, the applicant will have the right to appeal that denial to HUD. The appeal must be made within 45 days of application rejection to: M2M Staff, Office of OMAR, Department of Housing and Urban Development, 451 Seventh Street, NW., Room 6284, Washington, DC 20410. HUD will make a binding determination within 45 days of the appeal.

(7) *Award Notification.* If an applicant is awarded and accepts an RCG or PDG, the applicant must inform the residents of the property about the award, by posting a notice or through a resident meeting or both, within three weeks of the applicant's acceptance of the award.

VI. Corrections of Deficient Applications

The General Section of the SuperNOFA provides procedures for corrections to deficient applications.

VII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(8) and (9), the assistance provided under this program relates only to the provision of engineering costs and technical assistance and therefore is categorically excluded from the requirements of the National Environmental Policy Act and is not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing, or repair for HUD assistance under this program.

ITAG Program Appendix A: Technical Assistance Applications

A. Eligible Applicants

(1) General Definition. An eligible applicant must notify residents of all occupied units that it is applying for a grant. That notification shall meet the

specifications of paragraph B below. An eligible applicant is one of the entities described in the following paragraphs (a) through (d) that complies with the applicable criteria:

(a) Resident Group. Resident Groups are eligible for Resident Capacity grants only. For an applicant to be considered a resident group, the following must be submitted:

(i) Evidence that the greater of 5% of the occupied units or 10 units of the subject property have heads of households that are members;

(ii) A copy of a notice announcing an organizational meeting to discuss resident participation in decisions affecting the project;

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph; and

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph.

(b) Resident Council (RC). For an applicant to be considered an RC, it must meet the definition of ''resident council'' as set out in 24 CFR 248.101. Specifically, a RC is any incorporated nonprofit organization or association in which membership is available to all the tenants, and only the tenants, of a particular project and:

(i) Is representative of the residents of the project;

(ii) Adopts written procedures providing for the election of officers on a regular basis; and

(iii) Has a democratically elected governing board, elected by the residents of the project.

(c) Community-Based Nonprofit Housing Developer (CBD). For an applicant to be considered a CBD it must submit evidence that it:

(i) Is classified as tax exempt under section 501(c)(3) of the IRS Code of 1986;

(ii) Has been in existence for at least two years, and has at least two years of housing and community development experience, prior to date of application;

(iii) Has a record of service to low-and moderate-income people in the community in which the project is located;

(iv) Is organized at the neighborhood, city, county or a multi-county level;

(v) In the case of an organization seeking to acquire eligible housing, it agrees to form a purchasing entity that conforms to the definition of a community-based nonprofit organization (CBO) in 24 CFR 248.101;

(vi) Agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested. Evidence of ''best efforts'' shall include a plan in the application which details method for securing such support. In addition, continued evidence of ''best efforts,'' such as additional resident meetings and notices, is required as a grantee moves towards a purchase.

(d) Public Entity. For an applicant to be considered a public entity, it must be an organization affiliated with State, county or local government, or a community action agency, legal services or fair housing counseling agency, intermediary, or others deemed appropriate by the ITAG administrator.

(2) Resident Capacity Grant Applicants. Applicants for Resident Capacity grants must meet the eligibility criteria listed in paragraph A(1) of this Appendix. In addition, these grants may be made only with respect to eligible M2M housing.

(3) Predevelopment Grant Applicants. Predevelopment grant applicants must be RCs or CBDs meeting the criteria listed in paragraph A(1) of this Appendix. These grants may be made only to organizations seeking to purchase the property, with the support of a majority of the residents. The owner of the property must have entered into a binding agreement to sell the housing to the applicant organization. This binding agreement shall not necessarily be a formal sales contract; rather, it may state that the owner will neither work with nor accept a purchase offer from any other entity during the term of the grant, as long as the grantee is progressing towards a purchase offer and acquisition in a reasonable period of time.

(4) Conflict of Interest. Each applicant must certify that its organization is not a ''Related Party'', as set forth in 24 CFR part 84, and that no individual that has, or has had within the last five years, a personal or professional relationship with the owner entity will receive financial benefit from the grant funds. This certification shall prohibit using mutual consultants, attorneys, etc. It shall not explicitly prohibit using architects or engineers that have worked with the owner or in the property in the past, as long as there is no ongoing professional relationship with the owner that could be perceived as a conflict of interest. A nonprofit general partner of an eligible property that is attempting to buy out its limited distribution partners is exempt from this part of the conflict of interest requirement. The certification shall also require disclosure, to the intermediary and the tenants, of any relationship with ownership, management, or any other parties to a sale, and will state that the applicant will not seek any financial benefit from project ownership or operations other than those disclosed.

B. Resident Notification.

Each applicant will be required to notify residents of the property of its application prior to submitting the application package to the intermediary. That notification shall be in writing, be distributed to each resident of the property, and include a summary of the applicant's plan for the property. The notification shall also include a statement that residents can themselves become eligible applicants under the M2M Technical Assistance grant program. In addition, the applicant must meet with the residents of the property at least two weeks prior to application submission, and give the residents at least two weeks notification of such meeting. In that meeting, the applicant must provide the following information to the residents:

- A summary of the grant proposal;
- A list of members of the board of directors, if known;
- A list of the proposed development team and management company, if known;
- A list of all proposed consultants and attorneys;
- Disclosure of any relationship with ownership, management, or any other parties related to the owner or, if applicable, related to the sale; and
- Information on how the residents may comment to the intermediary on the applicant's proposal and that residents shall have 14 days to submit comments to the applicant and to the intermediary on the proposal. This information shall include a name and contact number for the intermediary and a name and phone number for a contact person in the applicant organization. If the applicant is unable to make this notification due to lack of access to the property or lack of resident addresses, the applicant may contact the intermediary for assistance. The intermediary may contact the owner to request access or resident addresses for the applicant. If the owner is uncooperative, the intermediary may contact the HUD field office for assistance. If residents make substantive comments to the intermediary, the applicant will be required to address these comments prior to any grant award from the intermediary.

C. Ineligible Technical Assistance Applicants.

(1) Entities that have applications pending for funds under the HOPE 2 program are not eligible to apply for funding under this ITAG section of the SuperNOFA.

(2) Entities that have been awarded grants under the Preservation Technical Assistance Grants NOFA (entitled ''Technical Assistance Planning Grants for Resident Groups, Community Groups, and Community-Based Nonprofit Organizations and Resident Councils'') issued April 6, 1994, may not receive funds under this ITAG section of the SuperNOFA for any properties for which those grants were funded either until all funds awarded to the grantee under the 1994 NOFA have been expended, or until the grant under the April 6, 1994, NOFA has been terminated as a result of a new grant approval under this ITAG section of the SuperNOFA. The total funds received from the April 6, 1994, NOFA plus the total grant award for this ITAG section of the SuperNOFA may not exceed the funding limits established in this ITAG section of the SuperNOFA. A grantee under the April 6, 1994 NOFA is eligible for funds under this ITAG section of the SuperNOFA only if it also meets the eligibility criteria of this ITAG section of the SuperNOFA and meets the notification requirements of paragraph B (''Resident Notification'') above.

D. Eligible Technical Assistance Grant Activities.

(1) Resident Capacity Grants. Resident Capacity grants may be used to cover expenses for the following activities:

- Resident outreach and coordination;
- Legal services to incorporate the resident organization or RC, establish a board of directors, write by-laws, or establish nonprofit status;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;
- Conducting resident meetings and democratic elections;

• Training residents and developing resident leadership;

• Hiring an architect or engineer to advise the residents during the M2M need assessment; and

• Other technical assistance related to developing the capacity of the residents of the organization to meaningfully participate in decisions related to the project.

(2) Predevelopment Grants. Predevelopment grants may be used to cover consultant costs, and grantee staff and overhead costs related to the following activities:

• Legal services to organize a purchasing entity;

• Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;

• Preparing bona fide offers including contracts and other documents to purchase the property;

• Training residents, resident council staff and board members on the M2M process and in skills related to the operation and management of the project;

• Developing and negotiating management contracts, related contract monitoring, and management procedures;

• Engineering studies, such as site, water, and soil analysis, mechanical inspections; and estimations of the cost of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property;

• Securing financing and preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;

• Preparing feasibility analyses, market studies and management plans;

• If applicable, creating a Community-Based Nonprofit Organization that conforms to the definition of such organization under 24 CFR Sec. 248.101;

• Other activities related to promoting the ability of eligible applicants to acquire, rehabilitate and competently own and manage eligible housing.

(3) Public Entity Grants may be used to cover the following activities:

• All activities listed under resident capacity and predevelopment and,

• Training tenants or organizations affiliated with a M2M eligible property in that area of expertise in which the public entity has been associated.

E. Ineligible Grant Activities

Examples of activities that are not eligible to be funded for technical assistance grantees include:

• Earnest money deposits as part of a purchase offer;

• Purchase of land or buildings or any improvements to land or buildings;

• Activities not directly related to eligible activities listed in paragraph D of this Appendix A;

• Payments of fees for lobbying services;

• Activities funded from other sources;

• Activities completed prior to time applicant becomes eligible for a grant; and

• Activities performed by the administering intermediary.

ITAG Program Appendix B: Activity Level and State Allocation

HUD determined the allocation of funds by State-Grouping by estimating the total number of M2M projects based on FY 1997, 1998, and 1999 data, dividing this number into total funds expected to be available, and multiplying the result by the number of projects in a State-Grouping. HUD reserves the right to periodically assess activity levels and, if necessary, reallocate funds among intermediaries. The following table contains the estimated State-Grouping allocations based on FY 1998 funding and subject to FY 1999 appropriations, if any:

State grouping	FY 1998 dollars	FY dollars (if appropriated)	Total
Northwest: Alaska Colorado Hawaii Idaho Illinois Iowa Kansas Minnesota Missouri Montana Nebraska North Dakota Oregon South Dakota Utah Washington Wyoming	$200,000	$1,600,000	$1,800,000
Southwest: Arizona Arkansas California Louisiana Nevada New Mexico Oklahoma Texas	$200,000	$1,600,000	$1,800,000
Midwest: Indiana Michigan Ohio Wisconsin	$200,000	$1,600,000	$1,800,000
Northeast: Connecticut Delaware Maine	$200,000	$1,600,000	$1,800,000

State grouping	FY 1998 dollars	FY dollars (if appropriated)	Total
Maryland Massachusetts New Hampshire New Jersey New York Pennsylvania Rhode Island Vermont Washington, DC West Virginia			
Southwest: Alabama Caribbean Florida Georgia Kentucky Mississippi North Carolina South Carolina Tennessee Virginia	$200,000	$1,600,000	$1,800,000
	$200,000	$1,600,000	$1,800,000
Total	$1,000,000	$8,000,000	$9,000,000

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OUTREACH AND TRAINING GRANTS (OTAG) TO PROVIDE TECHNICAL ASSISTANCE TO TENANT GROUPS IN PROJECTS ELIGIBLE UNDER THE MARK-TO-MARKET (M2M) PROGRAM

BILLING CODE 4210–32–C

Funding Availability for Outreach and Training Grants (OTAG) To Provide Technical Assistance To Tenant Groups in Projects Eligible Under the Mark-To-Market (M2M) Program

Program Description: Approximately $6.0 million in Outreach and Training Grant (OTAG) funds is available for resident-controlled non-profit organizations, community-based organizations and public entities to apply for funds to conduct outreach and training development for HUD tenants in properties eligible to participate in the M2M program, so that the tenants can (1) participate meaningfully in the M2M program, and (2) affect decisions about the future of their housing. The purpose of the M2M program is to reduce the cost of above market Section 8 assistance, preserve affordable housing stock, and streamline the administration of Federal housing subsidies. These funds are available to grantees providing the program on a community-, county-, city-, or state-wide level.

Application Due Date: Completed applications must be received no later than 12:00 midnight, Eastern time on June 30, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: the Office of Portfolio Reengineering, Room 6130, HUD Headquarters, 451 Seventh Street, SW, Washington, DC 20410. When submitting your application, please refer to OTAG, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance: For Application Kits. For an application kit and any supplemental information please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to OTAG and provide your name, address (including zip code), and telephone number (including area code).

For Further Information. Arthur Goldstein at (202) 708–2300, extension 2657. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the ''800'' number, these numbers are not toll-free. Mr. Goldstein can also be reached via the Internet at arthur__d.__goldstein@HUD.gov.

For Technical Assistance. An information broadcast via satellite will be held for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of the broadcast, please consult the HUD web site at the web address listed above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

Applicants should take care in reviewing this section to ensure they are eligible to apply for funds and that they meet the program requirements described.

(A) Authority

The FY 1998 HUD Appropriations Act authorizes funding for the Outreach and Training Grant program. This authorization is under the legislation ''Multifamily Assisted Housing Reform and Affordability Act of 1997'' (MAHRA), (Title V–HUD Multifamily Housing Reform, subtitle A, section 514, Mortgage Restructuring and Rental Assistance Sufficiency Plan).

(B) Purpose

The purpose of the OTAG program is to provide technical assistance to tenants of eligible M2M properties so that the tenants can (1) participate meaningfully in the M2M program, and (2) affect decisions about the future of their housing.

(C) Amount Allocated

The competition in this program is for up to $6.0 million to fund resident-controlled nonprofit organizations, community-based organizations and public entities in the pursuit of OTAG activities. The $6.0 million will be awarded in 1998 but will be utilized for OTAG technical assistance activities that are needed through October 1, 2001.

(D) Grant Amount and Terms

M2M will accept OTAG applications that propose a term of from one to three years. The term begins on the date of the execution of the grant agreement. The grant amount will be limited to $400,000 for successful applications that propose the three year maximum for activities. The maximum annual allocation for such grants will be approximately $150,000, which must be expended by the grantee prior to the distribution of additional funds. For example: If a grantee is unable to successfully utilize their annual allocation in the requisite year, then no funds for the next year will be allocated until the current year's allocation has been expended according to the agreement. The grant may be terminated if the grantee fails to complete the tasks within a reasonable time period.

(E) Eligible Applicants

An organization applying for OTAG funding must:

(1) Be a resident-controlled nonprofit organization with a majority of the board consisting of residents of HUD assisted housing, with at least two years of experience in resident organizing and education;

(2) A community-based organization (CBO), with at least two years of experience in resident organizing and education; or

(3) Public entities such as: community action, legal service, and fair housing counseling agencies; State and local government agencies; and intermediaries.

These grants will be awarded on a community-, city-, county-, multi-county-, or state-wide basis. The approved grantees will initiate an outreach program that will identify, deliver training to, and develop the organizational process that will be used in organizing the unorganized residents of eligible low-income housing. Any group that is applying for an OTAG must have at least two years of experience in organizing and training tenants, or have an affiliation with an organization that has such experience. However, the organization providing the experience must *not* have influence over the grantee's decision making. All funds expended under this OTAG Program section of the SuperNOFA must be used for tenant activities as described later in this program section of the SuperNOFA.

A CBO is a private nonprofit organization that:

(1) Is organized under State or local laws;

(2) Has no part of its earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization;

(4) Has applied for, or has a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986;

(5) Does not include a public body (including the participating jurisdiction) or an instrumentality of a public body. An organization that is State or locally

charted may qualify as a community-based nonprofit organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members can be public officials;

(6) Has standard of financial accountability that conforms to 24 CFR part 84;

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low income community residents by:

(i) Maintaining at least one-third of its governing board's membership for low income neighborhood residents, other low-income community residents, or elected representatives of low-income neighborhood organizations. For urban areas, ''community'' may be a neighborhood or neighborhoods, town, village, county, or multi-county area or state; and

(ii) Providing a formal process for low-income, program beneficiaries to advise the organization on its decisions regarding the acquisition, rehabilitation and management of affordable housing.

Applicants that do not have tax-exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered as long as the organization is approved before the effective date of the grant agreement. Also, newly formed and otherwise eligible organizations may submit joint applications with eligible organizations that are tax exempt.

(F) Eligible Activities

An applicant must identify its specific jurisdiction and the activities it will undertake to accomplish its objectives. Activities for OTAGs can include:

(1) Identifying residents and resident groups living in eligible M2M properties as well as enforcement properties with rents greater than market rents. Eligible projects include any property with an expiring Section 8 contract that is eligible for the M2M program and these properties deemed ineligible for participation in the M2M program under section 516 of the FY 1998 Appropriations Act;

(2) Providing outreach and training to tenants to explain the M2M program, the possible financial changes, the possible project repairs, access and community resources and effective methods for communicating the organization's position;

(3) Organizing residents of eligible low-income housing so the tenants can effectively participate in the M2M process;

(4) Performing outreach, training, and counseling, which may include teaching sound housing management, maintenance, and financial management, to residents and resident groups living in eligible M2M properties;

(5) Delivering project-based, community-, city-, county-, or state-wide training programs on M2M and/or resident homeownership options;

(6) Establishing M2M clearinghouses as a resource to resident organizations, community groups and potential purchasers;

(7) Creating informational materials about the M2M process for local/state-wide distribution;

(8) Providing support for HUD approved activities proposed by the grantee that would further the M2M program and others considered eligible at HUD's discretion;

(9) Educating parties outside HUD (including but not limited to appraisers, financial institutions officials, State and local government officials, community groups, and owner entities) about the M2M process.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) Reporting Requirements

(1) OTAG Grantees must comply with all requirements of 24 CFR Part 84.

(2) OTAG Grantees must submit a quarterly performance report to the Director of the Office of Mortgage and Housing Assistance Restructuring (OMAR).

(3) These reports are to list the properties and number of tenants assisted by the OTAG Activities being performed that quarter. These reports must include information conferences, brochures, meetings held, training, etc., and a narrative describing what tangible benefits resulted from the assistance.

(4) Payment requests may be frozen until receipt of an acceptable performance report.

(B) Records Retention and Access Requirements

All accounting and other records associated with OTAG administration must be retained and made available to HUD or its designee in accordance with 24 CFR § 84.53.

(C) Auditing Requirements

OTAG grantees must comply with the audit requirements set forth in 24 CFR part 45.

(D) Conflict of Interest (CI) Requirements

Funds received under this OTAG Program section of this SuperNOFA shall not be used to supplant or duplicate other resources for the proposed activities. In carrying out its duties under this program section of the SuperNOFA, any grantee must avoid even the appearance of a conflict of interest. All executives, board members, key management personnel, or any other person or entity with direct or indirect control, is required to execute a CI Certification at the time of execution of a grant agreement and on each anniversary date of execution.

III. Application Selection Process

Two types of reviews will be conducted: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this Section III.

(A) Additional Threshold Criteria for Funding Consideration

Under the threshold review, the applicant will be rejected from the competition if the applicant is not in compliance with the requirements of the General Section of the SuperNOFA and if the applicant does not qualify as an Eligible Applicant as defined in Section I(E) of this OTAG Program section of the SuperNOFA.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100. This section of the SuperNOFA does not include EZ/EC bonus points.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (25 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any faculty, subcontractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor, HUD

will consider the extent to which the proposal demonstrates:

(1) (5 points) The knowledge and direct experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors, in planning and managing the kind of programs for which funding is being requested. The applicant will be judged in terms of recent, relevant and successful experience in undertaking eligible program activities.

The applicant has sufficient personnel, or access to qualified experts or professionals, enabling delivery of the proposed activities in each proposed service area in a timely and effective fashion. Capacity also includes the readiness and ability of the applicant to immediately begin the proposed work program.

(2) (5 points) The applicant's experience in managing programs similar in scope or nature directly relevant to the work activities proposed and carrying out grant management responsibilities. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information supporting this claim in their response.

(3) (5 points) If the applicant received funding in previous years, the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in the implementation of their most recent grant awards, as measured by expenditures and measurable progress in achieving the purpose for which funds were provided. However, the applicant must demonstrate how it will successfully undertake additional activities effectively under this OTAG Program section of the SuperNOFA.

Capability to conduct community-, city, county-, multi-county, or state-wide outreach and training program. This program could be to identify and organize residents and conduct educational workshops for tenants of eligible M2M residents, about the residents involvement in the M2M program. Training is to be conducted in a reasonable time period, within budget, and in an effective manner. This criterion can be demonstrated through past performance, as evidenced by previous experience and success in outreach, training recruitment, counseling, and development of tenant nonprofit organizations. References should be included that indicate groups of individuals, entities, projects that received training, along with contact information of same.

(4) (5 points) Ability to cover large geographic areas. The larger the geographic area proposed, the larger number of points will be awarded.

(5) (5 points) Applicant's fiscal capability in meeting the reporting and audit requirements of 24 CFR part 84. The ability of the applicant's key staff to handle, manage, and adequately account for financial resources, and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State or local funds, or an explanation of how such capability can be obtained. Implicit to this criterion is the capacity of the applicant to carry out the program, subject to conflict of interest and non-duplication of ''other resource'' requirements. If the applicant organization, or any staff person associated with the organization intends to seek other technical assistance funding, as a consultant or any other means, under the M2M program (i.e. Intermediary Technical Assistance Grant program), it must demonstrate that it can maintain the financial systems required to avoid even the appearance of a conflict of interest or non-duplication of funding. Evidence of meeting this criteria can be shown by the demonstrated performance of a recent audit review of the organization or a satisfactory, HUD Field Office Management Review.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. HUD has determined that need will be evaluated based on the number of M2M-eligible projects in the geographic area which an applicant proposes to provide services. Points will be awarded based on the following:

Number of M2M projects	Points awarded
100 and over	25
60–69	20
40–59	15
30–39	10
20–29	5
Fewer than 19	2

A list of M2M eligible properties by property name, city and state can be obtained from the Multifamily Clearinghouse at 1–(800) 685–8470. This list will be updated periodically.

Rating Factor 3: Soundness of Approach (30 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In developing a work plan, the applicant should consider all Eligible Activities listed in Section I(F) of the OTAG Program section of the SuperNOFA. The work plan should address, at a minimum:

(1) The type of activities the applicant intends to perform;

(2) The intended methodology for initial contact with tenants and plan for follow-up contact;

(3) The subjects to be covered in any proposed training;

(4) The proposed methodology for encouraging tenant leadership;

(5) The proposed methodology for completion of all other activities proposed under the work plan;

(6) The plan for creation and distribution of any printed material;

(7) The intended audience for each proposed activity; and

(8) For applicants covering a large geographic area, the proposed method of contact to residents outside the applicant's immediate area.

There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. The factor will be evaluated based on the extent to which the proposed activities will:

(1) Help solve or address an urgent need or problem as identified under Rating Factor 2—Need/Extent of the Problem. The impact of the activity will be evaluated, including the tangible benefits to be attained by the community and by the target population including affirmatively furthering fair housing for classes protected under the Fair Housing Act. As applicable to the program for which funding is requested, the activities should aid a broad diversity of eligible client or beneficiary groups, including those that have been traditionally undeserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach will also be evaluated, if applicable.

HUD will consider, within the context of the program for which funding is requested, the extent to which the applicant's activities are providing for geographic coverage for articulated needs, and will assist or result in a community taking appropriate action to overcome the effects of any impediments identified in the A.

In the case of technical assistance, HUD will evaluate the extent to which the proposed activities help solve or

address an urgent need identified for the specific technical assistance program for which an applicant is applying and the extent to which full geographic coverage is provided, including urban and rural areas as well as under-served populations within the field office jurisdiction(s) in which funding is requested.

(2) Achieve the purposes of the program for which funding is requested and result in measurable accomplishments that are consistent with the purposes of the program and will result in a goal being met/product produced within a timeframe appropriate and reasonable for the program.

(3) Be undertaken using technically competent methodologies for conducting the work to be performed and uses a cost effective plan for designing, organizing and carrying out the proposed activities. The proposed cost estimates should be reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area.

(4) Yield innovative strategies or ''best practices'' that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. Applicants will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this OTAG Program section of the SuperNOFA.

(5) Further and support the policy priorities of HUD including:

(a) Promoting healthy homes;

(b) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(c) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as ''One Strike and You're Out'' or the ''Officer Next Door'' initiative;

(d) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking to AmeriCorps activities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community assets, resources and/or financing to achieve program purposes. In evaluating this factor HUD will consider:

(1) The extent to which the applicant has leveraged resources, such as funding and/or in-kind services from governmental entities, private organizations, resident management organizations, educational institutions, or other entities in order to achieve the purposes of the award the applicant is requesting.

(2) The extent to which the applicant has partnered with other entities to make more effective use of available public or private resources. Partnership arrangements may include, but are not limited to, funding or in-kind services from local governments or government agencies, non-profit or for-profit entities, private organizations, educational institutional or other entity that is willing to partner with the applicant on proposed activities in order to leverage resources, or partnering with other program funding recipients to make more effective use of resources within the geographic area covered by the award either within the community or within the field office jurisdiction in which activities are occurring. Applicants may partner directly or through a consortium of applicants to more effectively address needs of underserved populations, rural areas, minority groups or other client groups that need attention either in the target area or the area covered by the field office jurisdiction in which the activities are to take place.

Evidence of commitment should include organization names, their proposed level of effort, resources, and responsibilities of these participants. Applicants must provide indications of participation by including in the application letters of firm commitments, memoranda of understanding or agreements, or letters indicating participation and levels of effort and responsibility to receive rating points for this factor. Letters of commitment, memoranda of understanding, or agreements to participate must be signed by an official of the organization legally able to make commitments for the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points).

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations in order to best complement, support and coordinate all known activities and, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other HUD, Federal, State or locally funded activities, including those proposed or on-going in the community(s) served.

(C) *Selections.* HUD will review each Outreach and Training Grant application and assign up to 100 points, in accordance with the criteria described in this Section. After rating, the M2M staff will rank the applications according to score and will fund them in rank order. Funds will be awarded based upon the highest scores, which represent the best overall assessment of the potential of the proposed work activities for achieving the principal objectives of this competition.

If two or more applications have the same number of points, a resident-controlled (51 percent or more of Board participation by HUD tenants) nonprofit organization will receive priority rating over a nonprofit organization that is not resident-controlled. Public entity applicants will only be considered for geographic areas where there is no acceptable application from a nonprofit organization.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded OTAGs. The approach HUD will use, if it decides to implement this option, will be to award to the highest ranked applicant in a geographic area, and to fund the next highest ranked applicants in other geographic areas before

duplicating funding for any one geographic area.

After all applications have been rated and ranked and selections have been made, HUD may require that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully conclude negotiations, or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant.

After award but before grant execution, winners will be required to provide a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets prescribed standards for fund control and accountability required by OMB Circular A–133, Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, Revised OMB Circular A–110, or 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable.

IV. Application Submission Requirements

An applicant must provide a completed application, including the following, as applicable:

(1) OMB Standard Forms 424;

(2) Summary of proposed activities and jurisdiction;

(3) Information about the applicant, including its history, its staff and qualifications, and its experience;

(4) Summary of plan to carry out proposed activities;

(5) Evidence of tax-exempt status, if applicable;

(6) Required Certifications relating to this grant; and

(7) Other information/materials described in application kit.

V. Corrections of Deficient Applications

The General Section of the SuperNOFA provides procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(2), (9) and (12), the assistance provided under this program relates only to information services, the provision of technical assistance, and supportive services and therefore is categorically excluded from the requirements of the National Environmental Policy Act and is not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing, or repair for HUD assistance under this program.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LOCAL LEAD HAZARD AWARENESS CAMPAIGN

BILLING CODE 4210–32–C

Funding Availability for the Local Lead Hazard Awareness Campaign

Program Description: Approximately $700,000 is available for the Local Lead Hazard Awareness Campaign grant funding. The purpose of this campaign is to deliver public education and outreach services to increase lead awareness and promote lead poisoning prevention to identified target audiences in specific geographical areas. Grants will be awarded on a competitive basis to eligible organizations ranging between $20,000 to $700,000.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on June 26, 1998 at the address shown below. HUD reserves the right to republish this program section of the SuperNOFA and announce additional due dates, or to make no awards at all if proposals are deficient. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: U.S. Department of Housing and Urban Development, Office of Lead Hazard Control, 451 Seventh Street, SW, B–133, Washington, DC 20410. When submitting your application, please refer to Local Lead Hazard Awareness Campaign grant, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance: For Application Kits. For an application kit and supplemental information please call the HUD SuperNOFA Information Clearinghouse at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY at 1–800–HUD–2209. The application kit also will be available on the Internet at: http://www.hud.gov. When requesting an application kit, please refer to Local Lead Hazard Awareness Campaign grant, and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. Dolline Hatchett, Community Outreach Officer, Office of Lead Hazard Control, 202–755–1785 extension 114 (this is not a toll-free number).

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Local Lead Hazard Awareness Campaign is authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 of the Housing and Community Development Act 1992, Pub. L. 102–550, section 1011(g)(1).

(B) Purpose

The Federal government has launched a national public education and outreach campaign to protect America's children from the health hazards of lead-based paint. The Campaign for a Lead-Safe America was announced by Mrs. Tipper Gore, the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency at a White House press conference on November 17, 1997. The Local Lead Hazard Awareness Campaign grant under this SuperNOFA is designed to conduct public education and outreach at a local level to increase lead-based paint hazard awareness and promote lead poisoning prevention to identified target audiences in specific geographical locations; increases lead hazard awareness through education and outreach to high-risk communities and other identified audiences such as, parents, caretakers, pediatricians, children, pregnant women, building owners and renovation and maintenance personnel; and to develop coalitions to establish a workable framework to sustain lead education and outreach programs (beyond the life of the grant). This program also implements, in part, HUD's Departmental Strategy for achieving Environmental Justice pursuant to Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations).

(C) Amount Allocated

Up to $700,000 will be made available on a competitive basis to eligible applicants with grant awards ranging between $20,000—$700,000. The funding selections will be based on the factors for award described in this program section of the SuperNOFA. The amounts included in this program section of the SuperNOFA are subject to change based on funds availability.

(D) Eligible Applicants

The following organizations shown below are eligible to receive funding under this program section of the SuperNOFA. Partnerships are encouraged, although the application must be made by a single entity.

(1) Non-profit (must submit proof of non-profit status) and for-profit organizations (for-profit firms are eligible; however, they are not allowed to include a fee in the cost proposal, i.e., no profit can be made from the project);

(2) Institutions of higher learning;

(3) State and local government;

(4) Federally recognized Indian Tribes;

(5) Trade and Professional Organizations; and

(6) Real Estate Organizations.

(E) Eligible Activities

Eligible activities to be funded under this program section of the SuperNOFA are those activities that deliver public education and outreach services to increase lead hazard awareness and promote lead poisoning prevention to identified target audiences in specific geographical areas. Efforts must include developing the infrastructure needed to implement media strategies to successfully market ''The Campaign for a Lead Safe America'' with assistance from the successful applicant(s) of the National Lead Hazard Awareness Campaign Grant. In addition, the activity must develop and implement various communication strategies to educate their target audience about the hazards of lead-based paint and what communities can do to protect their families from being poisoned by lead. Each applicant must define its target audience, which can include, for example, the real estate community, parents, teachers, health care workers, daycare providers, the general public and other entities. Grantees are encouraged to conduct education and outreach using their affiliate chapters, if applicable, branch members or other outreach arms, to involve a full complement of local organizations/representatives from the community (such as local elected officials, and faith-based community groups). It is anticipated that this method of networking would have a two-fold approach to increase awareness about lead poisoning, as well as establish an infrastructure to sustain lead education and outreach activities well after the life of the grant. While the application must be submitted by a single entity, the applicant can propose a partnership of multiple organizations in order to accomplish the objectives of the project.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees

must meet the following program requirements:

(A) Applicants Limited to a Single Award

Applicants are limited to one FY 1998 award under this program. If more than one eligible application is submitted by an applicant and both have an adequate score, the Department will select the application which the applicant has indicated as its preference for award.

(B) Independence of Applications

There are no limits on the number of applications that can be submitted by a single applicant. However, each application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. This provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(C) Project Starting Period

The period of performance will be up to two years. The applicant must be able to commence work immediately.

(D) Page Limitation

Applicants will be limited to 5 pages of narrative responses for each of the selection factors for a total of no more than 25 pages (this does not include forms or documents which are required under each factor). Unrequested items such as brochures, news articles and similar items included in the application will not be considered in the evaluation process. Applicants that exceed the 5-page limit for each factor will only have the first 5 pages evaluated for each factor. Failure to provide narrative responses to all selection criteria will result in an application being ineligible.

(E) Payment Contingent on Completion

Payment to grantees will be contingent on the satisfactory completion of each project activity.

(F) Accessibility Requirements

All activities and materials funded by the grant must be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 24 CFR part 8.

(G) Type of Award

HUD reserves the right to award a grant or cooperative agreement that is either cost reimbursable or fixed price.

(H) Funding Requests

Applications that request funding in excess of the stated maximum award will be ineligible.

(I) Type of Project

Projects aimed primarily at research or data gathering, including but not limited to surveys and questionnaires, will not be eligible under this program section of the SuperNOFA.

(J) Activities/Final Products Description

All proposals must contain a description of how the activities or the final products relate to the program.

(K) In Order To Be Funded Applicants Must Have a Score of 80 Points or Better

If applicants score less than 80 points, they may apply again later under any republication of this program section of the SuperNOFA. Not all applicants with scores above 80 will necessarily receive awards.

(L) Definitions

The definitions that apply to this program section of the SuperNOFA are as follows:

Federally recognized Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the bureau of Indian Affairs.

Grantee means the recipient to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award amount.

High-Risk Communities refers to predominantly low-income communities which consist of housing built before 1978.

Low-income is defined as families, including single persons, 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. However, HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low-income families.

States means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* The selection process is structured to achieve the purpose set forth in Section I.(B) of this program section of the SuperNOFA.

Each application for funding will be evaluated competitively, and the applicant will be assigned a score based on the Factors for Award used to evaluate and rate applications identified in sections III.(B) and (C) of this program section of the SuperNOFA. After eligible applications are evaluated based upon the factors for award and assigned a score, they will be organized by rank order. Awards will be funded in rank order.

(B) Factors for Award Used To Evaluate and Rate the Local Lead Hazard Awareness Campaign

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points is 100.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent projects accomplished in the last two years which are similar in scope or nature directly relevant to the work activities proposed. If the

applicant has managed large, complex, interdisciplinary projects, the applicant should include information on them in its response.

(2) The applicant has sufficient personnel, or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem. In responding to this factor, applicants will be evaluated on:

(1) The extent to which they document a critical level of need for the proposed activities. The documentation of need may include, but is not limited to, HUD reports and analyses, relevant economic and/or demographic data, government or foundation reports and studies, news articles, and other information which relate to the proposed project activities.

(2) To the extent possible, the documented need is specific to the area where the project activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or State. If the target area is an entire locality or State, then documenting need at this level is appropriate. The applicant must demonstrate how specific community or neighborhood needs can be resolved through the activities proposed. The applicant should discuss how it took into account existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms, and other entities to address such needs in the community(ies) to be served, how the proposed program compliments or supplements existing efforts and why additional funds are being requested.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed statement of work. In evaluating this factor, HUD will consider the extent to which:

(1) Proposed activities will coordinate with private and public sector organizations to deliver products and messages which will increase lead poisoning prevention awareness. Specifically, the applicant must describe the proposed activities that will reach and benefit members of the public, especially in high-risk communities and other identified audiences in Section I.(B) of this program section of the SuperNOFA.

(2) Projects may be replicated in other communities. In responding to this subfactor, the applicant should describe the extent to which the proposed activities will yield long-term results and innovative strategies or ''best practices'' that can be readily disseminated to other organizations and State and local governments.

(3) The proposed Statement of Work should address the following:

(a) Clearly describes the specific tasks and subtasks to be performed and how feasibly they can be completed within the grant period;

(b) Describes the immediate benefits of the project and indicators by which the benefits will be measured. Applicants must describe the methods they will use to determine the effectiveness of their local marketing strategies;

(c) Provides for proposed tasks and sub-tasks that clearly provide technically competent methods for conducting the work;

(d) Describes the extent to which the proposed design and size of the project or activity is appropriate to the achievement of the program funding purposes articulated in this program section of the SuperNOFA;

HUD also will measure the soundness of the applicant's approach by assessing the following:

(4) The cost estimates provided are reasonable and thorough and the program is cost effective in achieving the anticipated results of the proposed activities as well as in achieving significant impact; and

(5) The applicant demonstrates capability in handling financial resources with adequate financial control procedures and accounting procedures. In addition, considerations will include findings identified in their most recent audits, internal consistency in the application of numeric quantities, accuracy of mathematical calculations and other available information on financial management capability.

In the event of a tie between two proposals, the applicant with the highest score in Rating Factor 3 will be the successful grantee.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other resources which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider the extent to which the applicant is partnering with other organizations to secure additional resources, including financial resources, to increase the effectiveness of the proposed program activities. (However, a match-in-kind funding is not required for this program.) If applicable, resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the identified target area.

Applicants shall provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memoranda of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated process of identifying needs and building a system to address those needs by using available HUD funding resources and other available resources. In evaluating this factor, HUD will consider:

(1) The extent to which the application demonstrates that project activities will reach the targeted audience. This includes discussion of the applicant's analysis of the most appropriate forums, approaches and other factors to ensure that activities reach the broadest spectrum of intended beneficiaries. Additionally, the application should discuss procedures to be used to promote awareness of the services provided by the proposed project.

(2) The extent to which the application demonstrates that the applicant will develop linkages with:

(a) Other HUD funded program activities proposed or on-going; or

(b) Other proposed or on-going State, Federal, local or privately funded

activities which taken as a whole, support and sustain a comprehensive system to address the purposes of this program.

(3) Documentation of the extent to which policy priorities of the Department are furthered by the proposed activities. Examples of such policy priority areas that may be addressed are:

(a) Increasing awareness among real estate agents about the importance of disclosing known lead-based paint hazards before they rent or sell property and

(b) Increasing awareness to promote healthy homes;

(C) *Applicant Notification and Award Procedures.*

(1) *Notification.* No information will be available to applicants during the period of HUD evaluation of proposals, approximately 90 days, except for HUD notification in writing or by telephone to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) *Funding Instrument.* HUD expects to award a cost reimbursable or fixed price grant or cooperative agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(3) *Performance Sanctions.* A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the Local Lead Hazard Awareness Campaign, and denial of further participation in programs of the Department or of any Federal agency.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section of this SuperNOFA, all applications must, at a minimum, contain the following items:

(A) Transmittal Letter

Which identifies thus SuperNOFA, the program under the SuperNOFA for which funds are requested and the dollar amount requested for each program, and the applicant submitting the application.

(B) Summary Budget

Identifying costs by cost category in accordance with the following:

(1) *Direct Labor* by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) *Fringe Benefits* by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) *Material Costs* indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(4) *Transportation Costs,* as applicable. Where a local private vehicle is proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence and the total estimated transportation costs;

(5) *Equipment Charges,* if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) *Consultant Costs,* if applicable. Indicate the type, estimated number of consultant hours, rate per hour, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) *Subcontract Costs,* if applicable. Indicate each individual subcontract and amount. For each proposed subcontract that is in excess of 10% of the grant amount, a separate budget which identifies costs by cost categories should be included;

(8) *Other Direct Costs* listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award;

(9) *Indirect Costs* should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. The submission should include the rationale used to determine costs and validation of fringe and indirect cost rates, if the applicant is not using an accepted, Federally negotiated indirect cost rate.

(C) Financial Management and Audit Information

Each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by: OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations; OMB Circular A–110 (as codified at 24 CFR Part 84), Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and/or OMB Circular A–102 (as codified at 24 CFR Part 85) Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(D) Narrative Statement

Addressing the Factors for Award in Section III.(B) of this program section of the SuperNOFA. Your narrative response should be numbered in accordance with each factor for award identified under Section III.(B), Items III.(B)(1) through III.(B)(4).

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(2) and (4), the assistance provided under this program relates only to the provision of information services and public services concerned with health and therefore is categorically excluded from the requirements of the National Environmental Policy Act of 1969 and is not subject to environmental review under the related laws and authorities.

Appendix A to SuperNOFA—HUD Field Office Contact Information

Not all Field Offices listed handle all of the programs contained in the SuperNOFAs. Applicants should look to the SuperNOFAs for contact numbers for information on

specific programs. Office Hour listings are local time. Persons with hearing or speech impediments may access any of these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339.

New England

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, 860–240–4800, Office Hours: 8:00–4:30 PM

Maine State Office, 99 Franklin Street, Third Floor, Suite 302, Bangor, ME 04401–4925, 207–945–0467, Office Hours: 8:00 AM–4:30 PM

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, 617–565–5234, Office Hours: 8:30 AM–5:00 PM

New Hampshire State Office, Norris Cotton Federal Building 275 Chestnut Street, Manchester, NH 03101–2487, 603–666–7681, Office Hours: 8:00 AM–4:30 PM

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, 6th floor, Providence, RI 02903–2808, 401–528–5230, Office Hours: 8:00 AM–4:30 PM

Vermont State Office, U.S. Federal Building, Room 237, 11 Elmwood Avenue, P.O. Box 879, Burlington, VT 05402–0879, 802–951–6290, Office Hours: 8:00 AM–4:30 PM

New York/New England

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, 518–464–4200, Office Hours: 7:30 AM–4:00 PM

Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, 716–551–5755, Office Hours: 8:00 AM–4:30 PM

Camden Area Office, Hudson Building, 800 Hudson Square, Second Floor, Camden, NJ 08102–1156, 609–757–5081, Office Hours: 8:00 AM–4:30 PM

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, 973–622–7900, Office Hours: 8:00 AM–4:30 PM

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, 212–264–6500, Office Hours: 8:30 AM–5:00 PM

Mid Atlantic

Delaware State Office, 824 Market Street, Suite 850, Wilmington, DE 19801–3016, 302–573–6300, Office Hours: 8:00 AM–4:30 PM

District of Columbia Office, 820 First Street, N.E., Suite 450, Washington, DC 20002–4205, 202–275–9200, Office Hours: 8:30 AM–4:30 PM

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, 410–962–2520, Office Hours: 8:30 AM–4:30 PM

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0600, Office Hours: 8:30 AM–4:30 PM

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–6428, Office Hours: 8:30 AM–4:30 PM

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539, Office Hours: 8:30 AM–4:30 PM

West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, 304–347–7000, Office Hours: 8:00 AM–4:30 PM

Southeast/Caribbean

Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7617, Office Hours: 8:00 AM–4:30 PM

Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5201, Office Hours: 8:00 AM–4:30 PM

Florida State Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4500, Office Hours: 8:30 AM–5 PM

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, 404–331–5136, Office Hours: 8:00 AM–4:30 PM

Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–2627, Office Hours: 8:00 AM–4:30 PM

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, 502–582–5251, Office Hours: 8:00 AM–4:45 PM

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, 3rd Floor, Knoxville, TN 37902–2526, 423–545–4384, Office Hours: 7:30 AM–4:15 PM

Memphis Area Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, TN 38103–2335, 901–544–3367, Office Hours: 8:00 AM–4:30 PM

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capital Street, Room 910, Jackson, MS 39269–1096, 601–965–4738, Office Hours: 8:00 AM–4:45 PM

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4000, Office Hours: 8:00 AM–4:45 PM

Orlando Area Office, Langley Building, 3751 Maguire Blvd, Suite 270, Orlando, FL 32803–3032, 407–648–6441, Office Hours: 8:00 AM–4:30 PM

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5592, Office Hours: 8:00 AM–4:45 PM

Tampa Area Office, Timberlake Federal Building Annex, 501 East Polk Street, Suite 700, Tampa, FL 33602–3945, 813–228–2501, Office Hours: 8:00 AM–4:30 PM

Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, 615–736–5213, Office Hours: 8:00 AM–4:30 PM

Midwest

Cincinnati Area Office, 525 Vine Street, 7th Floor, Cincinnati, OH 45202–3188, 513–684–3451, Office Hours: 8:00 AM–4:45 PM

Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, 216–522–4065, Office Hours: 8:00 AM–4:40 PM

Flint Area Office, The Federal Building, 605 North Saginaw, Suite 200, Flint, MI 48502–2043, 810–766–5108, Office Hours: 8:00 AM–4:30 PM

Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, 3rd Floor, Grand Rapids, MI 49503–2648, 616–456–2100, Office Hours: 8:00 AM–4:30 PM

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd, Chicago, IL 60604–3507, 312–353–5680, Office Hours: 8:15 AM–4:45 PM

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, 317–226–6303, Office Hours: 8:00 AM–4:45 PM

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7900, Office Hours: 8:00 AM–4:30 PM

Minnesota State Office, 220 Second St., South, Minneapolis, MN 55401–2195, 612–370–3000, Office Hours: 8:00 AM–4:30 PM

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, Office Hours: 8:00 AM–4:45 PM

Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, 414–297–3214, Office Hours: 8:00 AM–4:30 PM

Southwest

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–5931, Office Hours: 8:00 AM–4:30 PM

Dallas Area Office, Maceo Smith Federal Building, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, 214–767–8359, Office Hours: 8:00 AM–4:30 PM

Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, 713–313–2274, Office Hours: 7:45 AM–4:30 PM

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7201, Office Hours: 8:00 AM–4:30 PM

Lubbock Area Office, George H. Mahon Federal Building and United States Courthouse, 1205 Texas Avenue, Lubbock, TX 79401–4093, 806–472–7265, Office Hours: 8:00 AM–4:45 PM

New Mexico State Office, 625 Truman Street, N.E., Albuquerque, NM 87110–6472, 505–262–6463, Office Hours: 7:45 AM—4:30 PM

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7401, Office Hours: 8:00 AM—4:30 PM

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6800, Office Hours: 8:00 AM—4:30 PM

Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3289, 318–676–3385, Office Hours: 7:45 AM—4:30 PM

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, 817–978–9000, Office Hours: 8:00 AM—4:30 PM

Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, 918–581–7434, Office Hours: 8:00 AM—4:30 PM

Great Plains

Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA

50309–2155, 515–284–4512, Office Hours: 8:00 AM—4:30 PM

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, 913–551–5462, Office Hours: 8:00 AM—4:30 PM

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, 402–492–3100, Office Hours: 8:00 AM—4:30 PM

St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103–2836, 314–539–6583, Office Hours: 8:00 AM—4:30 PM

Rocky Mountains

Colorado State Office, 633—17th Street, Denver, CO 80202–3607, 303–672–5440, Office Hours: 8:00 AM—4:30 PM

Montana State Office, Federal Office Building, 301 South Park, Room 340, Drawer 10095, Helena, MT 59626–0095, 406–441–1298, Office Hours: 8:00 AM—4:30 PM

North Dakota State Office, Federal Building, P.O. Box 2483, Fargo, ND 58108–2483, 701–239–5136, Office Hours: 8:00 AM—4:30 PM

South Dakota State Office, 2400 West 49th Street, Suite I–201, Sioux Falls, SD 57105–6558, 605–330–4223, Office Hours: 8:00 AM—4:30 PM

Utah State Office, 257 Tower Building, 257 East—200 South, Suite 550, Salt Lake City, UT 84111–2048, 801–524–3323, Office Hours: 8:00 AM—4:30 PM

Wyoming State Office, Federal Office Building, 100 East B Street, Room 4229, Casper, WY 82601–1918, 307–261–6250, Office Hours: 8:00 AM—4:30 PM

Pacific/Hawaii

Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004, 602–379–4434, Office Hours: 8:00 AM—4:30 PM

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, 415–436–6550, Office Hours: 8:15 AM—4:45 PM

Fresno Area Office, 2135 Fresno Street, Suite 100, Fresno, CA 93721–1718, 209–487–5033, Office Hours: 8:00 AM—4:30 PM

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, 808–522–8175, Office Hours: 8:00 AM—4:00 PM

Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, 213–894–8000, Office Hours: 8:00 AM—4:30 PM

Nevada State Office, 333 North Rancho Drive, Suite 700, Las Vegas, NV 89106–3714, 702–388–6525, Office Hours: 8:00 AM—4:30 PM

Reno Area Office, 1575 Delucchi Lane, Suite 114, Reno, NV 89502–6581, 702–784–5356, Office Hours: 8:00 AM—4:30 PM

Sacramento Area Office, 777—12th Street, Suite 200, Sacramento, CA 95814–1997, 916–498–5220, Office Hours: 8:00 AM—4:30 PM

San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, 619–557–5310, Office Hours: 8:00 AM—4:30 PM

Santa Ana Area Office, 3 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707–5764, 714–957–3745, Office Hours: 8:00 AM—4:30 PM

Tucson Area Office, Security Pacific Bank Plaza, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701–1467, 520–670–6237, Office Hours: 8:00 AM—4:30 PM

Northwest/Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4135, 907–271–4170, Office Hours: 8:00 AM—4:30 PM

Idaho State Office, Plaza IV, 800 Park Boulevard, Suite 220, Boise, ID 83712–7743, 208–334–1990, Office Hours: 8:00 AM—4:30 PM

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, 503–326–2561, Office Hours: 8:00 AM—4:30 PM

Spokane Area Office, Farm Credit Bank Building, Eighth Floor East, West 601 First Avenue, Spokane, WA 99204–0317, 509–353–2510, Office Hours: 8:00 AM—4:30 PM

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5101, Office Hours: 8:00 AM—4:30 PM

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federal register

Thursday
April 30, 1998

Part IV

Department of Housing and Urban Development

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4361–N–01]

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA)

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability for National Competition Programs (National SuperNOFA).

SUMMARY: This National SuperNOFA announces the availability of approximately $5,050,000 in HUD program funds covering three (3) National Competition Programs operated and managed by the following HUD Offices: Fair Housing and Equal Opportunity (FHEO), Housing, and Lead Hazard Control. The General Section of this National SuperNOFA contains the procedures and requirements applicable to all 3 programs. The Programs Section of this National SuperNOFA contains a description of the specific programs for which funding is made available under this National SuperNOFA and additional procedures and requirements that are applicable to each.

APPLICATION DUE DATES: *The information contained in this ''APPLICATION DUE DATES'' section applies to all programs contained in this National SuperNOFA.* Completed applications must be submitted to HUD no later than July 7, 1998. Applications may not be sent by facsimile (FAX). The Program Chart also lists the application due dates.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses.* Completed applications must be submitted to the location specified in the Programs Section of this SuperNOFA. When submitting your application, please refer to the program name for which you are seeking funding.

Applications to HUD Headquarters. All applications under this National SuperNOFA are to be submitted to HUD Headquarters at: Department of Housing and Urban Development, 451 Seventh Street, SW., Room _____ (See Program Chart or Programs Section for room location), Washington DC 20410. Please follow the requirements of the Programs Section to ensure that you submit your application to the proper location. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that timeliness of submission will be based on the time the application is received at HUD Headquarters.

Applications Procedures—Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. For applications submitted to HUD Headquarters, hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm until 12:00 midnight, local time.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information contained in this section is applicable to all programs contained in this National SuperNOFA.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with application kits and/or a guidebook to all HUD programs. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which HUD Office(s) should receive a copy of your application.

Consolidated Application Submissions. Where an applicant can apply for funding under more than one program in this National SuperNOFA, the applicant need only submit one originally signed SF–424 and one set of original signatures for the other required assurances and certifications, accompanied by the matrix contained in each application kit. As long as the applicant submits one originally signed set of these documents with an application, only copies of these documents may be submitted with any additional application submitted by the applicant.

For Further Information. For answers to your questions about this National SuperNOFA, you have several options. You may call the HUD Office or Processing Center serving your area at the telephone number listed in your program area section to this National SuperNOFA, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairment may call the Center's TTY number at 1–800–HUD–2209. Information on this National SuperNOFA also may be obtained through the HUD web site on the Internet at http://www.hud.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide general guidance and technical assistance about this National SuperNOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Introduction to the SuperNOFA Process

To further HUD's objective, under the direction of Secretary Andrew Cuomo, of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities, HUD will publish three SuperNOFAs, in addition to this National SuperNOFA, in 1998, which coordinate program funding for nearly 40 programs and cut across traditional program lines.

(1) The first is the SuperNOFA and consolidated application process for Housing and Community Development Programs, published in the March 31, 1998, **Federal Register**, at 63 FR 15490, covering 19 Housing and Community Development Programs.

(2) The second is the SuperNOFA and consolidated application process for Economic Development and Empowerment Programs. This second SuperNOFA includes funding for the following programs and initiatives: Brownfields; Youthbuild; Economic Development Initiative; Neighborhood Initiatives; Tenant Opportunity Program; Economic Development and Supportive Services; Mark to Market Outreach and Training, and Mark to Market Technical Assistance Intermediaries Grant Administration.

This second SuperNOFA is published elsewhere in today's **Federal Register**.

(3) The third is the SuperNOFA and consolidated application process for Targeted Housing and Homeless Assistance Programs. This third SuperNOFA includes the following programs and initiatives: Housing Opportunities for Persons with Aids; Continuum of Care Assistance; Section 202 Elderly Housing; Section 811 Disabled Housing; Service Coordinators; and Elderly Housing Revitalization. This third SuperNOFA is published elsewhere in today's **Federal Register**.

All of these SuperNOFAs and consolidated applications, to the greatest extent possible, given statutory, regulatory and program policy distinctions, will have one set of rules that, together, offer a ''menu'' of approximately 39 programs. From this menu, communities will be made aware of funding available for their jurisdictions. Nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations, faith-based organizations and others will be able to identify the programs for which they are eligible for funding. HUD is anticipating publishing all three SuperNOFAs before May 1, 1998.

The National Competition SuperNOFA

In addition to the three SuperNOFAs, HUD is publishing this single NOFA for three national competitions: the Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach Competition; the National Housing Counseling Training Program; and the National Lead Hazard Awareness Campaign.

The Housing and Community Development SuperNOFA

The first SuperNOFA announced the availability of approximately $1,247,906,870 in HUD program funds covering nineteen (19) Housing and Community Development Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), Office of Lead Hazard Control, and Fair Housing and Equal Opportunity (FHEO).

Assisting Communities to Make Better Use of Available Resources.

The SuperNOFA approach represents a marked departure from, and HUD believes a significant improvement over, HUD's past approach to the funding process. In the past, HUD has issued as many as 40 separate NOFAs, all with widely varying rules and application processing requirements. This individual program approach to funding, with NOFAs published at various times throughout the fiscal year, did not encourage and, at times, unintentionally impeded local efforts directed at comprehensive planning and development of comprehensive local solutions. Additionally, the old approach seemed to require communities to respond to HUD's needs rather than HUD responding to local needs. Secretary Cuomo brings to the leadership of HUD the experience of successfully implementing a consolidated planning process in HUD's community development programs. As Assistant Secretary for Community Planning and Development, Secretary Cuomo consolidated the planning, application, and reporting requirements of several community development programs. The Consolidated Plan rule, published in 1995, established a renewed partnership among HUD, State, and local governments, public and private agencies, tribal governments, and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems.

The SuperNOFA approach builds upon Consolidated Planning implemented by Secretary Cuomo in HUD's community development programs, and also reflects the Secretary's organizational changes for HUD, as described in the Secretary's management reform plan. On June 26, 1997, Secretary Cuomo released the HUD 2020 Management Reform Plan, which provides for significant management reforms at HUD. This plan calls for significant consolidation of like programs to maximize efficiency and dramatically improve customer service. The plan also calls for HUD to improve customer service by adopting a principle of ''menus not mandates.''

By announcing the funding of groups of related programs in one NOFA, HUD hopes to assist communities in making better use of available resources to address their needs and the needs of those living within the communities in a holistic and effective fashion. These funds are available for eligible applicants to support individual program objectives, as well as cross-cutting and coordinated approaches to improving the overall effective use of available HUD program funds.

To date, HUD has been consolidating and simplifying the submission requirements of many of its formula grant and discretionary grant programs to offer local communities a better opportunity to shape available resources into effective and coordinated neighborhood housing and community development strategies that will help revitalize and strengthen their communities, physically, socially and economically. To complement this overall consolidation and simplification effort, HUD designed this process to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs in response to a single NOFA. Everyone interested in HUD's assistance programs can benefit from having this information made available in one NOFA.

Coordination, Flexibility, and Simplicity in the HUD Funding Process

This National SuperNOFA coordinates the application process for those program activities which successful grantees will be required to implement on a nationwide, rather than a local or regional, basis. This nationwide scope is the unique characteristic which distinguishes the three programs included in this National SuperNOFA. The programs which make funding available under the other three FY 1998 SuperNOFAs focus on meeting local housing and community development needs. For those programs, the SuperNOFAs encourage greater coordination by, and provide flexibility to, eligible applicants to determine what HUD program resources best fit a community's needs, as identified in local Consolidated Plans and Analysis of Impediments to Fair Housing Choice (''Analysis of Impediments'' (AI)).

This National SuperNOFA seeks to implement the same improvements for nationwide activity grant competitions as the other SuperNOFAs do for local activity grants: a simplification of the application process; the promotion of effective and coordinated use of program funds; a reduction of duplication in the delivery of services and housing and community development programs; permitting interested applicants to seek to deliver a wider, more integrated array of services; and an improvement in the system for potential grantees to be aware of, and compete for program funds.

HUD encourages eligible applicants to apply for multiple HUD programs and work together to coordinate and, to the maximum extent possible, join their activities to form a seamless and comprehensive program of assistance to meet the nationwide needs addressed by this National SuperNOFA.

The specific statutory and regulatory requirements of each of the three separate programs continue to apply to

each program. The National SuperNOFA reflects, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the individual program requirements that are identified for each program. Also, you will note that not all applicants are eligible to receive assistance under all three programs identified in this SuperNOFA.*

The National SuperNOFA contains two major sections. The General Section contains the procedures and requirements applicable to all applications. The Programs Section describes each program for which funding is made available in the National SuperNOFA. As in the past, each program provides a description of eligible applicants, eligible activities, and any additional requirements or limitations that apply to the program. An additional feature of this National SuperNOFA is that it consolidates both the factors for award and application submission requirements into common elements that apply to all three national programs. The presentation of a single set of uniform rating factors and submission requirements further advances the coordination and simplification of the NOFA process, and demonstrates the interconnections that can be realized even with programs as diverse as the three covered under this National SuperNOFA.

Please read carefully both the General Section and the Programs Section of the SuperNOFA for the program(s) to which you are applying. This will ensure that you apply for program funding for which your organization is eligible to receive funds and you fulfill all the requirements for that program(s).

The Programs of this National SuperNOFA and the Amount of Funds Allocated

The three programs for which funding availability is announced in this National SuperNOFA are identified in the following chart. The approximate available funds for each program are listed as expected funding levels based on appropriated funds. Should recaptured or other funds become available for any program, HUD reserves the right to increase the available program funding amounts by the amount available.

The chart also includes the application due date for each program, the OMB approval number for the information collection requirements contained in the specific program, and the Catalog of Federal Domestic Assistance (CFDA) number.

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PROGRAM NAME	FUNDING AVAILABLE	DUE DATE	SUBMISSION LOCATION AND ROOM
FAIR HOUSING INITIATIVES PROGRAM - NATIONAL FOCUS EDUCATION AND OUTREACH CFDA No.: 14.409 OMB Approval No.: 2529-0033	$ 3,500,000	July 7, 1998	HUD Headquarters, FHIP/FHAP Support Division, Room 5234
NATIONAL HOUSING COUNSELING TRAINING PROGRAM CFDA No.: 14.169 OMB Approval No.: 2502-0261	$ 550,000	July 7, 1998	HUD Headquarters, Director, Marketing and Outreach Division, Office of Single Family Housing, Room 9166
NATIONAL LEAD HAZARD AWARENESS CAMPAIGN CFDA No: 14.900 OMB Approval No.: pending	$ 1,000,000	July 7, 1998	HUD Headquarters, Office of Lead Hazard Control, Room B-133

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Paperwork Reduction Act Statement

For those programs listed in the chart which have OMB approval numbers, the information collection requirements contained in this National SuperNOFA for those programs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). For those programs listed in the chart for which an OMB approval number is pending, the approval number when received will be announced by HUD in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Section of the National SuperNOFA

I. Authority; Purpose; Amount Allocated; Eligible Applicants and Eligible Activities

(A) Authorities

The authority for Fiscal Year 1998 funding availability under this National SuperNOFA is the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub.L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act). Where applicable, additional authority for each program in this National SuperNOFA is identified in the Programs Section.

(B) Purpose

The purpose of this National SuperNOFA is to:

(1) Make funding available through a variety of programs to implement information, outreach and education activities on a nationwide scale that will empower communities and their residents, particularly the poor and disadvantaged, to develop viable communities, provide decent housing and a suitable living environment for all citizens, without discrimination in order to improve themselves both as individuals and as a community.

(2) Simplify and streamline the application process for funding under HUD programs. By making available to eligible applicants the application requirements for HUD programs with nationwide coverage in one NOFA, HUD hopes that the result will be a less time consuming and less complicated application process. This new process also allows an applicant to submit one application for funds for several programs. Except where statutory or regulatory requirements or program policy mandate differences, the National SuperNOFA strives to provide for one set of rules, standardized rating factors, and uniform and consolidated application procedures.

(3) Enhance the ability of applicants to make more effective and efficient use of HUD national funding to implement coordinated information, outreach and education activities on a nationwide scale. Through this National SuperNOFA process, applicants are encouraged to promote methods for developing more coordinated and effective approaches to dealing with national problems by recognizing the interconnections among the underlying problems and ways to address them through layering of available HUD programs;

(4) Promote the ability of eligible applicants to participate in the programs contained in this National SuperNOFA; provide an increased opportunity to assist the effort to develop and implement consistent, national programs which promote fair housing practices and open housing opportunities; and provide technical assistance and services to improve program results and increase the productivity of HUD programs in meeting community needs; and

(5) Recognize and make better use of the expertise that each of the programs, and organizations eligible for funding under this National SuperNOFA, can contribute when developing and implementing nationwide information, outreach and education activities.

(C) Amounts Allocated

The amounts allocated to specific programs in this National SuperNOFA are based on appropriated funds. Should recaptured funds become available in any program, HUD reserves the right to increase the available funding amounts by the amount of funds recaptured.

(D) Eligible Applicants and Eligible Activities

The eligible applicants and eligible activities for each program are identified and described for the program in the Programs Section of the National SuperNOFA.

II. Requirements and Procedures Applicable to All Programs

Except as may be modified in the Programs Section of this Super NOFA, or as noted within the specific provisions of this Section II, the following principles apply to all programs. Please be sure to read the program area section of the National SuperNOFA for additional requirements or information.

(A) Statutory Requirements

All applicants must meet and comply with all statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. Copies of the regulations are available from the SuperNOFA Information Center or through the Internet at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed are ineligible, or HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(B) Threshold Requirements—Compliance with Fair Housing and Civil Rights Laws

All applicants must comply with all applicable Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR § 5.105(a). If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this National SuperNOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(C) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(D) Affirmatively Furthering Fair Housing

Where applicable, each successful applicant will have a duty to affirmatively further fair housing. Applicants should include in their work plans the specific steps that they will take to (1) address the elimination of impediments to fair housing; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in this National SuperNOFA.

(E) Forms, Certifications and Assurances

Each applicant is required to submit signed copies of the standard forms,

certifications, and assurances, listed in this section, unless the program requirements in the Programs Section specifies otherwise.

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL); (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are not required to submit this certification. Tribes and TDHEs established under State law are required to submit this certification.)

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(F) OMB Circulars

The policies, guidances, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments) apply to the award, acceptance and use of assistance under the programs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this SuperNOFA. Compliance with additional OMB Circulars may be specified for a particular program in the Programs Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(H) Prohibition Against Multiple Billing

A recipient may not bill two or more awards for the same work, materials, or any other expenses.

III. Application Selection Process

(A) General

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* All applications for funding in each program listed in this National SuperNOFA will be evaluated and rated against the criteria in this National SuperNOFA. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

(2) *Ranking.* Applicants will be ranked within each program. Applicants will be ranked only against others that applied for the same program funding and where there are set-asides within the competition, the applicant would only compete against applicants in the same set-aside competition.

(B) Threshold Requirements

HUD will review each application to determine whether the application meets all of the threshold criteria described for program funding made available under this National SuperNOFA. Applications that meet all of the threshold criteria will be eligible to be rated and ranked, based on the criteria described, and the total number of points to be awarded.

(C) Factors For Award Used To Evaluate and Rate Applications

(1) For all of the programs for which funding is available under this National SuperNOFA, the points awarded for the factors total 100.

(2) *The Five Standard Rating Factors.* In accord with the other three SuperNOFAS for this year, this National SuperNOFA uses Five Standard Rating Factors. One of these factors in the other SuperNOFAs, Rating Factor 2: Need/Extent of the Problem, has been modified to reflect the national scope of the programs under this National SuperNOFA. The Need in the other SuperNOFA programs must be identified by applicants at the local level at which they propose to undertake activities. In this National SuperNOFA, the need for the eligible activities has been determined by HUD to exist at the national level. Therefore, applicants will be expected to address this factor by describing the basis or rationale they used to determine why the proposed work activities will best address the needs that HUD has identified.

The factors for rating and ranking applicants and the maximum points for each factor are listed in this Section III(C)(2) as follows:

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner, and the applicant's ability to develop and implement large information campaigns, community tension projects, or training programs, as appropriate, on a national scale. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project. In rating this factor, HUD will consider the extent to which the application demonstrates:

(1) *General Description of Applicant Organization and Relevant Experience.*

(a) The eligibility and qualifications of the applicant organization; the type of organization (e.g., public, private, non-profit, for profit); and the organization's general areas of activity or line of business.

(b) If the applicant has managed large, complex, interdisciplinary projects, the applicant must include information on them in its response.

(c) Awards and major accomplishments of the applicant organization must be described. HUD will also consider any documented evidence, such as performance reviews, newspaper articles, or monitoring findings, that may reflect positively or negatively upon the ability of the applicant and its proposed staff to perform the work.

(d) The applicant's capability in handling financial resources with adequate financial control procedures and accounting procedures. In addition,

HUD will consider findings identified in applicants' most recent audits; internal consistency in the application of numeric quantities; accuracy of mathematical calculations; and other available information on financial management capability.

(2) *Specific Description of Staff for Proposed Activities.* The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals to deliver the proposed activities in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program; the knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. To demonstrate that the applicant has sufficient personnel, the applicant must submit the proposed number of staff hours for the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert. Experience will be judged in terms of at least two years' worth of recent and relevant experience to undertake eligible program activities or projects similar in scope or nature and directly relevant to the work activities proposed.

(3) *Specific Description of Experience Relevant to the Proposed Activities.* Applicants must describe their ability to effectively develop, implement, and manage a media campaign, tension reduction project for communities, or training program, as appropriate, on a national scale. Applicants for FHIP program funding must specifically describe their experience in formulating or crrying out programs to prevent or eliminate discriminatory housing practices. Applicants must discuss their knowledge of implementing coordinated national training programs, reducing community tensions, or marketing national awareness campaigns, especially in the areas of fair housing, discrimination, public health, and housing. In responding to this subfactor, the applicant must describe the extent to which its past activities have resulted in successful national media campaigns, training programs, or reduction of tensions in communities, as appropriate, especially with respect to developing and implementing innovative strategies resulting in positive public response.

Rating Factor 2: Need/Approach to the Problem (10 Points)

This factor addresses the extent to which the applicant documents the national need that its proposed activities and methods are intended to address, and how its proposal offers the most effective approach for dealing with that national need. In responding to this factor, an applicant will be evaluated on the following:

(1) The extent to which the applicant describes and documents the national need the application intends to address, which demonstrates a grasp of the elements of the problem and its pervasiveness at the national level. The applicant's description of the national need will be used to evaluate the depth of the applicant's understanding of the problem as an indication of ability to address the problem; and

(2) The extent to which the applicant provides a rationale for how its proposed activities and methods most effectively deal with the national need described by the applicant in response to subfactor (1), immediately above. To the extent possible, applicants should demonstrate effectiveness in terms of scope and cost.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In evaluating this factor, HUD will consider the extent to which:

(1) *Work Plan.* Applications include work plans that:

(a) Clearly describe the specific tasks and subtasks to be performed, the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously, estimated completion dates, and the work and program deliverables to be completed within the grant period, including specific numbers of quantifiable end products and program improvements the applicant aims to deliver by the end of the award agreement period as a result of the work performed;

(b) Provide national coverage, specific protected class focus, as well as focus on persons traditionally underserved; and

(c) Describe the immediate benefits of the project and how the benefits will be measured. Applicants must describe the methods they will use to determine the effectiveness of their national marketing strategies or training programs.

(2) *Budget.* Applications include proposed budgets that demonstrate:

(a) Cost estimates of salary levels, staff assignments, number of staff hours, and all other budget items are reasonable, allowable, and appropriate for the proposed activities;

(b) The proposed program is cost effective in achieving its anticipated results, as well as in achieving significant impact;

(3) Proposed activities will be conducted in a manner (e.g., languages, formats, locations, distribution, use of minority media) that will reach and benefit all members of the public, especially members of target groups identified in the individual program sections of this National SuperNOFA;

(4) Applications describe how proposed activities will yield long-term results and innovative strategies or ''best practices'' that can be readily disseminated to other organizations and State and local governments; and

(5) The proposed media campaign, community tensions project, or training program makes activities, training and meeting sites, and information services and materials in places and formats that are accessible to all persons including persons with disabilities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other resources which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources, including financial resources, to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants must also describe how they plan to use their affiliated branches, or partner with other organizations, to distribute materials, training or services developed under this National SuperNOFA for use at the local level. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area or subject.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of

understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program makes materials, training or services available to local community programs and implements a coordinated process of addressing the national need by using HUD funding resources and other available resources. Applicants must also describe how they plan to use their affiliated branches, or partner with other organizations, to distribute materials, training or services developed under this National SuperNOFA for use at the local level. In evaluating this factor, HUD will consider:

(1) The extent to which the application demonstrates that project activities will reach the targeted audience. This includes a discussion of the applicant's methods or approaches to ensure that activities and materials are made available to local groups and organizations and a description of how such activities can enhance or work in tandem with local activities and materials. At a minimum, the application should discuss procedures to be used to promote awareness of the services provided by the proposed project.

(2) The extent to which the application demonstrates that the applicant, in carrying out program activities, will make communities and organizations aware of opportunities for linking activities with:

(a) Other HUD funded program activities, proposed or on-going; or

(b) Other proposed or on-going State, Federal, local or privately funded activities which, taken as a whole, support and sustain a comprehensive system to address the purposes of these programs.

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(E) Adjustments to Funding

HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of the programs contained in this National SuperNOFA are met. HUD also reserves the right to adjust funding based on revisions in locations for project activities. HUD may choose not to fund portions of the applications that are ineligible for funding under applicable program statutory or regulatory requirements, or which do not meet the requirements of this General Section of this National SuperNOFA or the requirements in the Programs Section for the specific program, and fund eligible portions of the applications.

If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program area. If the applicant turns down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program area where there is a balance of funds.

Additionally, in the event of a HUD procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this National SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees

Performance and compliance actions of grantees will be measured and addressed in accordance with applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed earlier in the introductory section of this National SuperNOFA, part of the simplification of this funding process is to reduce the duplication effort involved in completing and submitting similar applications for HUD funded programs. The application submission requirements for all three programs under this National SuperNOFA have been consolidated. In addition to the forms, certifications and assurances listed in Section II.(E) of the General Section of this National SuperNOFA, all applications must, at a minimum, contain the following items:

(A) *Transmittal Letter* which identifies the SuperNOFA, the program under the SuperNOFA for which funds are requested, the dollar amount requested for each program, and the applicant submitting the application. If applying for more than one program, please indicate in the letter the location where the original signed application was submitted.

(B) *Budget* identifying costs by cost category in accordance with the following:

(1) *Direct Labor* by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) *Fringe Benefits* identifying the rate, the salary base the rate was computed on, and the total estimated fringe benefit cost;

(3) *Material Costs* indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(4) *Transportation Costs*, as applicable. Where a local private vehicle is proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. For purposes of estimating travel costs for the Housing Counseling National Training Program and the FHIP Community Tensions Project, applicants should project travel costs to the District of Columbia, San Francisco, Atlanta, Chicago, and New Orleans. The actual sites of activities will be determined by HUD. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence, other travel costs, such as those for HUD-sponsored training, as appropriate, and the total estimated transportation costs;

(5) *Equipment Charges*, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) *Consultant Costs*, if applicable. Indicate the type, estimated number of

consultant days or hours, rate per day or hour, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) *Subcontract Costs*, if applicable. Indicate each individual subcontract and amount. For each proposed subcontract that is in excess of 10% of the grant amount, a separate budget which identifies costs by cost categories should be included;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award;

(9) *Indirect costs* should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. The submission should include the rationale used to determine costs and validation of fringe and indirect cost rates, if the applicant is not using an accepted, Federally negotiated indirect cost rate.

(C) *Financial Management and Audit Information*. Each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets the applicable prescribed standards for fund control and accountability required by: OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations; OMB Circular A–110 (as codified at 24 CFR Part 84), Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and/or OMB Circular A–102 (as codified at 24 CFR Part 85) Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(D) *Narrative statement* addressing the five Rating Factors in Section III.(C) of the General Section of this National SuperNOFA. Your narrative response should be numbered in accordance with rating factor and subfactor identified under Section III.(C) of the General Section.

(E) *A Work Plan* which incorporates all activities to be funded in the application and details how the proposed work will be accomplished. Following a task-by-task format, the Work Plan must identify activities conducted and how the tasks meet the requirements of Rating Factor 3, Soundness of Approach, in the General Section of this National SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Findings and Certifications

(A) Environmental Impact

This National SuperNOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this SuperNOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(B) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this National SuperNOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the National SuperNOFA solicits applicants to implement nationwide information, outreach and education activities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the National SuperNOFA is not subject to review under the Order.

(C) Prohibition Against Lobbying Activities

Applicants for funding under this National SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

(D) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this National SuperNOFA as follows:

(1) *Documentation and public access requirements*. HUD will ensure that documentation and other information regarding each application submitted pursuant to this National SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures*. HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this National SuperNOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding*. HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

VII. The FY 1998 National SuperNOFA Process and Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step at changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination may be considered for FY 1998. The SuperNOFAs published for FY 1998 represent the additional step taken by HUD to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new SuperNOFA process was developed based on comments received from HUD clients and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years. For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process, and how it may be improved in future years.

The description of program funding available under this first National SuperNOFA to implement information, outreach and education activities on a nationwide scale follows.

Dated: April 23, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach Competition

BILLING CODE 4210–32–C

Funding Availability for the Fair Housing Initiatives Program, National Focus Education and Outreach

Program Description: Approximately $3,500,000 is available for the National Focus Education and Outreach Initiative under the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Under this competition, projects that have a national focus will be funded under the Education and Outreach Initiative (EOI) as follows:

(1) *Nationwide Education Project.* Activities funded must provide a coordinated national education campaign which provides fair housing information to the public. Efforts must include targeting such information toward educating all persons about their fair housing rights, including groups historically underserved, such as new immigrant groups as well as other protected classes under the Fair Housing Act about their fair housing rights.

(2) *Community Tensions Project.* Funded activities must be used to develop and implement national methodologies that can be used nationwide as a model for both preventing and responding to the community tensions that arise from persons exercising their rights of equal housing choice and opportunity as guaranteed by the Fair Housing Act (nondiscrimination on the basis of race, color, religion, sex, familial status, national origin, and disability). Implementation of these methodologies must involve sending facilitators to work with groups in HUD-selected communities to prevent or respond to the emergence of such community tensions.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 7, 1998, at HUD Headquarters. See the General Section of this National SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and five copies) must be submitted to: FHIP/FHAP Support Division, Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 5234, Washington, DC 20410, by mail or hand delivery. When submitting your application, please refer to FHIP National Focus, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance: For Application Kits. For an application kit and supplemental information please call the HUD SuperNOFA Information Clearinghouse at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY at 1–800–HUD–2209. The application kit also will be available on the Internet at: http://www.HUD.gov. When requesting an application kit, please refer to FHIP National Focus, and provide your name, address (including zip code), and telephone number (including area code).

For Further Information. For answers to your questions, you have several options. You may contact Ivy Davis, Director, FHIP/FHAP Support Division at 202–708–0800 (this is not a toll-free number). Persons who use a text telephone (TTY) may call 1–800–290–1617.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP). The FHIP regulations are found at 24 CFR part 125.

(B) Purpose

In September 1997, HUD announced a ''crackdown on housing discrimination'' and pledged to double its enforcement actions. The projects funded under the FHIP in FY 98 are expected to contribute to the accomplishment of this goal.

In keeping with the announced crackdown on discrimination, HUD believes that educating immigrants about fair housing rights and ensuring enforcement mechanisms to address the specific types of discrimination they and other underserved populations encounter is necessary if we are to expand housing opportunities in communities across this nation. Additionally, HUD continues to move aggressively to expand opportunities in housing into communities which have not historically served persons who are most likely to be the victims of unlawful discrimination. HUD recognizes that community tensions often arise whenever there are changes or proposed changes in the local housing market caused by the entry or the departure of persons from a community or neighborhood. For example, such tensions may be prompted by a rise in the numbers of a particular immigrant population, proposals to establish group homes for persons with disabilities, or persons moving or attempting to move into neighborhoods where persons of their race or ethnicity have not previously lived or have been underrepresented. Recognizing that dealing with existing community tensions as well as working to prevent their development is an important element of ensuring equal housing opportunity, the Department seeks to fund a single entity that can (a) develop national methodologies for both preventing and responding to community tensions that are related to persons exercising their Fair Housing Act rights and moving into communities where members of their protected class either have not previously lived or have been underrepresented, and (b) respond to or attempt to prevent the emergence of community tensions in communities that HUD identifies as experiencing high levels of community tensions or showing a strong likelihood that such tensions may build up without intervention or preventive measures.

(C) Amount Allocated

The FY 1998 HUD Appropriations Act appropriated $15 million for activities pursuant to section 561, the Fair Housing Initiatives Program. Of the $4,500,000 allocated to the EOI, $3,500,000 is being used for this competition under the EOI for the following projects:

(1) *Nationwide Education Project.* Of the $3,500,000, $2,000,000 is available for a single 18-month national EOI project, of which at least $200,000 will be for activities related to Fair Housing Month.

(2) *Community Tensions Project.* A total of $1,500,000 will be used to fund a single 24-month project that will address tensions that arise in local communities as persons protected under the Fair Housing Act seek to expand their housing choices.

The remaining funding under this initiative was made available through the SuperNOFA published on March 31, 1998, which solicited applications that are regional/local in scope.

The full cost of FY 1998 multi-year awards under the FHIP will be funded from FY 1998 funds. HUD retains the right to transfer funds between the FHIP projects listed below, within statutorily prescribed limitations. The amounts included in this notice are subject to change based on the availability of funds.

(D) Eligible Applicants

(1) *Nationwide Education Project.*

(a) The following organizations are eligible to receive funding under the EOI—Nationwide Education Project:

(i) Qualified Fair Housing Enforcement Organizations (QFHOs)

(ii) Fair Housing Enforcement Organizations (FHOs), and

(iii) Other non-profit organizations representing groups of persons protected under the Fair Housing Act.

(b) In addition to meeting the eligible applicant requirement, all applicants under the EOI—Nationwide Education Project must include as part of their proposal a subcontract with an established media/advertising organization which has experience in conducting national media campaigns. Applicants that fail to include such subcontract arrangements in their proposals will be ineligible for funding.

(2) *Community-Tensions Project.* Eligible applicants that have the organizational infrastructure of affiliate chapters, branch members or other outreach arms that can be utilized to provide national coverage and facilitate involvement at the local level in communities to be selected throughout the nation, and that possess familiarity with local circumstances and issues in diverse communities, are particularly encouraged to apply. Applicants that do not have affiliates or the organizational structure to call upon should describe plans to partner with other groups or organizations to provide national coverage. In addition, the Department particularly encourages the submission of applications from traditional civil rights organizations. The organizations that are eligible to receive funding under the EOI—Community-Tensions Project are:

(a) QFHOs;

(b) FHOs;

(c) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(d) State or local governments; and

(e) FHAP Agencies.

(E) Eligible Activities

(1) *Nationwide Education Project.* Activities eligible to be funded under the Nationwide Education Project must provide a centralized, coordinated effort for the development and implementation of a fair housing media campaign designed to educate the public of their fair housing rights. Applications must address at least one of the following statutory objectives: demonstrated cooperation with real estate industry organizations; and/or dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988. HUD encourages applicants to provide materials developed under this program to housing counseling agencies and service providers. HUD anticipates that products will be available in at least 3 languages other than English. Deliverables must include Public Service Announcements (PSAs) for radio and television, and posters and other graphic materials. Graphic materials may include, but are not limited to, enlarged reproductions of several print public service announcements, separately produced and printed posters for public dissemination, and the development of ad slicks to market in newspapers and magazines nationwide. The applicant should plan on using a clipping service or other appropriate means to collect information on frequency and scope of the placement of ads.

Applications must include development and dissemination of media products in languages other than English and a discussion of the applicant's and/or subcontractors' expertise in languages other than English and in reaching the informational needs of such non-English speaking audiences. Applicants should also utilize media targeted to the outreach group, e.g., minority newspapers.

A minimum of $200,000 in the Nationwide Education Project must be budgeted for activities and materials developed for future Fair Housing Month activities, and budgets must clearly break out funds relating to those activities that support conformity with this requirement.

(2) *Community Tensions Project.* Activities funded as a community tensions project must be designed to meet the following objectives:

(a) Prevent the emergence of community tensions that may occur when persons who are members of classes (race, color, religion, sex, familial status, and disability) protected by the Fair Housing Act exercise their right of equal housing opportunity and move into communities where members of their protected class have not previously lived or have been underrepresented, and

(b) Respond through interventions when such community tensions emerge and create volatile situations which harm, or threaten to harm, those who are exercising their rights to equal housing opportunity.

The applicant would be required to develop a menu of strategies that communities can use to reduce or prevent tensions within a community due to protected classes exercising their fair housing choices and to increase the referral of individuals to file complaints with HUD when they believe they have been victims of discriminatory housing practices.

In its community response and preventive work, the applicant should solicit participation from, and work with, a diverse group of local organizations and community representatives (such as local elected officials, schools, police departments, faith-based community groups, civil rights organizations, community service organizations, FHAP agencies). It is anticipated that the community response and preventive work will implement some of the developed strategies and address not only immediate problems or problems anticipated at that time, but also the underlying issues which make the existence or prospect of community tensions a long-term problem. While the application must be submitted by a single entity, the application can propose a partnership of multiple organizations, consisting of the applicant and its subrecipients or subcontractors, in order to accomplish the objectives of this project.

II. Program Requirements

In addition to the program requirements listed in the General Section of this National SuperNOFA, grantees must meet the following program requirements:

(A) Definitions

The additional definitions that apply to this program section of the National SuperNOFA are as follows:

(1) *Fair Housing Assistance Program (FHAP) Agencies* means State and local agencies funded by the Fair Housing Assistance Program (FHAP), as described in 24 CFR 115.

(2) *Fair housing enforcement organization (FHO)* means an organization engaged in fair housing activities as defined at 24 CFR 125.103.

(3) *Qualified Fair Housing Enforcement Organization (QFHO)* means an organization engaged in fair housing activities as defined at 24 CFR 125.103.

(4) *Traditional Civil Rights Organizations* means private, non-profit organizations or institutions and/or private entities that are formulating or carrying out programs to prevent or

eliminate discriminatory housing practices and which have a history and primary mission of engaging in programs designed to secure civil rights protections for groups and individuals.

(B) Additional Requirements

The following requirements are applicable to all applications:

(1) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, disability, familial status, or national origin.

(2) Applications that request FHIP funding in excess of the award cap will be ineligible.

(3) Projects aimed solely or primarily at research or dependent upon such data gathering, including but not limited to surveys and questionnaires, will not be eligible under this program section of the National SuperNOFA.

(4) All proposals must contain a description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(5) Every Community Tensions Project application must include as one of its activities a procedure for referring persons with fair housing complaints to HUD for further enforcement processing. Every Nationwide Education Project must propose to use HUD toll free Housing Discrimination Hotline numbers for voice and TTY.

(6) In accordance with 24 CFR 125.104(f), no recipient of assistance under the FHIP may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(7) *Applicants Limited to a Single Award.* Applicants may apply for funding for more than one project or activity under one or more Initiatives. However, applicants are limited to one award under this program section of the National SuperNOFA. If more than one eligible application is submitted by an applicant for the program section of the National SuperNOFA and both are within funding range, the Department will select the application which the applicant has indicated as its preference for award.

(8) *Independence of Applications.* There are no limits on the number of applications that can be submitted by a single applicant for this National SuperNOFA. However, each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. This provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(9) *Project Starting Period.* The Department has determined that all applications must propose that the project will begin immediately upon issuance of an award.

(10) *Page Limitation.* Applicants will be limited to 10 pages of narrative responses for each of the selection factors (this does not include forms or documents which are required under each factor). Brochures, news articles, PSAs, posters, and other materials submitted to document capability will be considered in the evaluation process and will not count towards the page limitation. Applicants that exceed the 10-page limit for each factor will only have the first 10 pages evaluated for each factor. Failure to provide narrative responses to all selection factors will result in an application being ineligible.

(11) *Training.* All applications must include a training set-aside of $3,000 for single-year projects and $6,000 (total) for multi-year projects in all project budgets. HUD will permit grantees to use these funds to attend both HUD-sponsored and HUD-approved training.

(12) *Accessibility Requirements.* All activities funded by FHIP must be accessible to persons with disabilities and materials must be available in accessible formats.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* The selection process is structured to achieve the objectives set forth in section I.(B) of this program section of the National SuperNOFA. Awards will be made in rank order, except that the additional procedures described below will be followed to make awards out of rank order to achieve the goals outlined below.

Each application for funding will be evaluated competitively. Upon receipt, the applications will be sorted into two categories: EOI-Nationwide Education Project and EOI—Community Tensions Project. Then, in each category, they will be awarded points and assigned a score based on the Rating Factors identified in section III.(C) of the General Section of the National SuperNOFA. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. Awards for each category listed above will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications, with the exception described in section III.(A)(2), immediately below. The final decision rests with the Assistant Secretary for Fair Housing and Equal Opportunity or designee.

(2) *Tie breaking.* When there is a tie in the overall total score and insufficient funding is available to fund all applications with the tied score, the award will be made to the applicant that has the higher score under Rating Factor 3 (Soundness of Approach). If these applications are equal in this respect, the application that receives a total higher number of points under Rating Factor 1 (Capacity of the Applicant and Relevant Organizational Experience) will receive the award.

(3) *Applicant Notification and Award Procedures.*

(a) *Notification.* No information will be available to applicants during the period of HUD evaluation, approximately 90 days, except for notification in writing or by telephone to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(b) *Negotiations.* After HUD has ranked the applications and provided notifications to applicants whose scores are within the funding range, HUD will require that applicants in this group participate in negotiations to determine the specific terms of the cooperative agreement. HUD will follow the negotiation procedures described in Section III.(D) of the General Section of this National SuperNOFA.

(c) *Funding Instrument.* HUD expects to award a cost reimbursable cooperative agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(d) *Reduction of Requested Grant Amounts and Special Conditions.* As provided in Section III.(E) of the General Section of this National SuperNOFA, HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement.

(e) *Performance Sanctions.* A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further

participation in the FHIP, and denial of further participation in programs of the Department or of any Federal agency.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided in Section III.(C) of the General Section of this National SuperNOFA.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II.(E) of the General Section of this National SuperNOFA, all applications must, at a minimum, also contain the items listed in Section IV. of the General Section.

V. Corrections to Deficient Applications

The General Section of this National SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and (12) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 and are not subject to environmental review under the related laws and authorities.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

National Housing Counseling Training Program

BILLING CODE 4210–32–C

Funding Availability for the National Housing Counseling Training Program

Program Description: Approximately $550,000 in housing counseling funds is available for the Housing Counseling Training (HCT) Program to train housing counselors of local HUD-approved counseling agencies nationwide. HUD's HCT Program will cover basic to advanced comprehensive counseling.

Application Due Date: Completed applications must be received no later than 12:00 midnight, Eastern time on July 7, 1998, at HUD Headquarters. See the General Section of this National SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail or overnight delivery, or hand carried).

Address for Submitting Applications: Completed application (one original and two copies) must be submitted to: The Director, Marketing and Outreach Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9166, Washington, DC 20410. When submitting your application, please refer to the National Housing Counseling Training Program, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance: For Application Kits. For an application kit and supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the National Housing Counseling Training Program.

For Further Information and Technical Assistance. You may call the Marketing and Outreach Division at HUD Headquarters at 202–708–0317. Before the application deadline, HUD Headquarters staff will be available to provide general guidance.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

HUD's Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), and is generally governed by HUD Handbook 7610.1, REV–4, dated August 9, 1995.

(B) Purpose

Section 106 of the Housing and Urban Development Act of 1968 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and meeting the responsibilities of tenancy and homeownership.

This includes housing counseling training for housing counselors of local HUD-approved counseling agencies nationwide to assure that the counseling being provided is current and accurate. To achieve this purpose, the training must include instructions to the housing counselors on (1) how to conduct community outreach to potential first-time homebuyers, and (2) how to provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this training is key to providing effective counseling which will support the revitalization and stabilization of low income and minority neighborhoods.

In FY 1998, HUD is requiring applicants to include in their proposed training, counseling for:

(1) First-time homebuyers by offering Homebuyer Education and Learning Program (HELP) training sessions;

(2) Eligible persons 62 or older who desire to use the Home Equity Conversion Mortgage (HECM) in order to convert their equity into a lump sum payment or an income stream that can be used for such purposes as home improvements, medical costs, and/or pay living expenses.

(3) Other homebuyers, homeowners and renters.

(C) Amount Allocated

Under this National SuperNOFA program, approximately $550,000 is available for eligible non-profits or public entities to provide technical training under the HUD Housing Counseling program, fundable for a period from twelve (12) to eighteen (18) calendar months. This funding is available from unused Housing Counseling funds appropriated in FY 1997. The funding period may begin from the date that the award is executed by HUD.

(D) Eligible Applicants

(1) Applicants must be public or private non-profit organizations that are HUD-approved housing counseling agencies with at least 2 years of relevant training experience. Applicants may propose to provide all, or a portion of, the eligible activities specified in section I.(E) of this program section of the National SuperNOFA, below.

(2) *Number of Applicants To Be Selected.* One or more training applicants will be selected who are experienced in delivering housing counseling training on a nationwide basis; receive a high score based upon the Rating Factors in Section III.(C) of the General Section of this National SuperNOFA; and satisfy all other criteria in this National SuperNOFA. They include the following: a HUD-approved local housing counseling agency; a HUD-approved national, regional, or multi-state housing counseling intermediary, or affiliate; or, a State housing finance agency, or affiliate.

(E) Eligible Activities

The applicant(s) funded under this National SuperNOFA program will deliver comprehensive housing counseling training, or a portion of such training, which may be conducted on-site, through satellite broadcast, or by means of CD-ROM computer training software, to cover the following components:

(1) Homebuyer Education Programs, including HUD's Homebuyer Education and Learning Program (HELP) and similar programs may be used in sessions that consist of approximately sixteen (16) hours of training. Completion of the training may allow graduates to receive first-time homebuyer incentives, such as the reduction in the FHA insurance premium. Marketing and outreach personnel at each HUD Homeownership Center will be available to assist agencies in this endeavor.

(2) Pre-purchase Homeownership Counseling covering such issues as purchase procedures, mortgage financing, down payment/closing cost fund accumulation, accessibility requirements of the property, and if appropriate, credit improvement, and debt consolidation.

(3) Post-purchase Counseling, including such issues as property maintenance, and personal money management.

(4) Mortgage delinquency and default resolution counseling including restructuring debt, arrangement of reinstatement plans, loan forbearance, and loss mitigation.

(5) Home Equity Conversion Mortgage (HECM) counseling that assists clients, who are 62 years old or older, with the complexity of converting the equity in

their home to income that is used to pay such items as living expenses or medical expenses.

(6) Loss Mitigation Counseling for clients who may be facing default and foreclosure, and need mortgage default resolution and foreclosure avoidance counseling.

(7) Outreach Initiatives including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities.

(8) Renter Assistance including information about rent subsidy programs, rights and responsibilities of tenants, and lease and rental agreements.

(9) Fair housing counseling that identifies rights, obligations and requirements under the Fair Housing Act.

(F) Eligible Costs

In addition to the budget items required under the application submission requirements in Section IV. of the General Section of this National SuperNOFA, the following costs are eligible:

(1) *Equipment Needed At Training.* Training sites must have the equipment necessary for conducting the training, such as overhead projectors, and microphones. The training program must provide for training sites, information services, and materials accessible to all persons, including those with a wide range of disabilities. These costs must be included in the budget submitted by applicants.

(2) *Cost of Training Facilities.* The cost is to be included in the budget unless provided without charge by the hotels or other training sites.

II. Program Requirements

In addition to the program requirements listed in the General Section of this National SuperNOFA, grantees must meet the following program requirements:

(A) Requirements Applicable to Religious Organizations.

Where the applicant is a religious organization, or a wholly secular organization established by a primarily religious organization, to provide training, the organization must undertake its responsibilities under the counseling training program in accordance with the following principles:

(1) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the Housing Counseling Program.

(B) On-Site Training

(1) *Number of Training Sites.* If applying for on-site training, include the following locations: District of Columbia, San Francisco, Atlanta, Chicago, and New Orleans.

(2) *Number of Workshops at Each Site.* There will be one to three workshops at each site. Approximately 40 to 50 participants will attend each workshop which will cover approximately from two to three days.

(3) *Total Number of Participants.* It is estimated that the total number of participants will vary from an estimated 700 to 1000 participants.

(4) *Eligible Participants.* Housing counselors on the staff of local HUD-approved housing counseling agencies may participate. At least one housing counselor from each local HUD-approved counseling agency will be invited to attend the training. In some instances, two participants may participate in the workshop particularly where there is a high turnover of housing counseling staff and an agency has recently become HUD-approved. On a case by case basis, agencies applying for HUD-approval may be authorized by the Government Technical Representative (GTR) to send staff housing counselors to the workshop. There are approximately 1250 HUD-approved local housing counseling agencies with branch offices. One or more housing counselors from the staff of each may be invited to attend the training.

(C) Reimbursement to Participants

Participants will not be reimbursed for their travel, hotel and food costs by the grantee. There will be no charge to the participants for attending the workshop, for the training manual and other materials and handouts. However, the participants may be reimbursed for their travel and/or hotel costs by their agencies.

(D) Applicants will use the HUD grant to undertake any of the eligible housing counseling activities described in this National Housing Counseling Training Program as included in their proposed training activities. To the maximum extent possible, applicants may provide in-kind contributions and seek other private and public sources of funding for housing counseling training to supplement HUD funding.

(E) Training Manual

The selected grantee(s) will use existing materials from HUD and other acceptable sources to prepare training materials. The grantee(s) will be required to update this information and incorporate the updated material within a training manual. HUD will print and distribute the training manual to the training sites. In the case of CD–ROM training, the training manual shall be incorporated on the CD–ROM. In the case of satellite training, the training manual must be available in text format via the Internet.

(1) *Cost of Packaging, Reproducing, and Mailing to Training Sites.*

These costs will be borne by HUD outside of the grant amount.

(2) *Use of Color or Black and White for Training Manual.* There will be several programs included in the training manual, including, Comprehensive Housing Counseling, Risk Loss Mitigation Counseling, and Home Equity Conversion Mortgage (HECM) Counseling. The training manual must separate sections of the manual to allow trainees to easily identify each section.

(F) Training Level

The training to be provided under this program is designated ''Basic to Advanced.'' It will include participants from beginners to experienced.

(G) Training Content

Training will include housing counseling basics: initial interview; intake and family history; recordkeeping; how to write-up a case; use of the computer; referrals and follow-ups; and reporting, such as form HUD–9902; and Housing Counseling Agency Fiscal Year Activity Report. Intermediate and advanced training will include complex problem solving covering the counseling components.

(H) In-kind Contributions

Applicant may provide such benefits.

III. Application Selection Process

(A) General

Applications will be evaluated competitively, and ranked against all other applicants that have applied for the HCT program. However, after

selection, the actual amount funded is subject to negotiation and adjustment as described in the General Section of this National SuperNOFA.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided in Section III.(C) of the General Section of this National SuperNOFA.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II.(E) of the General Section, all applications must, at a minimum, also contain the items listed in Section IV of the General Section.V. Corrections to Deficient Applications.

The General Section of this National SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

National Lead Hazard Awareness Campaign

BILLING CODE 4210–32–C

Funding Availability for the National Lead Hazard Awareness Campaign

Program Description: Approximately $1,000,000 is available to fund this grant program for a national media campaign to market ''The Campaign for a Lead-Safe America,'' as well as increase overall lead awareness on a national scale. Efforts must include developing and marketing several public service announcements, assisting activities funded under the Local Lead Hazard Awareness Campaign grant to develop the infrastructure needed to implement media strategies to successfully market ''The Campaign for A Lead-Safe America,'' as well as identifying and implementing media strategies to use print, radio and television to increase awareness about the dangers of lead-based paint nationally. Up to $1 million will be awarded on a competitive basis to eligible organizations with grant awards ranging between $50,000–$1 million.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 7, 1998, at the address shown below. HUD reserves the right to republish this program section of the National SuperNOFA and announce additional due dates, or to make no awards at all, if proposals are deficient.

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: U.S. Department of Housing and Urban Development, Office of Lead Hazard Control, 451 7th Street, SW, B–133, Washington, DC 20410, by mail or hand delivery. When submitting your application, please refer to the National Lead Hazard Awareness Campaign, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance: For Application Kits. For an application kit and supplemental information please call the HUD SuperNOFA Information Clearinghouse at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY at 1–800–HUD–2209. The application kit also will be available on the Internet at: http://www.HUD.gov. When requesting an application kit, please refer to National Lead Hazard Awareness Campaign grant, and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. Dolline Hatchett, Community Outreach Officer, Office of Lead Hazard Control, 202–755–1785, extension 114 (this is not a toll-free number).

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The National Lead Hazard Awareness Campaign is authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 of the Housing and Community Development Act 1992, Pub.L. 102–550, section 1011(g)(1).

(B) Purpose

The Federal government has launched a national public education and outreach campaign to protect America's children from the health hazards of lead-based paint. The Campaign for a Lead-Safe America was announced by Mrs. Tipper Gore, the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency at a White House press conference on November 17, 1997. The National Lead Hazard Awareness Campaign funding under this program section of the National SuperNOFA will be awarded to conduct a national media campaign to market ''The Campaign for a Lead-Safe America''; increase lead hazard awareness through the use of radio, newspaper, and television public service announcements; and identify and maximize opportunities to raise visibility of the lead hazard issue among the general public.

In keeping with the announced public awareness campaign, the Department has developed partnerships with major national hardware retailers to display posters in their paint sections and to otherwise educate consumers about lead hazards. Public service advertisements have also been developed for various publications throughout the nation. In addition, Mrs. Tipper Gore has taped two video public service announcements for the Department to use as part of the Campaign for A Lead-Safe America under the slogan, ''Take the Lead on Lead.''

The purpose of the campaign is: (1) to identify and maximize opportunities to raise visibility of the lead issue among the general public, and invigorate the efforts in both the public and private sectors to help eradicate the problem, and (2) to increase lead hazard awareness through education and outreach activities to specific high risk communities, and other identified audiences such as parents, caretakers, pediatricians, children, pregnant women, building owners, and renovation and maintenance personnel.

(C) Amount Allocated

Up to $1 million will be made available on a competitive basis to eligible organizations with grant awards ranging between $50,000—$1 million. The funding selections will be based on the Rating Factors described in the General Section of the National SuperNOFA. The amounts included in this program section of the National SuperNOFA are subject to change based on funds availability.

(D) Eligible Applicants

The types of organizations listed below are eligible to receive funding under this program section of the National SuperNOFA. Partnerships are encouraged, although the application must be made by a single entity.

(a) Public Relation Firms (PRFs)—For profit firms may not include a fee or profit in their budget or costs;

(b) Marketing/Advertising Companies (MACs); and

(c) Non-profit organizations—must submit proof of non-profit status.

(E) Eligible Activities

Eligible activities to be funded under this program section of the National SuperNOFA shall include but not be limited to developing and conducting a national media campaign to increase lead awareness on a national scale to market ''The Campaign for A Lead-Safe America.'' Activities must also work cooperatively with those funded under the Local Lead Hazard Awareness Campaign NOFA to assist in the development of the infrastructure needed to implement media strategies to successfully market ''The Campaign for A Lead-Safe America,'' as well as conduct public education and outreach for lead awareness in specific localities. In addition, applicants are encouraged to focus on innovative methods of marketing several public service announcements, and using well-known public figures as spokespersons for the campaign, as well as identifying and implementing media strategies using print, radio and television to increase awareness about the dangers of lead-based paint nationally. Eligible activities will also include work with major national hardware retailers to identify and coordinate opportunities to increase lead awareness among consumers. Activities may also include the preparation of additional graphics needed to maintain store inventories of lead related posters and educational information. Graphic materials may include, but are not limited to, enlarged reproductions of several print public service announcements, separately

produced and printed posters for public dissemination, and the development of ad slicks to market in newspapers and magazines nationwide. The applicant should plan on using a clipping service or other appropriate means to collect information on frequency and scope of the placement of ads. Applications which include development and dissemination of media products in languages other than English must include a discussion of the applicant's and/or subcontractors' expertise in languages other than English and in reaching the informational needs of such non-English speaking audiences. Applicants should also utilize minority media in an effort to achieve diversity in its outreach efforts.

The performance measures and deliverables will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the applicant's proposal.

II. Program Requirements

In addition to the program requirements listed in the General Section of this National SuperNOFA, grantees must meet the following program requirements:

(A) Applicants Limited to a Single Award

Applicants are limited to one FY 1998 award under this program. If more than one eligible application is submitted by an applicant and both have an adequate score, the Department will select the application which the applicant has indicated as its preference for award.

(B) Independence of Applications

There are no limits on the number of applications that can be submitted by a single applicant. However, each application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. This provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(C) Project Starting Period

The period of performance will be up to 2 years. The applicant must be able to commence work immediately.

(D) Page Limitation

Applicants will be limited to 10 pages of narrative responses for each of the rating factors for a total of no more than 50 pages (this does not include forms or documents which are required under each factor). Items such as brochures and news articles or similar items included in the application will be considered in the evaluation process and will not count towards the page limitation. Applicants that exceed the 10-page limit for each factor will only have the first 10 pages evaluated for each factor. Failure to provide narrative responses to all selection criteria will result in an application being ineligible.

(E) Payment Contingent on Completion

Payment to grantees will be contingent on the satisfactory completion of each project activity.

(F) Accessibility Requirements

All activities and materials funded by the grant must be accessible to persons with disabilities.

(G) Type of Award

HUD reserves the right to award a cooperative agreement that is cost reimbursable or fixed price.

(H) Funding Requests

Applications that request funding in excess of the stated maximum award will be ineligible.

(I) Ineligible Projects

Projects aimed primarily at research or data gathering, including but not limited to surveys and questionnaires, will not be eligible under this program section of the National SuperNOFA.

(J) Interagency Cooperation and Coordination

All proposals must contain a description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, are needed to achieve that purpose.

(K) Minimum Application Score

In order to be funded applicants must have a score of 80 points or better. If applicants score less than 80 points, they may apply again later under the republished program section of this National SuperNOFA, if funds remain available. Not all applicants with scores above 80 will necessarily receive awards.

(L) Definitions

The definitions that apply to this program section of the National SuperNOFA are as follows:

High Risk Communities refers to communities which consist of housing built before 1978.

Media/Advertising Companies (MACs) means private companies that develop, advertise and market ideas using media strategies to increase awareness and better understanding about a product, method, idea, or campaign.

Public Relations Firms (PRFs) means private organizations that develop and implement public awareness methods by using print, broadcast and electronic media, or other communication tools to influence public opinion.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* The selection process is structured to achieve the purpose set forth in Section I(B) of this program section of the National SuperNOFA. Awards will be made in rank order.

Each application for funding will be evaluated competitively, and the applicant will be assigned a score based on the Rating Factors used to evaluate and rate applications identified in Section III.(C) of the General Section of this National SuperNOFA. After eligible applications are evaluated based upon the factors for award and assigned a score, they will be organized by rank order.

(2) *Tie breaking.* When there is a tie in the overall total score and insufficient funding is available to fund all applications with the tied score, the the award will be made to the applicant that has the higher score under Rating Factor 3 (Soundness of Approach). If these applications are equal in this respect, the application that receives a total higher number of points under Rating Factor 1 (Capacity of the Applicant and Relevant Organizational Experience) will receive the award.

(B) *Factors For Award Used To Evaluate and Rate National Lead Hazard Awareness Campaign*

The factors for rating and ranking applicants, and maximum points for each factor, are provided in Section III.(C) of the General Section of this National SuperNOFA.

(C) Applicant Notification and Award Procedures

(1) *Notification.* No information will be available to applicants during the period of HUD evaluation of proposals, which is approximately 90 days, except for HUD notification in writing or by telephone to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) *Funding Instrument.* HUD expects to award a fixed price or cost reimbursable cooperative agreement to each successful applicant. HUD reserves

the right, however, to use the form of assistance determined to be most appropriate after negotiation with the applicant.

(3) *Performance Sanctions.* A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the program, and denial of further participation in programs of the Department or of any Federal agency.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II.(E) of the General Section, all applications must, at a minimum, also contain the items listed in Section IV of the General Section.

V. Corrections to Deficient Applications

The General Section of this National SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(2), (9) and (12) of the HUD regulations, the assistance provided under this program relates only to information services, technical assistance and supportive services and therefore is categorically excluded from the requirements of the National Environmental Policy Act of 1969 and is not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing or repair for HUD assistance under this program.

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federal register

Thursday
April 30, 1998

Part V

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for Targeted Housing and Homeless Assistance Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4364–N–01]

Super Notice of Funding Availability (SuperNOFA) for Targeted Housing and Homeless Assistance Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for Targeted Housing and Homeless Assistance Programs.

SUMMARY: This Super Notice of Funding Availability (SuperNOFA) announces the availability of approximately $1,196,920,112 in HUD program funds covering six (6) Targeted Housing and Homeless Assistance Programs operated and managed by HUD's Office of Community Planning and Development (CPD) and HUD's Office of Housing-Federal Housing Administration (FHA). The General Section of this SuperNOFA contains the procedures and requirements applicable to all programs. The applications for funding for these programs have been consolidated into four applications. The Programs Section of this SuperNOFA contains a description of the specific programs for which funding is made available under this SuperNOFA and additional procedures and requirements that are applicable to each.

APPLICATION DUE DATES: *The information contained in this* **APPLICATION DUE DATES** *section applies to all programs contained in this SuperNOFA.* Completed applications must be submitted to HUD no later than the deadline established for the program for which you are seeking funding. Applications may not be sent by facsimile (FAX). See the Program Chart for specific application due dates.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses.* Completed applications must be submitted to the location specified in the Programs Section of this SuperNOFA. When submitting your application, please refer to the program name for which you are seeking funding.

For Applications to HUD Headquarters. Applications to be submitted to HUD Headquarters are due at: Department of Housing and Urban Development, 451 Seventh Street, SW, Room _____ (See Program Chart or Programs Section for room location), Washington DC 20410.

For Applications to HUD Field Offices. For those programs for which applications are due to the HUD Field Offices, please see the Programs Section for the exact locations for submission.

Applications Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. For applications submitted to HUD Headquarters, hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm until 12:00 midnight, Eastern time. Applications due to HUD Field Office locations must be delivered to the appropriate HUD Field Office in accordance with the instructions specified in the Programs Section of the SuperNOFA.

For applications submitted to the HUD Field Offices, hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 p.m. local time. (Please see Appendix A to this SuperNOFA listing the hours of operations for the HUD Field Offices.)

COPIES OF APPLICATIONS TO HUD OFFICES. The Programs Section of this SuperNOFA may specify that to facilitate processing and review of your submission a copy of the application also be sent to an additional HUD location (for example, a copy to the HUD Field Office if the original application is to be submitted to HUD Headquarters, or a copy to HUD Headquarters, if the original application is to be submitted to a HUD Field Office). Please follow the requirements of the Programs Section to ensure that you submit your application to the proper location. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that for those applications for which copies are being submitted to the Field Offices and HUD Headquarters, timeliness of submission will be based on the time the application is received at HUD Headquarters.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information contained in this section is applicable to all programs contained in this SuperNOFA.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with application kits and/or a guidebook to all HUD programs. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which HUD Office(s) should receive a copy of your application. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209.

Consolidated Application Submissions. Where an applicant can apply for funding under more than one program in this SuperNOFA, the applicant need only submit one originally signed SF–424 and one set of original signatures for the other required assurances and certifications, accompanied by the matrix contained in each application kit. As long as the applicant submits one originally signed set of these documents with an application, only copies of these documents are required to be submitted with any additional application submitted by the applicant. The application should identify the program for which the original signatures for assurances and certifications is being submitted.

For Further Information. For answers to your questions about this SuperNOFA, you have several options. You may call the SuperNOFA Information Center at 1–800–HUD–8929, or you may contact the HUD Office or Processing Center serving your area at the telephone number listed in the application kit for the program in which you are interested. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. Information on this SuperNOFA also may be obtained through the HUD

web site on the Internet at http://www.HUD.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide general guidance and technical assistance about this SuperNOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Introduction to the SuperNOFA Process

To further HUD's objective, under the direction of Secretary Andrew Cuomo, of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities, HUD will publish three SuperNOFAs in 1998, which coordinate program funding for 40 programs and cut across traditional program lines.

(1) The first is the SuperNOFA and consolidated application process for Housing and Community Development Programs, covering 19 Housing and Community Development Programs. This SuperNOFA was published in the **Federal Register** on March 31, 1998.

(2) The second is the SuperNOFA and consolidated application process for Economic Development and Empowerment Programs, covering 9 programs. This second SuperNOFA was published elsewhere in today's **Federal Register**.

(3) The third is the SuperNOFA and consolidated application process for Targeted Housing and Homeless Assistance Programs. This third SuperNOFA includes the following programs and initiatives: Housing Opportunities for Persons with AIDS; Continuum of Care Assistance, which includes the Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals; Section 202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities. Related to this SuperNOFA for HUD's Targeted Housing and Homeless Assistance Programs is HUD's NOFA for Section 8 Tenant-Based Assistance for Persons with Disabilities, published elsewhere in today's **Federal Register**.

All three SuperNOFAs and consolidated applications, to the greatest extent possible, given statutory, regulatory and program policy distinctions, will have one set of rules that, together, offer a ''menu'' of approximately 40 programs. From this menu, communities will be made aware of funding available for their jurisdictions. Nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations, faith-based organizations and others will be able to identify the programs for which they are eligible for funding.

The National Competition NOFA. In addition to the three SuperNOFAs, HUD is publishing in today's **Federal Register** a single NOFA for three national competitions: the Fair Housing Initiatives Program National Competition; the Lead-Based Paint Hazard Control National Competition; and the Housing Counseling National Competition.

Assisting Communities To Make Better Use of Available Resources

These SuperNOFAs represent a marked departure from, and HUD believes a significant improvement over, HUD's past approach to the funding process. In the past, HUD has issued as many as 40 separate NOFAs, all with widely varying rules and application processing requirements. This individual program approach to funding, with NOFAs published at various times throughout the fiscal year, did not encourage and, at times, unintentionally impeded local efforts directed at comprehensive planning and development of comprehensive local solutions. Additionally, the old approach seemed to require communities to respond to HUD's needs rather than HUD responding to local needs. Secretary Cuomo brings to the leadership of HUD the experience of successfully implementing a consolidated planning process in HUD's community development programs. As Assistant Secretary for Community Planning and Development, Secretary Cuomo consolidated the planning, application, and reporting requirements of several community development programs. The Consolidated Plan rule, published in 1995, established a renewed partnership among HUD, State, and local governments, public and private agencies, tribal governments, and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems.

The SuperNOFA approach builds upon Consolidated Planning implemented by Secretary Cuomo in HUD's community development programs, and also reflects the Secretary's organizational changes for HUD, as described in the Secretary's management reform plan. On June 26, 1997, Secretary Cuomo released the HUD 2020 Management Reform Plan, which calls for significant consolidation of like programs to maximize efficiency and dramatically improve customer service. The plan also calls for HUD to improve customer service by adopting a principle of ''menus not mandates.''

By announcing the funding of these six programs in one NOFA, HUD hopes to assist communities in making better use of available resources to address their needs and the needs of those living within the communities in a holistic and effective fashion. These funds are available for eligible applicants to support individual program objectives, as well as cross-cutting and coordinated approaches to improving the overall effective use of available HUD program funds.

To date, HUD has been consolidating and simplifying the submission requirements of many of its formula grant and discretionary grant programs to offer local communities a better opportunity to shape available resources into effective and coordinated neighborhood housing and community development strategies that will help revitalize and strengthen their communities, physically, socially and economically. To complement this overall consolidation and simplification effort, HUD designed this process to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs in response to a single NOFA. Everyone interested in HUD's grant programs can benefit from having this information made available in one NOFA.

Coordination, Flexibility, and Simplicity in the HUD Funding Process

The SuperNOFA approach places heavy emphasis on the coordination of activities to provide (1) greater flexibility and responsiveness in meeting local housing and community development needs, and (2) greater flexibility to eligible applicants to determine what HUD program resources best fit the community's needs, as identified in local Consolidated Plans and Analysis of Impediments to Fair Housing Choice (''Analysis of Impediments'' (AI)).

The SuperNOFA approach is designed to simplify the application process; promote effective and coordinated use of program funds in communities; reduce duplication in the delivery of services and economic development and empowerment programs; allow interested applicants to seek to deliver a wider, more integrated array of services; and improve the

system for potential grantees to be aware of, and compete for program funds.

HUD encourages applicants to work together to coordinate and, to the maximum extent possible, join their activities to form a seamless and comprehensive program of assistance to meet identified needs in their communities, and address barriers to fair housing and equal opportunity that have been identified in the community's Consolidated Plan and Analysis of Impediments in the geographic area(s) in which they are seeking assistance.

As part of the simplification of this funding process, and to avoid duplication of effort, the SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this NOFA. HUD programs that provide assistance for, or complement similar activities, for example the Continuum of Care programs have a consolidated application that reduces the administrative and paperwork burden applicants may otherwise encounter in submitting an application for each program. The Program Chart in this introductory section of the SuperNOFA identifies the programs that have been consolidated and for which a consolidated application is made available to eligible applicants.

The funding of these six programs through this SuperNOFA will not affect the ability of eligible applicants to seek HUD funding. *Eligible applicants are able, as they have been in the past, to apply for funding under as few as one or as many as all programs for which they are eligible.*

The specific statutory and regulatory requirements of each of the six separate programs continue to apply to each program. The SuperNOFA reflects, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the individual program requirements that are identified for each program. Also, you will note that not all applicants are eligible to receive assistance under all six programs identified in this SuperNOFA.*

The SuperNOFA contains two major sections. The General Section of the SuperNOFA contains the procedures and requirements applicable to all applications. The Programs Section of the SuperNOFA describes each program for which funding is made available in the NOFA. As in the past, each program provides a description of eligible applicants, eligible activities, factors for award, and any additional requirements or limitations that apply to the program. Please read carefully both the General Section and the Programs Section of the SuperNOFA for the program(s) to which you are applying. This will ensure that you apply for program funding for which your organization is eligible to receive funds and you fulfill all the requirements for that program(s).

The Programs of this SuperNOFA and the Amount of Funds Allocated

The six programs for which funding availability is announced in this SuperNOFA are identified in the following chart. The approximate available funds for each program are listed as expected funding levels based on appropriated funds. Should recaptured or other funds become available for any program, HUD reserves the right to increase the available program funding amounts by the amount available.

The chart also includes the application due date for each program, the OMB approval number for the information collection requirements contained in the specific program, and the Catalog of Federal Domestic Assistance (CFDA) number.

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PROGRAM NAME	FUNDING AVAILABLE	DUE DATE	SUBMISSION LOCATION AND ROOM
CONTINUUM OF CARE STRATEGIES FOR HOMELESS AND PERSONS WITH AIDS			
Continuum of Care Homeless Assistance • **Supportive Housing** CFDA No.: 14.235 • **Shelter Plus Care** CFDA No.: 14.238 • **Section 8 Moderate Rehabilitation Single Room Occupancy** CFDA No.: 14.249 OMB Approval No.: 2506-0112	$ 700,000,000*	August 4, 1998	**Headquarters, SNAPS Office, Room 7270**
Housing Opportunities for Persons with AIDS CFDA No: 14.241 OMB Approval No.: 2506-0133	$ 20,150,000	**July 10, 1998**	**Headquarters, Processing and Control Unit, Room 7251**

PROGRAM NAME	FUNDING AVAILABLE	DUE DATE	SUBMISSION LOCATION AND ROOM
SUPPORTIVE HOUSING PROGRAMS			
Section 202 Supportive Housing for the Elderly CFDA No.: 14.157 OMB Approval No.: 2502-0267	$ 402,397,190	**July 7, 1998**	**Appropriate Local HUD Multifamily Hub or Multifamily Program Center**
Section 811 Supportive Housing for Persons with Disabilities CFDA No.: 14.181 OMB Approval No.: 2502-0462	$ 74,372,922	**July 7, 1998**	**Appropriate Local HUD Multifamily Hub or Multifamily Program Center**
Section 8 Tenant-Based Assistance for Persons with Disabilities CFDA No.: 14.855 and 14.857 OMB Approval No.: 2577-0169	$ 88,500,000	**July 7, 1998**	**See Additional Information on this program, published elsewhere in today's Federal Register**

* $640,000,000 is currently available for obligation for FY 1998, and $60,000,000 is subject to appropriations in FY 1999.

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Paperwork Reduction Act Statement. The information collection requirements contained in this SuperNOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preceding chart reflects the OMB approval number for each program component of this SuperNOFA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. *$640,000,000 is currently available for obligation for FY 1998, and $60,000,000 is subject to appropriations in FY 1999.

General Section of the SuperNOFA

I. Authority; Purpose; Amount Allocated; Eligible Applicants and Eligible Activities

(A) Authorities

The authority for Fiscal Year 1998 funding availability under this SuperNOFA is the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act). Where applicable, additional authority for each program in this SuperNOFA is identified in the Programs Section.

(B) Purpose

The purpose of this SuperNOFA is to:

(1) Make funding available through a variety of programs to empower communities and their residents, particularly the poor and disadvantaged, to develop viable communities, provide decent housing and a suitable living environment for all citizens, without discrimination in order to improve themselves both as individuals and as a community.

(2) Simplify and streamline the application process for funding under HUD programs. By making available to State and local governments, public housing agencies, tribal governments, non-profit organizations and others, the application requirements for Targeted Housing and Homeless Assistance Programs in one NOFA, HUD hopes that the result will be a less time consuming and less complicated application process. This new process also allows an applicant to submit one application for funds for several programs. Except where statutory or regulatory requirements or program policy mandate differences, the SuperNOFA strives to provide for one set of rules, standardized rating factors, and uniform and consolidated application procedures.

(3) Enhance the ability of applicants to make more effective and efficient use of housing and community development funding when addressing community needs and implementing coordinated housing and community development strategies established in local Consolidated Plans, which is the single application for HUD housing and community development and other formula funds submitted by the local or State government. Through this SuperNOFA process, applicants are encouraged to: (i) create opportunities for strategic planning and citizen participation in a comprehensive context at the local level in order to establish a full continuum of housing and services; and (ii) promote methods for developing more coordinated and effective approaches to dealing with urban, suburban, and rural problems by recognizing the interconnections among the underlying problems and ways to address them through layering of available HUD programs;

(4) Promote the ability of eligible non-profit organizations to participate in many of the programs contained in this SuperNOFA; provide an increased opportunity to assist communities in developing continuum of care strategies, and supportive housing programs; and

(5) Recognize and make better use of the expertise that each of the programs, and organizations eligible for funding under this SuperNOFA, can contribute when developing and implementing local housing and community development plans, the Consolidated Plan, and the HUD required Analysis of Impediments to Fair Housing Choice.

(C) Amounts Allocated

The amounts allocated to specific programs in this SuperNOFA are based on appropriated funds. Should recaptured funds become available in any program, HUD reserves the right to increase the available funding amounts by the amount of funds recaptured.

(D) Eligible Applicants and Eligible Activities

The eligible applicants and eligible activities for each program are identified and described for the program in the Programs Section of the SuperNOFA.

II. Requirements and Procedures Applicable to all Programs

Except as may be modified in the Programs Section of this SuperNOFA, or as noted within the specific provisions of this Section II, the following principles apply to all programs. Please be sure to read the program area section of the SuperNOFA for additional requirements or information.

(A) Statutory Requirements

All applicants must meet and comply with all statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. Copies of the regulations are available from the SuperNOFA Information Center or through the Internet at the HUD web site located at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed are ineligible, or (with the exception of the Section 202 and 811 programs) HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(B) Threshold Requirements—Compliance With Fair Housing and Civil Rights Laws

All applicants, with the exception of Federally recognized Indian tribes, must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this SuperNOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(C) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(D) Affirmatively Furthering Fair Housing

Unless otherwise specified in the Programs Section of this SuperNOFA, each successful applicant will have a duty to affirmatively further fair housing. Applicants should include in their applications or work plans the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing

Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in the Programs Section of this SuperNOFA.

(E) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

Certain programs in this SuperNOFA require recipients of HUD assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons) and the HUD regulations at 24 CFR part 135, including the reporting requirements subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons. The applicability of section 3 will be noted in the Programs Section of the SuperNOFA.

(F) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD assistance is covered by the relocation requirements of the URA and the governmentwide regulation.

(G) Forms, Certifications and Assurances

Each applicant is required to submit signed copies of the standard forms, certifications, and assurances, listed in this section, unless the program funding in the Programs Section specifies otherwise. Additionally, the Programs Section may specify additional forms, certifications, assurances or other information that may be required for a particular program in this SuperNOFA.

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL); (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are not required to submit this certification. Tribes and TDHEs established under State law are required to submit this certification.)

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(H) OMB Circulars

The policies, guidances, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations), 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments) may apply to the award, acceptance and use of assistance under the programs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this SuperNOFA. Compliance with additional OMB Circulars may be specified for a particular program in the Programs Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(I) Environmental Requirements

For programs under this SuperNOFA that assist physical development activities or property acquisition, grantees are generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these program activities, until one of the following has occurred: (1) HUD has completed an environmental review in accordance with 24 CFR part 50; or (2) for programs subject to 24 CFR part 58, HUD has approved a grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review. Applicants should consult the Programs Section for the applicable program to determine the procedures for, timing of, and any exclusions from environmental review under a particular program.

(J) Conflicts of Interest

Consultants or experts assisting HUD in rating and ranking applicants for funding under this SuperNOFA are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and to the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, individuals who have assisted or plan to assist applicants with preparing applications for this SuperNOFA may not serve on a selection panel or as a technical advisor to HUD for this SuperNOFA. All individuals involved in rating and ranking this SuperNOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. If the selection or non-selection of any applicant under this NOFA affects the individual's financial interests set forth in 18 U.S.C. 208 or involves any party with whom the individual has a covered relationship

under 5 CFR 2635.502, that individual must, prior to participating in any matter regarding this NOFA, disclose this fact to the General Counsel or the Ethics Law Division.

III. Application Selection Process

(A) General

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* All applications for funding in each program listed in this SuperNOFA will be evaluated and rated against the criteria in this SuperNOFA. The rating of the ''applicant'' or the ''applicant's organization and staff'' for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

(2) *Ranking.* Applicants will be ranked within each program (or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care section of this SuperNOFA). Applicants will be ranked only against others that applied for the same program funding and where there are set-asides within the competition, the applicant would only compete against applicants in the same set-aside competition.

(B) Threshold Requirements

HUD will review each application to determine whether the application meets all of the threshold criteria described for program funding made available under this SuperNOFA. Applications that meet all of the threshold criteria will be eligible to be rated and ranked, based on the criteria described, and the total number of points to be awarded.

(C) Factors for Award Used To Evaluate and Rate Applications

For all of the programs for which funding is available under this SuperNOFA, the points awarded for the rating factors total 100. Where applicable, the program may provide for up to four bonus points as provided in paragraphs (1) and (2) of this Section III(C), or other bonus points as may be specified in the individual program in the Programs Section of this SuperNOFA.

(1) *Bonus Points.* The SuperNOFA provides for the award of up to two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones, Enterprise Communities, or Urban Enhanced Enterprise Communities, and/or serve the EZ/EC residents, and are certified to be consistent with the strategic plan of the EZs and ECs. The application kit contains a certification which must be completed for the applicant to be considered for EZ/EC bonus points. A listing of the federally designated EZs, Enhanced ECs are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov.

(2) *Court-Ordered Consideration.* Due to an order of the U.S. District Court for the Northern District of Texas, Dallas, Division, with respect to any application by the City of Dallas, Texas, for HUD funds, HUD shall consider the extent to which the strategies or plans in an application or applications submitted by the City of Dallas for any program under this SuperNOFA will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score based on this consideration. (This Section III(C)(2) is limited to applications submitted by the City of Dallas.)

(3) *The Five Standard Rating Factors.* The factors for rating and ranking applicants are listed in this Section III(C)(2) and maximum points for each factor, are provided in the Programs Section of the SuperNOFA. Each applicant should carefully read the factors for award as described in the program area section that they are seeking funding. While HUD has established the following basic factors for award, these may have been modified or adjusted to take into account specific program needs, or statutory or regulatory limitations imposed on a program. The standard factors for award, except as modified in the program area section are:

Factor 1: Capacity of the Applicant and Relevant Organizational Staff
Factor 2: Need/Extent of the Problem
Factor 3: Soundness of Approach
Factor 4: Leveraging Resources
Factor 5: Comprehensiveness and Coordination

The Continuum of Care Homeless Assistance Programs have only two factors that receive points: Need and Continuum of Care.

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, HUD may require, depending upon the program, that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(E) Adjustments to Funding

HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of the programs contained in this SuperNOFA are met. HUD may choose not to fund portions of the applications that are ineligible for funding under applicable program statutory or regulatory requirements, or which do not meet the requirements of this General Section of this SuperNOFA or the requirements in the Programs Section for the specific program, and fund eligible portions of the applications.

If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program area. If the applicant turns down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program area where there is a balance of funds.

Additionally, in the event of a HUD procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees

Performance and compliance actions of grantees will be measured and addressed in accordance with applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed earlier in the introductory section of this SuperNOFA, part of the simplification of this funding process is to reduce the duplication of effort involved in

completing and submitting similar applications for HUD funded programs. As the Program Chart shows above, this SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete. (Note that the Sections 202 and 811 Programs, by regulation, provide for appeal of rejection of an application on technical deficiency. Please see the programs sections for these programs for additional information.)

VI. Promoting Comprehensive Approaches to Housing and Community Development

(A) General

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. By making HUD's Targeted Housing and Homeless Assistance Programs funding available in one NOFA, applicants may be able to relate the activities proposed for funding under this SuperNOFA to the recent and upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. A complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html.

(B) Linking Program Activities With AmeriCorps

Applicants are encouraged to link their proposed activities with AmeriCorps, a national service program engaging thousands of Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training. For information about AmeriCorps, call the Corporation for National Service at (202) 606–5000.

(C) Encouraging Visitability in New Construction and Substantial Rehabilitation Activities

In addition to applicable accessible design and construction requirements, applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but does not require that all features be made accessible. Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. Allowing use of 2′10″ doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units. A visitable home also serves persons without disabilities, such as a mother pushing a stroller, or a person delivering a large appliance. Copies of the UFAS are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–5404 or the TTY telephone number, 1–800–877 8399 (Federal Information Relay Service).

(D) Developing Healthy Homes

HUD's Healthy Homes Initiative is one of the initiatives developed by the White House Task Force on Environmental Health Risks and Safety Risks to Children that was established under Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks''). HUD encourages the funding of activities (to the extent eligible under specific programs) that promote healthy homes, or that promote education on what is a healthy home. These activities may include, but are not limited to the following: educating homeowners or renters about the need to protect children in their home from dangers that can arise from items such as curtain cords, electrical outlets, hot water, poisons, fire, and sharp table edges, among others; incorporating child safety measures in the construction, rehabilitation or maintenance of housing, which include but are not limited to: child safety latches on cabinets, hot water protection devices, properly ventilated windows to protect from mold, window guards to protect children from falling, proper pest management to prevent cockroaches which can cause asthma, and activities directed to control of lead-based paint hazards. The National Lead Information Hotline is 1–800–424–5323.

VII. Findings and Certifications

(A) Environmental Impact

This SuperNOFA provides funding under, and does not alter the environmental requirements of 24 CFR parts 582, 583, and 882, subpart H (Continuum of Care Program); part 574 (HOPWA Program); and part 891 (Section 202 Supportive Housing for the Elderly Program and Section 811 Program of Supportive Housing for Persons with Disabilities). Accordingly, under 24 CFR 50.19(c)(5), this SuperNOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Activities under this SuperNOFA are subject to the environmental review provisions that are specified in the Environmental Requirements paragraph in each program section of this SuperNOFA.

(B) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this SuperNOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the SuperNOFA solicits applicants to expand their role in addressing community development needs in their localities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the

SuperNOFA is not subject to review under the Order.

(C) Prohibition Against Lobbying Activities

Applicants for funding under this SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

(D) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

VIII. The FY 1998 SuperNOFA Process and Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step in changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination may be considered for FY 1998. The three SuperNOFAs to be published for FY 1998 represent the additional step taken by HUD to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new SuperNOFA process was developed based on comments received from HUD clients and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years. For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process, and how it may be improved in future years.

The description of program funding available under this third SuperNOFA for Targeted Housing and Homeless Assistance Programs follows.

Dated: April 23, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS

Supportive Housing Program (SHP)

Shelter Plus Care (S+C)

Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals (SRO)

BILLING CODE 4210–32–C

Funding Availability for Continuum of Care Homeless Assistance Programs—Supportive Housing Program (SHP), Shelter Plus Care (S+C), Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO)

Program Description: The process of developing a Continuum of Care system to assist homeless persons is part of the community's larger effort of developing a Consolidated Plan. For a community to successfully address its often complex and interrelated problems, including homelessness, the community must marshall its varied resources—community and economic development resources, social service resources, housing and homeless assistance resources—and use them in a coordinated and effective manner. The Consolidated Plan serves as the vehicle for a community to comprehensively identify each of its needs and to coordinate a plan of action for addressing them.

Approximately $700 million is being competed for the Continuum of Care Homeless Assistance Programs. For this competition, approximately $640 million is available in FY 1998, and it is anticipated that up to an additional $60 million may be made available in FY 1999, subject to appropriations. Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may be used in addition to 1998 appropriations to fund applications submitted in response to this program section of this SuperNOFA.

The funds available under this program section of this SuperNOFA can be used under any of three programs that can assist in creating community systems for combating homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. The chart in the Attachment to this program section of this SuperNOFA summarizes key aspects of the programs. Program descriptions are contained in the applicable regulations cited in the chart.

As in previous funding availability announcements for the Continuum of Care Homeless Assistance Programs, amounts for each of the three programs will not be specified this year. Instead, the distribution of funds among the three programs will depend on locally determined priorities and overall demand. HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of these homeless programs are met.

Application Due Date: Completed applications (an original containing the original signed documentation and two copies) are due before 12:00 midnight, Eastern time, on August 4, 1998 to the addresses shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submissions (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Electronic Submission: Applicants are highly encouraged to use a special supplement to HUD's new Community Planning Software to prepare the application. The special supplement has been programmed to produce the charts and narratives that will meet both the requirements of the homelessness sections of the Consolidated Plan and the identical requirements of the Continuum of Care application. The supplement will also produce the necessary project-specific information. If you choose to use the supplement to prepare your Continuum of Care application, you will submit the required information on 3½″ computer diskettes, *together with a paper copy of the entire application* including the signed cover sheet (SF–424), all required certifications and other signed documentation, by the deadline. Please submit three copies of these materials, as directed in the ADDRESSES FOR SUBMITTING APPLICATIONS section below. The supplement may be obtained at no charge by contacting the SuperNOFA Information Center by phone or internet as specified below.

Addresses for Submitting Applications

To HUD Headquarters. The original completed application (containing the original signed documentation) must be submitted to: Special Needs Assistance Programs Office, Room 7270, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: Continuum of Care Programs.

To the Appropriate CPD Field Office. Two copies of the completed application must also be submitted to the Community Planning and Development Division of the appropriate HUD Field Office for the applicant's jurisdiction. Field Office copies must be received by the deadline date as well, but a determination that an application was received on time will be made *solely on receipt of the application at HUD Headquarters in Washington.*

When submitting your application please refer to Continuum of Care Programs, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further information, and Technical Assistance

Application Kits. For a copy of the application package, please call the SuperNOFA Information Center at 1–800–HUD–8929 (voice) or 1–800–483–2209 (TTY), or contact by Internet at http://www.HUD.gov.

For Further Information. For answers to your questions, you may call the HUD Field Office serving your area, at the telephone number shown in the application kit for this program, or you may contact the Community Connections Information Center at 1–800–998–9999 (voice) or 1–800–483–2209 (TTY) or by Internet at: http://www.comcon.org/ccprog.html.

Technical Assistance. Prior to the application deadline, HUD staff will be available to provide general guidance, but not guidance in actually preparing the application. HUD field office staff will also be available to help identify organizations in your community that are involved in developing the Continuum of Care system and, in the case of renewals, to determine the HUD final year amount (e.g., leasing, supportive services and operations for SHP, and rental assistance for S+C). Following conditional selection, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement or Annual Contributions Contract by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

Additional Information

I. Authority; Purpose; Prioritizing

(A) Authority

The Supportive Housing Program is authorized by title IV, subtitle C, of the Stewart B. McKinney Homeless Assistance Act (McKinney Act), 42 U.S.C. 11381. Funds made available under this program section of the SuperNOFA for the Supportive Housing Program are subject to the program regulations at 24 CFR part 583.

The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney Act, 42 U.S.C. 11403. Funds made available under this program section of the SuperNOFA for the

Shelter Plus Care program are subject to the program regulations at 24 CFR part 582.

The Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (SRO) is authorized by section 441 of the McKinney Act, 42 U.S.C. 11401. Funds made available under this NOFA for the SRO program are subject to the program regulations at 24 CFR part 882, subpart H.

(B) Purpose: Develop Continuum of Care Systems

The purpose of the Continuum of Care Homeless Assistance Programs is to fund projects that will fill gaps in locally developed Continuum of Care systems to assist homeless persons move to self-sufficiency and permanent housing. A Continuum of Care system consists of four basic components:

(1) A system of outreach and assessment for determining the needs and conditions of an individual or family who is homeless;

(2) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(3) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to permanent housing and independent living; and

(4) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families.

A Continuum of Care system is developed through a community-wide or region-wide process involving nonprofit organizations (including those representing persons with disabilities), government agencies, other homeless providers, housing developers and service providers, private foundations, neighborhood groups, and homeless or formerly homeless persons. It should address the specific needs of each homeless subpopulation: the jobless, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with multiple diagnoses, victims of domestic violence, youth, and any others.

The community process used in developing a Continuum of Care system must include interested veteran service organizations, particularly veteran service organizations with specific experience in serving homeless veterans, in order to ensure that the Continuum of Care system addresses the needs of homeless veterans.

High scores under the Continuum of Care scoring criteria will be assigned to applications that demonstrate the achievement of two basic goals:

- Have maximum participation by non-profit providers of housing and services; homeless and formerly homeless persons; state and local governments and agencies; veteran service organizations; organizations representing persons with disabilities; the private sector; housing developers; foundations and other community organizations.
- Create, maintain, and build upon a community-wide inventory of housing and services for homeless families and individuals; identify the full spectrum of needs of homeless families and individuals; and coordinate efforts to obtain resources, particularly resources sought through this program section of the SuperNOFA, to fill gaps between the current inventory and existing needs. This inventory must appropriately address all aspects of the continuum, especially permanent housing.

In deciding the geographic area to be covered by a Continuum of Care strategy, applicants should be aware that the single most important factor in receiving funding under this competition will be the strength of the Continuum of Care strategy when measured against the Continuum of Care criteria described in this SuperNOFA. In determining what jurisdictions to include in a Continuum of Care strategy area, the applicant should include only those jurisdictions that are involved in the development and implementation of the Continuum of Care strategy.

Applicants should also be aware that the more jurisdictions included in a Continuum of Care strategy area, the larger the pro rata need share that will be allocated to the strategy area (as described in Section III(A)(4) of this program section of the SuperNOFA). However, it would be a mistake to include jurisdictions that are not fully involved in the development and implementation of the Continuum of Care strategy since this would adversely affect the Continuum of Care score. Because most rural counties have extremely small pro rata need shares, they may wish to consider working with larger groups of contiguous counties to develop a region-wide or multi-county Continuum of Care strategy covering the combined service areas of these counties.

Since the basic concept of a Continuum of Care strategy is the creation of a single, coordinated, inclusive homeless assistance system for an area, the areas covered by Continuum of Care strategies should not overlap. If there are cases where the Continuum of Care strategies geographically overlap to the extent that they are essentially competing with each other, projects in the applications/Continuum of Care that receive the highest score out of the possible 60 points for Continuum of Care will be eligible for up to 40 points under Need. Projects in the competing applications/Continuum of Care with the less effective Continuum of Care strategies will be eligible for only 10 points under Need. In no case will the same geography be used more than one time in assigning Need points. The local HUD field office can help applicants determine if any of the area proposed for inclusion by one Continuum of Care system is also likely to be claimed under another Continuum of Care system in this competition.

(C) Prioritizing

Priority decisions are best made through a locally-driven process and are key to the ultimate goal of reducing homelessness. As was done in 1997, this year's application (1998) instructs that all projects proposed for funding under this program section of the SuperNOFA be listed in priority order from the highest priority to the lowest. Generally, this priority order will mean, for example, that if funds are only available to award 8 of 10 proposed projects, then funding will be awarded to the first eight projects listed. HUD expects nonprofit organizations to be given a fair role in establishing these priorities.

This priority list will be used in awarding up to 40 points per project under the ''Need'' scoring criteria. Higher priority projects will receive more points under Need than lower priority projects. If a complete project priority chart is not submitted for the continuum, then all projects will receive the lowest score for Need.

Project renewals. Consistent with the Continuum of Care approach, HUD funds that are needed to continue grants that will be expiring in 1999 (Supportive Housing grants, Supportive Housing Demonstration Program grants, SAFAH grants, and Shelter Plus Care grants, as described below) will only be available through the competitive process described in this program section of the SuperNOFA.

The need for the continuation of previously funded projects must be considered in the local needs analysis process and a decision should be made locally on the priority to assign to the continuation of a project. HUD will not fund renewals out of order on the priority list. It is important that the

applicant, regardless of the priority assigned to expiring projects, has fully considered how persons currently being served by those projects will continue to be served, and has addressed this issue in its gap analysis. In last year's competition, numerous renewal projects that were not assigned top priority by a locality did not receive funding. To the extent a community desires to have such projects renewed, it should give them the top priorities on the priority projects listing in the application. Since renewal projects receive no special consideration during the review, it is important that they meet minimum project eligibility, capacity, and quality standards identified in this program section of the SuperNOFA or they will be rejected. For the renewal of a Supportive Housing Program project, Supportive Housing Demonstration Program project or SAFAH project, you may request funding for one (1), two (2) or three (3) years. The amount of this request can be up to the total of HUD grant funds for leasing, operations, and supportive services approved for the final year of the expiring grant's term. For the renewal of a Shelter Plus Care project, the grant term is fixed at five (5) years as required by statute. You may request up to the amount determined by multiplying the number of units under lease at the time of application for renewal funding under this SuperNOFA by the applicable current Fair Market Rent(s) by 60 months. While full funding of existing grants may be requested, there is no guarantee that the entire amount will be awarded.

This program section of the SuperNOFA is not applicable to the renewal of funding under the SRO program. For further guidance on SRO renewals, please contact your local HUD Field Office.

Applicants eligible to apply for renewal of a grant are only those that have executed a grant agreement for the project directly with HUD. Project sponsors or subrecipients who have not signed such an agreement are not eligible to serve as applicant for renewal of these projects. The local HUD field office can provide assistance in determining eligibility to apply for project renewal. To be considered an applicant when applying as part of a consolidated application, the eligible applicant must submit an originally signed HUD Form SF–424 and the necessary certifications and assurances.

II. Application Requirements

The application kit provides the application materials, including Form SF–424 and certifications, that must be used in applying for homeless assistance under this SuperNOFA. These application materials substitute for the forms, certifications, and assurances listed in Section II(G) of the General Section of the SuperNOFA.

The application requires a description of the Continuum of Care system and proposed project(s). It also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable State or unit of general local government, including the Analysis of Impediments to Fair Housing and the Action Plan to address these impediments. Projects funded under this SuperNOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) Section II(D) of the General Section of this SuperNOFA regarding Affirmatively Furthering Fair Housing does not apply to the Continuum of Care Homeless Assistance programs.

There are three options for submitting an application under this program section of the SuperNOFA.

One: A ''Consolidated Application'' is submitted when a jurisdiction (or a consortium of jurisdictions) submits a single application encompassing a Continuum of Care strategy and containing all the projects within that strategy for which funding is being requested. Individual projects are contained within the one consolidated application. Grant funding may go to one entity which then administers all funded projects submitted in the application, or under this option, grant funding may go to all or any of the projects individually. Your application will specify the grantee for each project.

Two: ''Associated Applications'' are submitted when applicants plan and organize a single Continuum of Care strategy which is adopted by project sponsors or operators who choose to submit separate applications for projects while including the identical Continuum of Care strategy. In this case, project funding would go to each successful applicant individually and each would be responsible to HUD for administering its separate grant.

Three: A ''Solo Application'' is submitted when an applicant applies for a project exclusive of participation in any community-wide or region-wide Continuum of Care development process.

Options one and two are not substantively different and will be considered equally competitive. Applicants are advised that projects that are not a part of a Continuum of Care strategy will receive few, if any, points under the Continuum of Care rating criteria.

III. Application Selection Process

(A) Review, Rating and Conditional Selection

HUD will use the same review, rating, and conditional selection process for all three programs (S+C, SRO, and SHP). The standard factors for award identified in the General Section of this SuperNOFA have been modified in this program section as described below. Only the criteria described in this program section—Continuum of Care and Need—will be used to assign points. To review and rate applications, HUD may establish panels, including persons not currently employed by HUD, to obtain certain expertise and outside points of view, including views from other Federal agencies. Two types of reviews will be conducted. Paragraphs (1) and (2) below describe threshold reviews and paragraphs (3) and (4) describe criteria—Continuum of Care and Need—that will be used to assign points. Up to 104 points (including bonus points and points for the court-ordered consideration described in Section III(C)(1) and (2) of the General Section of the SuperNOFA) will be assigned using these criteria.

(1) *Applicant and sponsor eligibility and capacity.* Applicant and project sponsor capacity will be reviewed to ensure the following eligibility and capacity standards are met. If HUD determines these standards are not met, the project will be rejected from the competition.

- The applicant must be eligible to apply for the specific program;
- The applicant must demonstrate that there is sufficient knowledge and experience to carry out the project(s). With respect to each proposed project, this means that in addition to knowledge of and experience with homelessness in general, the organization carrying out the project, its employees, or its partners, must have the necessary experience and knowledge to carry out the specific activities proposed, such as housing development, housing management, and service delivery;
- If the applicant or project sponsor is a current or past recipient of assistance under a HUD McKinney Act program or

the HUD Single Family Property Disposition Homeless Program, there must be no project or construction delay, HUD finding, or outstanding audit finding of a material nature regarding the administration of HUD McKinney Act programs or the HUD Single Family Property Disposition Homeless Program; and

• The applicant and project sponsors must be in compliance with applicable civil rights laws and Executive Orders, and must meet the threshold requirements of Section II(B) of the General Section of the SuperNOFA.

(2) *Project eligibility and quality.* Each project will be reviewed to determine if it meets the following eligibility and threshold quality standards. If HUD determines the following standards are not met by a specific project or activity, the project or activity will be rejected from the competition.

• The population to be served must meet the eligibility requirements of the specific program, as described in the application instructions;

• The activity(ies) for which assistance is requested must be eligible under the specific program, as described in the program regulations;

• The housing and services proposed must be appropriate to the needs of the persons to be served. HUD may find a project to be inappropriate if:

—The type and scale of the housing or services clearly does not fit the needs of the proposed participants (e.g., housing homeless families with children in the same space as homeless individuals, or separating members of the same family, without an acceptable rationale provided);
—Participant safety is not addressed;
—The housing or services are clearly designed to principally meet emergency needs rather than helping participants achieve self-sufficiency;
—Transportation and community amenities are not available and accessible; or
—Housing accessibility for persons with disabilities is not provided as required by applicable laws;

• The project must be cost-effective in HUD's opinion, including costs associated with construction, operations, and administration, with such costs not deviating substantially from the norm in that locale for the type of structure or kind of activity;

• Supportive services only projects, and all others, must show how participants will be helped to access permanent housing and achieve self-sufficiency;

• For the Section 8 SRO program, at least 25 percent of the units to be assisted at any one site must be vacant at the time of application; and

• For those projects proposed under the SHP innovative category: Whether or not a project is considered innovative will be determined on the basis that the particular approach proposed is new to the area, is a sensible model for others, and can be replicated.

(3) *Continuum of Care.* Up to 60 points will be awarded as follows:

(a) *Process and Strategy.* Up to 30 points will be awarded based on the extent to which the application demonstrates:

• The existence of a quality and inclusive community process, including organizational structure(s), for developing and implementing a Continuum of Care strategy which includes nonprofit organizations (such as veterans service organizations, organizations representing persons with disabilities, and other groups serving homeless persons), State and local governmental agencies, other homeless providers, housing developers and service providers, private foundations, local businesses and the banking community, neighborhood groups, and homeless or formerly homeless persons, as articulated in Section I(D) of this program section of the SuperNOFA; and

• That a quality and comprehensive strategy has been developed which addresses the components of a Continuum of Care system (i.e., outreach, intake, and assessment; emergency shelter; transitional housing; permanent and permanent supportive housing) and that strategy has been designed to serve all homeless subpopulations in the community (e.g., seriously mentally ill, persons with multiple diagnoses, veterans, persons with HIV/AIDS), including those persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) *Gaps and Priorities.* Up to 20 points will be awarded based on the extent to which the application:

• Describes the gap analysis performed, uses reliable information and sources that are presented completely and accurately, and establishes the relative priority of homeless needs identified in the Continuum of Care strategy; and

• Proposes projects that are consistent with the priority analysis described in the Continuum of Care strategy, describes a fair project selection process, explains how gaps identified through the analysis are being addressed, and correctly completes the priority chart.

In reviewing a community's Continuum of Care and determining the points to assign, HUD will consider whether the community took its renewal needs into account in preparing its project priority list.

(c) *Supplemental Resources.* Up to 10 points will be awarded based on the extent to which the application demonstrates leveraging of funds requested under this program section of the SuperNOFA with other resources, including private, other public, and mainstream services and housing programs.

(d) *EZ/EC bonus points.* As provided for in Section III(C)(1) of the General Section of this SuperNOFA, a bonus of up to 2 points will be added to the Continuum of Care score when some proposed homeless assistance projects will be located within the boundaries and/or will principally serve the residents of a federal Empowerment Zone, Enterprise Community or Enhanced Enterprise Community (collectively ''EZ/EC'') if priority placement will be given by the project to homeless persons living on the streets or in shelters within the EZ/EC, or whose last known address was within the EZ/EC. In order for a Continuum of Care system to receive any of the bonus points, the applicant must specifically state how it meets the EZ/EC bonus criterion, and provide a narrative describing the extent of the linkages and coordination between proposed projects and the EZ/EC. The greater the extent of EZ/EC involvement in and coordination with the implementation strategy for the Continuum of Care system and projects, the greater the likelihood that bonus points will be awarded.

(e) *Court-ordered consideration.* Section III(C)(2) of the General Section is applicable to this program.

(4) *Need.* Up to 40 points will be awarded for need. There is a three-step approach to determining the need scores to be awarded to projects:

(a) *Determining relative need:* To determine the homeless assistance need of a particular jurisdiction, HUD will use nationally available data, including the following factors as used in the Emergency Shelter Grants program: data on poverty, housing overcrowding, population, age of housing, and growth lag. Applying those criteria to a particular jurisdiction provides an estimate of the relative need index for that jurisdiction compared to other jurisdictions applying for assistance under this program section of the SuperNOFA.

(b) *Applying relative need:* That relative need index is then applied to the total amount of funding estimated to

be available under this program section of the SuperNOFA to determine a jurisdiction's pro rata need. HUD reserves the right to adjust pro rata need, if necessary, to address the issue of project renewals.

(c) *Awarding need points to projects:* Once the pro rata need is established, it is applied against the priority project list in the application. Starting from the highest priority project, HUD proceeds down the list to include those projects whose total funding equals that jurisdiction's pro rata need. Those priority projects which fall within that pro rata need each receive the full 40 points for need. Thereafter, HUD proceeds further down the priority project list until two (2) times the pro rata need is reached and each of those projects receive 20 points. Remaining projects each receive 10 points. If a project priority chart is not submitted for the continuum, then all projects will receive 10 points for Need.

In the case of competing applications from a single jurisdiction or service area, projects in the application that received the highest score out of the possible 60 points for Continuum of Care are eligible for up to 40 points under Need. Projects in the competing applications with lower Continuum of Care scores are eligible for only 10 points under Need.

(5) *Ranking.* The score for Continuum of Care will be added to the Need score in order to obtain a total score for each project. The projects will then be ranked from highest to lowest according to the total combined score.

(6) *Conditional Selection and Adjustments to Funding.*

(a) *Conditional Selection.* Whether a project is conditionally selected, as described in Section IV below, will depend on its overall ranking compared to others, except that HUD reserves the right to select lower rated eligible projects that are part of comprehensive, coordinated, and inclusive Continuum of Care systems that would not otherwise receive funding if necessary to achieve geographic diversity.

When insufficient funds remain to fund all projects having the same total score, HUD will break ties by comparing scores received by the projects for each of the following scoring factors, in the order shown: Need, Overall Continuum of Care (COC) score, COC Process and Strategy, COC Gaps and Priorities, and COC Supplemental Resources. The final tie-breaking factor is the priority number of the competing projects on the applicable COC priority list(s).

(b) *Adjustments to Funding.* HUD may adjust funding of applications in accordance with the provisions of Section III(E) of the General Section of the SuperNOFA. HUD also reserves the right to ensure that a project that is applying for and eligible for selection under this competition is not awarded funds that duplicate activities.

(7) *Additional selection considerations.* HUD will also apply the limitations on funding described below in making conditional selections.

In accordance with section 429 of the McKinney Act, HUD will award Supportive Housing funds as follows: not less than 25 percent for projects that primarily serve homeless families with children; not less than 25 percent for projects that primarily serve homeless persons with disabilities; and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After projects are rated and ranked, based on the criteria described above, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked projects in a category for which the minimum percent has been achieved in order to achieve the minimum percent for another category. If there are an insufficient number of conditionally selected projects in a category to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable Supportive Housing project.

In accordance with section 463(a) of the McKinney Act, as amended by the Housing and Community Development Act of 1992, at least 10 percent of Shelter Plus Care funds will be awarded for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Section 8 Moderate Rehabilitation of Single Room Occupancy Dwellings for Homeless Individuals (provided there are sufficient numbers of approvable projects to achieve these percentages). After projects are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked projects for a component for which the minimum percent has been achieved in order to achieve the minimum percent for another component. If there are an insufficient number of approvable projects in a component to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable Shelter Plus Care project.

In accordance with section 455(b) of the McKinney Act, no more than 10 percent of the assistance made available for Shelter Plus Care in any fiscal year may be used for programs located within any one unit of general local government. In accordance with section 441(c) of the McKinney Act, no city or urban county may have Section 8 SRO projects receiving a total of more than 10 percent of the assistance made available under this program. HUD is defining the 10 percent availability this fiscal year as $10 million for Shelter Plus Care and $10 million for Section 8 SRO. However, if the amount awarded under either of these two programs exceeds $100 million, then the amount awarded to any one unit of general local government (for purposes of the Shelter Plus Care program) or city or urban county (for the purposes of the SRO program) could be up to 10 percent of the actual total amount awarded for that program.

Lastly, HUD reserves the right to reduce the amount of a grant if necessary to ensure that no more than 10 percent of assistance made available under this program section of the SuperNOFA will be awarded for projects located within any one unit of general local government or within the geographic area covered by any one Continuum of Care. If HUD exercises a right it has reserved under this program section of the SuperNOFA, that right will be exercised uniformly across all applications received in response to this program section of the SuperNOFA.

IV. Funding Award Process

HUD will notify conditionally selected applicants in writing. As necessary, HUD will subsequently request them to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review, where applicable; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. SHP, SRO, S+C and S+C/SRO applicants will be notified of the deadline for submission of such information. If an applicant is unable to meet any conditions for fund award within the specified timeframe, HUD reserves the right not to award funds to the applicant, but instead to either: use them to select the next highest ranked application(s) from the original competition for which there are sufficient funds available; or add them to funds available for the next competition for the applicable program.

V. Program Limitations

(A) SRO Program

Applicants need to be aware of the following limitations that apply to the Section 8 SRO program:

- Under section 8(e)(2) of the United States Housing Act of 1937, no single project may contain more than 100 assisted units;
- Under 24 CFR 882.802, applicants that are private nonprofit organizations must subcontract with a Public Housing Authority to administer the SRO assistance;
- Under section 8(e)(2) of the United States Housing Act of 1937 and 24 CFR 882.802, rehabilitation must involve a minimum expenditure of $3000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade conditions to comply with the Housing Quality Standards.
- Under section 441(e) of the McKinney Act and 24 CFR 882.805(d)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. This cost limitation applies to rehabilitation that is compensated for in a Housing Assistance Payments Contract. For purposes of Fiscal Year 1998 funding, the cost limitation is raised from $16,900 to $17,200 per unit to take into account increases in construction costs during the past 12-month period.

(B) Shelter Plus Care/Section 8 SRO Component

With regard to the SRO component of the Shelter Plus Care program, applicant States, units of general local government and Indian tribes must subcontract with a Public Housing Authority to administer the Shelter Plus Care assistance. Also with regard to this component, no single project may contain more than 100 units.

VI. Timeliness Standards

Applicants are expected to initiate their approved projects promptly. If implementation difficulties occur, applicants need to be aware of the following timeliness standards:

(A) Supportive Housing Program

- HUD will deobligate SHP funds if site control has not been demonstrated within one (1) year after initial notification of the grant award, as provided in 24 CFR 583.320(a), subject to the exceptions noted in that regulation.
- Except where HUD finds that delay was due to factors beyond the control of the grantee, HUD may deobligate SHP funds if the grantee does not meet the following additional timeliness standards:

—Construction activities must begin within eighteen (18) months after initial notification of the grant award and be completed within thirty-six (36) months after that notification.

—For activities that cannot begin until construction activities are completed, such as supportive service or operating activities that will be conducted within the building being rehabilitated or newly constructed, these activities must begin within three (3) months after the construction is completed.

—For all activities that may proceed independent of construction activities, these activities must begin within twelve (12) months after initial notification of the grant award.

(B) Shelter Plus Care Program Components Except SRO Component

Except where HUD finds that delay was due to factors beyond the control of the grantee, HUD will deobligate S+C funds if the grantee does not meet the following timeliness standards:

- For Tenant-based Rental Assistance, for Sponsor-based Rental Assistance, and for Project-based Rental Assistance without rehabilitation, the rental assistance must begin within twelve (12) months of the initial announcement of the grant award.
- For Project-based Rental Assistance with rehabilitation, the rehabilitation must be completed within twelve (12) months of initial notification of the grant award.

(C) SRO Program and SRO Component of the Shelter Plus Care Program

For projects carried out under the SRO program and the SRO component of the S+C program, the rehabilitation work must be completed and the Housing Assistance Payments contract executed within twelve (12) months of execution of the Annual Contributions Contract. HUD may reduce the number of units or the amount of the annual contribution commitment if, in the determination of HUD, the Public Housing Authority fails to demonstrate a good faith effort to adhere to this schedule.

VII. Linking Supportive Housing Programs and AmeriCorps

Applicants for the Supportive Housing Program are encouraged to link their proposed projects with AmeriCorps, a national service program engaging thousands of Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training. For information about AmeriCorps SHP partnerships, call the Corporation for National Service at (202) 606–5000 extension 486.

VIII. Other Matters

(A) Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications (See Section V of the General Section).

(B) Environmental Requirements

All Continuum of Care assistance is subject to the National Environmental Policy Act of 1969 and related Federal environmental authorities. No Federal or non-Federal funds or assistance that limits reasonable choices or could produce a significant adverse environmental impact may be committed to a project until all required environmental reviews and notifications have been completed. Conditional selection of projects under the Continuum of Care Program is subject to the environmental review requirements under 24 CFR 582.230, 583.230, and 882.804(c), as applicable.

(C) Section 3

To the extent that any housing assistance (including rental assistance) funded through this program section of the SuperNOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement) or housing construction, then it is subject to section 3 of the Housing and Urban Rehabilitation Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

BILLING CODE 4210–32–P

ATTACHMENT

CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS

ELEMENT	SUPPORTIVE HOUSING	SHELTER PLUS CARE	SECTION 8 SRO
AUTHORIZING LEGISLATION	Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act	Subtitle F of Title IV of the Stewart B. McKinney Homeless Assistance Act	Section 441 of the Stewart B. McKinney Homeless Assistance Act
IMPLEMENTING REGULATIONS	24 CFR part 583	24 CFR part 582	24 CFR part 882
ELIGIBLE APPLICANT(S)	• States • Units of general local government • Special purpose units of government such as public housing agencies (PHAs) • Private nonprofit organizations • CMHCs that are public nonprofit organizations	• States • Units of general local government • PHAs	• PHAs • Private nonprofit organizations
ELIGIBLE COMPONENTS	• Transitional housing • Permanent housing for disabled persons only • Supportive services not in conjunction with supportive housing • Safe Havens • Innovative supportive housing	• Tenant-based • Sponsor-based • Project-based • SRO-based	• SRO housing
ELIGIBLE ACTIVITIES See footnotes 1, 2, and 3	• Acquisition • Rehabilitation • New construction • Leasing • Operating costs • Supportive services	• Rental assistance	• Rental Assistance
ELIGIBLE POPULATIONS See footnote 2	• Homeless persons	• Homeless disabled individuals • Homeless disabled individuals and their families	• Homeless individuals • Section 8 eligible current occupants

POPULATIONS GIVEN SPECIAL CONSIDERATION	• Homeless persons with disabilities • Homeless families with children	Homeless persons who: • are seriously mentally ill • have chronic problems with alcohol and/or drugs • have AIDS and related diseases	N/A
INITIAL TERM OF ASSISTANCE	3 years	5 years: TRA, SRA, and PRA if no rehab 10 years: SRO and PRA with rehab	10 years

Footnote 1: **Homeless prevention activities are statutorily ineligible under these programs.**

Footnote 2: **Persons at risk of homelessness are statutorily ineligible for assistance under these programs.**

Footnote 3: **Acquisition, construction, rehabilitation, leasing, and operating costs for emergency shelters are statutorily ineligible for assistance under Shelter Plus Care and Section 8 SRO.**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA) PROGRAM

BILLING CODE 4210–32–C

Housing Opportunities for Persons With AIDS (HOPWA)

Program Description: Approximately $20,150,000 is available for housing assistance and supportive services under the Housing Opportunities for Persons With AIDS (HOPWA) program.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time, on July 10, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: The completed original application must be submitted to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. The original application submitted to HUD headquarters is considered the official application.

In addition, two (2) copies of this application must also be submitted to the area CPD Field Office or Offices that serve the area in which activities are proposed; the list of addresses for area CPD Field Offices is provided in the HOPWA application kit. An applicant that proposes nationwide activities should file the two copies with their original with the HUD headquarters office. When submitting your applications, please refer to HOPWA, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance

For an application kit, supplemental information, and technical assistance please call the SuperNOFA Information Center at 1–800–HUD–8929 (1–800–483–8929). Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to HOPWA and provide your name, address (including zip code), and telephone number (including area code).

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

This program is authorized under the AIDS Housing Opportunity Act (42 U.S.C. 12901). The regulations for HOPWA are found at 24 CFR part 574.

(B) Purpose

Under selection procedures established in Section II of this NOFA, the funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under two categories of assistance:

(1) Grants for Special Projects of National Significance (SPNS) that, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the housing and related supportive service needs of eligible persons; and

(2) Grants for projects that are part of Long-Term Comprehensive Strategies (Long-Term) for providing housing and related supportive services for eligible persons in areas that are not eligible for HOPWA formula allocations.

(C) Amount Allocated

Approximately $20,150,000 is being made available by this NOFA. Additional funds may be awarded if funds are recaptured, deobligated, appropriated or otherwise made available during the fiscal year.

(1) Maximum grant amounts. The maximum amount that an applicant may receive is $1,000,000 for program activities (e.g., activities that directly benefit clients). An applicant may also receive up to 3 percent of the amount that is awarded for program activities for grantee administrative costs and, if the application involves project sponsors, up to 7 percent of the amount that is provided to project sponsors for program activities for the project sponsors' administrative costs. In addition, up to $50,000 may be requested to collect data on project outcomes. HUD reserves the right to reduce the amount requested for data collection on project outcomes in relation to the amount requested for program activities.

For example, an applicant that proposes to use $1,000,000 for housing assistance could receive up to an additional $100,000 for administrative costs (potentially up to $30,000 for grantee administrative costs and up to $70,000 for project sponsors' administrative costs if the sponsors carry out that assistance) and $50,000 for data collection. Due to statutory limits on administrative costs, no project sponsor administrative costs are available in cases where the grantee directly carries out the program activities and that grantee is limited to using up to 3 percent of the grant amount for administering the grant. An applicant should note that the costs of staff that are carrying out the program activities may be included in those program activity costs and that costs may be prorated between categories as may be appropriate. A sponsor is only eligible to use up to 7 percent of the amount that they receive for the sponsor's administrative costs.

(2) Award modifications. See the General Section of this SuperNOFA for information with regard to adjustments to funding. HUD also reserves the right to ensure that a project that is applying for and eligible for selection under this and other competitions, including the FY 1998 Continuum of Care Homeless Assistance NOFA, is not awarded funds that duplicate activities.

(D) Eligible Applicants

(1) States, units of general local government, and nonprofit organizations may apply for grants for Special Projects of National Significance.

(2) Certain States and units of general local government may apply for grants for projects under the Long-Term category of grants, if the proposed activities will serve areas that were not eligible to receive HOPWA formula allocations in fiscal year 1998. An appendix in the application kit will describe the formula areas. Nonprofit organizations are not eligible to apply directly for the Long-Term category of grants but may serve as a project sponsor for an eligible State or local government grantee.

The HOPWA regulations at 24 CFR 574.3 provide for a definition of nonprofit organization, and eligibility of these organizations is further addressed in the application kit.

(E) Eligible Activities

The following eligible activities are subject to standards and limitations found in 24 CFR part 574:

(1) Housing information services (including fair housing counseling).

(2) Project-based or tenant-based rental assistance.

(3) New construction of a community residence or SRO dwelling.

(4) Acquisition, rehabilitation, conversion, lease or repair of facilities to provide housing and services.

(5) Operating costs for housing.

(6) Short-term rent, mortgage and utility payments to prevent homelessness.

(7) Supportive services.

(8) Administrative expenses.

(9) Resource identification and technical assistance;

Under this NOFA, applicants may propose to operate technical assistance

and/or resource identification activities that help communities and organizations develop housing resources for persons with HIV/AIDS and their families. Generally, this assistance can be used to help communities to improve community-based needs assessments, undertake multiple-year HIV/AIDS housing planning, enhance facility operations and refine other management practices of organizations that provide or plan to provide housing assistance and/or related supportive services for persons living with HIV/AIDS and their families. This assistance can also be used to provide support for HOPWA project sponsors in the form of advice and training. These activities should help build the capacity of sponsors to undertake housing development, to operate housing programs, and use of funds in compliance with the Consolidated Planning Process and the Grants Management System. Funds may be used to provide assistance in developing community-based needs assessments and assistance for State-wide, metropolitan, nonmetropolitan and/or rural areas in development of area multiyear HIV and AIDS housing plans, and for research and information services. Applications to provide technical assistance and resource identification on a national or multijurisdictional basis also may be proposed.

HUD has received community recommendations that the program place additional emphasis on assistance in the planning, development, and operation of projects as well as in undertaking the evaluation of performance from grantees and project sponsors that have been administering HOPWA formula allocations and/or competitive grants. The proposed use of funds for technical assistance and resource identification would also help respond to these recommendations; and

(10) Other activities that are proposed in an application and approved by HUD, including data collection on project outcomes; however, HUD will not approve proposals that depend on future decisions on how funds are to be used, for example, a proposal to establish a local request-for-proposal process to select sponsors and activities.

Project Outcomes. Under item (10), applicants are encouraged to apply for funds to collect data on project outcomes, particularly client outcomes. In addition, data may be collected on changes to housing and supportive services delivery systems as a result of the model project, including changes resulting from any innovative features. A plan for the collection of data and the reporting of information on project outcomes to HUD should be provided by applicants requesting funds for this purpose.

In offering funds for outcomes data collection, this NOFA recognizes the importance of collecting information on model and innovative projects to support further improvements and reforms to the local assistance programs for persons with HIV/AIDS and their families and to be used in national evaluations.

As noted above in Section I(C)(1), an applicant may request up to $50,000 to collect information and report to HUD, or a third party designated by HUD, on project outcomes.

If funds are requested, the applicant must propose data collection activities in their application. The persons who will conduct these activities may include expert third-party assistance. Generally, this person will help a project:

(a) Define monitoring questions that will be addressed and examined during the project period;

(b) Specify outcome measures;

(c) Develop instruments to assess project outcomes and systems outcomes;

(d) Train project staff in the collection of the data, including preparation of standard Annual Progress Reports to HUD;

(e) Monitor data collection activities to assure that submissions are complete and accurate, including data coding and entry;

(f) Summarize the data collected; and

(g) Prepare reports summarizing findings.

II. Program Requirements

(A) Performance Measures and Project Goals and Objectives

Applicants should establish and describe performance goals and objectives that are important in developing the proposed projects and that will be used to evidence accomplishments under the HOPWA performance measures. These goals and objectives (i.e., specific, achievable and time-limited statements) will be a basis for a review of project outcomes and help establish the nature of possible findings that would be disseminated to the benefit of other projects.

As standard, program-wide performance measures, applicants should use the following:

(1) In the area to be served, increase the number of short-term housing units (that may include access to related supportive services) by an estimated ''xx'' by the end of the program year. For example, a transitional program that provides five units that are used in conjunction with drug and/or alcohol abuse treatment and counseling and/or mental health services with a plan for client outplacement to other housing.

(2) In the area to be served, increase the number of permanent housing units by an estimated ''xx'' by the end of the program year. For example, a program designed to offer 25 rental vouchers and assistance to participants in finding housing with access to service components that could assist clients in maintaining daily living activities through an appropriate range of support.

(B) Performance Benchmarks

Funds received under this competition are expected to be expended within 3 years following the date of the signing of a grant agreement. As a condition of the grant, selected projects are expected to undertake activities based on the following performance benchmarks:

(1) A project that involves the acquisition or leasing of a site is required to gain site control within one year of their selection (i.e, one year from the date of the signing of their selection letter by HUD);

(2) If the project is proposing to use HOPWA funds to undertake rehabilitation or new construction activities, the project is required to begin the rehabilitation or construction within 18 months of their selection and to complete the activity within 3 years of that date; and

(3) Except for a project that involves HOPWA-funded rehabilitation or construction activities, the project is required to begin program operations within one year of their selection. If a selected project does not meet the appropriate performance benchmark, HUD reserves the right to cancel or withdraw the grant selection or otherwise deobligate awarded funds. In exercising this right, the Secretary may waive a termination action in cases that HUD determines evidence that the delay and failure to meet the performance benchmark are due to factors that were beyond the control of the grantee.

(C) Availability of FY 1998 Formula Allocations

In FY 1998, a total of $183.6 million was allocated by formula to the qualifying cities for 59 eligible metropolitan statistical areas (EMSAs) and to 29 eligible States for areas outside of EMSAs. All HOPWA formula grants are available as part of the jurisdiction's Consolidated Plan, which also includes the Community Development Block Grant, HOME Investment Partnerships program, and Emergency Shelter Grants. Plans are

developed through a public process that assesses area needs, creates a multiple-year strategy and proposes an action plan for use of Federal funds and other community resources in a coordinated and comprehensive manner. Information on consolidated planning, including HOPWA formula programs, is available on the HUD HOME Page at www.hud.gov/cpd/cpdallst.html.

III. Application Selection Process

(A) HOPWA Application Reviews

HOPWA Applications will be reviewed to ensure that they meet the threshold requirements found in Section II of the General Section of the Super NOFA. Applications will also be reviewed to ensure that:

(1) A Certification of Consistency with Consolidated Plans is provided. Under the HOPWA program, proposed activities that are located in a jurisdiction are required to be consistent with the jurisdiction's current, approved Consolidated Plan, including the Analysis of Impediments to Fair Housing and the Action Plan to address these impediments, except that this certification is not required for projects that propose to undertake activities on a national basis; and

(2) The applicant is currently in compliance with the Federal requirements contained in 24 CFR part 574, subpart G, ''Other Federal Requirements.''

(B) The HOPWA Competition

This national competition will involve the review, rating, and selection of HOPWA applications under each of the two categories of assistance (Special Projects of National Significance (SPNS), and Long-Term Comprehensive Strategies (Long-Term) in areas that do not qualify for HOPWA formula allocations).

(C) Procedures for the Rating of Applications

HOPWA applications will be rated based on the criteria listed below. The rating factors are common for all applications, except that some elements are specific for an application that is submitted under the Special Projects of National Significance category, and other elements are specific for an application that is submitted under the second category for Projects that are part of Long-Term Comprehensive Strategies in areas that do not qualify for HOPWA formula allocations.

(D) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The points awarded for the factors total 100. In addition, bonus points available under Section III(C)(2) of the General Section of this SuperNOFA apply to this competition. After rating, these applications will be placed in the rank order of their final score for selection within the appropriate category of assistance.

Rating Factor 1: Capacity of the Applicant and Project Sponsors and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant and any project sponsor has the organizational resources necessary to successfully implement the proposed activities in a timely manner.

HUD will award up to 20 points based on the ability of the applicant and any project sponsor to develop and operate the proposed program, such as housing development, management of housing facilities or units, and service delivery, in relation to which entity is carrying out an activity.

(1) With regard to both the applicant and the project sponsor(s), HUD will consider:

(a) Past experience and knowledge in serving persons with HIV/AIDS and their families;

(b) Past experience and knowledge in programs similar to those proposed in the application;

(c) Experience and knowledge in monitoring and evaluating program performance and disseminating information on project outcomes; and

(d) The applicant's past experience as measured by expenditures and measurable progress in achieving the purpose for which funds were provided.

(2) In reviewing the elements of paragraph (1), HUD will consider the extent to which the proposal demonstrates:

(a) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing the kind of activities for which funding is being requested. The applicant and any project sponsor will be judged in terms of recent, relevant and successful experience of their staff to undertake eligible program activities, including experience and knowledge in serving persons with HIV/AIDS and their families.

(b) The applicant's and/or sponsor's experience in managing complex interdisciplinary programs, especially those involving housing and community development programs directly relevant to the work activities proposed and carrying out grant management responsibilities.

(c) If the applicant and/or sponsor received funding in previous years in the program area for which they are currently seeking funding, the applicant's or sponsor's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in the implementation of their *recent grant awards*, as measured by expenditures and measurable progress in achieving the purpose for which funds were provided.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. For up to 15 points, HUD will award points as follows under paragraphs (1) to (3), and 5 points under paragraph (4).

(1) (5 Points) AIDS Cases. Up to five of these points will be determined by the relative numbers of AIDS cases and per capita AIDS incidence, in metropolitan areas of over 500,000 population and in areas of a State outside of these metropolitan areas, in the State for proposals involving state-wide activities, and in the nation for proposals involving nation-wide activities. To determine these points, HUD will obtain AIDS surveillance information from the Director of the Centers for Disease Control and Prevention.

(2) (5 Points) Description of Need. Up to five of these points will be determined by the extent to which there is a need for funding eligible activities in the area to be served. The applicant should demonstrate that the area to be served has an urgent and unmet need in the eligible population, as follows:

(a) The applicant should describe in its application for a proposed Special Project of National Significance, the need that is not currently addressed by other projects or programs in the area, any unresolved or emerging issues, and/or the need to provide new or alternative forms of assistance that enhance area systems of housing and related care for persons living with HIV/AIDS and their families; or

(b) The applicant should describe in its application for a proposed project that is part of a Long-Term Comprehensive Strategy in an area that does not receive a HOPWA formula allocation, the need that is not currently addressed by other projects or programs in the area, any unresolved or emerging issues, and/or the need to provide forms

of assistance that enhance the community's strategy for providing housing and related services to eligible persons.

HUD will consider the application's presentation of statistics and data sources based on soundness and reliability and the specificity of information to the target population and the area to be served. To the extent that the jurisdiction's Consolidated Plan and Analysis of Impediments to Fair Housing Choice, Continuum of Care Homeless Assistance plans, comprehensive HIV/AIDS housing plans and other sources are applicable and identify the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. If the application proposes to serve a subpopulation of eligible persons on the basis that these persons have been traditionally underserved, the application must document the need for this targeted effort.

(3) (5 Points) Need in Non-Formula Areas and for Renewals. Within the points available under this criterion, HUD will award points under the following two circumstances:

(a) An application that proposes to serve clients in an area that does not qualify for HOPWA formula allocation. HUD recognizes that the clients in these areas that benefit under the proposed project do not have access to HOPWA formula allocations that distribute 90 percent of the annual appropriation for this program; or

(b) An application that proposes to continue the operations of HOPWA funded activities that have been supported by HOPWA competitive funds in prior years and that have operated with reasonable success. An applicant has operated with reasonable success if it shows that previous HOPWA-funded activities have been carried out and are nearing completion of the planned activities in a timely manner. The applicant should also show that performance reports were provided and that benchmarks, if any, in program development and operation have been met, and that the number of persons assisted is comparable to the number that was planned at the time of application.

(4) (5 Points) Highest Rated in a State or the Nation (for nationwide activities). After the other rating factors have been determined, HUD will award five of the points to help achieve greater geographic diversity in funding activities within a variety of States. Under this criterion, five points will be awarded to the highest rated application under each category in each State and to the highest rated application among the applications that propose nationwide activities.

(5) Up to two (2) additional points will be awarded to any application submitted by the City of Dallas, Texas, to the extent this subfactor is addressed. Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of this subfactor will consider the extent to which the applicant's plan for the use of HOPWA funds will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

Rating Factor 3: Soundness of Approach: Responsiveness and Model Qualities (40 Points)

This factor addresses the quality of the applicant's proposed plan in providing a clear relationship between the proposed activities, community needs and the purpose of the program funding. HUD will award up to 40 points based on the extent to which the proposal shows a soundness in its approach to assisting HOPWA eligible persons.

(1) (20 Points) Responsiveness. Of the points available under this criteria, HUD will award up to 20 points based on the proposal's responsiveness to the needs of clients. HUD will consider the extent to which the proposed activities address area needs for the project. The proposal should demonstrate that:

(a) The proposed activities respond to the need for housing and related supportive services for eligible persons in the community. Under this NOFA, HUD is requiring that an application that proposes to use HOPWA funds for supportive services only should clearly demonstrate that the housing needs of eligible persons in the area are addressed through other means to ensure that the proposal fits within the purposes of this program;

(b) The proposed activities will offer a personalized response to the needs of clients that maximizes opportunities for independent living, including accessibility of housing units and other structures, and in the case of a family, accommodates the needs of families.

(c) The proposed activities will result in tangible benefits for the community and for persons with HIV/AIDS and their families, including persons who have been traditionally underserved, as documented by the applicant under Factor 2 in the application's description of need.

(d) In relation to technical assistance activities proposed in the application, the proposed activities respond to the technical assistance needs of programs that provide or seek to provide housing and related supportive services for HOPWA-eligible persons.

(2) (15 Points) Model Qualities. Of the points available under this criteria, HUD will award up to 15 points based on the proposal's model qualities in offering or expanding housing opportunities for persons living with HIV/AIDS and their families. The proposal should demonstrate that the design, planning, operation, coordination with health-care and other supportive services, management oversight, and evaluation of activities are appropriate and sufficiently shown to serve as a model for replication in other similar communities.

HUD will consider the extent to which the application demonstrates that the proposed activities will result in measurable accomplishments that serve as a Special Project of National Significance, when compared to other applications and projects funded under this category in the past; or a Project that is part of a Long-Term Comprehensive Strategy for providing housing and related supportive services for HOPWA-eligible persons in areas of the nation that do not receive HOPWA formula allocations.

Under this criterion, the highest rating will be given to applications that demonstrate:

(a) That the proposed activities will be undertaken using technically competent methodologies for conducting the work to be performed that may include a cost-effective plan for designing, organizing, and carrying out the proposed activities. The proposed cost estimates should be reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area. All activities that include rehabilitation, construction, weatherization, lead-based paint removal, and other activities related to site and design must meet or exceed local building codes.

(b) A potential for yielding a ''best practice'' that can be replicated and disseminated to other organizations, including nonprofit organizations and State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. If selected, the applicant will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to

inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this NOFA.

(c) In the case of a project that is part of a Long-Term Comprehensive Strategy in an area that does not receive a HOPWA formula allocation, that the proposed project is part of a community strategy involving local, metropolitan, or State-wide planning and coordination of housing programs designed to meet the changing needs of low-income persons with HIV/AIDS and their families, including programs providing housing assistance and related services that are operated by Federal, State, local, private, and other entities serving eligible persons.

(3) (5 Points) Innovation. Of the points available under this factor, HUD will award up to five points for an application that demonstrates innovation in the provision of housing for persons living with HIV/AIDS and their families.

HUD will consider the extent to which the project involves a new program for, or alternative method of, meeting the needs of eligible persons, when compared to other HOPWA applications under this notice and HOPWA projects funded in the past. HUD will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, and proposed activities help to ensure that the innovation or innovative quality will benefit eligible persons. HUD will also consider the extent to which the proposal provides for the evaluation of this innovation or quality in order to measure the benefit(s) and allow for the dissemination of information on the success of the proposed activities in assisting eligible persons and/or in establishing or operating systems of housing and related care for eligible persons. Under this criterion, the highest rating will be given to applications that demonstrate innovation in a clear and reasonable manner and the innovation is likely, in HUD's view, to be effective in addressing needs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes. HUD will award up to 10 points based on the extent to which resources from other public or private sources have been committed to support the project at the time of application. Exhibit 4 of the application kit provides guidance on the appropriate language that applicant's must use to document these leveraged resources.

In establishing leveraging, HUD will not consider other HOPWA-funded activities, entitlement benefits inuring to eligible persons, or conditioned commitments that depend on future fund-raising or actions. In assessing the use of acceptable leveraged resources, HUD will consider the likelihood that State and local resources will be available and continue during the operating period of the grant. In evaluating this factor HUD will also consider:

(1) The extent to which the applicant documents leveraged resources, such as funding and/or in-kind services from governmental entities, private organizations, resident management organizations, educational institutions, or other entities in order to achieve the purposes of the project for which the applicant is requesting HOPWA funds.

(2) The extent to which the documented resources evidence that the applicant has partnered with other entities to make more effective use of available public or private resources. Partnership arrangements may include, but are not limited to, funding or in-kind services from local governments or government agencies, nonprofit or for-profit entities, private organizations, educational institutions, or other entities that are willing to partner with the applicant on proposed activities in order to leverage resources, or partnering with other program funding recipients to make more effective use of resources within the geographic area covered by the award.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Continuum of Care Homeless Assistance planning process (if homeless persons are to be served by proposed activities), the jurisdiction's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. HUD will award up to 10 points based on the proposal's comprehensiveness and coordination. In order to ensure that resources are used to their maximum effect within the community, it is important that organizations seeking funds under this program be involved in HUD's planning processes for community development and homeless assistance resources. If an applicant, sponsor or other involved organization has been involved in these processes, that involvement should be described under this factor.

HUD will consider the extent to which the proposal describes how activities were planned and are proposed to be carried out with HOPWA funds and other resources in order to provide a comprehensive and responsive range of housing and related supportive services to meet the changing needs of eligible persons. The proposal should demonstrate that housing is provided in conjunction with the client's access to health-care and other supportive services in the area to be served, including assistance provided under the Ryan White CARE Act programs.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support, and coordinate all known activities, and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Been actively involved in its community's Continuum of Care Homeless Assistance planning process (if homeless persons are to be served by proposed activities), and/or the jurisdiction's Consolidated Planning process established to identify and address a need/problem that is related in whole, or part, directly, or indirectly to the activities the applicant proposes.

In the case of technical assistance providers, the applicant will be evaluated on the specific steps it will take to work with recipients of technical assistance services to inform them of, and get them involved in, the community's Continuum of Care Homeless Assistance planning process and/or the jurisdiction's Consolidated Planning process, as applicable. HUD will review more favorably those applicants who can demonstrate they are active, or in the case of technical assistance providers, will work with recipients of technical assistance to get them involved in these local and State planning process.

(3) Developed linkages, or the specific steps it will take to develop linkages with other activities, programs or projects through meetings, information networks, planning processes, or other mechanisms to coordinate its activities

so solutions are holistic and comprehensive, including linkages with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other activities funded by the Federal, State, or local government, including those proposed or on-going in the community.

(E) Selection of HOPWA Awards

Whether an HOPWA application is conditionally selected will depend on its overall ranking compared to other applications within each of the two categories of assistance. HUD will select applications in rank order in each category of assistance to the extent that funds are available, except as noted below. In allocating amounts to the categories of assistance, HUD reserves the right to ensure that sufficient funds are available for the selection of at least one application under each category of assistance.

HUD reserves the right to achieve greater diversity in the selection of applications (i.e., by selecting a lower rated application), in the case that an application demonstrates a great unmet need and no applicant in that State has been the recipient of any prior HOPWA competitive grant or formula allocation. In selecting a lower rated application in order to achieve greater diversity under this paragraph (i.e. resulting in funding activities within a variety of states), HUD will not select an application that is rated below 50 points.

In the event of a tie between applications in a category of assistance, HUD reserves the right to break the tie: by selecting the proposal that increases geographic diversity as defined in the prior paragraph; and, if greater geographic diversity is not achievable, by subsequently designating as the higher rated proposal, that proposal which was scored higher on a rating criterion, taken in the following order until the tie is broken: the Soundness of Approach: Responsiveness and Model Qualities (Rating Factor 3); Comprehensiveness and Coordination (Rating Factor 5); the Capacity of the Applicant and Relevant Organizational Experience (Rating Factor 1); the Need/Extent of the Problem (Rating Factor 2); and Leveraging Resources (Rating Factor 4).

HUD will notify conditionally selected applicants in writing. Such applicants will subsequently be notified of any modification made by HUD, the additional project information necessary for grant award, and the date of deadline for submission of such information. In the event that a conditionally-selected applicant is unable to meet any conditions for fund award within the specified timeframe or funds are deobligated under a grant awarded under this competition, HUD reserves the right not to award funds to the applicant, but instead to: use those funds to make awards to the next highest rated applications in this competition; to restore amounts to a funding request that had been reduced in this competition; or to add amounts to funds available for the next competition.

IV. Application Submission Requirements

The HOPWA application kit provides an application that must be used in applying for program funds under this NOFA. The HOPWA application provides certifications and an SF–424 that are applicable to this program, and HOPWA applicants are not required to provide the forms, certifications, and assurances listed in Section II(G) of the General Section of the SuperNOFA. Section II(D) of the General Section of this SuperNOFA regarding Affirmatively Furthering Fair Housing does not apply to the HOPWA program.

All HOPWA applications must contain the following items:

(A) Transmittal Letter

This letter identifies which program under the SuperNOFA for which funds are requested and the dollar amount requested.

(B) Narrative Statements

The HOPWA application provides for narrative statements that address the Factors for Award found at Section III(D) of this NOFA.

(C) Service Areas

The HOPWA application provides for a statement to identify the area(s) in which the application proposes to offer housing and/or services.

(D) Budget

The budget should be submitted on the form found in the HOPWA Application Kit, in lieu of the standard budget form under the General Section of this SuperNOFA.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

All HOPWA assistance is subject to the National Environmental Policy Act of 1969, applicable related Federal environmental authorities, and the environmental review requirements in 24 CFR 574.510. HUD's conditional selection of an application does not constitute approval of a proposed site. Before an applicant or project sponsor may acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, or commit Federal or non-Federal funds to such activities, HUD will perform an environmental review with respect to a proposed property in accordance with 24 CFR part 50.

VII. Section 3

To the extent that any housing assistance (including rental assistance) funded through this program section of the SuperNOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement) or housing construction, then it is subject to section 3 of the Housing and Urban Rehabilitation Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM

BILLING CODE 4210–32–C

Funding Availability for Section 202 Supportive Housing for the Elderly Program

Program Description: Approximately $402,397,190 is available for the Section 202 Supportive Housing for the Elderly Program. Under the Section 202 Program, assistance is provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly.

Application Due Date: Completed applications must be submitted no later than 6:00 pm, local time on July 7, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (an original and four copies) must be submitted to the Director of either the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project with the following exceptions:

1. Applications for projects proposed to be located within the jurisdiction of the Seattle, Washington and the Anchorage, Alaska Offices must be submitted to the Portland, Oregon Office.
2. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.
3. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.
4. Applications for projects proposed to be located within the State of Nevada must be submitted to the Denver, Colorado Office.

A listing of the Multifamily Hubs and Program Centers, their addresses, and telephone numbers, including TTY numbers is included in the application kit, and is also available from HUD's SuperNOFA Information Center at 1–800–HUD–8929 and from the Internet through the HUD web site at http://www.hud.gov.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call HUD's SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to the Section 202 Program and provide your name, address (including zip code), and telephone number (including area code).

You may also contact the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project.

Immediately upon publication of this SuperNOFA, if HUD Offices have not already provided names to the SuperNOFA Information Center, the Offices shall notify elderly and minority media, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and other groups with special interest in housing for elderly households.

For Further Information and Technical Assistance. For further information and technical assistance, please contact the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project. HUD encourages minority organizations to participate in this Section 202 Program as Sponsors and strongly recommends that prospective applicants attend the local HUD Office workshop which will be held within three weeks of the publication of this SuperNOFA. Interested applicants should ensure that their names are included on the appropriate HUD Office's mailing list so that they will be informed of the date, time and place of the workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. At the workshops, HUD will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes and accessibility requirements, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

Sponsors who cannot attend the workshops are strongly encouraged to contact the appropriate HUD Office with any questions regarding the submission of applications to that particular office and to request any materials distributed at the workshop.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Section 202 Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA)(Pub. L. 101–625; approved November 28, 1990). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992)(Pub.L. 102–550; approved October 28, 1992), and by the Rescissions Act (Pub.L. 104–19; enacted on July 27, 1995).

(B) Purpose

The purpose of this NOFA is to provide funds to enable private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for very low-income persons 62 years of age or older that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing.

HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital Advances are used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Federal Deposit Insurance Corporation (formerly held by the Resolution Trust Corporation) (FDIC/RTC). Capital Advance funds will bear no interest and will be based on development cost limits published in the **Federal Register**. Repayment of the capital advance is not required as long as the housing remains available for occupancy by very low-income elderly persons for at least 40 years.

Project rental assistance contracts are used to supplement the difference between what the residents pay and the HUD-approved expense to operate the project.

(C) Amount Allocated

For supportive housing for the elderly, the FY 1998 HUD Appropriations Act provides $645,000,000 for capital advances, including amendments to capital advance contracts, for supportive housing for the elderly as authorized by section 202 of the Housing Act of 1959 (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. In accordance with the waiver authority provided in the Act, the Secretary is waiving the following statutory and regulatory provision: The term of the project rental

assistance contract is reduced from 20 years to a minimum term of 5 years. HUD anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, HUD will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

Although not subject to the section 213(d) requirements, a formula is still used for allocating Section 202 funds. The allocation formula was developed to reflect the ''relevant characteristics of prospective program participants'', as specified in 24 CFR 791.402(a). The FY 1998 formula for allocating Section 202 capital advance funds consists of one data element: a measure of the number of one and two person renter households with incomes at or below the Departments's Very-low Income Limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size), which have housing deficiencies. The counts of elderly renter households with housing deficiencies were taken from a special tabulation of the 1990 Decennial Census. The formula focuses the allocation on targeting the funds based on the unmet needs of elderly renter households with housing problems.

Under Section 202, 85 percent of the total capital advance amount is allocated to metropolitan areas and 15 percent to nonmetropolitan areas. In addition, each HUD Office jurisdiction receives sufficient capital advance funds for a minimum of 20 units in metropolitan areas and 5 units in nonmetropolitan areas. The total amount of capital advance funds to support these minimum set-asides are then subtracted from the respective (metropolitan or nonmetropolitan) total capital advance amount available. The remainder is fair shared to each HUD Office jurisdiction based on the allocation formula fair share factors. NOTE: The allocations for metropolitan and nonmetropolitan portions of the Multifamily Hub or Program Center jurisdictions reflect the most current definitions of metropolitan and nonmetropolitan areas, as defined by the Office of Management and Budget.

A fair share factor is developed for each metropolitan and nonmetropolitan portion of each local HUD Office jurisdiction. A fair share factor is developed by taking the number of renter households for the total United States. The resulting percentage for each local HUD Office jurisdiction is then adjusted to reflect the relative cost of providing housing among the HUD Office jurisdictions. The adjusted needs percentage for the applicable metropolitan or nonmetropolitan portion of each jurisdiction is then multiplied by respective total remaining capital advance funds available nationwide.

Based on the allocation formula, HUD has allocated the available capital advance funds as shown on the following chart:

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FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

FISCAL YEAR 1998 SECTION 202 ALLOCATIONS

	METROPOLITAN CAPITAL ADVANCE		NONMETROPOLITAN CAPITAL ADVANCE		TOTALS CAPITAL ADVANCE	
OFFICES	AUTHORITY	UNITS	AUTHORITY	UNITS	AUTHORITY	UNITS
BOSTON HUB						
Boston	$ 13,928,619	172	731,762	9	14,660,381	181
Hartford	6,942,385	86	405,792	5	7,348,177	91
Manchester	2,938,826	44	2,153,835	33	5,092,661	77
Providence	4,123,859	51	405,792	5	4,529,651	56
TOTAL	$ 27,933,689	353	3,697,181	52	31,630,870	405
NEW YORK HUB						
New York	$ 41,649,087	474	439,608	5	42,088,695	479
BUFFALO HUB						
Buffalo	$ 10,037,944	132	1,939,433	25	11,977,377	157
PHILADELPHIA HUB						
Charleston	$ 1,339,114	20	1,097,944	16	2,437,058	36
Newark	15,973,798	197	0	0	15,973,798	197
Pittsburgh	5,963,619	84	1,225,255	17	7,188,874	101
Philadelphia	13,091,151	166	1,602,997	20	14,694,148	186
TOTAL	$ 36,367,682	467	3,926,196	53	40,293,878	520

FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

FISCAL YEAR 1998 SECTION 202 ALLOCATIONS

OFFICES	METROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	NONMETROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	TOTALS CAPITAL ADVANCE AUTHORITY	UNITS
BALTIMORE HUB						
Baltimore	$ 5,081,750	72	696,420	10	5,778,170	82
Richmond	4,076,335	68	1,372,856	23	5,449,191	91
D.C.	5,423,833	73	0	0	5,423,833	73
TOTAL	$ 14,581,918	213	2,069,276	33	16,651,194	246
GREENSBORO HUB						
Columbia	$ 3,114,907	48	1,141,145	17	4,256,052	65
Greensboro	6,014,615	79	2,773,050	37	8,787,665	116
TOTAL	$ 9,129,522	127	3,914,195	54	13,043,717	181
ATLANTA HUB						
Atlanta	$ 4,619,633	77	2,061,585	34	6,681,218	111
San Juan	3,040,850	41	1,071,493	14	4,112,343	55
Louisville	3,216,301	50	1,716,799	27	4,933,100	77
Knoxville	2,147,040	38	643,568	11	2,790,608	49
Nashville	3,065,606	53	1,088,217	19	4,153,823	72
TOTAL	$ 16,089,430	259	6,581,662	105	22,671,092	364

FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

FISCAL YEAR 1998 SECTION 202 ALLOCATIONS

OFFICES	METROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	NONMETROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	TOTALS CAPITAL ADVANCE AUTHORITY	UNITS
JACKSONVILLE HUB						
Jacksonville	$ 14,631,792	231	925,540	15	15,557,332	246
Birmingham	3,441,641	58	1,429,361	24	4,871,002	82
Jackson	1,129,454	20	1,639,704	29	2,769,158	49
TOTAL	$ 19,202,887	309	3,994,605	68	23,197,492	377
CHICAGO HUB						
Chicago	$ 17,526,276	216	2,639,561	33	20,165,837	249
Indianapolis	5,358,758	81	1,506,829	23	6,865,587	104
TOTAL	$ 22,885,034	297	4,146,390	56	27,031,424	353
COLUMBUS HUB						
Cincinnati	$ 4,164,425	65	321,252	5	4,485,677	70
Cleveland	7,698,346	107	1,024,425	14	8,722,771	121
Columbus	3,154,963	49	1,100,274	17	4,255,237	66
TOTAL	$ 15,017,734	221	2,445,951	36	17,463,685	257

FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

FISCAL YEAR 1998 SECTION 202 ALLOCATIONS

OFFICES	METROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	NONMETROPOLITAN CAPITAL ADVANCE AUTHORITY	UNITS	TOTALS CAPITAL ADVANCE AUTHORITY	UNITS
DETROIT HUB						
Detroit	$ 8,364,186	113	370,285	5	8,734,471	118
Grand Rapids	2,831,506	45	1,122,203	18	3,953,709	63
TOTAL	$ 11,195,692	158	1,492,488	23	12,688,180	181
MINNEAPOLIS HUB						
Milwaukee	$ 6,193,457	85	2,180,078	30	8,373,535	115
Minneapolis	5,857,191	75	2,134,029	27	7,991,220	102
TOTAL	$ 12,050,648	160	4,314,107	57	16,364,755	217
FT. WORTH HUB						
Ft. Worth	$ 5,972,570	102	1,793,110	30	7,765,680	132
Houston	3,854,289	65	699,560	12	4,553,849	77
Little Rock	1,948,353	36	1,392,193	26	3,340,546	62
New Orleans	3,785,765	66	913,775	16	4,699,540	82
San Antonio	3,156,527	56	693,858	12	3,850,385	68
TOTAL	$ 18,717,504	325	5,492,496	96	24,210,000	421

FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

	FISCAL YEAR 1998 SECTION 202 ALLOCATIONS					
	METROPOLITAN		NONMETROPOLITAN		TOTALS	
	CAPITAL ADVANCE		CAPITAL ADVANCE		CAPITAL ADVANCE	
OFFICES	AUTHORITY	UNITS	AUTHORITY	UNITS	AUTHORITY	UNITS
KANSAS CITY HUB						
Des Moines	$ 2,323,760	38	1,679,447	27	4,003,207	65
Kansas City	3,998,922	62	1,686,002	27	5,684,924	89
Omaha	1,237,666	20	924,117	15	2,161,783	35
Oklahoma City	2,506,999	44	1,189,530	21	3,696,529	65
St. Louis	4,326,741	60	1,429,173	20	5,755,914	80
TOTAL	$ 14,394,088	224	6,908,269	110	21,302,357	334
DENVER HUB						
Denver	$ 6,803,572	102	2,339,655	38	9,143,227	140
SAN FRANCISCO HUB						
Honolulu (Guam)	$ 2,434,752	20	608,688	5	3,043,440	25
Phoenix	3,606,448	60	578,417	10	4,184,865	70
Sacramento	4,799,921	60	845,564	11	5,645,485	71
San Francisco	14,187,613	175	823,829	10	15,011,442	185
TOTAL	$ 25,028,734	315	2,856,498	36	27,885,232	351

FISCAL YEAR 1998 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

	FISCAL YEAR 1998 SECTION 202 ALLOCATIONS					
	METROPOLITAN CAPITAL ADVANCE		NONMETROPOLITAN CAPITAL ADVANCE		TOTALS CAPITAL ADVANCE	
OFFICES	AUTHORITY	UNITS	AUTHORITY	UNITS	AUTHORITY	UNITS
LOS ANGELES HUB						
Los Angeles	28,051,923	350	400,720	5	28,452,643	355
SEATTLE HUB						
Anchorage	$ 2,434,752	20	608,688	5	3,043,440	25
Portland	4,377,067	61	1,552,869	22	5,929,936	83
Seattle	6,088,705	80	1,239,291	16	7,327,996	96
TOTAL	$ 12,900,524	161	3,400,848	43	16,301,372	204
NATIONAL TOTAL	**$342,037,612**	**4,647**	**60,359,578**	**895**	**402,397,190**	**5,542**

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(D) Eligible Applicants

Private nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this Section 202 Program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program.

No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in three (3) or more Hubs in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition (acquisition permitted only with FDIC/RTC properties) of 200 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD offices (554 units). Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a HUD office or 125 units, whichever is less. Reservations for projects will not be approved for less than 5 units.

(E) Eligible Activities

Section 202 capital advance funds must be used to finance the development of housing through new construction, rehabilitation, or acquisition of housing from the FDIC/Resolution Trust Corporation. Project Rental Assistance funds are provided to cover the difference between the HUD-approved operating costs and the amount the residents pay (each resident pays 30 percent of adjusted income).

Project Rental Assistance Contract funds may also be used to provide supportive services and to hire a service coordinator in those projects serving the frail elderly residents. The supportive services must be appropriate to the category or categories of frail elderly residents to be served.

(F) Ineligible Activities

Section 202 funds may not be used for nursing homes, infirmaries, medical facilities, mobile home projects, community centers, headquarters for organizations for the elderly, nonhousekeeping accommodations, or refinancing of sponsor-owned facilities without rehabilitation.

II. Program Requirements

In addition to the program requirements listed in the General Section of this NOFA, applicants are subject to the following requirements:

(A) Statutory and Regulatory Requirements

All applicants must comply with all statutory and regulatory requirements applicable to the Section 202 Program as cited in Section I(A) and I(B) above.

(B) HUD/RHS Agreement

In accordance with an agreement between HUD and the Rural Housing Service (RHS) to coordinate the administration of the agencies' respective rental assistance programs, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS comments in its review and project selection process.

(C) Development Cost Limits

(1) The following development cost limits, adjusted by locality as described in Section II(C)(2) of this NOFA, below, shall be used to determine the capital advance amount to be reserved for projects for the elderly:

(a) The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

Nonelevator structures:
- $28,032 per family unit without a bedroom;
- $32,321 per family unit with one bedroom;
- $38,979 per family unit with two bedrooms;

For elevator structures:
- $29,500 per family unit without a bedroom;
- $33,816 per family unit with one bedroom;
- $41,120 per family unit with two bedrooms.

(b) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the accessibility requirements of § 891.120(b); and the project design and cost standards of § 891.120.

(2) Increased development cost limits.

(a) HUD may increase the development cost limits set forth in section IV(A)(1) of this NOFA, above, by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(b) If HUD finds that high construction costs in Alaska, Guam, the Virgin Islands, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in section IV(A) of this NOFA, above, the amount of the capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(D) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low Income Persons), and its implementing regulations at 24 CFR part 135. Recipients shall ensure that training, employment and other economic opportunities shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low and very low income persons. Recipients must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E.

(E) Certifications and Resolutions

In addition to the certifications and assurances listed in the General Section of this NOFA with the exception of SF–424A, SF–424B, SF–424C, SF–424D and the OMB Circulars which are not required, applicants are required to submit signed copies of the following:

(1) Executive Order 12372 Certification. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

(2) Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of

the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this NOFA. The Plan regulations are published in 24 CFR part 91.

(3) Certification of Compliance with HUD's project design and cost standards and the Uniform Federal Accessibility Standards;

(4) Certification of Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; and

(5) Sponsor's Certification that it will form an ''Owner'' (24 CFR 891.205) after issuance of the capital advance; cause the Owner to file a request for determination of eligibility and a request for capital advance, and provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at firm commitment processing in an amount sufficient to meet its obligations in connection with the project.

(6) A certified Board Resolution that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

(7) A certified Board Resolution, acknowledging the responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of 1 percent of the HUD-approved capital advance, not to exceed $10,000, if nonaffiliated with a National Sponsor; one-half of 1 percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors;), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(8) Sponsor's Certification that it will not require residents to accept any supportive services as a condition of occupancy.

III. Application Selection Process

(A) Rating

All applications will be reviewed and rated in accordance with the Application Selection Process in the General Section of this SuperNOFA with the following exception. The Secretary will not reject an application based on threshold or technical review without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD office. The HUD office must respond within 5 working days to the Sponsor. The HUD office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical review. Upon completion of technical review, all acceptable applications which meet all program eligibility requirements will be rated according to the selection criteria in Section I(E)(3) of this Section 202 Program section of the SuperNOFA, below.

(B) Ranking and Selection Procedures

Applications submitted in response to the advertised metropolitan allocations or nonmetropolitan allocations that have a total base score (without the addition of EC/EZ bonus points) of 60 points or more will be eligible for selection, and HUD will place them in rank order per metropolitan or nonmetropolitan allocation. After adding any bonus points for EC/EZ, HUD will select these applications based on rank order, up to and including the last application that can be funded out of each of the local HUD office's metropolitan or nonmetropolitan allocations. HUD offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections in each allocation area, any residual funds may be used to fund the next rank-ordered application by reducing the number of units by no more than 10% rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of nine units or less.

Once this process has been completed, HUD offices may combine their unused metropolitan and nonmetropolitan funds in order to select the next ranked application in either category, using the unit reduction policy described above, if necessary.

After the offices have funded all possible projects based on the process above, combined metropolitan and nonmetropolitan residual funds from all HUD Offices in each Multifamily Hub will be combined. These funds will be used first to restore units to projects reduced by HUD offices as based on the above instructions. Second, additional applications within each Multifamily Hub will be selected in rank order with no more than one additional application selected per HUD Office unless there are insufficient approvable applications in other HUD Offices within the Multifamily Hub. This process will continue until there are no more approvable applications within the Multifamily Hub that can be selected with the remaining funds. However, any remaining residual funds may be used to fund the next rank-ordered application by reducing the number of units by no more than 10% rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of nine units or less.

Funds remaining after these processes are completed will be returned to Headquarters. These funds will be used first to fund AHEPA, a FY 1996 application which was not selected due to HUD error, second to restore units to projects reduced by HUD offices as a result of the instructions above and, third, for selecting applications on a national rank order. No more than one application will be selected per HUD office (excluding the Iowa State Office since the above application is being funded from the residual funds) from the national residual amount, however, unless there are insufficient approvable applications in other HUD offices. If funds still remain, additional applications will be selected based on a national rank order, insuring that no more than one application will be selected per HUD office unless there are insufficient approvable applications in other HUD offices.

(C) Factors for Award Used To Evaluate and Rate Applications

HUD will rate applications for Section 202 capital advances that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements identified in Section IV(B) below. The maximum number of points for this program is 102. This includes two EZ/EC bonus

points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (30 Points)

This factor addresses the extent to which the applicant has the organizational resources to successfully implement the proposed activities in a timely manner.

In rating this factor, HUD will consider the extent to which the application demonstrates the Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following:

(1) (20 points) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity as well as its financial management capability; and

(2) (10 points) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families. For purposes of this NOFA ''minority'' means the basic racial and ethnic categories for Federal statistics and administrative reporting, as defined in OMB's Statistical and Policy Directive No. 15. (See 60 FR 44673, at 44692, August 28, 1995.)

Rating Factor 2: Need/Extent of the Problem (10 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented problem in the target area. In evaluating this factor, HUD will consider:

The extent of the need for the project in the area based on a determination by the HUD Office. HUD will make this determination by considering the Sponsor's evidence of need in the area, as well as other economic, demographic, and housing market data available to the HUD office. The data could include the availability of existing Federally assisted housing (HUD and RHS) (e.g., considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities; Federally assisted housing for the elderly under construction or for which fund reservations have been issued; and in accordance with an agreement between HUD and the RHS, comments from the RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area. Also, to the extent that the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization identifies the level of the problem and the urgency in meeting the need, the AI or planning document should be referred to in the response. The Department will review more favorably those applications in which the AI or planning document supports the need for the project.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of the applicant's proposal. There must be a clear relationship between the proposed activities, the community's needs and purposes of the program funding for an applicant to receive points for this factor. In evaluating this factor, HUD will consider the following:

(1) (15 points) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (24 CFR 891.125);

(2) (10 points) The suitability of the site from the standpoints of promoting a greater choice of housing opportunities for minority elderly persons/families, and affirmatively furthering fair housing;

(3) (3 points) The extent to which the proposed design will meet the special physical needs of elderly persons;

(4) (3 points) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(5) (3 points) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve;

(6) (3 points) The extent to which the proposed supportive services meet the identified needs of the anticipated residents; and

(7) (3 points) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent, long-term basis.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other community resources which can be combined with HUD's program resources to achieve program purposes.

(1) (5 points) The extent of local government support (including financial assistance, donation of land, provision of services, etc.) for the project; and

(2) (5 points) The extent of the Sponsor's activities in the community, including previous experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to enlist volunteers and raise local funds.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

(1) (4 points) The Sponsor's involvement of elderly persons, particularly minority elderly persons, in the development of the application, and its intent to involve elderly persons, particularly minority elderly persons, in the development and operation of the project; and

(2) (2 points) The extent to which the Sponsor coordinated its application with other organizations to complement and/or support the proposed project;

(3) (2 points) The extent to which the Sponsor demonstrates that it has been actively involved, or if not currently active, the steps it will take to become actively involved in its community's Consolidated Planning process to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project;

(4) (2 points) The extent to which the Sponsor developed or plans to develop linkages with other activities, programs or projects related to the proposed project to coordinate its activities so solutions are holistic and comprehensive; and

IV. Application Submission Requirements

(A) Application

Each application must include all of the information, materials, forms, and

exhibits listed in Section IV(B) (with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles) and in the application kit. Such previously selected Section 202 Sponsors are not required to submit the information described in Sections IV(B)(2)(a), (b), and (c) of this Section 202 Program section of the SuperNOFA, below (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The local HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 202 capital advance funds on the information provided in the application. HUD offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to submit information and exhibits they have previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, applicant experience in provision of housing and services, supportive services plan, community ties, and experience serving minorities.

(B) General Application Requirements

(1) Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

(2) Evidence of each Sponsor's legal status as a private nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption.

Note: Sponsors who have received a section 202 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the latest application and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(3) Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purpose, current activities and how long it has been in existence;

(b) A description of Sponsor's ties to the community at large and to the minority and elderly communities in particular;

(c) A description of local government support (including financial assistance, donation of land, provision of services, etc.);

(d) Letters of support for the Sponsor and for the proposed project from organizations familiar with the housing and supportive services needs of the elderly that the Sponsor expects to serve in the proposed project;

(e) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or supportive services facilities sponsored, owned, and operated by the Sponsor; the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities (including financial management) and experience; the Sponsor's experience in serving the elderly, including elderly persons with disabilities, and/or families and minorities; and the reasons for receiving any increases in fund reservations for developing and/or operating previously funded Section 202 or Section 811 projects;

(f) A description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as its intent to involve elderly persons in the development of the project.

(g) A description of the steps the Sponsor took to identify and coordinate its application with other organizations to complement and/or support the proposed project as well as the steps it will take, if funded, to share information on solutions and outcomes relative to the development of the proposed project.

(h) A description of the Sponsor's involvement in its community's Consolidated Planning process including:

(i) An identification of the lead/facilitating agency that organizes/administers the process;

(ii) An identification of the Consolidated Plan issue areas in which the Sponsor participates;

(iii) The Sponsor's level of participation in the process, including active involvement in any committees.

If Sponsor is not currently active, describe the specific steps it will take to become active in the Consolidated Planning process. (Consult local HUD Office for the identification of the Consolidated Plan community process for the appropriate area.)

(4) Project information, including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and RHS; e.g., public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition; the types of supportive services arrangements currently available in the area; and the use of such services as evidenced by data from local social service agencies or agencies on aging. Also, a description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the project.

(b) A description of how the proposed project will benefit the target population and the community in which it will be located.

(c) A description of the project, including the following:

(i) A narrative description of the building design, including a description of the number of units with bedroom distributions, any special design features, amenities, and/or community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years. NOTE: If these community spaces, amenities, or features would not comply with the project design and cost standards of 24 CFR 891.120 and the special project standards of 24 CFR 891.310, the

Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features;

(ii) A description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(d) Evidence of site control and permissive zoning, including the following:

(i) Evidence that the Sponsor has entered into a legally binding option agreement (which extends 30 days beyond the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional 6 months) to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the FDIC/RTC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation must also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses;

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 202 project or from any other development team member.

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the firm commitment application (e.g., a summary of the results of any requests for rezoning and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies);

(iii) A narrative topographical and demographic description of the suitability of the site and area, and how the site will promote greater housing opportunities for minority elderly and elderly persons with disabilities, thereby affirmatively furthering fair housing; (NOTE: The applicant can best demonstrate its commitment to affirmatively furthering fair housing by describing how proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the applicable jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice, which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. The applicable Consolidated Plan and AI may be the Community's, the County's, or the State's, to which input should have been provided by the local community and its agencies. Alternatively, a document may be used which was previously prepared by a local planning, or similar, organization which addresses Fair Housing issues and remedies to barriers to Fair Housing in the specific community. Applicable impediments could include the need for improved housing quality and services and concomitant expanded housing choice for all elderly families.)

(iv) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(v) A Phase I Environmental Site Assessment, in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–93, as amended. Since the Phase I study must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after publication of the NOFA as possible.

If the Phase I study indicates the possible presence of contamination and/or hazards, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site.

Note: For properties to be acquired from the FDIC/RTC, include a copy of the FDIC/RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the FDIC/RTC Environmental Guidelines.

If the Sponsor chooses to continue with the original site on which the Phase I study indicated contamination or hazards, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional. If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1998 funding competition, this information would have to be submitted to the local HUD office no later than July 29, 1998.

Note: This could be an expensive undertaking. The cost of any clean-up and/or remediation must be borne by the sponsor.

(vi) A letter from the State Historic Preservation Officer (SHPO) indicating whether the proposed site has any historical significance. If the Sponsor cannot obtain a letter from the SHPO due to the SHPO not responding to the Sponsor's request or the SHPO responding that it cannot or will not comply with the requirement, the Sponsor must submit the following: (*1*) a letter indicating that it attempted to get the required letter from the SHPO but that the SHPO either had not responded to the Sponsor's request or would not honor or recognize the Sponsor's request; (*2*) a copy of the Sponsor's letter to the SHPO requesting the required letter; and, (*3*) a copy of the SHPO's response, if available.

(d) Provision of supportive services and proposed facility:

(i) A detailed description of the supportive services proposed to be provided to the anticipated occupancy;

(ii) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services;

(iii) The manner in which such services will be provided to such persons (i.e., on or off-site), including whether a service coordinator will

facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

Note: Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

(5) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD office in response to this announcement of Section 202 Program funding availability or the announcement of Section 811 Program (Supportive Housing for Persons with Disabilities) funding availability, published elsewhere in today's **Federal Register**). Indicate by HUD office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 1997 and prior year projects to which the Sponsor(s) is a party that have not been finally closed. Such projects must be identified by project number and HUD office.

(6) A statement that: (a) identifies all persons (families, individuals, businesses, and nonprofit organizations), identified by race/minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance;

(b) indicates the estimated cost of relocation payments and other services; (c) identifies the staff organization that will carry out the relocation activities; and (d) identifies all persons that have moved from the site within the past 12 months.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of site acquisition, relocation, construction, and other project costs).

VI. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VII. Environmental Requirements

All Section 202 assistance is subject to the National Environmental Policy Act of 1969 and applicable related Federal environmental authorities. The environmental review provisions of the Section 202 program regulations are in 24 CFR 891.155(b).

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM

BILLING CODE 4210–32–P

Funding Availability for the Section 811 Program of Supportive Housing for Persons With Disabilities

Program Description: Approximately $74,372,922 is available for the Section 811 Program of Supportive Housing for Persons with Disabilities. The Section 811 Program provides funding to nonprofit organizations for the development of housing for persons with disabilities that is designed to enable them to live with dignity and independence within their communities.

Application Due Date: Completed applications must be submitted no later than 6:00 pm, local time on July 7, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (an original and four copies) must be submitted to the Director of either the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project with the following exceptions:

1. Applications for projects proposed to be located within the jurisdiction of the Seattle, Washington and the Anchorage, Alaska Offices must be submitted to the Portland, Oregon Office.
2. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.
3. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.
4. Applications for projects proposed to be located within the State of Nevada must be submitted to the Denver, Colorado Office.

A listing of the Multifamily Hubs and Program Centers, their addresses and telephone numbers, including TTY numbers is included in the application kit, and is also available from HUD's SuperNOFA Information Center at 1–800–HUD–8929 and from the Internet through the HUD web site at http://www.hud.gov.

For Application Kits, Further Information, and Technical Assistance: For Application Kits. For an application kit and any supplemental information, please call HUD's SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to the Section 811 Program and provide your name, address (including zip code), and telephone number (including area code).

You may also contact the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project.

Immediately upon publication of this SuperNOFA, if HUD Offices have not already provided names to the SuperNOFA Information Center, the Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, the State Independent Living Council, the local Center for Independent Living and other groups with special interest in housing for persons with disabilities .

For Further Information and Technical Assistance. For further information and technical assistance, please contact the Multifamily Hub Office or Multifamily Program Center having jurisdiction over the proposed project. HUD encourages minority organizations to participate in this program as Sponsors and strongly recommends that prospective applicants attend the local HUD Office workshop which will be held within three weeks of the publication of this SuperNOFA. Interested applicants should ensure that their names are included on the appropriate HUD Office's mailing list so that they will be informed of the date, time and place of the workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. At the workshops, HUD will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes and accessibility requirements, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

Sponsors who cannot attend the workshops are strongly encouraged to contact the appropriate HUD Office with any questions regarding the submission of applications to that particular office and to request any materials distributed at the workshop.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (Pub.L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), and by the Rescissions Act (Pub. L. 104–19, approved July 27, 1995) authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and the HCD Act of 1992, to authorize supportive housing for the elderly).

(B) Purpose

The purpose of this Section 811 Program section of the SuperNOFA is to provide funds to enable nonprofit organizations to expand the supply of supportive housing for very low income persons with disabilities to enable them to live independently in the community.

HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Federal Deposit Insurance Corporation (formerly held by the Resolution Trust Corporation) (FDIC/RTC), of structures to be developed into a variety of housing options ranging from small group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing and cooperative housing. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

Project rental assistance contracts are used to cover the difference between the tenants' contributions toward rent and the HUD-approved cost to operate the project.

(C) Amount Allocated

For supportive housing for persons with disabilities, the FY 1998 HUD Appropriations Act provides $194,000,000 for capital advances, including amendments to capital

advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA. Up to 25 percent of this amount is being set aside for tenant-based rental assistance administered through public housing agencies (PHAs) for persons with disabilities and is also announced elsewhere in today's **Federal Register**.

In accordance with 24 CFR part 791, the Assistant Secretary for Housing has allocated the funds available for capital advances for supportive housing for persons with disabilities based on fair share factors developed by the Assistant Secretary for Policy Development and Research. In accordance with the waiver authority provided in the Act, the Secretary is waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to a minimum term of 5 years and a maximum term which can be supported by funds authorized by the Act. HUD anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, the Department will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

The allocation formula for Section 811 funds consists of two data elements from the 1990 Decennial Census: (1) the number of non institutionalized persons age 16 or older with a work disability and a mobility or self-care limitation and (2) the number of non-institutionalized persons age 16 or older having a mobility or self-care limitation but having no work disability.

A work disability is defined as a health condition that had lasted for 6 or more months which limited the kind (restricted the choice of jobs) or amount (not able to work full time) of work a person could do at a job or business. A mobility limitation is defined as a health condition that had lasted for 6 or more months which made it difficult for the person to go outside the home alone; including outside activities such as shopping or visiting a doctor's office. A self-care limitation is defined as a health care limitation that had lasted for 6 or more months which made it difficult for the person to take care of his/her own personal needs such as dressing, bathing, or getting around inside the home. Temporary (short term) problems such as broken bones that are expected to heal normally are not considered problems.

Under the Section 811 program, each HUD Office jurisdiction receives sufficient capital advance funds for a minimum of 10 units. The total amount of capital advance to fund this minimum set-aside is then subtracted from the total capital advance available. The remainder is fair shared to each HUD Office jurisdiction based on the allocation formula fair share factors.

The fair share factors were developed by taking the sum of the number of persons in each of the two elements for each state, or state portion, of each local HUD Office jurisdiction as a percent of the sum of the two elements for the total United States. The resulting percentage for each local HUD Office is then adjusted to reflect the relative cost of providing housing among the local HUD Office jurisdictions. The adjusted needs percentage for each local HUD Office is then multiplied by the total amount of capital advance funds available nationwide.

The Section 811 capital advance funds have been allocated, based on the formula above, to 51 local HUD Offices as shown on the following chart:

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Fiscal Year 1998 Allocations for Supportive Housing for Persons with Disabilities
[Fiscal Year 1998 Section 811 Allocations]

Office	Capital Advance Authority	Units
Boston HUB:		
Boston	1,830,164	24
Hartford	1,341,593	17
Manchester	632,702	10
Providence	775,704	10
Total	4,580,163	61
New York HUB:		
New York	4,201,487	50
Total	4,201,487	50
Buffalo HUB:		
Buffalo	1,539,093	21
Total	1,539,093	21
Philadelphia HUB:		
Newark	2,332,929	30
Pittsburgh	1,375,826	20
Philadelphia	2,436,828	32
Charleston	1,027,837	16
Total	7,173,420	98
Baltimore HUB:		
Baltimore	1,235,651	18
Richmond	1,166,701	20
D.C.	1,311,197	19
Total	3,713,549	57

Fiscal Year 1998 Allocations for Supportive Housing for Persons with Disabilities
[Fiscal Year 1998 Section 811 Allocations]

Office	Capital Advance Authority	Units
Greensboro HUB:		
Columbia	1,266,240	20
Greensboro	2,033,243	28
Total	3,299,483	48
Atlanta HUB:		
Atlanta	1,559,825	27
San Juan	1,474,968	21
Louisville	1,279,740	21
Knoxville	880,234	16
Nashville	969,444	18
Total	6,164,211	103
Jacksonville HUB:		
Jacksonville	2,857,268	47
Birmingham	1,312,196	23
Jackson	1,027,605	19
Total	5,197,069	89
Chicago HUB:		
Chicago	2,933,910	38
Indiana	1,436,832	23
Total	4,370,742	61
Columbus HUB:		
Cincinnati	999,946	16
Cleveland	1,652,626	24
Columbus	1,003,249	16
Total	3,655,821	56
Detroit HUB:		
Detroit	1,936,041	27
Grand Rapids	597,939	10
Total	2,533,980	37

Fiscal Year 1998 Allocations for Supportive Housing for Persons with Disabilities
[Fiscal Year 1998 Section 811 Allocations]

Office	Capital Advance Authority	Units
Minneapolis HUB:		
Milwaukee	1,322,695	19
Minneapolis	1,291,346	17
Total	2,614,041	36
Ft. Worth HUB:		
Ft. Worth	1,682,494	30
Houston	1,220,144	21
Little Rock	905,754	18
New Orleans	1,235,594	22
San Antonio	1,099,397	20
Total	6,143,383	111
Kansas City HUB:		
Des Moines	591,474	10
Kansas City	1,189,668	20
Omaha	591,474	10
Oklahoma City	970,253	18
St. Louis	1,235,942	18
Total	4,578,811	76
Denver HUB:		
Denver	1,514,967	24
Total	1,514,967	24
San Francisco HUB:		
Honolulu (Guam)	1,163,556	10
Phoenix	1,019,473	18
Sacramento	766,008	10
San Francisco	2,319,414	30
Total	5,268,451	68
Los Angeles HUB:		
Los Angeles	4,137,246	54
Total	4,137,246	54

Fiscal Year 1998 Allocations for Supportive Housing for Persons with Disabilities
[Fiscal Year 1998 Section 811 Allocations]

Office	Capital Advance Authority	Units
Seattle HUB:		
Alaska	1,163,556	10
Portland	1,188,282	18
Seattle	1,335,167	18
Total	3,687,005	46
National Total	**74,372,922**	**1,096**

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(D) Eligible Applicants

Nonprofit organizations that have a section 501(c)(3) tax exemption from the Internal Revenue Service are the only eligible applicants under this program.

No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in three (3) or more Hubs in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition of 100 units of housing for persons with disabilities. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD offices. Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application shall request more units in a given HUD Office than allocated for that HUD Office in this program section of the SuperNOFA.

(E) Eligible/Ineligible Activities

(1) *Eligible Activities.* Section 811 capital advance funds must be used to construct, substantially rehabilitate or acquire, with or without rehabilitation, structures to be used as supportive housing integrated into the surrounding community for very low income persons with disabilities who are at least 18 years old. Project rental assistance funds must be used to cover the difference between the HUD-approved cost of operating the housing and the tenants' contributions toward rent (each resident pays 30 percent of adjusted income).

(2) *Ineligible Activities.* The following activities are ineligible to be funded out of the Section 811 program:

(a) Nursing homes, infirmaries and medical facilities;

(b) Transitional housing facilities;

(c) Manufactured housing facilities;

(d) Community centers, with or without special components for use by persons with disabilities;

(e) Sheltered workshops and centers for persons with disabilities;

(f) Headquarters for organizations for persons with disabilities; and

(g) Refinancing of Sponsor-owned facilities without rehabilitation.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Statutory Requirements and Regulatory Requirements

All applicants must comply with all statutory and regulatory requirements applicable to the Section 811 program as cited in Section I(A) and I(B) above.

(B) HUD/RHS Agreement

In accordance with an agreement between HUD and the Rural Housing Service (RHS) to coordinate the administration of the agencies' respective rental assistance programs, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS in its review and project selection process.

(C) Development Cost Limits

The following development cost limits, adjusted by locality as described in (C)(3) below, shall be used to determine the capital advance amount to be reserved for projects for persons with disabilities:

(1) *For independent living facilities:* The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

Non-elevator structures:

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms;
$49,893 per family unit with three bedrooms;
$55,583 per family unit with four bedrooms.

For elevator structures:

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms;
$53,195 per family unit with three bedrooms;
$58,392 per family unit with four bedrooms.

(2) *For group homes only:*

Number of residents	Type of disability	
	Physical/developmental	Chronic mental illness
# Residents	.....	.....
3	$128,710	$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450

These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of 24 CFR 891.310(a); the accessibility requirements of 24 CFR 891.120(b) and 891.310(b); and the project design and cost standards of 24 CFR 891.120.

(3) Increased development cost limits.

(a) HUD may increase the development cost limits set forth in paragraphs (C)(1) and (2) above by up to 140% in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(b) If HUD finds that high construction costs in Alaska, Guam, Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in paragraphs (1) and (2) of this Section II(C), the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(c) For group homes only, HUD Offices may approve increases in the development cost limits in paragraph (C)(2) above, in areas where Sponsors can provide sufficient documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area where the project is to be built. The average cost of the documented sales must exceed seven percent of the development cost limit for which the project in question is eligible in order for an increase to be considered.

(D) Sites

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within six months of

notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in Section III(B)(4)(e)(1) of this program section of the SuperNOFA and in the application kit. If it does not have site control, it must provide the information required in Section III(B)(4)(e)(2) and in the application kit for identified sites as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site(s) is (are) not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (i.e., site control) will have 10 bonus points added to the rating of their applications. Sponsors submitting proper identification of a site will not be eligible for the 10 bonus points.

Applications containing evidence of site control where either the evidence or the site is not approvable will not be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification.

In the case of a scattered site application submitted with evidence of site control for some or all of the sites, all of the sites must have satisfactory evidence of site control and all of the sites must be approvable for the application to receive the 10 bonus points for site control.

(E) Supportive Services

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to include a supportive services plan and a certification from the appropriate State or local agency that the provision of services identified in the Supportive Services Plan is well designed to serve the special needs of persons with disabilities. Section III(B)(4)(c) below outlines the information that must be in the Supportive Services Plan. Sponsors must submit one copy of their Supportive Services Plan to the appropriate State or local agency well in advance of the application submission deadline date in order for the State or local agency to review the Supportive Services Plan and complete the Supportive Services Certification (Exhibit 4(d) of the application kit) and return it to the Sponsor for inclusion with the application submission to HUD.

Since the appropriate State or local agency will review the Supportive Services Plan on behalf of HUD, the Supportive Services Certification will also indicate whether the Sponsor demonstrated that the supportive services will be provided on a consistent, long-term basis and whether the proposed housing is consistent with State or local policies or plans governing the development and operation of housing to serve individuals of the proposed occupancy category. If HUD receives an application in which the Supportive Services Certification is missing and is not submitted during the deficiency period, or is received by HUD after the deficiency period, or indicates that the provision of services *is not* well designed to meet the special needs of persons with disabilities; the application is rejected. Furthermore, if the Certification indicates that the Sponsor failed to demonstrate that the supportive services will be provided on a consistent, long-term basis, or the proposed housing *is not* consistent with State or local agency's plans/policies governing the development and operation of housing to serve the proposed population and the agency will be a major funding or referral source for the proposed project or be responsible for licensing the project, the application shall also be rejected.

Any prospective resident of a Section 811 project who believes he/she needs supportive services must be given the choice to be responsible for acquiring his/her own services or to take part in the Sponsor's Supportive Services Plan which must be designed to meet the individual needs of each resident. Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

(F) Project Size Limits

(1) *Group home*—The minimum number of persons with disabilities that can be housed in a group home is three and the maximum number is six, with one person per bedroom unless two residents choose to share one bedroom or a resident determines he/she needs another person to share his/her bedroom.

(2) *Independent living facility*—The minimum number of units that can be applied for in one application is five; not necessarily in one structure. The maximum number of persons with disabilities that can be housed in an independent living facility is 18.

(3) *Exceptions*—Sponsors may request an exception to the above project size limits by providing the information required in the application kit and as outlined in Section III(B)(4)(e)(1)(viii) below.

(G) Economic Opportunities for Low and Very Low Income Persons

Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low Income Persons) and its implementing regulations at 24 CFR part 135. Recipients shall ensure that training, employment and other economic opportunities shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low and very low income persons. Recipients must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E.

(H) Certifications and Resolutions

In addition to the certifications listed in the General Section of this SuperNOFA with the exception of SF–424A, SF–424B, SF–424C, SF–424D and the OMB Circulars which are not required, applicants are required to submit signed copies of the following:

(1) *Supportive Services Certification.* A certification from the appropriate State or local agency identified in the application kit indicating whether: (1) the provision of supportive services is well designed to serve the needs of persons with disabilities the housing is expected to serve, (2) whether the supportive services will be provided on a consistent, long-term basis, and (3) whether the proposed housing is consistent with State or local plans and policies governing the development and operation of housing to serve individuals of the proposed occupancy category. (The name, address, and telephone number of the appropriate agency will be identified in the application kit and can also be obtained from the appropriate HUD Office.)

(2) *Executive Order 12372 Certification.* A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

(3) *Certification of Consistency with the Consolidated Plan (Plan)* for the jurisdiction in which the proposed project will be located. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this SuperNOFA. The Plan regulations are published in 24 CFR part 91.

(4) *Certification of Compliance with HUD's project design and cost standards* and special project standards;

(5) *Certification of Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,* as amended;

(6) *Sponsor's Certification that it will form an ''Owner'' after issuance of the capital advance;* cause the Owner to file a request for determination of eligibility and a request for capital advance, and provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at firm commitment processing in an amount sufficient to meet its obligations in connection with the project;

(7) *Sponsor's Certification that it will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act* (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in 24 CFR 891.325); and

(8) *Sponsor's Certification that it will not require residents to accept any supportive services* as a condition of occupancy.

(9) *A certified Board Resolution that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner* or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term.

(10) *A Certified Board Resolution Acknowledging Responsibilities of Sponsorship,* long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership, and Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

III. Application Selection Process

(A) Rating

All applications will be reviewed and rated in accordance with the Application Selection Process in the General Section of this SuperNOFA with the following exception. The Secretary will not reject an application based on threshold or technical review without giving notice of that rejection with all rejection reasons and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five (5) working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical review. Upon completion of technical review, all acceptable applications which meet all program eligibility requirements will be rated according to the Rating Factors in (B) below.

(B) Ranking and Selection Procedures

Applications that have a total base score of 60 points or more (without the addition of EC/EZ and/or site control bonus points) will be eligible for selection and will be placed in rank order. These applications, after adding any bonus points for EC/EZ and/or site control, will be selected based on rank order to and including the last application that can be funded out of each local HUD Office's allocation. HUD Offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections, any residual funds may be utilized to fund the next rank-ordered application by reducing the units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, projects of nine units or less may not be reduced.

After this process is completed, residual funds from all HUD Offices within each Multifamily Hub will be combined. These funds will be used first to restore units to projects reduced by HUD Offices based on the above instructions. Second, additional applications within each Multifamily Hub will be selected in rank order with no more than one additional application selected per HUD Office unless there are insufficient approvable applications in other HUD Offices within the Multifamily Hub. This process will continue until there are no more approvable applications within the Multifamily Hub that can be selected with the remaining funds. However, any remaining residual funds may be used to fund the next rank-ordered application by reducing the number of units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of nine units or less.

At the conclusion of this process, any residual funds from the 18 Multifamily Hubs will be returned to Headquarters. These funds will be used first to restore units to projects reduced by HUD Offices as a result of the instructions above and, second, for selecting applications on a national rank order. No more than one application will be selected per HUD Office from the national residual amount unless there are insufficient approvable applications in other HUD Offices. If funds still remain, additional applications will be selected based on a national rank order insuring that no more than one application will be selected per HUD Office unless there are insufficient approvable applications in other HUD Offices.

(C) Factors for Award Used To Evaluate and Rate Applications

HUD will rate applications for Section 811 capital advances that successfully complete technical processing using the following Rating Factors set forth below and in accordance with the application submission requirements in IV.(B) below. The maximum number of base points to be awarded for applications is 100. Applications have the potential of earning 12 bonus points; ten (10) bonus points for acceptable evidence of control of an approvable site, and two (2) EZ/EC bonus points, as described in the General Section of the SuperNOFA. With the addition of 12 bonus points, an application has the potential of earning 112 maximum points.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (30 Points)

This factor addresses the extent to which the applicant has the organizational resources to successfully implement the proposed activities in a timely manner.

In rating this factor, HUD will consider the extent to which the application demonstrates the Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following:

(1) (20 points) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity as well as its financial management capability; and

(2) (10 points) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families. For purposes of this program section of the SuperNOFA ''minority'' means the basic racial and ethnic categories for Federal statistics and administrative reporting, as defined in OMB's Statistical and Policy Directive No. 15. (See 60 FR 44673, at 44692, August 28, 1995.)

Factor 2: Need/Extent of the Problem (10 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented problem in the target area. In evaluating this factor, HUD will consider:

The extent of the need for the project in the area based on a determination by the HUD Office. This determination will be made by considering the Sponsor's evidence of need in the area, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing comparable subsidized housing for persons with disabilities and current occupancy in such facilities, comparable subsidized housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and RHS, comments from RHS on the demand for additional comparable subsidized housing and the possible harm to existing projects in the same housing market area. Also, to the extent that the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization identifies the level of the problem and the urgency in meeting the need, the AI should be referred to in the response. The Department will review more favorably those applications in which the AI or planning document supports the need for the project.

Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of the applicant's proposal. There must be a clear relationship between the proposed activities, the community's needs and purposes of the program funding for an applicant to receive points for this factor. In evaluating this factor, HUD will consider the following:

(1) (15 points) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended tenants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (site control projects only); and compliance with site and neighborhood standards in 24 CFR 891.125;

(2) (10 points) The suitability of the site from the standpoints of promoting a greater choice of housing opportunities for minority persons with disabilities and affirmatively furthering fair housing.

(3) (5 points) The extent to which the proposed design of the project will meet any special needs of persons with disabilities the housing is expected to serve;

(4) (5 points) The extent to which the proposed design of the project and its placement in the neighborhood will facilitate the integration of the residents into the surrounding community; and

(5) (5 points) The Sponsor's board includes persons with disabilities (including persons who have similar disabilities to those of the prospective residents).

Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other community resources which can be combined with HUD's program resources to achieve program purposes.

(1) (5 points) The extent of local government support (including financial assistance, donation of land, provision of services, etc.) for the project; and

(2) (5 points) The extent of the Sponsor's activities in the community, including previous experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to raise local funds.

Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

(1) (4 points) The Sponsor involved persons with disabilities (including minority persons with disabilities) in the development of the application, and will involve persons with disabilities (including minority persons with disabilities) in the development and operation of the project;

(2) (2 points) The extent to which the Sponsor coordinated its application with other organizations to complement and/or support the proposed project;

(3) (2 points) The extent to which the Sponsor demonstrates that it has been actively involved, or if not currently active, the steps it will take to become actively involved in its community's Consolidated Planning process to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project; and

(4) (2 points) The extent to which the Sponsor developed or plans to develop linkages with other activities, programs or projects related to the proposed project to coordinate its activities so solutions are holistic and comprehensive.

Bonus Points

(1) (10 bonus points) Acceptable evidence of control of an approvable site.

(2) (2 bonus points) Location of proposed site in an EC/EZ area as described in the General Section of this SuperNOFA.

IV. Application Submission Requirements

(A) Application

Each application shall include all of the information, materials, forms, and exhibits listed in Section IV(B) of this Section 811 Program section of the SuperNOFA (with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding

cycles), and in the application kit. Such previously selected Section 811 Sponsors are not required to submit the information described in Section IV(B)(2) (a), (b), and (c), below, of this program section of the SuperNOFA (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 811 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties; and experience serving minorities.

(B) General Application Requirements

Note: A sponsor may apply for a scattered site project in one application.

(1) Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

(2) Evidence of each Sponsor's legal status as a nonprofit organization, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches).

Note: Sponsors who have received a section 811 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. instead, sponsors must submit the project number of the latest application submitted and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(d) The number of people on the Sponsor's board and the number of those people who have disabilities (including disabilities similar to those of the prospective residents).

(3) Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purpose, current activities and how long it has been in existence;

(b) A description of Sponsor's ties to the community at large and to the minority and disabled communities in particular;

(c) A description of local government support (including financial assistance, donation of land, provision of services, etc.);

(d) Letters of support for the Sponsor and for the proposed project from organizations familiar with the housing and supportive services needs of the persons with disabilities that the Sponsor expects to serve in the proposed project;

(e) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects (including integrated housing developments) and/or supportive services facilities sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities (including financial management) and experience, and the Sponsor's experience in serving persons with disabilities and minorities; and the reasons for receiving any increases in fund reservations for developing and/or operating any previously funded projects.

(f) A description, if applicable, of the Sponsor's efforts to involve persons with disabilities (including minority persons with disabilities and persons with disabilities similar to those of the prospective residents) in the development of the application and in the development and operation of the project.

(g) A description of the steps the Sponsor took to identify and coordinate its application with other organizations to complement and/or support the proposed project as well as the steps it will take, if funded, to share information on solutions and outcomes relative to the development of the proposed project.

(h) A description of the Sponsor's involvement in its community's Consolidated Planning process including:

(i) An identification of the lead/facilitating agency that organizes/administers the process;

(ii) An identification of the Consolidated Plan issue areas in which the Sponsor participates;

(iii) The Sponsor's level of participation in the process, including active involvement in any committees.

If Sponsor is not currently active, describe the specific steps it will take to become active in the Consolidated Planning process. (Consult local HUD Office for the identification of the Consolidated Plan community process for the appropriate area.)

(4) Project information including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the proposed population and evidence demonstrating sustained effective demand for supportive housing for the proposed population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing comparable subsidized housing for persons with disabilities, State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies. Also, a description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the project.

(b) A description of how the proposed project will benefit the target population and the community in which it will be located;

(c) A description of the project, including the following:

(i) A narrative description of the building(s) including the number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities, and any resident staff per structure; an identification of all community spaces, amenities, or features planned for the housing and a description of how the spaces, amenities, or features will be used, and the extent to which they are necessary to accommodate the needs of the proposed residents. If these community spaces, amenities, or features would not comply with the project design and cost standards of § 891.120 and the special project standards of § 891.310, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and a description of how the

design of the proposed project will promote the integration of the residents into the surrounding community; and

(ii) A description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(d) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding).

(5) If the Sponsor has control of the site, it must submit the following information:

(a) Evidence that the Sponsor has entered into a legally binding option agreement (which extends 30 days beyond the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional six months) to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the FDIC/RTC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 811 capital advance, and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 811 project or from any other development team member.

(b) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the firm commitment application (e.g., a summary of the results of any requests for rezoning on land in similar zoning classifications and the time required for such rezoning, the procedures for obtaining special or conditional use permits or preliminary indications of acceptability from zoning bodies, etc.).

Note: Sponsors should be aware that under certain circumstances the Fair Housing Act requires localities to make reasonable accommodations to their zoning ordinances or regulations in order to offer persons with disabilities an opportunity to live in an area of their choice. If the Sponsor is relying upon a theory of reasonable accommodation to satisfy the zoning requirement, then the Sponsor must clearly articulate the basis for its reasonable accommodation theory.

(c) A narrative topographical and demographic description of the suitability of the site and area as well as a description of the area surrounding the site, the characteristics of the neighborhood, how the site will promote greater housing opportunities for minority persons with disabilities thereby affirmatively furthering fair housing;

Note: The applicant can best demonstrate its commitment to affirmatively furthering fair housing by describing how proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the applicable jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice, which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. The applicable Consolidated Plan and AI may be the Community's, the County's, or the State's, to which input should have been provided by the local community and its agencies. Alternatively, a document may be used which was previously prepared by a local planning, or similar, organization which addresses Fair Housing issues and remedies to barriers to Fair Housing in the community. Applicable impediments could include the need for improved housing quality and services and concomitant expanded housing choice for all persons with disabilities.

(d) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation;

(e) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(f) A Phase I Environmental Site Assessment, in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–93, as amended. Since the Phase I study must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after publication of the SuperNOFA as possible.

If the Phase I study indicates the possible presence of contamination and/or hazards, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site.

Note: For properties to be acquired from the FDIC/RTC, include a copy of the FDIC/RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the FDIC/RTC Environmental Guidelines.

If the Sponsor chooses to continue with the original site on which the Phase I study indicated contamination or hazards, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional. If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1998 funding competition, this information would have to be submitted to the local HUD Office *no later than 30 days after the application submission deadline date.*

Note: This could be an expensive undertaking. The cost of any clean-up and/or remediation must be borne by the sponsor.

(g) A letter from the State Historic Preservation Officer indicating whether the proposed site(s) has any historical significance. If the Sponsor cannot obtain a letter from the SHPO due to the SHPO not responding to the Sponsor's request or the SHPO responding that it cannot or will not comply with the requirement, the Sponsor must submit the following: 1) a letter indicating that it attempted to get the required letter from the SHPO but that the SHPO either

had not responded to the Sponsor's request or would not honor or recognize the Sponsor's request; 2) a copy of the Sponsor's letter to the SHPO requesting the required letter; and, 3) a copy of the SHPO's response, if available.

(h) If an exception to the project size limits found in Section IV(D) below, of this program section of the SuperNOFA is being requested, describe why the site was selected and demonstrate the following:

(i) People with disabilities similar to those of the prospective tenants have indicated their acceptance or preference to live in housing with as many units/people as proposed for the project;

(ii) The increased number of people is necessary for the economic feasibility of the project;

(iii) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(iv) The increased number of people will not prohibit their successful integration into the community;

(v) The project is marketable in the community;

(vi) The size of the project is consistent with State and/or local policies governing similar housing for the proposed population; and

(vii) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(6) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(a) A description of the location of the site, including its street address, its unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, and how the site will promote greater housing opportunities for minority persons with disabilities thereby affirmatively furthering fair housing;

(b) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(c) An indication as to whether the site is properly zoned. If it is not, an indication of the actions necessary for proper zoning and whether these can be accomplished within six months of fund reservation award, if approved for funding;

(d) A status of the sale of the site; and

(e) An indication as to whether the site would involve relocation.

(7) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in Section IV(C) below of this program section of the SuperNOFA) that includes:

(a) A detailed description of whether the housing is expected to serve persons with physical disabilities, developmental disabilities, chronic mental illness or any combination of the three. Include how and from whom/where persons will be referred to and accepted for occupancy in the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this program section of the SuperNOFA to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, the Owner must permit occupancy by any qualified person with a disability who could benefit from the housing and/or services provided, regardless of the person's disability.

(b) If the Sponsor is requesting approval to limit occupancy in its proposed project(s), it must submit the following:

(i) description of the population of persons with disabilities to which occupancy will be limited;

(ii) An explanation of why it is necessary to limit occupancy of the proposed project(s) to the population described in (i) above. This should include but is not limited to:

(*1*) An explanation of how limiting occupancy to a subcategory of persons with disabilities promotes the goals of the Section 811 program; and,

(*2*) An explanation of why the housing and/or service needs of this population cannot be met in a more integrated setting.

(iii) A description of the Sponsor's experience in providing housing and/or supportive services to the proposed occupants; and

(iv) A description of how the Sponsor will ensure that the occupants of the proposed project(s) will be integrated into the neighborhood and surrounding community.

(8) A detailed description of the supportive service needs of the persons with disabilities that the housing is expected to serve.

(9) The Sponsor shall develop, and submit with its application, a list of community service providers, including those that are consumer controlled, and include letters of intent to provide services to residents of the proposed project(s) from as many potential service providers as possible. This list shall be made available to any residents who wish to be responsible for acquiring their own supportive services. However, a provider may not require residents to participate in any particular service.

(10) A detailed description of a comprehensive supportive services plan organized by the Sponsor for those residents who do not wish to take responsibility for acquiring their own services. Such a plan must include the following:

(a) The name(s) of the agency(s) that will be responsible for providing the supportive services;

(b) The evidence of each service provider's (applicable even if the service provider will be the Sponsor) capability and experience in providing such supportive services;

(c) A description of how, when, how often, and where (on/off-site) the services will be provided;

(d) Identification of the extent of State and local funds to assist in the provision of supportive services;

(e) Letters of intent from service providers (including those that are consumer-controlled) or funding sources, indicating commitments to fund or to provide the supportive services, or that a particular service will be available to proposed residents. If the Sponsor will be providing any supportive services or will be coordinating the provision of any of the supportive services, a letter indicating its commitment to either provide the supportive services or ensure their provision for the life of the project;

(f) If any State or local government funds will be provided, a description of the State or local agency's philosophy/policy concerning housing for the population to be served, and a demonstration by the Sponsor that the application is consistent with State or local plans and policies governing the development and operation of housing for the same disabled population.

(e) A description of residential staff, if needed.

(f) Assurances that if any proposed resident chooses to receive supportive services organized by the Sponsor, the services will be provided based on the resident's individual needs.

(g) A statement indicating the Sponsor's commitment that it will not condition occupancy on the resident's acceptance of any supportive services.

(11) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this Section 811 funding announcement under this SuperNOFA or announcement for funding under this SuperNOFA of the Section 202 program of Supportive Housing for the Elderly. Indicate, by HUD Office, the number of units requested and the proposed location by

city and State for each application. Include a list of all FY 1997 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

(12) A statement that: (a) identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; (c) identifies the staff organization that will carry out the relocation activities; and (d) identifies all persons that have moved from the site within the last 12 months. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: If any of the relocation costs will be funded from sources other than the section 811 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of site acquisition, relocation, construction and other project costs).

VI. Environmental Requirements

All Section 811 assistance is subject to the National Environmental Policy Act of 1969 and applicable related Federal environmental authorities. The environmental review provisions of the Section 811 program regulations are in 24 CFR 891.155(b).

Appendix A to SuperNOFA—HUD Field Office Contact Information

Not all Field Offices listed handle all of the programs contained in the SuperNOFAs. Applicants should look to the SuperNOFAs for contact numbers for information on specific programs. Office Hour listings are local time. Persons with hearing or speech impediments may access any of these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339.

New England

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, 860–240–4800, Office Hours: 8:00—4:30 PM

Maine State Office, 99 Franklin Street, Third Floor, Suite 302, Bangor, ME 04401–4925, 207–945–0467, Office Hours: 8:00 AM–4:30 PM

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, 617–565–5234, Office Hours: 8:30 AM–5:00 PM

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, 603–666–7681, Office Hours: 8:00 AM–4:30 PM

Rhode Island State Office, Sixth Floor 10 Weybosset Street, 6th Floor, Providence, RI 02903–2808, 401–528–5230, Office Hours: 8:00 AM–4:30 PM

Vermont State Office, U.S. Federal Building, Room 237, 11 Elmwood Avenue, P.O. Box 879, Burlington, VT 05402–0879, 802–951–6290, Office Hours: 8:00 AM–4:30 PM

New York/New England

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, 518–464–4200, Office Hours: 7:30 AM–4:00 PM

Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, 716–551–5755, Office Hours: 8:00 AM–4:30 PM

Camden Area Office, Hudson Building 800, Hudson Square, Second Floor, Camden, NJ 08102–1156, 609–757–5081, Office Hours: 8:00 AM–4:30 PM

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, 973–622–7900, Office Hours: 8:00 AM–4:30 PM

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, 212–264–6500, Office Hours: 8:30 AM–5:00 PM

Mid Atlantic

Delaware State Office, 824 Market Street, Suite 850, Wilmington, DE 19801–3016, 302–573–6300, Office Hours: 8:00 AM–4:30 PM

District of Columbia Office, 820 First Street, N.E., Suite 450, Washington, DC 20002–4205, 202–275–9200, Office Hours: 8:30 AM–4:30 PM

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, 410–962–2520, Office Hours: 8:30 AM–4:30 PM

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0600, Office Hours: 8:30 AM–4:30 PM

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–6428, Office Hours: 8:30 AM–4:30 PM

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539, Office Hours: 8:30 AM–4:30 PM

West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, 304–347–7000, Office Hours: 8:00 AM–4:30 PM

Southeast/Caribbean

Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7617, Office Hours: 8:00 AM–4:30 PM

Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5201, Office Hours: 8:00 AM–4:30 PM

Florida State Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4500, Office Hours: 8:30 AM–5 PM

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, 404–331–5136, Office Hours: 8:00 AM–4:30 PM

Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–2627, Office Hours: 8:00 AM–4:30 PM

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, 502–582–5251, Office Hours: 8:00 AM–4:45 PM

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, 3rd Floor, Knoxville, TN 37902–2526, 423–545–4384, Office Hours: 7:30 AM–4:15 PM

Memphis Area Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, TN 38103–2335, 901–544–3367, Office Hours: 8:00 AM–4:30 PM

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capital Street, Room 910, Jackson, MS 39269–1096, 601–965–4738, Office Hours: 8:00 AM–4:45 PM

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4000, Office Hours: 8:00 AM–4:45 PM

Orlando Area Office, Langley Building, 3751 Maguire Blvd, Suite 270, Orlando, FL 32803–3032, 407–648–6441, Office Hours: 8:00 AM–4:30 PM

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5592, Office Hours: 8:00 AM–4:45 PM

Tampa Area Office, Timberlake Federal Building Annex, 501 East Polk Street, Suite 700, Tampa, FL 33602–3945, 813–228–2501, Office Hours: 8:00 AM–4:30 PM

Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, 615–736–5213, Office Hours: 8:00 AM–4:30 PM

Midwest

Cincinnati Area Office, 525 Vine Street, 7th Floor, Cincinnati, OH 45202–3188, 513–684–3451, Office Hours: 8:00 AM–4:45 PM

Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, 216–522–4065, Office Hours: 8:00 AM–4:40 PM

Flint Area Office, The Federal Building, 605 North Saginaw, Suite 200, Flint, MI 48502–2043, 810–766–5108, Office Hours: 8:00 AM–4:30 PM

Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, 3rd Floor, Grand Rapids, MI 49503–2648, 616–456–2100, Office Hours: 8:00 AM–4:30 PM

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd, Chicago, IL 60604–3507, 312–353–5680, Office Hours: 8:15 AM–4:45 PM

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, 317–226–6303, Office Hours: 8:00 AM–4:45 PM

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7900, Office Hours: 8:00 AM–4:30 PM

Minnesota State Office, 220 Second St., South, Minneapolis, MN 55401–2195, 612–370–3000, Office Hours: 8:00 AM–4:30 PM

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, Office Hours: 8:00 AM–4:45 PM

Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI

53203–2289, 414–297–3214, Office Hours: 8:00 AM–4:30 PM

Southwest

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–5931, Office Hours: 8:00 AM–4:30 PM

Dallas Area Office, Maceo Smith Federal Building, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, 214–767–8359, Office Hours: 8:00 AM–4:30 PM

Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, 713–313–2274, Office Hours: 7:45 AM–4:30 PM

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7201, Office Hours: 8:00 AM–4:30 PM

Lubbock Area Office, George H. Mahon Federal Building and United States Courthouse, 1205 Texas Avenue, Lubbock, TX 79401–4093, 806–472–7265, Office Hours: 8:00 AM–4:45 PM

New Mexico State Office, 625 Truman Street, N.E., Albuquerque, NM 87110–6472, 505–262–6463, Office Hours: 7:45 AM—4:30 PM

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7401, Office Hours: 8:00 AM—4:30 PM

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6800, Office Hours: 8:00 AM—4:30 PM

Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3289, 318–676–3385, Office Hours: 7:45 AM—4:30 PM

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, 817–978–9000, Office Hours: 8:00 AM—4:30 PM

Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, 918–581–7434, Office Hours: 8:00 AM—4:30 PM

Great Plains

Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, 515–284–4512, Office Hours: 8:00 AM—4:30 PM

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, 913–551–5462, Office Hours: 8:00 AM—4:30 PM

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, 402–492–3100, Office Hours: 8:00 AM—4:30 PM

St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103–2836, 314–539–6583, Office Hours: 8:00 AM—4:30 PM

Rocky Mountains

Colorado State Office, 633—17th Street, Denver, CO 80202–3607, 303–672–5440, Office Hours: 8:00 AM—4:30 PM

Montana State Office, Federal Office Building, 301 South Park, Room 340, Drawer 10095, Helena, MT 59626–0095, 406–441–1298, Office Hours: 8:00 AM—4:30 PM

North Dakota State Office, Federal Building P. O. Box 2483, Fargo, ND 58108–2483, 701–239–5136, Office Hours: 8:00 AM—4:30 PM

South Dakota State Office, 2400 West 49th Street, Suite I–201, Sioux Falls, SD 57105–6558, 605–330–4223, Office Hours: 8:00 AM—4:30 PM

Utah State Office, 257 Tower Building, 257 East—200 South, Suite 550, Salt Lake City, UT 84111–2048, 801–524–3323, Office Hours: 8:00 AM—4:30 PM

Wyoming State Office, Federal Office Building, 100 East B Street, Room 4229, Casper, WY 82601–1918, 307–261–6250, Office Hours: 8:00 AM—4:30 PM

Pacific/Hawaii

Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004, 602–379–4434, Office Hours: 8:00 AM—4:30 PM

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, 415–436–6550, Office Hours: 8:15 AM—4:45 PM

Fresno Area Office, 2135 Fresno Street, Suite 100, Fresno, CA 93721–1718, 209–487–5033, Office Hours: 8:00 AM—4:30 PM

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, 808–522–8175, Office Hours: 8:00 AM—4:00 PM

Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, 213–894–8000, Office Hours: 8:00 AM—4:30 PM

Nevada State Office, 333 North Rancho Drive, Suite 700, Las Vegas, NV 89106–3714, 702–388–6525, Office Hours: 8:00 AM—4:30 PM

Reno Area Office, 1575 Delucchi Lane, Suite 114, Reno, NV 89502–6581, 702–784–5356, Office Hours: 8:00 AM—4:30 PM

Sacramento Area Office, 777—12th Street, Suite 200, Sacramento, CA 95814–1997, 916–498–5220, Office Hours: 8:00 AM—4:30 PM

San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, 619–557–5310, Office Hours: 8:00 AM—4:30 PM

Santa Ana Area Office, 3 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707–5764, 714–957–3745, Office Hours: 8:00 AM—4:30 PM

Tucson Area Office, Security Pacific Bank Plaza, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701–1467, 520–670–6237, Office Hours: 8:00 AM—4:30 PM

Northwest/Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4135, 907–271–4170, Office Hours: 8:00 AM—4:30 PM

Idaho State Office, Plaza IV 800 Park Boulevard, Suite 220, Boise, ID 83712–7743, 208–334–1990, Office Hours: 8:00 AM—4:30 PM

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, 503–326–2561, Office Hours: 8:00 AM—4:30 PM

Spokane Area Office, Farm Credit Bank Building, Eighth Floor East, West 601 First Avenue, Spokane, WA 99204–0317, 509–353–2510, Office Hours: 8:00 AM—4:30 PM

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5101, Office Hours: 8:00 AM—4:30 PM

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federal register

Thursday
April 30, 1998

Part VI

Department of Housing and Urban Development

Super 8 Tenant-Based Assistance for Persons With Disabilities, Fiscal Year 1998; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4359–N–01]

Section 8 Tenant-Based Assistance for Persons With Disabilities, Fiscal Year 1998

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of budget authority for approximately 8700 Section 8 rental vouchers and certificates for persons with disabilities. HUD is issuing this NOFA, along with its SuperNOFA for Targeted Housing and Homeless Assistance Programs (published elsewhere in today's **Federal Register**), in order to encourage local efforts toward comprehensive planning and development of comprehensive local solutions.

This NOFA announces the availability of approximately $48.5 million in 5-year budget authority under the Mainstream Program for Section 8 rental vouchers and certificates for persons with disabilities. This funding will support approximately 1,700 rental vouchers or certificates to enable persons with disabilities (elderly and non-elderly) to rent affordable private housing. Public Housing Agencies (PHAs) are invited to respond to this NOFA.

This NOFA also announces the availability in FY 1998 of approximately $20 million in one-year budget authority for approximately 3,500 Section 8 rental vouchers and certificates for non-elderly families with disabilities in support of designated housing allocation plans, and approximately $20 million in one-year budget authority for approximately 3,500 Section 8 rental vouchers and certificates for non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners establishing preferences for the admission of elderly families, and certain types of section 202, section 221(d)(3), and section 236 developments where the owners are restricting occupancy in the development (or portion thereof) to elderly families. PHA applications for funding related to designated housing allocation plans, and PHA applications for funding related to non-elderly disabled families currently on the waiting lists or otherwise in the community of certain Section 8 project-based developments and certain types of section 202, section 221(d)(3) and section 236 developments will be approved for funding on a first-come, first-served basis.

Approximately $39 million ($25 million for designated housing allocation plans and $14 million related to certain types of Section 8 project-based developments) of the $50 million in funding announced as available to PHAs under NOFA FR–4207, published in the **Federal Register** on April 10, 1997 (62 FR 17672), remains unobligated. These remaining funds, for which there was no application deadline, may be sufficient to fund all applications received during FY 1998 without having to use the FY 1998 appropriations provided for similar purposes. Funding announced in NOFA FR–4207 must be obligated before any new amounts are provided for applications related to designated housing allocation plans or certain types of Section 8 project-based developments. HUD's FY 1998 Appropriations Act expanded the use of any FY 1997 funding remaining unobligated under NOFA FR–4207, as well as allowed for the use of FY 1998 appropriations, to fund applications received for Section 8 rental vouchers and certificates in connection with non-elderly disabled families affected by the restriction in certain types of section 202, section 221(d)(3), and section 236 developments to elderly families. Any portion of the current balance of $39 million in FY 1997 appropriations, or $40 million in FY 1998 appropriations related to designated housing allocation plans, certain types of Section 8 project-based developments, or certain types of section 202, section 221(d)(3), or section 236 developments remaining unobligated will be added to the approximately $48.5 million available under this NOFA, but for use only for non-elderly disabled families under the Mainstream Program. The authority to use any remaining funds for additional Section 8 rental vouchers and certificates under the Mainstream Program is found in HUD's 1998 Appropriations Act, which states that to the extent the Secretary determines that the FY 1997 and 1998 appropriations related to designated housing allocation plans, certain types of Section 8 project-based developments, and certain types of section 202, section 221(d)(3), or section 236 developments is not needed to fund applications, the funds may be used for other non-elderly disabled families. Consequently, PHAs should take this into consideration when deciding whether to apply for Mainstream Program funding, as the potential availability of such remaining funds in FY 1998 would support approval of more than 10,000 additional Section 8 rental vouchers and certificates. Unlike in FY 1997, the potential exists in FY 1998 to fund a far greater number of Mainstream Program applications from PHAs.

With the exception of the ADDRESSES AND APPLICATION SUBMISSION PROCEDURES section of this NOFA, and section I.(A) of this NOFA, which cites the authority under which funding is being made available, the remainder of this NOFA applies only to the Mainstream Program.

Application Due Dates

(A) Delivered Applications

The application deadline for delivered applications for the Mainstream Program is July 7, 1998, 6:00 p.m. local HUD Field Office HUB or local HUD Field Office Program Center time.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing public housing agencies, HUD will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should submit their materials as early as possible to avoid any risk of loss of eligibility because of unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent by facsimile (FAX) transmission.

(B) Mailed Applications

Applications for the Mainstream Program will be considered timely filed if postmarked before midnight on the application due date and received by the local HUD Field Office HUB or local HUD Field Office Program Center within ten (10) days of that date.

(C) Applications Sent by Overnight Delivery

Overnight delivery items will be considered timely filed for the Mainstream Program if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Address and Application Submission Procedures

Headquarters Submission

The original and a copy of applications for each of the three programs covered by this NOFA: (1) Section 8 rental voucher and certificate funding for the Mainstream Program, (2) non-elderly disabled families in support

of designated housing allocation plans, and (3) non-elderly disabled families in connection with certain Section 8 project-based developments and certain types of section 202, section 221(d)(3) and section 236 developments should be submitted to the local HUD Field Office HUB, Attention: Director, Office of Public Housing; or to the local HUD Field Office Program Center, Attention: Program Center Coordinator. A copy of an application submitted in connection with a designated housing allocation plan should also be submitted concurrently to HUD Headquarters, Office of Customer Service and Amenities, Room 4206, 451 Seventh Street, SW., Washington, DC 20410. The local HUD Field Office HUB or local HUD Field Office Program Center is the official place of receipt for all applications submitted in response to this NOFA. For ease of reference, the term ''local HUD Field Office'' will be used throughout this NOFA to mean the local HUD Field Office HUB and local HUD Program Center.

PHAs submitting an application for either of the $20 million increments of funding (related to either allocation plans, or certain types of Section 8 project-based developments and certain types of section 202, section 221(d)(3) and section 236 developments) available under this FY 1998 NOFA should note that, other than the address for submission of applications specified in NOFA FR–4207, they are to otherwise follow the application procedures and requirements set forth in NOFA FR–4207 published on April 10, 1997, and NOFA FR–4085 published on October 30, 1996, in the **Federal Register**. PHAs submitting an application related to funding available for non-elderly disabled families in connection with certain types of Section 8 project-based developments should also see the correction to NOFA FR–4207 dated April 17, 1997, in the **Federal Register**. The 200-unit limitation on the number of Section 8 rental certificates or vouchers that any PHA may request that was addressed by the correction shall also be the same unit limitation for applications submitted in response to this FY 1998 NOFA in connection with the funding related to certain types of section 202, section 221(d)(3), and section 236 developments. Section I.(A) in this FY 1998 NOFA further describes and defines these developments.

The FY 1997 publications are included in the application kits available under this NOFA for these programs.

For Application Kits, Further Information and Technical Assistance: For Application Kits. HUD will be pleased to provide you with application kits for purposes of submitting an application in connection with funding for either designated housing allocation plans, or with regard to certain types of Section 8 project-based developments or certain types of section 202, section 221(d)(3), and section 236 developments. An application kit is not necessary for submitting an application for Mainstream Program funding. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. HUD will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which local HUD Field Office should receive a copy of your application.

For Further Information. For answers to your questions, you have several options. You may contact the local HUD Field Office.You may also contact George C. Hendrickson, Housing Program Specialist, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–0477. (The number listed above is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

For Technical Assistance. Prior to the application due date, HUD staff will be available to provide general guidance and technical assistance about this NOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

Additional Information

I. Authority, Purpose, Amount Allocated, and Eligibility

(A) Authority

Authority for the approximately $48.5 million in 5-year budget authority available for the Mainstream Program under this NOFA (general use rental assistance for persons with disabilities) is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105–65; approved October 27, 1997) (1998 Appropriations Act), which states that the Secretary may designate up to 25 percent of the amounts earmarked for Section 811 of the National Affordable Housing Act of 1990 (42 U.S.C. 8013) for tenant-based assistance, as authorized under that section.

HUD's 1998 Appropriations Act also authorizes the use of approximately $40 million in one-year budget authority for Section 8 rental vouchers and certificates for non-elderly disabled families in support of designated housing allocation plans, for non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners establishing preferences for the admission of elderly families, and for non-elderly disabled families not being housed in certain section 202, section 221(d)(3) and section 236 developments (or portions thereof) where the owners have restricted occupancy to elderly families. HUD's 1998 Appropriations Act added this third category of eligible families (non-elderly disabled families affected by occupancy restrictions established in accordance with section 658 of the Housing and Community Development Act of 1992 (the 1992 Act)). Section 658 of the 1992 Act provides that an owner of a Federally assisted project (or portion of a project) as described in subparagraphs (D), (E), and (F) of section 683(2), that was designed for occupancy for elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing. The three types of housing listed under the relevant subsections are: housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act (NAHA); housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears an interest rate determined under section 221(d)(5); and housing insured, assisted or held by the Secretary or a State or State Agency under section 236 of the National Housing Act.

The 1998 Appropriations Act states that to the extent the Secretary determines that the FY 1997 and FY 1998 appropriations related to

designated housing allocation plans and certain types of Section 8 project-based developments and certain types of section 202, section 221(d)(3) and section 236 developments are not needed to fund applications, the funds may be used for other non-elderly disabled families. Any such remaining funds will be used to supplement funding for the Mainstream Program. As a result, approximately $79 million may be available in additional funding in FY 1998 for the Mainstream Program.

(B) Purpose

The Secretary has established a Mainstream Housing Opportunities for Persons with Disabilities Program (Mainstream Program) to provide rental vouchers or certificates to enable persons with disabilities to rent affordable private housing of their choice.

The Mainstream Program will assist PHAs in providing Section 8 rental vouchers and certificates to a segment of the population recognized by HUD's housing research as having one of the worst case housing needs of any group in the United States; i.e., very low-income households with adults with disabilities. In addition, the Mainstream Program will assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market.

(C) Amount Allocated

HUD will award funding for rental vouchers or certificates under the Mainstream Program to PHAs that submit an application for rental assistance for persons with disabilities. HUD will make available approximately $48.5 million for approximately 1,700 Section 8 rental vouchers and certificates for PHAs to increase the supply of mainstream housing opportunities available to persons with disabilities. HUD will supplement the Mainstream Program funding with additional funding to the extent funding is not needed during FY 1998 to fund applications in support of designated housing allocation plans, or applications related to non-elderly disabled families on the waiting lists of certain types of Section 8 project-based developments where the owner has established a preference for the admission of elderly families. HUD will select PHA applications for funding by lottery in the event approvable applications are received for more funding than is available under this NOFA.

There is a limit on the amount of rental assistance that may be requested. An eligible PHA may apply for one of the following: (1) up to 100 rental vouchers, (2) up to 100 rental certificates, or (3) a combination of rental vouchers and certificates not to exceed 100. A State or Regional (multicounty) PHA may apply for up to 200 rental vouchers or certificates (either all rental vouchers, all rental certificates, or a combination of the two not to exceed 200).

(D) Eligible Applicants

A PHA established pursuant to State law may apply for funding under this NOFA. Indian Housing Authorities are no longer eligible for new increments of Section 8 funding. A regional (multicounty) or State PHA is eligible to apply for funding.

Some PHAs currently administering the Section 8 rental voucher and certificate programs have, at the time of publication of this NOFA, major program management findings that are open and unresolved or other significant program compliance problems (e.g., PHA has not implemented mandatory Family Self-Sufficiency (FSS) Program). HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application due date, the findings are not closed to HUD's satisfaction. If the PHA wants to apply for funding under this NOFA, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor, that is acceptable to HUD. The PHA's application must include an agreement by the other housing agency, nonprofit agency, or contractor to administer the new funding increment on behalf of the PHA, and a statement that outlines the steps the PHA is taking to resolve the program findings. Immediately after the publication of this NOFA, the Office of Public Housing in the local HUD Field Office will notify, in writing, those PHAs that are not eligible to apply without such an agreement. The PHA may appeal the decision, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error and must be received prior to the application deadline. HUD will reject applications submitted by these PHAs without an agreement from another housing agency, nonprofit agency, or contractor, approved by HUD, to administer the new funding increment on behalf of the PHA.

(E) Eligible Participants

Only a disabled family may receive a rental voucher or certificate awarded under the Mainstream Program. Applicants with disabilities will be selected from the PHA's Section 8 waiting list.

II. Program Requirements and Definitions.

(A) Program Requirements

(1) Compliance With Fair Housing and Civil Rights Laws. All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a violation of the Fair Housing Act by the Secretary; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, or letter of findings to HUD's satisfaction.

(2) Additional Nondiscrimination Requirements. Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972. In addition to compliance with the civil rights requirements listed at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), and Titles I and V of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(3) Affirmatively Furthering Fair Housing. Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to: (a) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in this NOFA.

(4) Certifications and Assurances. Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity

Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(5) Family Self-Sufficiency (FSS) Program Requirement. Unless specifically exempted by HUD, all rental vouchers and certificates provided under this NOFA will be used to establish or contribute to the minimum size of the PHA's FSS program.

(6) Rental Voucher and Certificate Assistance Requirements.

(a) Section 8 regulations. PHAs must administer the Mainstream Program in accordance with HUD regulations and requirements governing the Section 8 rental voucher and certificate programs.

(b) Section 8 admission requirements. Section 8 assistance must be provided to eligible applicants in conformity with regulations and requirements governing the Section 8 program and the PHA's administrative plan.

If there is ever an insufficient pool of disabled families on the PHA Section 8 waiting list, the PHA shall conduct outreach to encourage eligible persons to apply for this special allocation of rental vouchers and certificates. Outreach may include contacting independent living centers, advocacy organizations for persons with disabilities, and medical, mental health, and social service providers for referrals of persons receiving such services who would benefit from Section 8 assistance. If the PHA's Section 8 waiting list is closed, and if the PHA has insufficient applicants on its Section 8 waiting list to use all awarded rental vouchers and certificates under this NOFA, the PHA shall open the waiting list for applications from disabled families.

(c) Turnover. When a rental voucher or certificate under this NOFA becomes available for reissue (e.g., the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the rental assistance may be used only for another individual or family eligible for assistance under this NOFA for 5 years from the date the rental assistance is placed under an annual contributions contract (ACC).

(d) PHA Responsibilities. In addition to PHA responsibilities under the Section 8 rental voucher and certificate programs and HUD regulations concerning nondiscrimination based on disability (24 CFR 8.28) and to affirmatively further fair housing, PHAs that receive rental voucher or certificate funding shall:

(i) Where requested by an individual, assist program participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program.

(ii) Identify public and private funding sources to assist participants in covering the costs of modifications that need to be made to their units as a reasonable accommodation for their disabilities.

(iii) Not deny persons who qualify for rental assistance under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate.

(iv) Provide Section 8 search assistance.

(B) Definitions

(1) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term ''disabled family'' may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more live-in aides. A disabled family may include a person with disabilities who is elderly. (Note: This definition applies to the approximately $48.5 million available under the Mainstream Program. This definition shall be modified, however, to be limited to solely non-elderly disabled families (families whose head, spouse or sole member is disabled and under the age of 62) regarding any funding available and awarded from the approximately $50 million in FY 1997 and $40 million in FY 1998 for designated housing allocation plans or in connection with certain Section 8 project-based developments. See the SUMMARY section at the beginning of this NOFA regarding the possibility of additional Mainstream Program funding during FY 1998 beyond the approximately $48.5 million available as announced under this NOFA.)

(2) *Person with disabilities.* A person who—

(a) Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

(b) Is determined to have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

Note: While the above definition of a ''person with disabilities'' is to be used for purposes of determining a family's eligibility for a Section 8 rental voucher or certificate under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

(3) *Section 8 search assistance.* Assistance to increase access by program participants to housing units in a variety of neighborhoods (including areas with low poverty concentrations) and to locate and obtain units suited to their needs.

III. Application Selection Process for Mainstream Program

After the local HUD Field Office has screened PHA applications and disapproved any applications found unacceptable for further processing, the local HUD Field Office will review all acceptable applications to ensure that they are technically adequate and responsive to the requirements of the NOFA. The local HUD Field Office will send to HUD Headquarters' Office of Funding and Financial Management the following information on each application that is found technically adequate and responsive:

(1) Name and address of the PHA;

(2) Local HUD Field Office contact person and telephone number;

(3) The number of rental vouchers and/or certificates in the PHA application, and the minimum number of rental vouchers and/or certificates acceptable to the PHA; and

(4) A completed fund reservation worksheet, indicating the number of Section 8 rental vouchers and/or certificates requested in the PHA application and recommended for approval by the local HUD Field Office during the course of its review, and the corresponding budget authority.

HUD Headquarters will fund all applications from PHAs that are recommended for funding by the local HUD Field Offices unless HUD receives approvable applications for more funds than are available. If HUD receives approvable applications for more funds than are available, HUD will select applicants to be funded by lottery. All PHAs identified by the local HUD Field Offices as having submitted technically adequate and responsive applications will be included in the lottery. As PHAs

are selected, the cost of funding the applications will be subtracted from the funds available. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding from any State to 10 percent of the budget authority available for the general use Mainstream Program. However, if establishing this geographic limit would result in unreserved budget authority, HUD may modify this limit to assure that all available funds are used.

Applications will be funded for the total number of units requested by the PHA and approved by the local HUD Field Office (not to exceed 100 units) in accordance with this NOFA. However, when remaining budget authority is insufficient to fund the last selected PHA application in full, HUD Headquarters will fund that application to the extent of the funding available, unless the PHA's application indicates it will only accept a higher number of units. In that event, the next selected application shall be one that has indicated a willingness to accept the lesser amount of funding for units available.

PHAs with approvable applications that are not funded, in whole or in part, due to insufficient funds available under this NOFA for the Mainstream Program, shall be considered first for funding in FY 1999 provided that HUD receives additional appropriations for the Mainstream Program for FY 1999.

IV. Application Submission Requirements for Mainstream Program

(A) Form HUD–52515

All PHAs must complete and submit form HUD–52515, Funding Application, for the Section 8 rental voucher and certificate program (dated January 1996). This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities; therefore, PHAs can complete and sign the form HUD–52515 to provide these required certifications. An application must include the information in Section (C), Average Monthly Adjusted Income, of form HUD–52515 in order for HUD to calculate the amount of Section 8 budget authority necessary to fund the requested number of units. Copies of form HUD–52515 may be obtained from the local HUD Field Office or may be downloaded from the HUD Home Page site on the Internet's world wide web (http://www.hud.gov).

(B) Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) requires that HUD independently determine that there is a need for the housing assistance requested in applications and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The local HUD Field Office will obtain section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the PHA needs to encourage the chief executive officer of the unit of general local government to submit a letter with the PHA application commenting on the PHA application in accordance with section 213. Because HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter needs to not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

(C) Letter of Intent and Narrative

All the items in this section must be included in the application submitted to the local HUD Field Office. The PHA must state in its cover letter to the application whether it will accept a reduction in the number of rental vouchers or certificates, and the minimum number of rental vouchers or certificates it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of rental vouchers or certificates requested. The maximum number of rental vouchers or certificates that a PHA may apply for under this NOFA is limited to 100, or 200 in the case of a State or regional (multicounty) PHA.

(D) Description of Need for Mainstream Program Rental Assistance

The application must demonstrate a need for Mainstream Program rental vouchers or certificates by providing information documenting that the demand for housing for persons with disabilities would equal or exceed the requested number of rental vouchers or certificates (not to exceed a maximum of 100). The PHA must assess and document the housing need for persons with disabilities using a range of sources including, but not limited to: census data, information from the PHA's waiting list (both public housing and Section 8), statistics on recent public housing admissions and rental certificate and voucher use, data from local advocacy groups and local public and private service agencies familiar with the housing needs of persons with disabilities, and pertinent information from the Consolidated Plan applicable to the PHA's jurisdiction. (See 24 CFR 91.205(d).) The PHA's demonstrated need for rental vouchers or certificates for disabled families must clearly support need on the basis of the types of disabled families (elderly and non-elderly disabled families versus exclusively non-elderly disabled families). This distinction is important, as any FY 1998 Mainstream Program funding that may be available beyond the approximately $48.5 million available under this NOFA, must be used to assist only non-elderly disabled families. (See the **SUMMARY** section at the beginning of this NOFA regarding the possibility of substantially more Mainstream Program funding beyond the approximately $48.5 million initially announced as available under this NOFA.)

(E) Mainstream Program Operating Plan

The application must include a description of an adequate plan for operating a program to serve eligible persons with disabilities, including:

(1) A description of how the PHA will carry out its responsibilities under 24 CFR 8.28 to assist recipients in locating units with needed accessibility features; and

(2) A description of how the PHA will identify private or public funding sources to help participants cover the costs of modifications that need to be made to their units as reasonable accommodations to their disabilities.

V. Corrections to Deficient Mainstream Program Applications

(A) Acceptable Applications

To be eligible for processing, an application must be received by the local HUD Field Office no later than the date and time specified in this NOFA. The local HUD Field Office will initially screen all applications and notify PHAs of technical deficiencies by letter.

If an application has technical deficiencies, the PHA will have 14 calendar days from the date of the issuance of the HUD notification letter to submit the missing or corrected information to the local HUD Field Office before the application can be considered for further processing by HUD. Curable technical deficiencies relate only to items that do not improve

the substantive quality of the application.

All PHAs must submit corrections within 14 calendar days from the date of the HUD letter notifying the applicant of any such deficiency. Information received by the local HUD Field Office after 3 p.m. eastern standard time on the 14th calendar day of the correction period will not be accepted and the application will be rejected as incomplete.

(B) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the local HUD Field Office will disapprove all PHA applications that it determines are not acceptable for processing. The local Hud Field Office's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section II(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings or HUD management review findings for its rental voucher or rental certificate programs; or the PHA has serious underutilization of rental vouchers or certificates not attributable to the 3-month statutory delay for the reissuance of rental vouchers and certificates. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

(c) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the rental vouchers or certificates.

(d) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(e) The PHA's application was submitted after the application due date.

VI. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities. In accordance with 24 CFR 50.19(c)(5), the approval for issuance of this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance numbers for this program are: 14.855 and 14.857.

(D) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA 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 notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of HUD, the States, and local governments, including PHAs.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF-LLL are included in the application package.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: April 24, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–11406 Filed 4–29–98; 8:45 am]

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federal register

Thursday
April 30, 1998

Part VII

Environmental Protection Agency

40 CFR Part 52

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6006–1]

RIN 2060–AH88

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In accordance with sections 126 and 110(a)(2)(D) of the Clean Air Act (CAA), EPA plans to take rulemaking action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ozone smog, nitrogen oxides (NO_X), across State boundaries. Each petition specifically requests that EPA make a finding that NO_X emissions from certain major stationary sources significantly contribute to ozone nonattainment problems in the petitioning State. If EPA makes such a finding, EPA would be authorized to establish Federal emissions limits for the sources. The petitions recommend control levels for EPA to consider. The eight Northeastern States that filed petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

This notice announces the Agency's schedule for rulemaking on the section 126 petitions, provides EPA's preliminary identification of sources named in the petitions that significantly contribute to nonattainment problems in the petitioning States, provides EPA's preliminary assessment of the types of recommended emission limitations and compliance schedules set forth in the petitions, and discusses legal and policy issues raised under section 126.

The transport of ozone is important because ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), increased inflammation of the lung, and possible long-term damage to the lungs.

DATES: The EPA is establishing an informal 30-day comment period for today's advance notice of proposed rulemaking (ANPR), ending on June 1, 1998. Please direct correspondence to the address specified below. See **SUPPLEMENTARY INFORMATION** for further information on the ANPR comment period.

A public hearing for the future proposed rulemaking on the section 126 petitions will be held on October 28 and 29, 1998.

ADDRESSES: Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

Written comments should be submitted to this address. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information should be submitted through e-mail.

The public hearing on the future proposed rulemaking on the section 126 petitions will be held on October 28 and 29, 1998 at the EPA Auditorium at 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347.

SUPPLEMENTARY INFORMATION:

Comment Period

This ANPR gives EPA's preliminary assessment of the petitions and raises a number of legal and policy issues related to the section 126 provisions. If comments are submitted within 30 days of publication of this notice, EPA will have adequate time to take the comments into account in the deliberative process for the rulemaking proposal. As discussed in Section V of this notice, under a proposed consent decree, EPA must publish the section 126 rulemaking proposal in the **Federal Register** by September 30 of this year. A formal comment period and public hearing will be provided for the proposal. The EPA will respond to comments on this ANPR, if any comment is appropriate, when it responds to comments on the proposal.

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). The eight petitions are contained in this docket. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments on this ANPR rule may be filed online at many Federal Depository Libraries.

The EPA is conducting a separate rulemaking action that contain actions and information related to this ANPR, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' (see 62 FR 60318; November 7, 1997 and a supplemental proposal being published in late April or early May 1998.) Documents related to these proposals are available for inspection in Docket No. A–96–56 at the address and times given above. This rulemaking action is hereafter referred to as the proposed NO_X State implementation plan (SIP) call (proposed NO_X SIP call). The proposed NO_X SIP call and associated documents are located at http://www.epa.gov/ttn/oarpg.otagsip.html.

Additional information relevant to this ANPR concerning the Ozone Transport Assessment Group (OTAG) is available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) via the web at http://www.epa.gov/ttn/. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. Documents related to OTAG can be downloaded directly from OTAG's webpage at http://

www.epa.gov/ttn/otag. The OTAG's technical data are located at http://www.iceis.mcnc.org/OTAGDC.

Outline

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VI. Impact on Small Entities

I. Background

A. Ozone Transport, Ozone Transport Commission NO_X Memorandum of Understanding (OTC NO_X MOU), OTAG, the Proposed NO_X SIP Call, and the Revised Ozone National Ambient Air Quality Standard (NAAQS)

Today's action occurs against a background of a major national effort, spanning at least the last 10 years, to analyze and take steps to mitigate the problem of the transport of ozone and its precursors across State boundaries. This effort has grown more intensive in the past several years with the approval of the OTC NO_X MOU by 11 of the Northeastern States and the District of Columbia included in the OTC, the completion of the OTAG process, and the publication of EPA's proposed NO_X SIP call. In addition, in July 1997, EPA issued a revised NAAQS for ozone, which is determined over an 8-hour period (the 8-hr standard). This new 8-hr standard must now be taken into account, along with the pre-existing 1-hr standard, in resolving transport issues. These issues and events are detailed in the proposed NO_X SIP call (62 FR 60318) and familiarity with that notice is assumed for purposes of today's notice.

B. Section 126

Today's action focuses on section 126 of the CAA. Subsection (a) of section 126 requires, among other things, that SIPs require major proposed new (or modified) sources to notify nearby States for which the air pollution levels may be affected by the fact that such sources have been permitted to commence construction. Subsection (b) provides:

> Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) * * * or this section.

Subsection (c) of section 126 states that—

> [I]t shall be a violation of this section and the applicable implementation plan in such State [in which the source is located or intends to locate]—
> (1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 110(a)(2)(D)(ii) * * * or this section, or
> (2) for any major existing source to operate more than three months after such finding has been made with respect to it.

However, subsection (c) further provides that EPA may permit the continued operation of such major existing sources beyond the 3-month period, if such sources comply with EPA-promulgated emissions limits within 3 years of the date of the finding.

Section 110(a)(2)(D) provides the requirement that a SIP contain adequate provisions—

> (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—
> (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [any] national * * * ambient air quality standard, or
> (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.
> (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement) * * *

For purposes of today's ANPR, it is EPA's preliminary view that, with respect to existing stationary sources, sections 126(b)–(c) and 110(a)(2)(D), read together, authorize a downwind State to petition EPA for a finding that emissions from major stationary sources upwind of the State contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the State. If EPA grants the requested finding, EPA must directly regulate the sources. Sources would have to comply with the emissions limits within 3 years from the finding. The EPA acknowledges that others have urged different readings of sections 126(b)–(c) and 110(a)(2)(D), and EPA solicits comments thereon, as described in Section IV below.

In a letter dated August 8, 1997, to Michael J. Walls, Chief, Environmental Protection Bureau, Office of Attorney General, State of New Hampshire, from Mary D. Nichols, Assistant Administrator for Air and Radiation, EPA provided preliminary and general guidance concerning section 126 and the process of submitting petitions (Nichols letter). This letter has been placed in the docket for today's action.

In Section IV of this notice, below, EPA discusses legal and policy issues raised under section 126 and requests comments on the various issues.

C. Summary of Section 126 Petitions

On August 14–15, 1997, EPA received eight section 126 petitions submitted individually by eight Northeastern States. The petitioning States are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont. Each petition requests EPA to make a finding that certain major stationary sources in upwind States contribute significantly to nonattainment, or interfere with maintenance, in the petitioning State. All of the petitions seek a finding and relief under the 1-hr standard; Massachusetts, Pennsylvania, and Vermont also seek a finding and relief with respect to the 8-hr standard.

The petitions vary as to the type and geographic location of the sources identified as significant contributors. Some petitions identify specific sources, others list source categories. The sources and source categories include electric generating plants, fossil fuel-fired boilers and other indirect heat exchangers, and certain other related stationary sources that emit NO_X. All the petitions target sources in the Midwest; some also target sources in the South and Northeast.

The petitions also vary as to the level of controls they recommend be applied to the sources to mitigate the transport problem. Several recommend EPA establish a 0.15 lb/mmBtu NO_X

emission limitation implemented through a cap-and-trade program. The petitions are described in greater detail in Sections II and III of this notice.

All of the petitions rely, in part, on OTAG analyses for technical support. In addition, the States submitted a variety of other technical analyses which include computerized urban airshed modeling, wind trajectory analyses, results of a transport study by the Northeast States for Coordinated Air Use Management, and culpability analyses.

D. Relationship to NO_X SIP Call

The sources, or groups of sources, identified in the petitions may also be subject to State-adopted emission limitations and control schedules in response to a separate rulemaking action on regional ozone transport—the NO_X SIP call.

In the proposed NO_X SIP call, EPA made a proposed determination that NO_X emissions from 22 eastern States and the District of Columbia significantly contribute to nonattainment problems in downwind States with respect to both the long-standing 1-hr NAAQS and the new 8-hr NAAQS. The EPA proposed that these jurisdictions be required to revise their SIPs to reduce Statewide NO_X emissions to a specified level. The proposal is designed to assure that SIPs meet the requirements of section 110(a)(2)(D), which mandates that SIPs contain adequate provisions prohibiting emissions that significantly contribute to downwind nonattainment.

The proposed NO_X SIP call is the result of technical analyses and recommendations by the OTAG, a group comprised of EPA and the 37 eastern-most States in the Nation, as well as industry and environmental groups. Because the NO_X SIP call process overlaps considerably with the section 126 petition process, EPA believes it is important to coordinate the two actions as much as possible.

E. Proposed Rulemaking Schedule

Section 126(b) requires EPA to make the requested finding, or deny the petition, within 60 days of receipt. It also requires EPA to provide a public hearing for the petition. In addition, EPA's action under section 126 is subject to the procedural requirements of section 307(d) of the Act. One of these requirements is notice-and-comment rulemaking. Section 307(d) provides for a time extension, under certain circumstances, for rulemakings subject to that provision. Specifically, it allows statutory deadlines that require promulgation in less than 6 months from proposal to be extended to not more than 6 months from proposal to afford the public and the Agency adequate opportunity to carry out the purposes of section 307(d). In three notices dated October 22, 1997 (62 FR 55769), November 20, 1997 (62 FR 6194), and January 2, 1998 (63 FR 26), EPA ultimately extended the deadline for action to December 18, 1997.

On February 25, 1998, the eight petitioning States filed a complaint in the U.S. District Court for the Southern District of New York to compel EPA to take action on the States' section 126 petitions. The EPA and the eight States filed a proposed consent decree that would establish a schedule for acting on the petitions. Pursuant to CAA section 113(g), the EPA has solicited comments on the proposed consent decree, by notice dated March 5, 1998 (63 FR 10874). The comment period closed April 6, 1998.

The schedule recommended in the proposed consent decree would require EPA to take final action on at least the technical merits of the petitions by April 30, 1999. The recommendation would further provide for an alternative schedule under which EPA could delay final action on the petitions until May 1, 2000. The section 126 rulemaking schedule is described in more detail in Section V of this notice.

II. Preliminary Analysis of Significant Contribution

A. Background

This section describes EPA's preliminary analysis of whether the sources identified in the section 126 petitions significantly contribute to nonattainment problems in the eight petitioning States. The EPA is relying on information included in the proposed NO_X SIP call on significant contribution for this analysis. The proposed NO_X SIP call significance determination was based upon a ''weight of evidence'' approach in which a range of technical information was evaluated against a set of factors, as described below. This section presents: (1) General information on the importance of transport to ozone formation, (2) the collective nature of the contribution of man-made emissions to ozone formation, (3) factors considered in the weight of evidence approach and findings of significant contribution in the proposed NO_X SIP call, and (4) analysis of these findings relative to each of the petitions.

B. Regional Ozone and Interstate Transport

The importance of interstate transport to the regional ozone problem and contributions from upwind States to downwind States is supported by numerous studies of air quality measurements and modeling analyses. In general, ozone episodes occur on many spatial and temporal scales ranging from localized subregional events lasting a day or two, up to regionwide episodes lasting as long as 10–14 days. The frequency of localized versus regional episodes depends on the characteristics of the large-scale meteorological patterns which control the weather in a particular summer season. In some cases, local controls alone are not sufficient to reduce ozone during regionwide episodes since a substantial amount of ozone may be transported into the area from upwind sources.

The National Research Council report, ''Rethinking the Ozone Problem in Urban and Regional Air Pollution,'' [1] cites numerous studies of widespread ozone episodes during summertime meteorological conditions in the East. These episodes typically occur when a large, slow-moving, high pressure system envelopes all, or a large portion of, the Eastern United States. The relatively clear skies normally associated with such weather systems favor high temperatures and strong sunlight, which enhances the formation of high ozone concentrations. In addition, the wind flow patterns can lead to a build up of ozone concentrations and the potential for long-range ozone transport. Specifically, winds are generally light in the center of high pressure systems so that areas under the center may have near-stagnation conditions resulting in the formation of high ozone levels. As the high pressure system moves eastward, winds become stronger on the ''backside'' which increases the potential for these high ozone levels to be transported to more distant downwind locations. Over several days, the emissions from numerous small, medium, and large cities, major stationary sources in rural areas, as well as natural sources, combine to form a ''background'' of moderate hourly ozone levels ranging from 80 to 100 ppb [2] of

[1] National Research Council, Committee on Tropospheric Ozone Formation and Measurement, ''Rethinking the Ozone Problem in Urban and Regional Air Pollution,'' pp. 93–107, National Academy Press, Washington, DC, 1991.

[2] Northeast States for Coordinated Air Use Management, ''The Long-Range Transport of Ozone and Its Precursors in the Eastern United States,''

which only 30 to 40 ppb may be due to natural sources. Hourly ozone concentration levels in the range of 80 to 100 ppb and higher have also been measured by aircraft aloft, across portions of the Northeast[3]. Because this level of background ozone is so close to the ozone NAAQS, even a small amount of locally-generated ozone will result in an exceedance.

C. Collective Contribution to Nonattainment

Ozone is generally the result of cumulative emissions of NO_X and volatile organic compounds (VOC) from hundreds of stationary sources and millions of vehicles, each of which is likely to be responsible for much less than 1 percent of the overall inventory of precursor emissions. A source (or group of sources) should not be exempted from treatment as a significant contributor merely because it may be a small part, in terms of total emissions, of the overall problem when all or most other contributors, individually, are also relatively small parts of the overall problem. This situation, in which a number of individual (and sometimes small) sources collectively cause a significant impact on air quality, is a major aspect of the contribution issue. As noted above, the moderate-to-high ozone levels which cover broad regions are the result of emissions from millions of individual sources interacting over multiple days. The contribution to downwind nonattainment results from the cumulative contribution from all sources involved in this process.

In light of these considerations, in the proposed NO_X SIP call, EPA believed it not appropriate to define a bright line test for significant contribution. Instead, EPA relied on a weight of evidence approach, based on a range of information, for determining whether a State makes a significant contribution to downwind nonattainment.

D. Weight of Evidence Approach and Findings of Significant Contribution

The factors considered by the EPA in the proposed NO_X SIP call for determining whether a contribution is significant include:

- the transport distance between the upwind source area and the downwind problem area;
- the amount of the contribution (ppb above the level of the ozone standard) made to the downwind nonattainment area;
- the geographic extent of the contribution downwind; and
- the level of emissions in the area upwind of a nonattainment area.

Details of the methodology and approaches followed by EPA in its analysis of these factors are documented in the proposed NO_X SIP call.[4]

In brief, the results of the OTAG air quality, trajectory, and wind vector analyses indicate that the 1- to 2-day transport distance scale for the northern portion of the OTAG domain is generally in the range of 150 to 500 miles. This information was used to identify a set of States which could potentially contribute to downwind nonattainment. The amount of contribution and geographic extent of contribution from upwind areas to downwind nonattainment were quantified by EPA based on analysis of the OTAG subregional modeling. In these model runs, all manmade emissions were removed in each of 12 subregions (see Figure 1), individually. The resulting ''ppb'' contributions were tabulated by State for areas within the State which (a) currently violate the NAAQS, based on 1993–1995 ambient monitoring data and (b) which are also expected to continue to violate the NAAQS, based on future-year 2007 modeling of CAA controls.[5] Contributions to 1-hr and 8-hr nonattainment were considered separately. The modeling results indicate that emissions from States wholly or partially contained in Subregions 1 through 9 produce large and frequent contributions to downwind nonattainment for both NAAQS. The EPA then examined NO_X emissions data along with the OTAG trajectory and modeling results to identify 23 jurisdictions which it proposed to determine make a significant contribution to nonattainment of both the 1-hr and 8-hr NAAQS in downwind States. These jurisdictions are: Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

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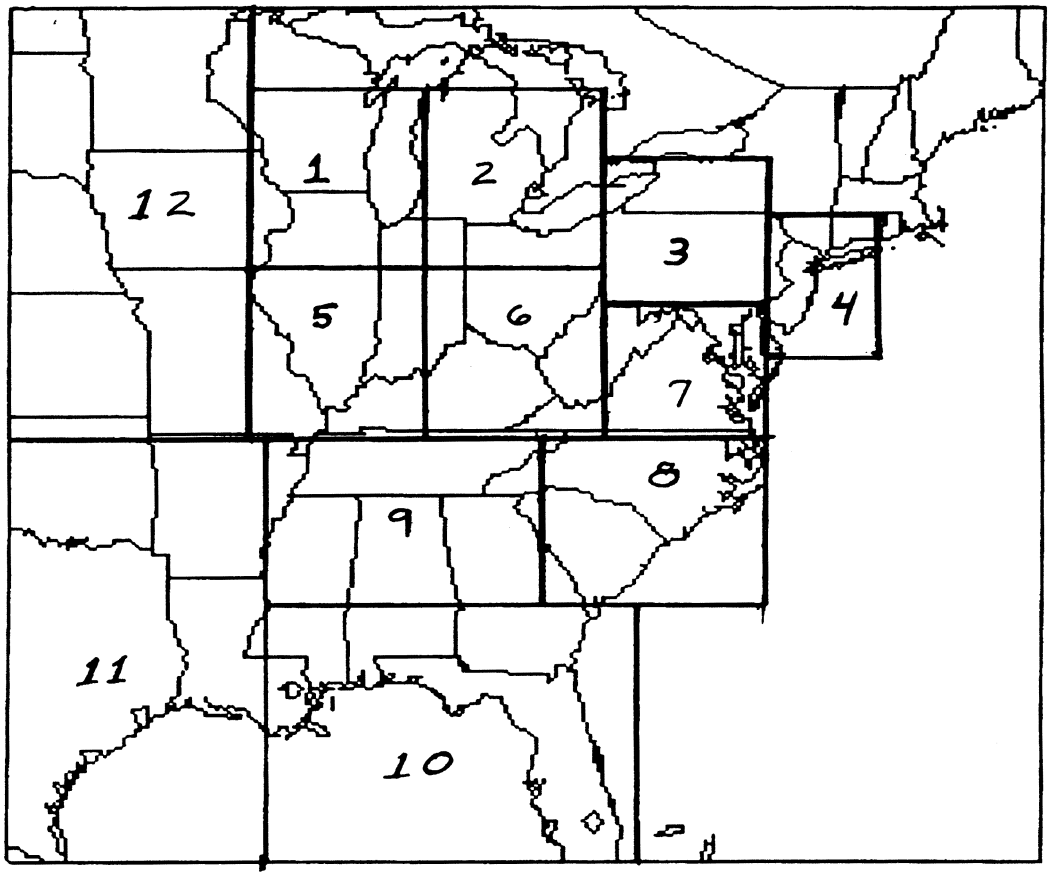
March 1997, Boston, MA. (Document is available in Docket A–96–56 for the NO_X SIP call.)

[3] Ibid.

[4] For a technical description of this modeling, see proposed NO_X SIP call, 62 FR 60,335–60,337.

[5] These areas are considered as having a ''monitored'' plus ''modeled'' ozone problem and are referred to as ''nonattainment'' for the purposes of this discussion.

Figure 1. Location of Subregions



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E. Technical Approach to Preliminary Analysis of Petitions

The EPA is in the process of gathering and reviewing technical information to determine whether EPA should find that certain large upwind stationary sources and/or source categories of NO_X named in each petition contribute significantly to nonattainment in the petitioning States. The EPA expects to propose its findings in a subsequent notice of proposed rulemaking. The following preliminary analysis should not be interpreted as a proposed finding of significant contribution for these petitions.

The EPA has examined the petitions based on the significant contribution analysis in the proposed NO_X SIP call. First, EPA determined if those source areas identified by the petitioners are located in States which EPA, in the proposed NO_X SIP call, proposed to determine make a significant contribution to downwind nonattainment. Second, EPA examined subregional modeling results to ascertain the predicted contributions to nonattainment relative to the source areas named in each petition.

The source areas named in petitions submitted by Connecticut, Massachusetts, New Hampshire, New York, Rhode Island and Vermont are generally limited to States which were found in the proposed NO_X SIP call to make a significant contribution to downwind nonattainment. The geographic area covered by each petition is shown in Figure 2. Specifically, the New York and Connecticut petitions cover sources in areas extending west and south of each of these States up to the western boundaries of Subregions 2 and 6 and the southern boundaries of Subregions 6 and 7. For the New York petition, this includes all or portions of the following States: Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. In addition to these States, the Connecticut petition also covers sources in portions of New York. The Massachusetts and Rhode Island petitions name specific sources in individual counties within the Subregion 6 States of Indiana, Kentucky, Ohio, and West Virginia. The New Hampshire petition includes sources in upwind portions of the Ozone Transport Region and in Subregions 1 through 7, which includes all or portions of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin. Also, the New Hampshire petition includes a portion of eastern Iowa (which is part of Subregion 1) which EPA, in the proposed NO_X SIP call, proposed to determine did not make a significant contribution to downwind nonattainment problems. The Vermont petition named sources in upwind portions of the Ozone Transport Region and in all or portions of Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia. Further, the petition notes that it intends to cover additional unidentified sources within an area extending 1,000 miles Southwest of Vermont if EPA determines the sources to be significantly contributing to Vermont. This broader geographic area includes South Carolina and portions of Alabama, Georgia, Missouri, and Wisconsin. The Vermont petition also

includes a portion of eastern Iowa which EPA, in the proposed NO_X SIP call, proposed to determine did not make a significant contribution to downwind nonattainment problems. The Pennsylvania petition named Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. However, the Pennsylvania petition also named several States which EPA, in the proposed NO_X SIP call, proposed to determine did not make a significant downwind contribution including: Arkansas, Iowa, Louisiana, Minnesota, and Mississippi. The petition from Maine named source categories for sources in upwind portions of the Ozone Transport Region and generally within all or portions of Subregions 2, 3, 4, 6, and 7. The Maine petition includes all or parts of the following jurisdictions: Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia. The Maine petition also identified New Hampshire and Vermont as containing sources which contribute significantly to nonattainment in Maine, but in the proposed NO_X SIP call these States were not found to make a significant contribution downwind.

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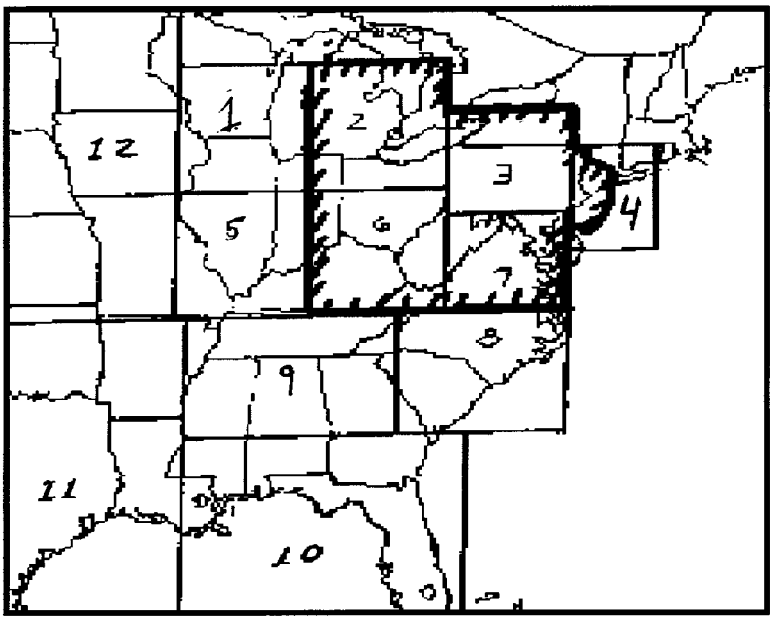
Figure 2a. Areas Covered by the Section 126 Petitions: New York (Top) and Connecticut (Bottom)



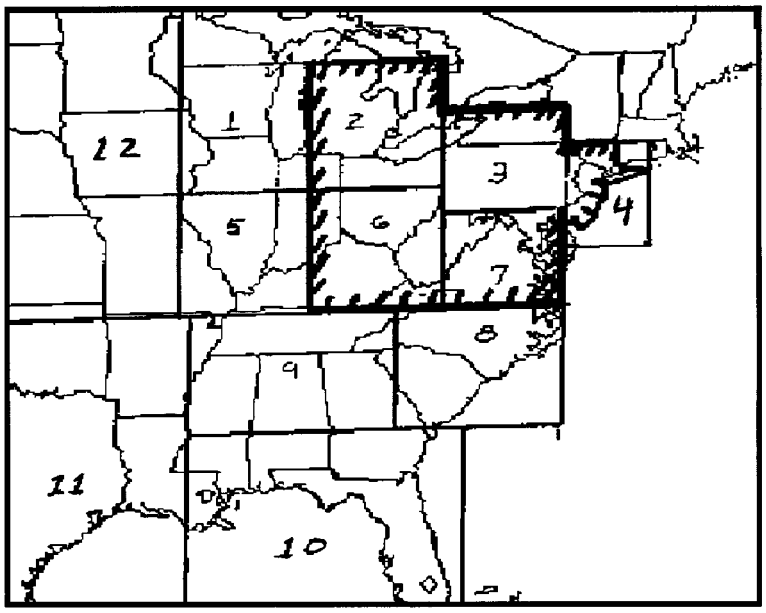
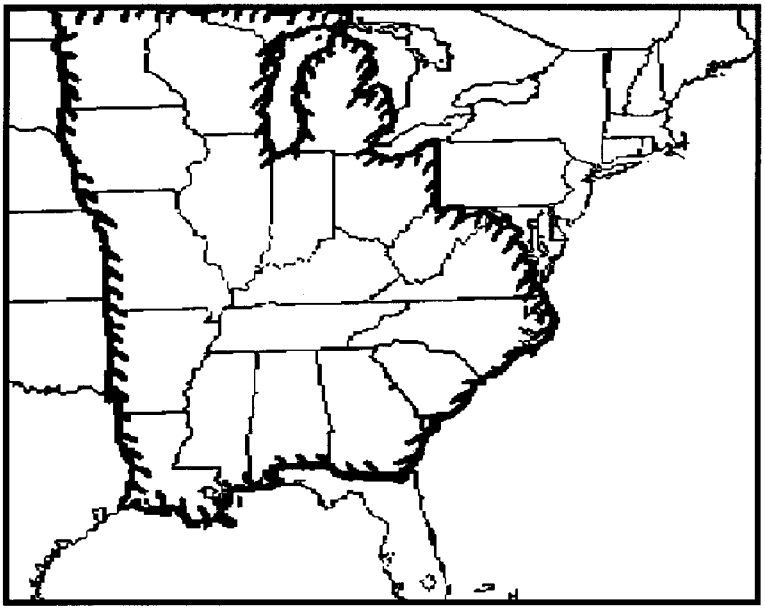


Figure 2b. Areas Covered by the Section 126 Petitions: Pennsylvania (Top), Massachusetts and Rhode Island (Bottom)



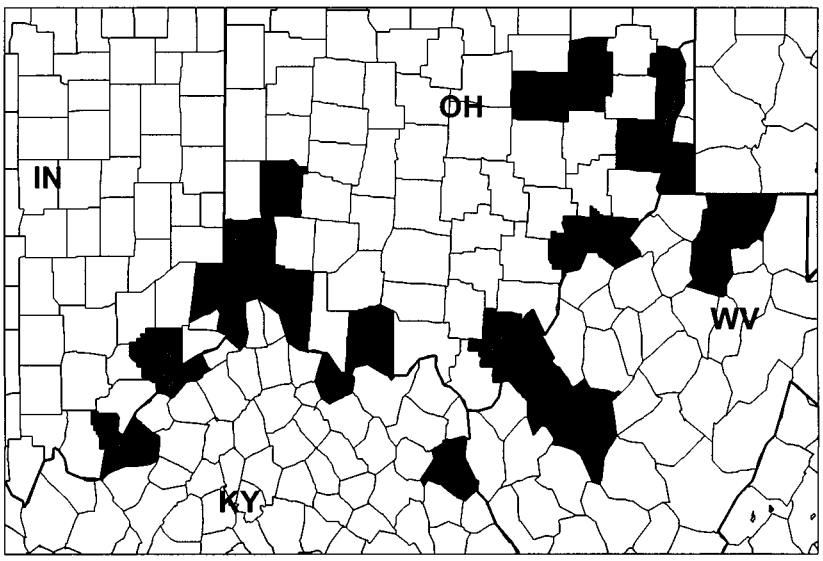
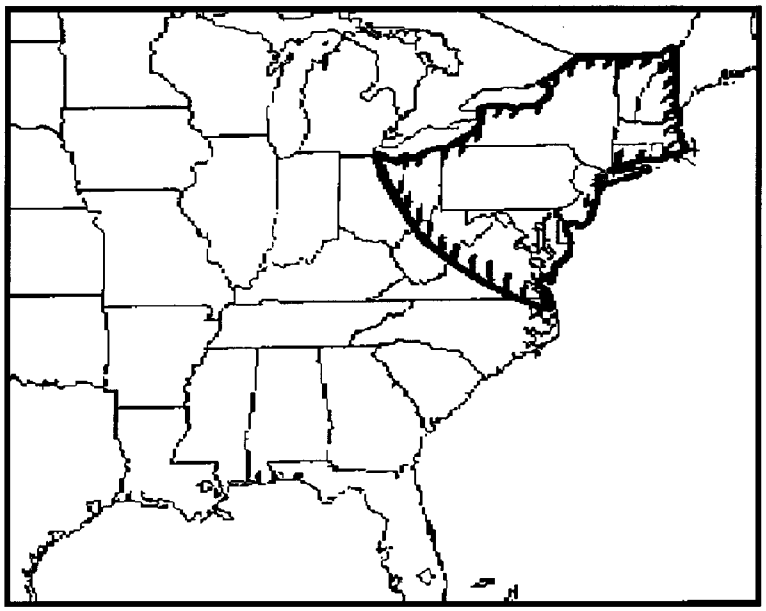


Figure 2c. Areas Covered by the Section 126 Petitions: Maine (Top) and New Hampshire (Bottom)



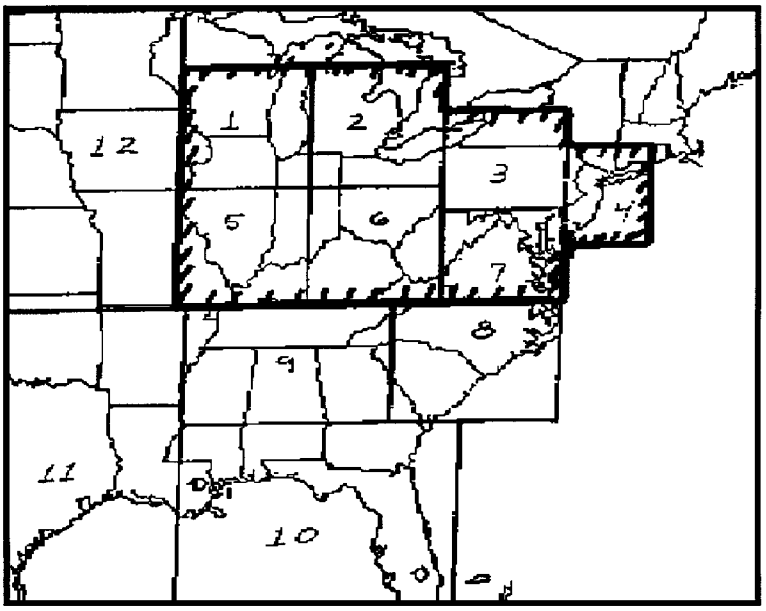
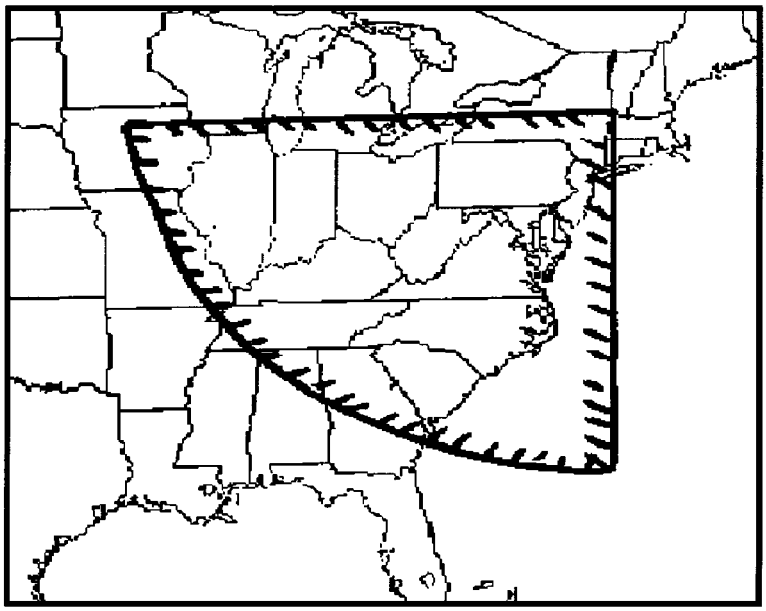


Figure 2d. Areas Covered by the Section 126 Petitions: Vermont



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Although there are differences between the petitions in terms of the sources named as significant contributors, the petitions have generally targeted NO_X emissions from utility and large non-utility (>250 mmBtu/Hr) fossil fuel-fired boilers. In this regard, analyzing the contributions from these emissions categories (i.e. utility and large non-utilities) is somewhat complicated because the subregional modeling in the proposed NO_X SIP call quantifies the contributions from all man-made emissions in each subregion, not just these categories. It is likely that the emissions from these categories produce downwind contributions which are at least roughly proportional to their relative amount of emissions, compared to the total man-made emissions in the subregion. As shown in Table 1, NO_X emissions from these categories combined, range from 33 percent to 60 percent of the total 2007 projected NO_X emissions within Subregions 1–9[6]. Thus, the utility and large non-utility emissions combined represent a relatively large portion of total NO_X emissions within these nine subregions. The collective contribution approach discussed above suggests that if total emissions in an upwind area are found to make a significant contribution to downwind nonattainment, then the individual components of the areas' emissions are considered to be part of the significant contribution. Thus, the subregional modeling results are relevant to the source categories identified in the petitions because these categories are a large component of the total man-made NO_X emissions and are therefore expected to produce contributions in proportion to their emissions.

TABLE 1.—PERCENT OF TOTAL SUBREGION NO_X emitted by Utility and Large Non-Utility Sources (OTAG 2007 Base Case)

Subregion	Percent
1	39
2	37
3	46
4	33
5	60
6	53
7	39
8	36
9	39
10	38
11	29
12	32

Table 2 provides the contributions to 1-hr and 8-hr nonattainment in each of the petitioning States from those upwind subregions which (a) correspond to upwind areas named in the petitions and (b) contain States which were found to make a significant contribution to downwind nonattainment in the proposed NO_X SIP call. These contributions are based on zero-out modeling of all man-made emissions in the subregion. Data are provided for the areas which have both ''monitored'' violations and ''modeled'' concentrations exceeding the NAAQS. This information was extracted from Tables II–10 and II–12 in the proposed NO_X SIP call. Note that 2 ppb is the lower range of the tabulated contributions, following the convention adopted by OTAG.

These results are discussed for each petition:

New York—This petition named sources in Subregions 2, 6, and 7. The subregional modeling results indicate a number of contributions in the range of 5–10 ppb or more from each of these subregions to both 1-hr and 8-hr nonattainment in New York. Contributions of 15–20 ppb are predicted from Subregion 7 to 1-hr nonattainment and from Subregions 2 and 7 to 8-hr nonattainment.

Connecticut—Subregions 2, 6, and 7 were named as source areas by Connecticut. For the both 1-hr and 8-hr nonattainment, frequent contributions are predicted from each of these subregions. The magnitude of the contributions ranges up to 15–20 ppb for 1-hr nonattainment and up to 10–15 ppb for 8-hr nonattainment.

[6] Note that these subregions are important because all man-made emissions in these subregions were found to make large and frequent contributions to downwind nonattainment.

TABLE 2.—CONTRIBUTIONS TO 1-HOUR AND 8-HOUR NONATTAINMENT IN EACH PETITIONING STATE FROM SELECTED SUBREGIONS (SUB)

Impacts (ppb)	Sub 2	Sub 6	Sub 7
NEW YORK			
Contributions to 1-Hour Nonattainment			
2–5	47	41	30
5–10	6	16	52
10–15	0	4	15
15–20	0	0	4
20–25	0	0	0
>25	0	0	0
Contributions to 8-Hour Nonattainment			
2—5	25	15	39
5—10	4	3	16
10–15	4	0	4
15–20	0	0	0
20–25	0	0	0
>25	0	0	0
CONNECTICUT			
Contributions to 1-Hour Nonattainment			
2–5	65	4	50
5–10	3	9	31
10–15	0	0	8
15–20	0	0	2
20–25	0	0	0
>25	0	0	0
Contributions to 8-Hour Nonattainment			
2–5	19	44	36
5–10	0	2	16
10–15	0	0	1
15–20	0	0	0
20–25	0	0	0
>25	0	0	0

Impacts (ppb)	Sub 1	Sub 2	Sub 5	Sub 6	Sub 7	Sub 8	Sub 9
PENNSYLVANIA							
Contributions to 1-Hour Nonattainment							
2–5	0	1	2	4	3	4	0
5–10	0	0	0	4	2	0	0
10–15	0	0	0	2	13	0	0
15–20	0	0	0	0	11	0	0
20–25	0	0	0	0	2	0	0
>25	0	0	0	0	7	0	0
Contributions to 8-Hour Nonattainment							
2–5	14	42	71	72	57	13	0
5–10	0	26	10	53	66	0	0
10–15	0	6	0	40	30	0	0
15–20	0	2	0	10	4	0	0
20–25	0	5	0	7	0	0	0
>25	0	1	0	0	0	0	0

Impacts (ppb)	Sub 6 1-hour	Sub 6 8-hour
MASSACHUSETTS		
Contributions to 1-hour and 8-hour Nonattainment		
2–5	0	22
5–10	0	0
10–15	0	0
15–20	0	0
20–25	0	0

Impacts (ppb)	Sub 6 1-hour	Sub 6 8-hour
>25	0	0

RHODE ISLAND
Contributions to 1-hour and 8-hour Nonattainment

2–5	0	1
5–10	2	0
10–15	0	0
15–20	0	0
20–25	0	0
>25	0	0

Impacts (ppb)	Sub 2	Sub 3	Sub 4	Sub 6	Sub 7
MAINE					
Contributions to 1-Hour Nonattainment					
2–5	0	7	0	0	0
5–10	0	0	2	0	0
10–15	0	0	15	0	0
15–20	0	0	0	0	0
20–25	0	0	0	0	0
>25	0	0	0	0	0
Contributions to 8-Hour Nonattainment					
2–5	8	28	0	0	3
5–10	0	0	20	0	0
10–15	0	0	6	0	0
15–20	0	0	4	0	0
20–25	0	0	0	0	0
>25	0	0	0	0	0

Impacts (ppb)	Sub 1	Sub 2	Sub 3	Sub 4	Sub 5	Sub 6	Sub 7
NEW HAMPSHIRE							
Contributions to 1-Hour Nonattainment							
2–5	0	0	4	8	0	0	0
5–10	0	0	0	1	0	0	0
10–15	0	0	0	11	0	0	0
15–20	0	0	0	3	0	0	0
20–25	0	0	0	1	0	0	0
25	0	0	0	1	0	0	0
Contributions to 8-Hour Nonattainment							
2–5	0	8	12	2	0	0	0
5–10	0	0	1	6	0	0	0
10–15	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0

Impacts (ppb)	Sub 1	Sub 2	Sub 3	Sub 4	Sub 5	Sub 6	Sub 7	Sub 8	Sub 9
VERMONT									
Contributions to 1-Hour Nonattainment									
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	6	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
<25	0	0	0	0	0	0	0	0	0
Contributions to 8-Hour Nonattainment									
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
<25	0	0	0	0	0	0	0	0	0

Pennsylvania—This petition named States which generally correspond to Subregions 1, 2, 5, 6, 7, 8, and 9. Of these, Subregions 2, 5, 6, 7, and 8 contribute to 1-hr nonattainment in Pennsylvania. The largest and most frequent contributions are predicted to come from Subregions 7 and 6, respectively. No contributions >2 ppb are predicted from Subregions 1 or 9. For 8-hr nonattainment, the largest contributions are from Subregions 2, 6, and 7. The magnitude of the contributions from these three subregions is in the range of 15–20 ppb or more. No contributions to 8-hr nonattainment >2 ppb were predicted from Subregion 9.

Massachusetts—This petition named sources within a portion of Subregion 6. However, no contributions >2 ppb were predicted to 1-hr nonattainment from this subregion to nonattainment in Massachusetts. Contributions to 8-hr nonattainment from this subregion were in the range of 2–5 ppb.

Rhode Island—This petition also named sources within a portion of Subregion 6. Contributions from this subregion to 1-hr nonattainment were 5–10 ppb. The predicted contribution to 8-hr nonattainment from this subregion was in the range of 2–5 ppb.

Maine—Of the five subregions (i.e. Subregions 2, 3, 4, 6, and 7) which are associated with sources named in Maine's petition, contributions to 1-hr nonattainment were predicted from Subregions 3 and 4, with contributions to 8-hr nonattainment from Subregions 2, 3, 4, and 7. The largest contributions were from Subregion 4 at 10–15 ppb for 1-hr contributions and 15–20 ppb for 8-hr contributions. No contributions were predicted from Subregion 6 to either 1-hr or 8-hr nonattainment.

New Hampshire—Subregions 1 through 7 are associated with sources named in the New Hampshire petition. Of these subregions, however, only Subregions 3 and 4 are predicted to contribute >2 ppb to 1-hr nonattainment with the largest contributions, >25 ppb, from Subregion 4. Subregions 2, 3, and 4 are predicted to contribute >2 ppb to 8-hr nonattainment with contributions of 10–15 ppb from Subregion 4.

Vermont—There is no current or predicted ''nonattainment'' in Vermont, based on 1993–1995 ambient monitoring data and/or model predictions from the OTAG 2007 Base Case.

F. Results of Preliminary Assessment of Section 126 Petitions

As indicated above, the purpose of this preliminary analysis is not to make a proposed finding of ''significance'' relative to the sources and/or source categories named in each petition. Rather, the intent is to identify the contributions to 1-hr and 8-hr nonattainment in each State based on information developed in the proposed NO_X SIP call as part of the significant contribution determination. As a whole, the eight petitions cover sources in States within OTAG Subregions 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12, as well as in Massachusetts, New Hampshire, Rhode Island, and Vermont. Of these, emissions in States covered by Subregions 1, 2, 3, 4, 5, 6, 7, 8, and 9 along with Massachusetts and Rhode Island were proposed, by EPA, to make a significant contribution to downwind nonattainment in the NO_X SIP call.

This preliminary assessment indicates that sources in Subregions 2, 3, 4, 5, 6, and 7 contribute to 1-hr nonattainment in at least one of the petitioning States. The 16 States and the District of Columbia that are wholly or partially within these subregions include: Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee[7], Virginia, and West Virginia. Based on these results, EPA's preliminary assessment indicates that the source categories identified by the petitions that are located within these 16 States and the District of Columbia make a significant contribution to nonattainment of the 1-hr standard. In addition, in the proposed NO_X SIP call, EPA proposed that Massachusetts and Rhode Island be considered significant contributors to nonattainment in downwind States, including Maine and New Hampshire. Accordingly, sources in these two States are preliminarily included in this assessment as significant contributors.

Sources in Subregions 1, 2, 3, 4, 5, 6, 7, and 8 contribute to 8-hr nonattainment in at least one of the petitioning States. However, it should be noted that sources in only Subregions 1, 2, 5, 6, 7, and 8 contribute to 8-hr nonattainment in one of the three petitioning States (Massachusetts, Pennsylvania, and Vermont) that requested EPA to make a finding under the 8-hr NAAQS. The 15 States and the District of Columbia which are wholly or partially within the subregions contributing to 8-hr nonattainment in Pennsylvania (i.e. subregions 1, 2, 5, 6, 7, and 8) and Massachusetts (i.e., subregion 6) and which were proposed to make a significant contribution to downwind nonattainment in the proposed NO_X SIP call are Delaware, Georgia[8], Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, North Carolina, Ohio, South Carolina, Tennessee[9], Virginia, West Virginia, and Wisconsin. The EPA's preliminary assessment indicates that the source categories identified by the petitions that are located within these States make a significant contribution to nonattainment of the 8-hr standard (or interfere with maintenance of that standard) in the petitioning States. Because there are no current or predicted nonattainment problems in Vermont, there are no upwind source areas that are included in the preliminary assessment of significant contribution due to the Vermont petition.

As noted above, the petitioning States submitted technical data in addition to the zero-out modeling data just described. The EPA is continuing to review the States' technical data, as well as other data relevant to the petitions, to develop a proposed finding for each petition.

By comparison to the above section 126 analysis, in the proposed NO_X SIP call, EPA determined that sources in 22 States and the District of Columbia are significantly contributing to 1-hr and 8-hr nonattainment problems. In the proposed NO_X SIP call, EPA considered nonattainment problems throughout the Eastern half of the United States. In the section 126 rulemaking action, EPA is limited to considering nonattainment problems in the 8 petitioning States, which are all located in the Northeast.

III. Preliminary Assessment of Emission Limitations and Compliance Schedules

The EPA is currently analyzing each of the section 126 petitions to determine whether to propose to grant the States' requests for findings of significant contribution or to deny the petitions; as a result, EPA is not prepared to propose a response at this time. If EPA does propose to find that certain source categories described in one or more of the petitions significantly contribute to nonattainment or interfere with maintenance of an ozone standard in a downwind State, then EPA would be

[7] Tennessee is included because it is part of Subregions 5 and 6. Tennessee is also part of Subregion 9 which, based on the subregional modeling, does not contribute to 1-hr nonattainment in any of the petitioning States.

[8] Georgia is included because it is part of Subregion 8. Georgia is also part of Subregion 9 which, based on subregional modeling, does not contribute to 8-hr nonattainment in any of the petitioning States.

[9] Tennessee is included because it is part of Subregions 5 and 6. Tennessee is also part of Subregion 9 which, based on the subregional modeling, does not contribute to 1-hr nonattainment in any of the petitioning States.

authorized to propose new control requirements for those sources.

The EPA anticipates that any requirements it may eventually propose would resemble the controls described in the proposed NO_X SIP call. As noted above, it is EPA's preliminary view that the NO_X SIP call rulemaking overlaps considerably with EPA action on the section 126 petitions because both are governed by the requirements of section 110(a)(2)(D) with respect to ozone for a similar geographic region. The EPA intends to employ the extensive analysis in the proposed NO_X SIP call action, including the NO_X Budget Trading Program (described in a supplemental rulemaking), in developing any proposed remedy for the petitions. Thus, if EPA were to propose to grant any or all of the section 126 petitions, EPA's response would include the proposal of a cap-and-trade program. The EPA expects to base any remedy granted under section 126 on the assumption of a uniform control level for the covered universe of sources, based on the criteria delineated in Section III.C. The following sections outline the remedies sought by petitioners and discuss how EPA would address the petitions if it were to propose granting any or all of them.

A. Remedies Recommended in Petitions

The eight petitions submitted to EPA collectively cover the 23 jurisdictions named by EPA in the proposed NO_X SIP call, as well as seven additional States that were not named (Iowa, New Hampshire, Vermont, Arkansas, Louisiana, Mississippi, and Minnesota). This section focuses on the source categories named in the petitions as significant contributors and the requested relief sought by petitioners.

Several of these petitions reference the OTC NO_X MOU, agreed to by eleven Northeastern States and the District of Columbia to implement NO_X emissions reductions across the Ozone Transport Region (OTR). The OTC NO_X MOU signatories were Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia. The OTC NO_X MOU commits these States to reductions in ozone season NO_X emissions from large utility and industrial combustion sources through implementation of a phased-in regionwide cap-and-trade program. Specifically, affected sources in the OTR are fossil fuel-fired boilers and other indirect heat exchangers with a maximum rated heat input capacity of 250 mmBtu/hr or greater, and electric generating facilities with a rated output of 15 megawatts (MW) or greater.

The OTC NO_X MOU established emissions reduction requirements for these sources in the OTR, creating emissions budgets for 1999 (Phase II) and 2003 (Phase III). (Phase I required the installation of reasonably available control technology (RACT) by May 1995.) The requirements vary across three control zones in the region: an inner zone ranging from the District of Columbia metropolitan area northeast to southeastern New Hampshire (covering all contiguous moderate and above nonattainment areas), an outer zone ranging out from the inner zone to western Pennsylvania, and a northern zone which includes much of northern New York and northern New England (including most of New Hampshire).

For Phase II of the OTC NO_X MOU, which begins in 1999, sources in the inner zone are subject to emissions reduction requirements based on the less stringent of an emission rate of 0.20 pounds NO_X per million British thermal units of heat input (lb/mmBtu), or a 65 percent reduction from 1990 NO_X levels; sources in the outer zone are subject to emissions reduction requirements based on the less stringent of a 0.20 lb/mmBtu rate, or a 55 percent reduction from 1990 NO_X levels; and sources in the northern zone must adopt RACT. The Phase III requirements, which may be altered by a ''mid-course correction'' based on new information such as refined air quality modeling, establish emissions reduction requirements based on the lesser of a 0.15 lb/mmBtu rate, or a 75 percent reduction from 1990 levels for sources in both the inner and outer zones. Northern zone sources would face emissions reduction requirements based on the lesser of a 0.20 lb/mmBtu rate, or a 55 percent reduction from 1990 levels. In both Phase II and III in all three zones, electric generating facilities less than 250 mmBtu/hr but above 15 MW are subject only to a capping of emissions at 1990 levels for purposes of budget calculation. However, individual States determine specific allocations for each source from their overall budget based on independent allocation formulas, and thus the allocation for these sources will not necessarily reflect this level.

All of the section 126 petitions, except Pennsylvania's, Massachusetts' and Rhode Island's, named States in the OTR as significant contributors. However, only New Hampshire and Maine requested relief beyond OTC NO_X MOU requirements from sources in the OTR. It may be noted that the OTC NO_X MOU requirements are not federally enforceable at this time since these requirements have not been adopted into SIPs.

Table 3 shows, by petitioner, the named source categories, the named geographic areas, and the requested remedy sought by the petitioning States. Please note that the named source categories are worded as they appear in the petitions.

TABLE—3. EPA'S SUMMARY OF SECTION 126 PETITIONS

State	Named source categories	Named states	Request
NY	Fossil fuel-fired boilers or indirect heat exchangers with a maximum heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.	All or parts of IN, KY, MI, NC, OH, TN, VA, WV. Also lists OTR States DE, MD, NJ, PA, but does not request relief.	Establish, at a minimum, emission limitations and a schedule of compliance consistent with the OTC NO_X MOU, and a cap-and-trade program.
CT	Fossil fuel-fired boilers or other indirect heat exchangers with a maximum gross heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.	All or parts of IN, KY, MI, NC, OH, TN, VA, WV. Also lists OTR States DE, MD, NJ, NY, PA, but does not request relief.	Establish, at a minimum, emission limitations and a schedule of compliance consistent with the OTC NO_X MOU, and a cap-and-trade program.

TABLE—3. EPA'S SUMMARY OF SECTION 126 PETITIONS—Continued

State	Named source categories	Named states	Request
PA	Fossil fuel-fired indirect heat exchange combustion units with a maximum rated heat input capacity of 250 mmBtu/hr or greater, and fossil fuel-fired electric generating facilities rated at 15 MW or greater.	AL, AR, GA, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, WI.	Establish emission limitations and a compliance schedule for a cap-and-trade program requiring: (a) Seasonal reductions of the less stringent of 55% from 1990 baseline levels, or 0.20 lbs/mmBtu, beginning by May 1999; (b) if necessary, seasonal reductions of the less stringent of 75% from 1990 baseline levels, or 0.15 lbs/mmBtu, beginning by May 2003; (c) such additional reductions as necessary beginning in 2005.
MA	Electricity generating plants	Parts of IN, KY, OH, WV. Also names sources in OTR States, but does not request relief.	Establish emissions limitation of 0.15 lbs/mmBtu or 1.5 lbs/MWh and a compliance schedule.
RI	Electricity generating plants	Parts of IN, KY, OH, WV. Also names sources in OTR States, but does not request relief.	Establish emissions limitation of 0.15 lbs/mmBtu or 1.5 lbs/MWh and a compliance schedule.
ME	Electric utilities and steam-generating units with a heat input capacity of 250 mmBtu/hr or greater.	Sources within 600 miles of Maine's ozone nonattainment areas (all or parts of NC, OH, VA, WV, and OTR States CT, DE, DC, MD, MA, NJ, NY, NH, PA, RI, VT).	Establish compliance schedule and emissions limitation of 0.15 lbs/mmBtu for electric utilities and the OTC NO_X MOU level of control for steam generating units, in a multi-state cap-and-trade NO_X market system.
NH	Fossil fuel-fired indirect heat exchange combustion units and fossil fuel-fired electric generating facilities which emit ten tons of NO_X or more per day.	All or parts of IL, IN, IA, KY, MI, MO, OH, VA, WV, WI. Also names sources in OTR States CT, DE, DC, MD, MA, NJ, NY, PA, RI.	Establish compliance schedule and emission limitations no less stringent than: (a) Phase III OTC NO_X MOU reductions; and/or (b) 85% reductions from projected 2007 baseline; and/or (c) An emission rate of 0.15 lbs/mmBtu.
VT	Fossil fuel-fired electric utility generating facilities with a maximum gross heat input rate of 250 mmBtu/hr or greater and potentially other unidentified major sources.	All or parts of IL, IN, KY, MI, NC, OH, TN, VA, WV. Also AL GA, IA, MO, SC, WI. Also names OTR sources, but does not request relief.	Establish emissions limitation of 0.15 lbs/mmBtu or 1.5 lbs/MWh and a compliance schedule.

The petitions vary somewhat with regard to the universe of sources they name as significant contributors to their ozone problem. Three of the petitioning States—New York, Connecticut, and Pennsylvania—name the same universe of sources covered by the OTC NO_X MOU. New Hampshire names fossil fuel-fired indirect heat exchangers and electric generating facilities as well, but uses a tonnage applicability cut-off to include only sources that emit ten tons or more of NO_X per day. Massachusetts and Rhode Island name ''electricity generating plants'' as the universe requiring controls, without naming a specific size cutoff. Finally, Vermont names fossil fuel-fired electric generating facilities of 250 mmBtu or greater.

The petitions also vary regarding the remedy requested. Though all of the petitions request that EPA impose controls in terms of various emissions limitations, four of the eight petitions—New York, Connecticut, Pennsylvania, and Maine—also request that a trading program with a cap, or emissions budget, be established to implement these controls. Massachusetts, Rhode Island, and Vermont request that limitations be established for all named sources at 0.15 lbs/mmBtu, which is the level of control for electric generating facilities used to calculate the budget in the proposed NO_X SIP call. Maine requests an emission limitation of 0.15 lbs/mmBtu for named electric utilities, but the OTC NO_X MOU level of control for named steam generating units. New Hampshire requests emission limitations no less stringent than the Phase III OTC NO_X MOU reductions, and/or 85 percent reductions from projected 2007 baseline, and/or an emission rate of 0.15 lbs/mmBtu. New York, Connecticut and Pennsylvania all request that emissions limitations consistent with the OTC NO_X MOU be imposed on named sources, but only Pennsylvania specifies the outer zone requirements; neither Connecticut nor New York specifies a zone. The level of reduction requested for 2003 in these three petitions specifying basic OTC NO_X MOU requirements appears to be less stringent than that in the petitions requesting 0.15 lbs/mmBtu, since the remedy requested would allow sources the option to implement the less stringent of a percentage reduction or an emission rate. In terms of smaller sources named by these three States, Pennsylvania's petition appears to seek somewhat more reductions than the OTC NO_X MOU by requiring the same emission level for electric generating facilities less than 250 mmBtu/hr and greater than 15MW as for larger units. Both Connecticut and New York appear to be aligned with the OTC NO_X MOU in seeking only a capping of emissions at 1990 levels for these smaller sources.

New York, Connecticut and Pennsylvania recommend a date for the implementation by sources of control requirements: the OTC NO_X MOU schedule of compliance, including its phased-in controls and implementation dates of 1999 and 2003. The remaining States request that EPA establish a schedule of compliance requiring sources to comply with emission limitations as expeditiously as practicable.

B. EPA's Analytic Approach

If EPA proposes to grant a section 126 petition, and thereby proposes to find that identified sources either contribute

significantly to nonattainment or interfere with maintenance in the petitioning State, EPA intends to propose emissions reduction requirements for those sources. The EPA would not, however, propose controls on sources other than those named in the petitions under section 126.

To determine the level of requirements to propose, EPA intends to consider the remedies described in the petitions (see III.A. of this section), relevant comments received in a timely manner on today's notice, the availability and cost effectiveness of potential control measures, the ambient impact of the control measures, OTAG's recommendations, and the similar efforts EPA is already undertaking to address the transport problem in the proposed NO_X SIP call.

In developing proposed budgets for States as part of the proposed NO_X SIP call, EPA assumed the application of a uniform NO_X emission rate of 0.15 lb/mmBtu to projected electricity generating activity levels at large electric generating devices, and 70 percent control for other large stationary sources. The EPA's rationale for assuming these control levels is explained in the proposed NO_X SIP call, and is based upon cost effectiveness, OTAG recommendations, the collective contribution approach described in the NO_X SIP call notice, equity concerns, EPA's air quality modeling approach, and concerns over emissions shifting (62 FR 60342).

The EPA believes that it needs to coordinate and integrate the proposed NO_X SIP call and the section 126 rulemaking to the greatest extent possible in order to reduce the possibility that affected sources would be faced with inconsistent or conflicting control requirements and deadlines. Such inconsistency could hamper the sources' abilities to plan and achieve the needed reductions as cost-effectively as possible. Further discussion of the proposed integration of these two efforts is included in Section IV.B.

The EPA believes that promoting consistent requirements among the States affected by the NO_X SIP call and the section 126 rulemaking would greatly facilitate participation in a common trading program to address the transport problem on a regional scale. Therefore, EPA anticipates that any section 126 proposed rulemaking will attempt to coordinate the schedules for the SIP revisions, and the implementation of reductions required under the proposed NO_X SIP call, with the schedule for completing the rulemaking on the section 126 petitions in accordance with the consent decree proposed by the petitioning States and EPA.

In determining the appropriate control requirements to propose in response to the granted section 126 findings, EPA would use the same cost effectiveness approach that it used in the proposed NO_X SIP call with respect to stationary sources. In the upcoming proposed rulemaking for the section 126 petitions, EPA intends to present analyses conducted for the proposed NO_X SIP call regarding the feasibility, performance, and cost of NO_X controls, and factor this into the control level recommendation. The application of this control level would determine the allocation of NO_X allowances each source would receive under a trading program.

The EPA's preliminary assessment is that it would propose the control levels assumed in formulating the budgets for the proposed NO_X SIP call in response to the section 126 petitions. In addition, EPA's preliminary assessment is that it would propose the full 3-year period for sources to implement those controls. Comments are sought on these approaches, as indicated in Section IV of today's notice.

Also in the proposal, EPA intends to use the Integrated Planning Model (IPM) to explore the cost of achieving emission levels among sources affected by the section 126 rulemaking. The EPA uses the IPM to evaluate the emissions and cost impacts expected to result from the requirements of the proposed NO_X SIP call on the electric power generation sector. The IPM has been used for over 10 years to address a wide range of electric power market issues, including environmental policy and compliance planning, and undergoing frequent and extensive review and validation. The EPA has used IPM for many analytic efforts, most recently as a tool to analyze alternative trading and banking programs during the OTAG process in 1996 and 1997, and to analyze the economic impacts of the proposed NO_X SIP call.

C. Intent To Implement Controls Through Cap-and-Trade Program

A cap-and-trade program is expected to be the most cost-effective approach to achieving any emissions reductions required under section 126. Under such a program, the sources for which EPA proposes a positive finding would be limited to specified amounts of emissions as a group, but would be authorized to trade emissions. Four of the eight petitioning States (New York, Connecticut, Pennsylvania, and Maine) requested that EPA establish such a trading program to implement the required reductions. The EPA is proposing a framework for a cap-and-trade program in a supplemental notice to the proposed NO_X SIP call to facilitate cost effective achievement of the proposed reductions, (''Purpose of the NO_X Budget Trading Program'' and ''Benefits of Participating in the NO_X Budget Trading Program''). If one or more of the section 126 petitions are granted, a remedy can be integrated with this program, consolidating the two actions and lowering the cost of compliance.

The EPA anticipates defining all the program elements for a cap-and-trade program in the proposed rulemaking for the section 126 petitions, including a list of covered sources, monitoring requirements for these sources, an allowance allocation methodology, source-specific NO_X allowance allocations for the initial control period, timing of the program, and permitting requirements.

IV. Legal and Policy Issues

A. Issues Involving Significant Contribution

As discussed earlier in Sections I.A and I.C. of this notice, both the section 126 petitions and proposed NO_X SIP call are premised on a violation of section 110(a)(2)(D) of the CAA. This section requires that SIPs prohibit emissions that contribute significantly to nonattainment or that interfere with maintenance downwind.[10] Because of the link between section 126 and section 110, EPA should use similar criteria in its analysis for each case.

As described in the proposed NO_X SIP call and earlier in this notice, EPA used a ''weight of evidence'' approach in determining whether sources in one State significantly contributed to ozone nonattainment in another State. This approach applies multiple factors which focus on emission quantities and air quality impacts, as well as, under certain formulations, control costs. It is EPA's intent to use this same ''weight of evidence'' approach in determining whether or not to grant any of the section 126 petitions.

The EPA is soliciting comment on whether there is any reason why it should rely on a different approach and, if so, what that approach should be. It should be noted that EPA is not soliciting comment on the issues of significant contribution discussed in the proposed NO_X SIP call. It is only asking

[10] As indicated earlier, it is EPA's preliminary interpretation that the cross reference in section 126(b) to section 110(a)(2)(D) should be treated as a cross reference to sentence (i) of the provision, which includes the significant contribution test.

for comment on whether or not the same approach should be used in evaluating the section 126 petitions.

Additionally, EPA is asking for comment on whether it should focus on the contributions to the downwind areas of named sources in a each petition, considered by themselves, or whether EPA should consider the named sources in one petition in conjunction with the named sources in all the other petitions under a type of ''collective contribution'' approach. In the latter case, even if the emissions from the named sources in a single petition have a relatively minor impact on downwind areas, the emissions may be considered significant if they are considered as part of a broader set of emissions from all the sources named in all the petitions, which together have a larger impact on the same downwind areas.

B. Issues Involving Trading

The EPA is proposing the framework for a cap-and-trade program in its supplemental notice to the proposed NO_X SIP call. As noted previously, EPA believes a trading program should be part of any remedy it proposes in response to the section 126 petitions. At this time, EPA is not prepared to define the scope of the trading program it would propose in response to the section 126 petitions, but would like to solicit comment on some important issues regarding trading program development.

First, EPA believes that when a petition identifies as significant contributors both named sources and generally identified source categories, EPA may make findings of significant contribution, apply controls, and implement a trading program, with respect to all sources within those source categories in geographic areas named in the petitions. Second, EPA foresees that the proposed response to the section 126 petitions would resemble the proposed NO_X Budget Trading Program in EPA's supplemental proposed NO_X SIP call and that the two efforts could be integrated into one common trading program. Under this common trading program, sources subject to controls under the section 126 rulemaking, or sources in States choosing to participate in the NO_X Budget Trading Program in response to the NO_X SIP call, or sources in States subject to a Federal implementation plan (FIP) under the NO_X SIP call, could trade with one another under a regionwide NO_X cap. The EPA solicits comments as to whether the trading program that EPA would propose in response to the section 126 petitions should be essentially the same trading program proposed by EPA in its proposed NO_X SIP call, and whether there are any reasons why the programs should not be integrated.

In order to address the ozone transport problem in the most cost-effective manner, EPA believes one trading program can and should be established in response to both the final NO_X SIP call and the section 126 petitions. The EPA believes that there are two principal criteria that sources must meet to be eligible to participate in a cap-and-trade program, as stated in the supplemental notice for the proposed NO_X SIP call. The first criterion requires that sources be able to account accurately and consistently for all of their emissions to ensure the trading program goal of maintaining emissions within a cap. The second criterion for participation in a trading program is the ability to identify a responsible party for each regulated source who would be accountable for demonstrating and ensuring compliance with the program's provisions. The EPA solicits comment on these, or additional, criteria that should be considered. Assuming that these criteria are met, and consistent control levels are used in setting emission requirements for the affected sources, EPA supports the establishment of a common trading program for all sources in States subject to the final NO_X SIP call who hold EPA-approved SIPs and choose to participate, and all sources subject to any section 126 remedy established by EPA. The EPA would administer this common trading program in collaboration with affected States. The EPA anticipates proposing to establish the geographic boundaries of the common trading program as those States submitting SIPs in response to the final NO_X SIP call or subject to FIPs and/or the sources in geographic areas for which EPA makes a finding for the section 126 petitions.

A common trading program integrating the NO_X Budget Trading Program and the section 126 actions would necessarily include those source categories in States for which EPA makes a finding in the section 126 process, sources located in States that are both named in the final NO_X SIP Call and which choose to participate in the NO_X Budget Trading Program, as well as sources subject to a FIP. States choosing to participate through the NO_X SIP call would be required to include a core group of sources in the trading program, but would be provided the option to include additional stationary source categories, and certain qualifying individual stationary sources would be provided the opportunity to opt in. Sources subject to section 126 findings would be required to participate in the common trading program under EPA's section 126 authority. However, EPA does not believe that section 126 provides EPA authority to make findings or require controls beyond the named sources or source categories in the petitions. The EPA seeks comment on this issue of whether it may include additional sources beyond the named sources or source categories in the petitions through the section 126 remedy. Specifically, EPA requests comment on whether the sources EPA includes in the common trading program under the section 126 petitions should be confined to source categories in geographic areas for which petitioning States request, and EPA grants, a finding of significant contribution. In the alternative, EPA requests comment as to whether additional sources not named in a petition, but located in a State where a finding is made under section 126, should be able to voluntarily participate in a trading program remedy. Further, EPA requests comment on whether such a trading program may include sources in other States subject to the NO_X SIP call.

Because sources may be included in the common trading program through one of three possible mechanisms (section 126 petitions, NO_X SIP Call, and FIP), the sources included in the trading program for purposes of the NO_X SIP call may vary from sources included for purposes of the section 126 remedy. The EPA solicits comment as to whether this is problematic for integration concerns.

The EPA does not anticipate that a trading program designed for sources subject to the final NO_X SIP call and the section 126 petitions for which EPA makes a finding could be expanded geographically to include sources in geographic areas not subject to requirements under either program. The EPA solicits comment on this preliminary view.

The effect of NO_X emissions on air quality in downwind nonattainment areas depends, in part, on the distance between sources and receptor areas. Sources that are closer to the nonattainment areas tend to have much larger effects on air quality than sources that are far away. In light of this and as discussed in Section IV.C, the EPA plans to evaluate alternative approaches, other than one based on the application of uniform controls, in developing the rulemaking proposal.

The Agency solicits comments on whether a trading program should factor in differential effects of NO_X emissions in an attempt to strike a balance

between achieving the cost savings from a broader geographic scope of trading and avoiding the adverse effects on air quality that could result if the geographic domain for trading is inappropriately large or trades across areas are not appropriately adjusted to reflect differential environmental effects. The EPA could consider establishing ''exchange ratios'' for tons traded between areas. The large number of areas in the petitioning States that are violating the standards and the several different weather patterns associated with summertime ozone pollution episodes complicate the development of a stable set of trading ratios. Alternatively, the Agency could consider establishing subregions for trading within the geographic area that may ultimately be subject to any section 126 findings and apply a discount to or prohibit trades between regions. The Agency solicits comments on this issue.

C. Cost-Effectiveness Issues

Where EPA proposes to grant a section 126 petition and, therefore, also to propose control measures, it plans to use the cost-effectiveness approach used in the proposed NO_X SIP call action with respect to stationary sources. This approach focuses on the selection of reasonable, cost-effective control measures and the application of uniform controls. Further, as in the proposed NO_X SIP call, EPA plans to propose to require sources in upwind areas to decrease emissions through cost-effective controls that compare favorably, at least qualitatively, with the costs of controls downwind and that reduce ozone levels downwind.

However, the effect of NO_X emissions on air quality in areas violating the ozone air quality standard depends, in part, on the distance between sources and receptor areas. Sources that are closer to areas violating the air quality standards tend to have larger effects on air quality than sources that are far away. If there is a significant variation in the contribution of emissions in different subregions within the geographic area that may be subject to any section 126 findings, alternative approaches to developing a remedy, other than one based on the application of uniform control measures, will be evaluated. On the other hand, the large number of nonattainment areas in the States that filed petitions and the several different weather patterns associated with summertime ozone pollution episodes should also be considered when evaluating a subregional approach. The EPA plans to evaluate alternative approaches at levels below and above the levels used in the calculation of the budgets in the proposed NO_X SIP call as well as regional approaches that apply different control levels to different geographic regions.

The EPA is soliciting comment on approaches for the section 126 control remedy that factor in the differential effects on air quality in areas violating the standard. Comments advocating alternative approaches would be most helpful if they set forth concrete proposals on what analysis should form the basis of the remedy. For example, some have suggested an approach that would attempt to quantify more explicitly the cost-effectiveness of emissions reductions in terms of improvements in ambient ozone concentrations in areas violating a standard (measures, for example, as cost per population-weighted changes in parts per billion peak ozone concentration) taking into account the location of control measures through subregional modeling.

The EPA invites comment on whether the criteria for cost effectiveness applied in any section 126 petition decision should be the same as the criteria used in the proposed NO_X SIP call action; or whether the criteria should be different because, for example, there are fewer sources involved in the section 126 petitions than in the proposed NO_X SIP call. (The EPA is not asking for comment, in this notice, on the issue of cost effectiveness as it applies to the proposed NO_X SIP call, but only on whether the approach taken in the proposed NO_X SIP call is appropriate for the section 126 action.) Similarly, EPA invites comment on whether to consider the cost effectiveness of controls for sources named in a single petition or whether EPA should look at the collective cost effectiveness of controls for all the sources named in all the petitions which EPA may propose to grant. In both cases, even if some sources' emissions reduction requirements taken by themselves are not cost effective, EPA believes that these controls may be considered cost effective if they are part of a set of controls which, when taken as a whole, are considered cost effective.

The EPA also invites comments on whether and to what extent cost effectiveness should differentiate between large and small sources within a specific source category. Specifically, EPA notes that its proposed NO_X SIP call included a cutoff of 25 MWe for utility boilers and 250 mmBtu for non-utility boilers; units below these cutoffs were not included in emissions decrease calculations for the statewide budgets. Because certain petitions suggest controlling 15–25 MWe generators, and one suggests controlling all electric generators, EPA specifically invites comment on the cost effectiveness of these requests.

As a preliminary matter, EPA anticipates making determinations as to cost effectiveness through the same approach as discussed in the proposed NO_X SIP call. Specifically, EPA would employ the following steps in proposing the control levels: First, EPA would compile a list of available NO_X control measures for the various emissions sectors named in the petitions. For the control measures on this list, EPA would estimate the average cost effectiveness of those controls. The average cost effectiveness is defined as the cost of a ton of reductions from the source category based on full implementation of the proposed controls, as compared to the pre-existing level of controls.

Second, EPA would determine the average cost effectiveness of a representative sample of recently proposed and adopted State and Federal controls. The EPA believes that the average cost effectiveness for measures that would form the basis of the remedy to the petitions should be comparable to the average cost effectiveness of those controls recently proposed and adopted. Third, EPA would use this information to determine which controls may be appropriate to propose as the remedy for any petitions that are proposed to be granted. Fourth, EPA would determine that the proposed controls—or generally comparable levels—result in an adequate level of ambient reductions downwind. The EPA used this approach to propose the level of control assumed in the proposed NO_X SIP call. The EPA solicits comments on whether this approach should be changed in the section 126 rulemaking.

D. Legal Issues

The EPA also solicits comment on a series of issues concerning the legal interpretation of section 126(b) and associated provisions. Section 126(b) provides that a State may petition EPA for a finding that specified sources in other States emit air pollutants ''in violation of the prohibition of section 110(a)(2)(D)(ii) of this title or this section.'' Section 110(a)(2)(D) provides the requirement that a SIP contain adequate provision:

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with

maintenance by, any other State with respect to [any] national * * * ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.

(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)* * *

One issue is whether the cross-reference in section 126(b) to ''section 110(a)(2)(D)(ii)'' is valid, or instead should be considered to be a typographical error that should be read to refer to section 110(a)(2)(D)(i). The EPA has offered this view in general and preliminary guidance. (Nichols Letter cited earlier in Section I.B.)

Some have argued that section 126(b) should be read literally, and that this reading would require EPA to deny the petitions submitted to date on grounds that section 126 allows a State to file a petition with EPA only to force other States to meet the requirements of section 126 itself, (i.e., the requirement in section 126(a) that SIPs include provisions to require new and modified major stationary sources to give preconstruction notification to nearby States under certain circumstances). (Letter from Henry V. Nickel, et.al, Counsel for the Utility Air Regulatory Group, to Carol M. Browner, Administrator, U.S. EPA, November 21, 1997 (UARG Letter); Letter from Betty D. Montgomery, Attorney General of Ohio, et. al., to Richard Wilson, Acting Assistant Administrator for Air & Radiation, U.S. EPA, November 5, 1997 (letters included in the docket to this rulemaking).)

If the proper interpretation of section 126(b) is that the cross-reference represents a typographical error, an issue arises as to what the appropriate cross-reference should be. The EPA has offered the view, in general and preliminary guidance, that the proper cross-reference should be to section 110(a)(2)(D)(i) (Nichols Letter). Some have argued that the appropriate cross-reference should be to section 110(a)(2)(D)(i)(II), and not section 110(a)(2)(D)(i)(I) (UARG letter). The effect of this reading would be to limit section 126 petitions to cases in which the upwind sources are adversely affecting: (i) Clean areas under the prevention of significant deterioration requirements of part C of Title I of the CAA; or (ii) visibility.

A further issue arises as to the interpretation of the requirement of section 110(a)(2)(D)(i) that the ''SIP contain adequate provisions prohibiting, consistent with the provisions of this title,'' sources from emitting air pollutants in amounts that contribute significantly to nonattainment problems downwind. Some have argued that the phrase ''consistent with the provisions of this title'' should be interpreted to limit the requirements imposed with respect to sources in a contributing State to the control requirements that the petitioning State demonstrates would be necessary to allow the petitioning State to reach attainment of the NAAQS after the petitioning State implements the applicable requirements under section 182 (requirements for nonattainment areas), and under sections 176A and 184 (transport region provisions). The EPA solicits comments on each of the issues of interpretation noted earlier.

Additional legal issues, which assume that section 126(b) should be read to authorize EPA to grant the petitions if they have an adequate technical basis, concern:

- Whether, if EPA grants a section 126 petition, EPA may allow sources a period longer than 3 years from the date of granting the petition to implement required controls under section 126(c).
- Whether administrative complexity is an appropriate factor to consider in determining whether to grant a petition with respect to certain sources, so that EPA would have the discretion to determine not to grant a finding with respect to, for example, smaller sources that would be administratively complex for EPA to regulate.
- Whether EPA should evaluate each of the section 126 petitions under both the 1-hr ozone NAAQS and the 8-hr ozone NAAQS or whether EPA should limit its evaluation of the 8-hr standard only to those petitions which cite the 8-hr standard as a basis for their petition.
- Whether EPA has the authority to evaluate petitions under the 8-hr standard in light of the fact that EPA has not yet designated areas under the 8-hr standard or required SIP revisions under that standard.
- Whether EPA, in determining whether sources are significant contributors to nonattainment problems downwind, may consider the impact of upwind sources named in a petition on only the petitioning State, or whether EPA may consider the impact of upwind sources named in one petition on other petitioning States (or non-petitioning States).

V. Schedule for Rulemaking Action on Section 126 Petitions

As discussed in the Section I Background, the eight petitioning States have sued EPA to establish a schedule for rulemaking on the section 126 petitions, and EPA and those States have filed with the court a proposed consent decree. The EPA took comment on the proposed consent decree under section 113(g) of the CAA and is considering those comments. The EPA has not asked the court to lodge the consent decree.

Section 2(b) of the proposed consent decree requires that EPA publish in today's ANPR ''the schedule set forth in [the] consent decree for finalizing action on the section 126 petitions, including the date and location of the public hearing.''

The proposed consent decree sets forth the relevant schedule as follows:

3. EPA will publish in the **Federal Register** a notice of proposed rulemaking regarding the section 126 petitions no later than September 30, 1998.* * *

5. a. EPA will take a final action on the section 126 petitions no later than April 30, 1999.

b. Unless EPA takes the final action described in paragraph 6, as to each individual petition, EPA's final action will be to—

(i) Grant the requested finding, in whole or part; and/or

(ii) Deny the petition, in whole or part.

c. Unless EPA denies a petition in whole, its final action will include promulgation of the Proposed Remedy for sources to the extent that a requested finding is granted with respect to those sources.

6. EPA shall be deemed to have complied with the requirements of Paragraph 5(a) if it instead takes a final action by April 30, 1999, that—

a. Makes an affirmative determination concerning the technical components of the ''contribute significantly to nonattainment'' or ''interfere with maintenance'' tests under CAA section 110(a)(2)(D)(i), 42 U.S.C. sec. 7410(a)(2)(D)(i);

b. Further provides that—

(i) If EPA does not issue a proposed approval of the relevant upwind State's SIP revision (submitted in response to the NO_X SIP call) by November 30, 1999, then the finding will be deemed to be granted as of November 30, 1999, without any further action by EPA;

(ii) If EPA issues a proposed approval of said SIP revision by November 30, 1999, but does not issue a final approval of said SIP revision by May 1, 2000, then the finding will be deemed to be granted as of May 1, 2000, without any further action by EPA;

(iii) If EPA issues a final approval of said SIP revision by May 1, 2000, EPA must take any and all further actions, if necessary to complete its action under section 126, no later than May 1, 2000; and

c. Promulgates the Proposed Remedy for sources to the extent that an affirmative determination is made with respect to those sources.

A public hearing on the future proposed rulemaking on the section 126 petitions will be held on October 28 and 29, 1998 at the EPA Auditorium at 401 M Street SW,

Washington, DC, 20460. The oral testimonies, as well as all written comments received during the comment period for the proposed rulemaking, will be considered in the development of the final rulemaking.

VI. Impact on Small Entities

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available a regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.'' Id., section 605(b).

No such requirements or certification apply in the case of an advance notice of proposed rulemaking. However, in accordance with section 609(a)(1) of the RFA, EPA is today notifying the public that if EPA grants the findings requested by the petitioning States, the controls that EPA would promulgate may have a significant economic impact on a substantial number of small entities. Accordingly, EPA has begun an informal outreach process to work with the Small Business Administration (SBA), the Office of Management and Budget (OMB), and a number of small-entity representatives. On April 14, 1998, EPA held a meeting in Washington, D.C. to provide an opportunity for small-entity representatives to provide advice and recommendations and to join in a discussion of the issues related to small-entities. Representatives from SBA and OMB also participated in the meeting. If this outreach and further analysis show that EPA's action appears likely to have a significant adverse impact on a substantial number of small entities, EPA would then convene a Federal Small Business Advocacy Panel for this rulemaking under the Small Business Regulatory Enforcement Fairness Act (SBREFA). The EPA would examine such issues as the number of small entities likely to be affected by the rule; the associated compliance, reporting and recordkeeping burdens; Federal rules which might duplicate, overlap, or conflict with the rule; and alternative compliance strategies and approaches that would help to minimize any significant economic impact on small entities.

Dated: April 24, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–11475 Filed 4–29–98; 8:45 am]

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Thursday
April 30, 1998

Part VIII

Architectural and Transportation Barriers Compliance

36 CFR Part 1191

Americans with Disabilities Act Accessibility Guidelines; Play Areas; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–2]

RIN 3014–AA21

Americans With Disabilities Act Accessibility Guidelines; Play Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) proposes to amend the Americans with Disabilities Act Accessibility Guidelines (ADAAG) by adding a special application section for play areas. The section was developed by a regulatory negotiation committee composed of persons who represent interests affected by accessibility guidelines for play areas. The section would ensure that newly constructed and altered play areas are readily accessible to and usable by children with disabilities.

DATES: Comments should be received by July 29, 1998.

The Access Board will hold a public hearing on the proposed guidelines on Wednesday, June 3, 1998 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. To facilitate posting comments on the Board's Internet site, commenters are requested to submit comments in electronic format, preferably as a Word or WordPerfect file, either by e-mail or on disk. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. E-mail comments should be sent to play@access-board.gov. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

The public hearing will be held at the Westin Hotel, 1672 Lawrence Street in Denver, Colorado. Interested members of the public may contact the Board at (202) 272-5434 ext. 18 or (202) 272–5449 (TTY) to preregister to give testimony or may register on the day of the hearing.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). E-mail address: greenwell@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–35 (Play Areas Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–35. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/playfac.htm).

Background

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (ADA) to ensure that new construction and alterations of facilities covered by titles II and III of the ADA are readily accessible to and usable by individuals with disabilities.[1] The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991 (36 CFR part 1191, Appendix A). ADAAG consists of general sections (ADAAG 1 to 4) that apply to all types of buildings and facilities, and special application sections (ADAAG 5 to 12) that contain additional requirements for certain types of buildings.[2]

Under the ADA, the Department of Justice is responsible for issuing regulations to implement titles II and III of the Act. The regulations issued by the Department of Justice must include accessibility standards for newly constructed and altered facilities covered by titles II and III of the ADA. The standards must be consistent with the accessibility guidelines issued by the Access Board. The Department of Justice has adopted ADAAG as the Standard for Accessible Design for title III of the ADA. (28 CFR part 36, Appendix A).[3]

Titles II and III of the ADA cover a wide variety of recreation facilities such as boating and fishing facilities, golf courses, parks, places of amusement, play areas, sports facilities, and trails. Newly constructed and altered recreation facilities are required to comply with ADAAG, as adopted by the Department of Justice as the Standards for Accessible Design, where the provisions can be applied. For example, parking areas, entrances, and toilet rooms that are part of newly constructed and altered recreation facilities must comply with ADAAG. Some recreation facilities have unique features for which additional provisions and special application sections need to be developed. The Access Board convened a Recreation Access Advisory Committee (RAAC) in July 1993 as the first step in developing the additional provisions and special application sections. The RAAC issued a report in July 1994 which addressed the various types of recreation facilities and identified the features of each facility type that are not adequately addressed by ADAAG. The RAAC made recommendations for developing

[1] The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) is a comprehensive civil rights law which prohibits discrimination on the basis of disability. Titles II and III of the ADA require, among other things, that newly constructed and altered State and local government buildings, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities.

The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] The special application sections cover the following buildings and facilities: restaurants and cafeterias (ADAAG 5); medical care facilities (ADAAG 6); business, mercantile and civic (ADAAG 7); libraries (ADAAG 8); transient lodging (ADAAG 9); transportation facilities (ADAAG 10); judicial, legislative, and regulatory facilities (ADAAG 11); and detention and correctional facilities (ADAAG 12).

[3] The Department of Justice's regulations currently include ADAAG 1 to 10. State and local governments currently have the option of using ADAAG or an earlier standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering facilities under the Department of Justice regulations for title II of the ADA. (28 CFR 35.151(c)). The Department of Justice has issued a notice of proposed rulemaking to eliminate this option. 59 FR 31808 (June 20, 1994).

accessibility guidelines for those features.

The Access Board published an Advance Notice of Proposed Rulemaking (ANPRM) in September 1994 requesting public comment on the RAAC's recommendations. 59 FR 48542 (September 21, 1994). The public comments expressed support for many of the RAAC's recommendations. However, the public comments also revealed a lack of consensus on some major issues regarding play areas among interests that potentially would be affected by accessibility guidelines for those facilities. Consequently, the Access Board decided to develop a special application section for play areas through regulatory negotiation. Regulatory negotiation is a supplement to the traditional rulemaking process that allows for face-to-face negotiations among representatives of affected interests, including the agency, with a goal of arriving at a consensus decision on the text of a proposed rule. The proposed rule is then published in the **Federal Register** and the public has an opportunity to comment. Based on public comments received, the final rule may differ from the proposed rule.

The regulatory negotiation committee on accessibility guidelines for play areas was established in March 1996. A notice of intent to form a regulatory negotiation committee was published in the **Federal Register** on December 22, 1995 (60 FR 66537). This notice proposed a committee membership and requested comments on the establishment of the committee and the proposed membership. The final membership of the committee included:

American Society of Landscape Architects
ASTM Public Playground Committee (F15.29)
ASTM Soft Contained Play Committee (F15.36)
ASTM Playground Surfacing Systems Committee (F 08.63)
International Play Equipment Manufacturers Association
National Association of Counties
National Association of Elementary School Principals
National Child Care Association
National Council on Independent Living
National Easter Seal Society
National League of Cities
National Parent-Teacher Association
National Recreation and Park Association
Spina Bifida Association of America
TASH
United Cerebral Palsy Associations
U.S. Access Board

The committee met seven times between March 1996 and July 1997 as a full committee. In addition, several workgroups met to gather information or develop recommendations for the full committee. Committee members sought input from the public on issues related to accessibility in play areas. The meetings were held in different locations across the country and were attended by over 250 members of the public. A formal public comment period was held at the end of each day of the full committee meetings. In August 1996, the committee met in the suburbs of Minneapolis, Minnesota. As a part of this meeting, the committee participated in a day long tour of playground sites, representing the various elements under discussion by the committee. In October 1996, the committee met in conjunction with the National Recreation and Park Association Annual Congress. This meeting was attended by over 100 members of the public. All committee meetings were facilitated by the Federal Mediation and Conciliation Service. An interest based model of negotiation was used during the negotiations.

The committee began its deliberations examining available information related to providing access for children with disabilities in play areas. The committee relied heavily upon three documents: the Recreation Access Advisory Committee (RAAC) Recommendations for Accessibility Guidelines: Recreational Facilities and Outdoor Developed Areas (July 1994), the ASTM F 1487–95 Public Playground Equipment Safety Standard, and the Recommendations for Accessibility Standards for Children's Environments Technical Report (July 1992). This technical report was based on a research project conducted for the Access Board by the National Center on Accessible Housing, North Carolina State University.

The committee identified basic principles to guide its negotiations. The committee agreed that accessibility guidelines should:

- be based on children's anthropometric dimensions and other resource information;
- be based on children with disabilities using a variety of assistive devices;
- provide opportunity for use by children who have a variety of abilities;
- support social interaction and encourage integration;
- create challenge, not barriers;
- maintain safety consistent with ASTM requirements;
- be reasonable in terms of cost relative to benefit;
- be based on independent use, as much as possible;
- address access for parents and care givers;
- provide access to elevated structures (additional ground level accessible play components may be required, depending on the type of vertical access provided to elevated structures); and
- provide advisory information in an understandable format to assist designers, operators, and owners, to effectively incorporate access into their designs.

The committee reached consensuses on the accessibility guidelines for newly constructed and altered play areas covered by the ADA. Committee members represented the diverse interests of those affected by this rulemaking, including persons with disabilities, owners and operators of play areas, State and local governments, designers, manufacturers, and voluntary standards groups. Where safety, cost, and access interests conflicted, consensus was difficult. Committee members explored many approaches and compromised in many areas to reach agreement on minimum accessibility guidelines for play areas.

The proposed accessibility guidelines for play areas include requirements for accessible play components with interactive manipulative features to be within certain reach ranges (16.1.5.3 Reach Ranges). Examples of manipulative or interactive features of a play component include the opening of a talk tube or the letters of a tic-tac-toe board. The committee considered it important for children with disabilities to reach these features to use the play component fully. The committee used a modified version of the dimensions for reach ranges that were included in the proposed accessibility guidelines for children's facilities, which were available during the committee's deliberations. (61 FR 37964, July 22, 1996). Final guidelines for building elements designed for children's use were issued after the committee's deliberations. (63 FR 2060, January 13, 1998.) Those final guidelines include reach range specifications for children of various age groups in the appendix as advisory information for designers to use where appropriate. This flexibility was incorporated into the final guidelines since it is not always clear which building elements are used primarily by children and should be within these reach ranges. In a play area, however, play components are designed specifically for use by children. Therefore, the proposed accessibility guidelines for play areas

require that where manipulative or interactive features are provided on accessible play components, they must be within the reach ranges of children with disabilities.

Section-by-Section Analysis

This section of the preamble contains a summary of the proposed guidelines for play areas. The text of the proposed rule follows this section.

16. Play Areas

Definitions

This section defines terms used in the proposed rule. To avoid potential confusion, terms and definitions already established within the industry have been used to the greatest extent possible.

The term *play area* is defined as a portion of a site containing play components designed and constructed for children in a specified age range as designated by ASTM F 1487–95, a voluntary safety standard. ASTM F 1487–95 recommends that play areas designed for children 2–5 years old and children 5–12 years old be separated. Where play areas are designed and constructed for specified age groups, each play area is required to meet the requirements in section 16.

Question 1. Safety standards for play areas require play equipment designed for children ages 2–5 and 5–12 to be separated. In assessing the benefits of these proposed accessibility guidelines, the Board is interested in gathering more data on the incidence of disabilities within these different age groupings. The Board is interested in any specific data sources where this information can be obtained.

The term *play component* is defined as an element intended to generate specific opportunities for play, socialization, or learning. The committee carefully reviewed definitions established by the industry and the Recreation Access Advisory Committee in developing this definition. The committee wanted the proposed definition to address the variety of play components. The committee considered elements that generate specific opportunities for play, socialization, or learning. Elements that provide experiences such as sliding, swinging, rocking, spinning, climbing, crawling, pretending, and bouncing are considered play components. Conversely, elements not specifically intended for play, socialization, or learning such as ramps, decks, steps, transfer systems, and roofs are not play components.

Play components may be manufactured or natural. Examples of natural play components include children's gardens and land forms designed to create gathering places. Manufactured play components may be stand alone or a part of a composite structure. Spring rockers and sand tables are generally placed in stand alone locations. Manufactured composite structures often combine slides, climbers, and activity panels on one unit. Landscape architects and other designers supported including natural elements in the description of play components. They were concerned that the definition would focus solely on manufactured play equipment.

A *composite play structure* is defined as two or more play components attached or functionally linked to create an integrated unit that provides more than one play activity. This definition clarifies that composite structures include play components combined to provide multiple play experiences. The manner in which play components are combined is not relevant so long as they are functionally linked. When individual parts of a composite structure act as a single unit, they are considered functionally linked, even if the parts are not physically attached to the structure. Examples may include a balance beam that may not be attached to the main structure, but serves as a play opportunity adjoining the main play structure. Although not physically attached, the balance beam allows a child to progress from one structure to another.

An *elevated play component* is defined as a play component that is part of a composite play structure and approached above or below grade. A stand alone slide, for example, would not be considered an elevated play component since it is not part of a composite play structure and is not approached above or below grade.

A *ground level play component* is a play component that is approached and exited at the ground level. Stand alone slides, balance beams, swings, and spring rockers are examples of ground level play components. Although portions of a ground level play component may be elevated, the key element of this definition is that the play component (slide, balance beam, swing, or a spring rocker) is approached and exited at the ground level.

The proposed definition of *use zone* includes the ground level area beneath and immediately adjacent to a play structure or equipment that is designated for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment. This definition is consistent with the ASTM definition, except that the term ''ground level'' is added to clarify that the area beneath a play structure or equipment includes the ground level area. Designers and operators sometimes use the term ''fall zone'' to identify the ''use zone''.

The term *soft contained play equipment* is defined as a play structure made up of one or more components where the user enters a fully enclosed play environment that uses pliable material(s) (e.g., plastic, netting, fabric). These structures are often associated with fast serve restaurants and other retail establishments and differ from most play areas found in parks and schools. Soft contained play areas are fully enclosed environments designed for users to enter the structures at various entry points. This definition was developed in cooperation with the ASTM Soft Contained Play Subcommittee F 15.36.

16.1 Play Areas

This section applies to each play area designed for children ages two and over and requires compliance with the applicable provisions in this section. The application of these guidelines is consistent with ASTM F 1487–95, which establishes safety standards beginning at age two.

The committee considered developing accessibility guidelines for children under the age of two years. It did not, however, believe that there was sufficient information available to establish guidelines for accessible play areas for children with disabilities in this age group. The committee also considered that regardless of disability, many children in this age group need assistance in using a play area. The absence of safety guidelines or standards for this age group was also recognized. While specific accessibility guidelines have not been developed for play areas for children under the age of two, these areas are covered by the ADA and the Department of Justice title II and title III regulations.

Several technical provisions are proposed that include a range of dimensions, which permits a designer to consider the primary user population served. The voluntary safety standard, ASTM F 1487–95, recommends play areas to be separated by age groups. Specifically, this standard recommends play areas designed for children 2–5 years old and 5–12 years old to be separated. These proposed accessibility guidelines also consider areas designed for these age groups to be separate play areas even if they are in the same facility.

The Board recognizes the value and importance of innovation in the design of play area surfaces and components. It is expected that new devices, technologies, and creativity will result in play area innovations not seen today. These changes are invited and welcome. ADAAG Section 2.2 (Equivalent Facilitation) permits ''departures from particular technical and scoping requirements'' where the result will provide substantially equivalent or greater access to and usability of the facility. Section 2.2 applies to every section in ADAAG, including proposed section 16 Play Areas.

16.1 Exception 1

Exception 1 to this section refers to the requirements of ADAAG 4.1.6 (Alterations). This exception permits play equipment to be relocated to create safe use zones without triggering the alterations requirements of ADAAG 4.1.6, if the surface is not changed or extended for more than one use zone. Many existing play areas are considered unsafe because of the close proximity of the various pieces of play equipment. This situation is commonly addressed by moving play equipment apart and extending the impact attenuating (also referred to as ''resilient'') surfaces to create a safe use zone.

This exception is proposed to minimize the potential cost impact of creating safer play areas, while balancing the need for accessibility for children with disabilities. This exception has been limited to surface changes that are not more than one use zone. The use zone of playground equipment is defined in ASTM F 1487–95 and generally requires a six foot radius of resilient surfacing underneath play equipment, except for swings and slide exits. Any surface alteration or change beyond one use zone would be subject to the alteration requirements of ADAAG 4.1.6.

16.1 Exception 2

Exception 2 to this section permits the use of platform lifts (wheelchair lifts) complying with ADAAG 4.11 and applicable State or local codes as part of an accessible route within a play area. The committee proposed that platform lifts be permitted so that they may be used in newly constructed play areas that may have unique environments where ramp access may not be feasible. The committee considered the use of platform lifts in play areas similar to the use of platform lifts on an accessible vertical route to a performing area in an assembly occupancy as permitted by ADAAG 4.1.3 Exception 4.

16.1 Exception 3

Exception 3 to this section exempts play areas from complying with the provisions for protruding objects in ADAAG 4.4. ADAAG 4.4 generally requires that elements mounted along circulation paths not project more than 4 inches, if the leading edge is above 27 inches and below 80 inches. The committee carefully considered the unique environments of play areas. In many cases, eliminating protruding objects from all circulation paths may have the effect of substantially altering the nature and design of a play area. The committee discussed several approaches to providing access for children who are blind or visually impaired, and the effect on the nature or design of a play area. The committee proposed that at least one accessible route be free of protruding objects. Section 16.1.3.1 requires that objects shall not protrude into the accessible route for a height of 80 inches measured from the surface. Because accessible routes must maintain a clear minimum unobstructed width, this requirement will provide at least one route within the play area that is clear of protrusions.

16.1.1(1) Ground Level Play Components

Paragraph 1 of this section requires one of each type of ground level play component to be accessible. The technical requirements for an accessible play component are addressed in 16.1.5. The committee proposed this requirement to give children with disabilities a choice of at least one of each of the different types of play components provided at the ground level. Swings, climbers, and spring rockers are examples of the different types of play components often found at the ground level in a play area. Providing choice and variety in play areas can facilitate social growth and interaction among children. The committee considered requiring all of the ground level play components to be accessible, however, it concluded that the additional cost may be prohibitive. Requiring at least one of each type to be accessible is also consistent with other ADAAG provisions where multiple elements serving the same function and in the same location are provided.

16.1.1(2)

Paragraph 2 of this section requires accessible ground level play components to be provided in a number equal to at least 50% of the total number of elevated play components. The committee added paragraph 2 as a result of its discussion related to providing vertical access to elevated play components. The committee wanted to provide additional accessible ground level play components based on the total number of elevated play components provided. Elevated play components that are only accessible to children who are able to or choose to transfer have limited play value for children who are unable to or choose not to transfer. This provision is an attempt to provide children with disabilities additional opportunities where only transfer access is provided to elevated play components.

Accessible ground level play components required by paragraph 1 can satisfy this requirement. For example, if ten elevated play components are provided, a total of five ground level play components must be accessible under paragraph 2. If three different types of ground level play components are provided, paragraph 1 would require one of each of the three types to be accessible. Paragraph 2 would require an additional two ground level play components to be accessible for a total of five.

16.1.1(2) Exception

The committee proposed an exception to this requirement when ramp access is provided to each elevated play component. Under this exception, additional accessible ground level play components are not required, when each elevated play component can be accessed by a ramp. Since children using wheelchairs and other mobility devices would have access to the entire structure, additional accessible play components are not required at the ground level.

16.1.1(3)

Paragraph 3 of this section requires accessible ground level play components to be integrated in the play area. In some play area designs, accessible play components are grouped into one area. These designs have the effect of segregating children with disabilities. Under the ADA, segregation of people with disabilities is not permitted. This provision is critical to promote social interaction among children with and without disabilities.

16.1.2 Elevated Play Components

This section requires at least 50% of all elevated play components to be accessible. Since elevated play components are often the most popular elements of a play area for children, the committee wanted to ensure that children with disabilities have adequate opportunities to use them. The committee also considered 50%

appropriate given the types of elements provided on composite structures. For example, an elevated composite structure with ten play components may include two slides, four climbers, and four activity panels. Using this example, at least five of the elevated components must be accessible. Section 16.1.2 allows the designer and operator to decide which elevated play components will be accessible.

The committee debated this requirement at great length. The committee frequently heard from members of the public who were concerned with the costs associated with providing an accessible route, as well as those concerned with ensuring a variety of accessible elevated play components. Section 16.1.3 (Accessible Route) addresses the requirements for an accessible route connecting accessible elevated play components.

The committee found a requirement for the integration of accessible elevated play components to be unnecessary since integration should occur naturally due to the number of elevated play components required to be accessible. Moreover, the committee recognized that designs using a single point of entry to access a number of elevated structures may be cost effective.

16.1.3 Accessible Routes

This section requires at least one accessible route within the boundary of a play area. Auxiliary pathways may also be provided throughout a play area. These other pathways are not required to be accessible and may incorporate changes in level and varying slopes.

The accessible route is required to connect accessible play components, including entry and exit points. Access to both entry and exit points is required to ensure usability by children with disabilities. This provision, applied to an accessible slide, will require an accessible route, with accessible surfacing, serving the entry and exit points of the slide. The committee recognized that many children with disabilities will require some assistance in moving mobility aids to the exit points of accessible play components. This provision will also provide access to parents and care givers with disabilities.

Entry and exit points of accessible play components may be on the ground level or be elevated. The committee carefully considered when access by ramp, transfer system, and other means should be provided to elevated play components. Committee members examined how the RAAC approached the issue of providing ramp access to elevated structures. The RAAC differentiated between larger and smaller structures, based on the number of elevated play components provided. During the comment period of the ANPRM, commenters supported the concept of differentiating between larger and smaller play structures, however, there was no consensus on the number of elevated play components that should trigger a requirement for ramp access.

Like the RAAC, the committee used an approach that differentiates between play areas based on the numbers of elevated play components. They contrasted the relative cost of providing a ramp system and transfer system with the total cost of the structure and the amount of area required. Ramp access costs always exceeded the costs of transfer access. For example, the cost of providing a transfer system to 3 feet above the ground is approximately 6–10 percent of the cost of a ramp system. For the ramp to be cost effective, the committee proposed to require ramp access only on larger structures that contain 20 or more play components.

16.1.3 Exception 1

Exception 1 permits accessible elevated play components to be connected by transfer systems, where less than 20 elevated play components are provided. This exception is based on the committee's consideration of the cost impact and available area. The committee was concerned that ramp access to smaller structures might result in a reduction in the number of play components that can be purchased within a specified budget.

To illustrate the application of the exception, a play structure with 18 elevated play components is required to provide at least 9 (50% minimum) accessible elevated components by 16.1.2. The exception would permit these accessible elevated components to be connected by a transfer system. Of course, ramp access is also permitted.

Where a transfer system is used to connect accessible play components on an elevated structure, an accessible play component may be used to connect to another accessible play component. For example, a transfer system may connect to an accessible crawl tube. Additional accessible play components complying with 16.1.5 may be located at the end of an accessible crawl tube on an elevated structure.

16.1.3 Exception 2

Exception 2 permits no more than 50% of accessible elevated play components to be connected by transfer systems, where 20 or more elevated play components are provided. To illustrate the application of this exception, a play structure with 24 elevated play components is required to have at least 12 (50% minimum) accessible elevated play components by 16.1.2. Assuming that 12 accessible elevated play components are provided, the exception would permit no more than 6 of these play components to be connected by a transfer system. The other 6 play components must be connected by ramps. Of course, ramp access is also permitted to all accessible elevated play components.

As discussed in 16.1.3 Exception 1, where a transfer system is used to connect accessible play components on an elevated structure, an accessible play component may be used to connect to another accessible play component. For example, a transfer system may connect to an accessible crawl tube. Additional accessible play components complying with 16.1.5 may be located at the end of an accessible crawl tube on an elevated structure.

16.1.3 Exception 3

This exception does not require handrails at ramps located in the use zone of a play area. The committee considered this an important safety precaution because obstacles such as handrails cannot be in these areas where it is predicted that users may fall.

16.1.3.1 Clear Width and Height

This provision requires the accessible route to be a minimum of 60 inches wide and to be clear of protrusions at or below 80 inches above the surface. The minimum 60 inch width is proposed for the accessible route for several purposes. Since this may be the only area where accessible surfacing is required, the committee considered a minimum 60 inch width necessary for adequate maneuvering space. This route will support and encourage interaction on the play area between children with and without disabilities. Unlike typical interior environments, the minimum width established in this provision is likely to be the only width requirement. For example, corridors in office buildings tend to be far wider than the minimum 36 inches required for accessible routes. Designers and landscape architects consider the minimum 60 inch width requirement necessary so that children may maneuver freely and pass each other without meeting transition points or edges between loose fill and firm surfaces. This requirement is also consistent with the recommendations of the RAAC and ASTM F 1487–95.

16.1.3.1 Exception 1

Exception 1 permits the use of a minimum 44 inch wide accessible route in play areas less than 1,000 square feet, provided that there is at least one turning space complying with ADAAG 4.2.3 where the route exceeds 30 feet in length. The committee proposed this exception based on concerns expressed by the child care industry regarding smaller facilities. Many child care facilities are often limited in the amount of space to designate for play. Concerns were raised about the potential impact of a wider accessible route in reducing the number of play components provided at smaller facilities. This exception is proposed to address these concerns.

16.1.3.1 Exception 2

Exception 2 permits the width of the accessible route to be reduced to a minimum 36 inches for a maximum distance of 60 inches. This reduction in the width of the accessible route is permitted if multiple segments are separated by 60 inch wide minimum segments that are at least 60 inches in length. The committee considered an occasional reduction in the minimum clear width necessary to accommodate obstacles such as trees and boulders in the play area. Because the accessible route also serves as a play area, any reduction in the clear width affects opportunities for socialization and interaction. Therefore, the committee developed these minimum criteria for spacing the narrowed segments and to ensure that adequate turning space is provided between narrowed segments of the accessible route.

16.1.3.1 Exception 3

Exception 3 permits the width of an elevated accessible route to be a minimum of 36 inches. Elevated accessible routes may include ramps between the ground and elevated structures, or ramps between elevated structures. This is consistent with the recommendations from the RAAC and ASTM F 1487–95. The committee considered a minimum 36 inch width to be appropriate for elevated structures where features such as edge protection and handrails typically are provided. Commonly available manufactured products will comply with this provision.

16.1.3.1 Exception 4

Exception 4 permits the clear width of the elevated accessible route to be reduced to 32 inches minimum for a maximum distance of 24 inches. This proposed exception is consistent with existing ADAAG sections 4.2.1 and 4.13.5.

16.1.3.2.1 Ramp Slope

This section requires ramps provided within the boundary of a play area to meet the requirements of ADAAG 4.8 with some modifications. Ground level accessible routes may not exceed a slope of 1:16. The committee proposed this requirement for several reasons. Initial concerns were raised about the ability of children with disabilities to move around within a play area where there is no limitation on the length of the accessible route connecting accessible play components. A more gradual slope requires wheelchair users and many others to expend less energy to traverse a distance. Additionally, proposed 16.1.3 Exception 3 does not require handrails on ramps in a use zone. Since ramps in the use zone will not have handrails, the committee considered this another reason for limiting the slope of the accessible route on the ground level. Additionally, preliminary information regarding some artificial or synthetic surfaces shows that they may perform more efficiently where slopes are gradual.

16.1.3.2.2 Ramp Rise

This provision requires that any ramp run have a maximum rise of 12 inches. The RAAC recommended that there be a 12 foot limitation on the length of a ramp run to limit the distance between landings and other areas where children gather on a structure. The committee has proposed a maximum rise, rather than run, for ramps. This solution limits distance without increasing slopes unnecessarily. The committee believed that limiting ramp run is important to promote interaction between children with and without disabilities. ASTM F 1487–95 also uses a 12 foot limitation on ramp runs to discourage inappropriate and unsafe use of ramps.

16.1.3.2.3 Handrail Height

This section requires ramp handrails to be provided 20 inches minimum to 28 inches maximum above the ramp surface. This height is considered appropriate for children. This is not an additional handrail requirement. Instead, the committee proposed that handrails are only provided to serve children. This range is based on a research project sponsored by the Access Board.

16.1.4 Transfer Systems

Section 16.1.3 permits some accessible elevated play components to be connected by a transfer system complying with 16.1.4. The transfer system provides one method of reaching the play equipment and is designed for use by children with disabilities who can transfer from their wheelchair or mobility device. Similar transfer systems are used to provide access into swimming pools. Manufactured transfer systems for play areas have been available since 1990. The transfer system consists of two components, a transfer platform and transfer steps. The transfer platform serves as an entry platform and is provided at a height that allows wheelchair users to transfer from wheelchairs. Transfer steps are designed to facilitate movement above or below the platform to accessible play components.

16.1.4.1 Transfer Platforms

16.1.4.1.1 Size

This section requires transfer platforms to have a level surface 14 inches minimum in depth and 24 inches minimum in width. This minimum size requirement allows for adequate space for transferring and maneuvering. The committee based this size requirement on the recommendations of the RAAC and ASTM F 1487–95. Transfer platforms can be designed in unique shapes such as a triangle, if the minimum clear space is provided.

16.1.4.1.2 Height

This section requires the transfer platform to be 11 inches minimum to 18 inches maximum above the ground or floor surface. The committee proposed a height range to allow designers flexibility to design for the intended age group and to accommodate existing manufactured composite play structures. The height ranges are also consistent with ASTM F 1487–95 and recommendations from the RAAC, and within the range of transfer height for other functions requiring transfer such as toileting.

16.1.4.1.3 Transfer Space

This section requires a level, clear and unobstructed space complying with ADAAG 4.2.4 to be provided along a 24 inch minimum side of the transfer platform. An unobstructed side of a transfer platform is necessary to permit a transfer. A level, clear space allows space for a stationary wheelchair adjacent to the transfer platform. Transfer steps connected below the platform may be used to facilitate access closer to the ground or floor surface. However, transfer steps shall not be connected to the unobstructed side of the platform.

16.1.4.1.4 Transfer Supports

This section requires a means of support to be provided for transferring. Such means may consist of a gripable edge of the transfer platform or some other element that provides a means of support. The committee agreed that this was integral to the process of transferring, but did not have sufficient information or technical data to require a specific location for the transfer support.

Question 2. What types of transfer supports are most effective in facilitating transfer? What is the most effective placement and why?

16.1.4.2 Transfer Steps

16.1.4.2.1 Size

This section requires transfer steps to comply with 16.1.4.1.1. Thus, the transfer step and platform are required to be the same minimum size. This regularity is important as the function of the step and platform are similar; serving as a deck to sit and push off of to move around. Transfer steps provide the opportunity for a child to ascend to the next level on an elevated structure.

16.1.4.2.2 Height

This provision requires a transfer step to be 8 inches high maximum. A maximum height is necessary to ensure use by children with disabilities in their movement from a transfer platform to an accessible play component. The 8 inches coincides with knee to foot range measurements and the maximum distance for children to move from step to step.

16.1.4.2.3 Transfer Supports

Similar to the requirement for the transfer platform, this section requires a means of support for transferring to be provided. Such means may consist of a gripable edge of the transfer step or some other element that provides a means of support. Transfer supports are also important to support the effort involved in moving from a transfer platform to an accessible play component. The accessible play component will often be located above the level of the transfer platform and may require movement over a series of transfer steps. (See Question 2.)

16.1.5 Accessible Play Components

This provision includes technical requirements for accessible play components. The committee examined what features of a play component make it accessible. Initially the committee focussed on individual play components and developed draft provisions for components such as climbers, spring rockers, and swings. Through this detailed examination, the committee identified features critical to making play components accessible for children with a variety of disabilities. These key features included clear space adjacent to the play component, maneuvering space on the same level as the play component, providing manipulative and interactive features of the play component within the reach of children with disabilities, and having the entry point or seat at an appropriate height for transfer and with transfer supports. The identification of these features provided the basis for the proposed technical provisions of this section. Establishing the general features will provide more flexibility to designers, and also should guide the development of emerging technologies and play component designs.

16.1.5.1 Maneuvering Space

This section requires maneuvering space to be provided on the level of the accessible play component. This maneuvering space is necessary so that children with disabilities can negotiate within a play area. This provision requires the space to be on the same level as the accessible play component that it serves. Maneuvering space shall have a slope not steeper than 1:48 in all directions. Except for swings, the maneuvering space is not required to be located adjacent to the accessible play component. The committee considered the location of the maneuvering space critical for use of a swing. This maneuvering space is required to be located at the swing to facilitate both transfer onto the swing and to allow space for a parent or care giver to assist children. Consistent with existing ADAAG requirements, maneuvering space and clear space may overlap.

16.1.5.1 Exception

This exception eliminates the requirement for maneuvering space on elevated structures with transfer access only. These systems are designed for movement on the structure without a wheelchair, therefore the maneuvering space is not needed.

16.1.5.2 Clear Floor or Ground Space

This provision requires a clear floor or ground space at accessible play components. This space is required to comply with ADAAG 4.2.4 which provides space for a stationary wheelchair or mobility device. This space is important for the use of play components. Since each play component is used differently, designers may choose the appropriate orientation and location of this space. The clear floor or ground space shall have a slope not steeper than 1:48 in all directions.

16.1.5.2 Exception

This exception eliminates the requirement for clear floor or ground space for elevated structures with transfer access only. Accessible clear floor or ground space is not necessary where structures are not designed to accommodate wheelchairs. Where ramp access is not provided, a transfer system is required.

16.1.5.3 Reach Ranges

This provision specifies reach ranges for heights of manipulative and interactive features of accessible play components. These features may include steering wheels, tic-tac-toe boards, and other operable equipment provided for use by children with disabilities on accessible play components. This section modifies the reach range requirements of ADAAG 4.2 which are based on adult dimensions and anthropometrics.

The table in this section specifies high and low reach ranges for children according to age: 36 inches high and 20 inches low for ages 2 through 5; and 40 inches high and 18 inches low for ages 5 through 12. These age ranges correspond to those specified in ASTM F 1487–95. The selection shall correspond to the age range of the primary user group served.

16.1.5.4 Height of Play Components

This provision specifies that when an accessible play component requires transfer, the entry point or seat must be located between 11 inches minimum and 24 inches maximum above the clear ground or floor space. This height is necessary for children using wheelchairs and other mobility devices to transfer onto the play component. The committee based these dimensions on information in a Board sponsored research project that examined seat heights and other elements that are often designed for transferring. The committee used these dimensions, since transfer height is also critical to these elements. A range has been established to avoid conflicts with height requirements of play components designed for movement (rocking, springing, bending).

Play components may be designed without an entry point or seat. In this case, the provisions of 16.1.5.4 do not apply. Swings and spring rockers are examples of play components with seats or entry points. Play components where seats or entry points are not provided include climbers and balance beams.

16.1.5.5 Transfer Supports

Similar to the requirement for the transfer platform and transfer steps, this section requires a means of support for transferring to be provided. Where an accessible play component requires transfer to the entry point or seat, such means may consist of a gripable edge of the play component or some other element that provides a means of support. Transfer supports are also important to support the effort involved in moving from a wheelchair or assistive device to an accessible play component. (See Question 2.)

16.1.6 Accessible Surfaces

16.1.6.1

This provision requires accessible surfaces located within play areas at ground level to comply with ADAAG 4.5.1 and this section. Surfaces within the play area that are required to be accessible must be firm, stable, and slip resistant and also meet the requirements of the ASTM PS 83 (Provisional Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment).[4] The Board will request approval to incorporate by reference ASTM PS 83 in these guidelines from the Director of the Office of the Federal Register prior to publication of the final guidelines.

The committee has proposed to use ASTM PS 83 to measure the accessibility of a surface in a play area. This provisional standard provides a specification for determining the accessibility of the various surfaces used in play areas. The committee agreed to this approach to provide more specific guidance to operators and designers when selecting surfaces for play areas. Owners and operators are often required to make this determination without sufficient guidance related to the factors that make a surface accessible to people using wheelchairs and other mobility aids.

The ASTM F 08.63 subcommittee has worked since May 1994 to prepare a specification for measuring surfaces to determine accessibility. ASTM's work was done at the urging of the Access Board and others interested in identifying objective methods of measuring the level of accessibility of various surfaces used in play areas. A playground surface would have to meet the specifications in the ASTM provisional standard before it would be considered an accessible surface.

The ASTM provisional standard specifically addresses the issue of ''maneuverability''. Maneuverability measures the effort needed to move a wheelchair across a surface. The development of this ASTM provisional standard included testing with people with disabilities who use wheelchairs and other mobility devices and was conducted at Beneficial Designs in Santa Cruz, CA. Effort required for turning and straight line movements were measured on different surfaces and slopes. The ASTM provisional standard assumes that the more difficult a surface is to turn and travel across, the less accessible it is. When compared to effort to travel across a very accessible surface, such as concrete, a minimum acceptable level of effort is yielded.

16.1.6.2

This provision requires accessible surfaces located within the use zone to be impact attenuating and to comply with the ASTM F 1292 provision for drop testing. The Board will request approval to incorporate by reference ASTM F 1292 in the guidelines from the Director of the Office of the **Federal Register** prior to publication of the final guidelines. The need for play areas to include safe surfaces, which are impact attenuating in case of a fall, is critical for children and for owners and operators. While the committee did not consider the requirement for an impact attenuating surface in a play area to be an accessibility issue, several playground surfaces may be considered accessible but would not meet the requirements for impact attenuation as defined by ASTM. For example, accessible surfaces such as concrete or pavement would not meet the requirements for impact attenuation as defined by ASTM.

There is controversy about which surfaces currently available meet the requirements for impact attenuation and accessibility. Cost is also an important factor. General estimates provided to the committee show large differences in costs between non-accessible loose fill surfaces that are impact attenuating and surfaces considered both accessible and impact attenuating. Sand and other loose fill materials, for example, presently range from approximately $.25 to $1.25 per square foot. However, rubber matting, poured-in-place rubber, and other accessible impact attenuating surfaces, presently range from approximately $6.00 to $20.00 per square foot.

The committee did not propose to require an entire play surface to be accessible because of a variety of considerations. These include a desire to maximize play value, allow for diversity in the play experience, and balance the costs with the benefits. The committee identified those areas where accessible surfacing is necessary so that children with disabilities can use and enjoy play components.

Question 3. Impact attenuating surfaces have been used to cover concrete for safety purposes in play areas. The border between the resilient surface and adjacent surfaces forms a transition between the two surfaces. Some manufacturers have noted difficulty in meeting the requirements of ADAAG 4.5.2 for changes in level and for beveled surfaces. Should there be an exception? If so, under what conditions should the exception apply?

16.1.7 Handrails

This provision proposes that the diameter or width of handrails be 0.95 inch minimum to 1.55 inch maximum, or a shape that provides an equivalent gripping surface. This requirement will apply to all handrails within the play area. The committee proposed this requirement to be consistent with ASTM F 1487–95.

16.2 Soft Contained Play Structures

This section requires soft contained play structures to comply with 16.2. Soft contained play structures are designed differently than the more traditional play areas found in parks, schools, and child care centers. They are designed to promote play inside a structure and were originally developed as an alternative to the more open designs to reduce injuries due to falls. Users must fully enter the play system to participate in this opportunity. The play experience is provided largely within the structure and can include elements such as ball pools, slides, climbing nets, and crawl tubes. Children maneuver through the system by crawling, climbing, pulling and sliding.

16.2.1 Access to Entry Points

This section requires that where three or fewer entry points are provided for each structure, a minimum of one entry point shall be on an accessible route. Where four or more entry points are provided, an accessible route is required to at least two entry points. The committee agreed that the proposed accessibility guidelines developed for the more traditional play environments would not be appropriate for soft contained play structures. As a result, the committee proposed requirements to ensure access to the entry points of soft contained play structures. The committee did not consider the interior space of these structures suitable for

[4] Copies of ASTM PS 83 are available through the American Society for Testing and Materials (ASTM) 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Telephone (610) 832–9585.

wheelchairs or other mobility devices. Additionally, these structures do not include open decks or platforms that would accommodate a wheelchair.

16.2.1 Exception 1

Exception 1 to this section permits the use of a transfer system complying with 16.1.4 to be a part of the accessible route connecting the entry points. The committee considered the use of transfer systems appropriate to connect entry points, since the interior space is not suitable for wheelchairs or other mobility devices. For example, a child either independently or with assistance can enter into a system at a transfer point, play in a ball pool, maneuver through a tube, and exit through a slide.

16.2.1 Exception 2

Exception 2 to this section permits the use of platform lifts (wheelchair lifts) complying with ADAAG 4.11 and applicable State or local codes as part of an accessible route for a soft contained play structure. The committee proposed that platform lifts be permitted so that they may be used in newly constructed play areas that may have unique environments where ramp access may not be feasible. The committee considered the use of platform lifts to connect entry points in soft contained play structures similar to the use of platform lifts on an accessible vertical route to a performing area in an assembly occupancy as permitted by ADAAG 4.1.3 Exception 4.

Regulatory Process Matters

Executive Order 12866: Regulatory Assessment

The Access Board has determined that this proposed rule is an economically significant regulatory action under Executive Order 12866 and has prepared a regulatory assessment of the potential costs and benefits of the rule. The regulatory assessment has been placed in the docket and is available for public inspection.

This proposed rule is the result of regulatory negotiation among 17 organizations representing the various interests affected by the rule. These interests include child care centers, elementary schools, park and recreation agencies, city and county governments, persons with disabilities, play equipment designers and manufacturers, and voluntary consensus standards groups. The regulatory negotiation committee considered many proposals made by the various interests. As discussed in the background section of the preamble, the regulatory negotiation committee agreed to basic principles to guide its negotiations. Among those principles are that the guidelines should provide opportunity for children with a variety of abilities to use play areas, support social interaction and integration, be based on independent use as much as possible, create challenge not barriers, maintain safety, and be reasonable in terms of cost relative to benefit. The section-by-section analysis of the preamble discusses the factors that the regulatory negotiation committee considered in reaching consensus on the proposed rule. Where alternatives were presented, the regulatory negotiation committee aimed for the most cost effective approach for achieving the regulatory objectives. For example, section 16.1.3 of the proposed rule requires at least 50 percent of elevated play components to be accessible and contains different provisions for connecting the accessible elevated play components by transfer system or ramp based on the number of elevated play components provided.

The major alternatives which were considered and rejected by the committee included the following:

(1) Requiring the entire surface of a play area to be accessible and requiring ramp access to all play components on an elevated structure. While both alternatives would ensure access for all children with disabilities in a play area, the cost was considered excessive. Many owners and operators have an established budget to work within when designing and constructing play areas. The cost impact of these alternatives would reduce the amount of ''play value'' and fewer play components would be designed or purchased. The guidelines identify only those areas where accessible surfacing is necessary so that children with disabilities can use and enjoy play components.

(2) Providing a lower level of access for children with disabilities. The committee considered requiring only transfer access to all of the elevated structures and requiring ramp access to a certain height. While these were considered lower cost alternatives, there was little support from committee members who felt that these approaches limited access for children with disabilities in a way that was not consistent with the intent and purposes of the ADA. Specifically, the committee did not believe these approaches gave children with disabilities sufficient opportunity to interact and socialize with other children.

The regulatory assessment examines the potential cost impact of the proposed rule on three play areas: (1) a medium-size play area such as may be found in an elementary school; (2) a small play area such as may be found in a child care center; and (3) a large play area such as may be found in a public park. Baseline costs were established for each play area based on the Department of Justice's ''Americans with Disabilities Act Title II Technical Assistance Manual'' (1994 Supplement), administrative complaints, ASTM F 1487–95 and ASTM PS 83, and common industry practices.

The regulatory assessment estimates equipment and surfacing cost increases over the baseline for providing access to elevated and ground level play components. For equipment, installation costs are estimated separately at 20 percent to 40 percent of equipment costs. If installed and maintained properly, it appears that engineered wood fiber, rubber mats or tiles, and poured-in-place rubber would be permitted for surface materials. The regulatory assessment considers two surfacing options for each play area: (1) using engineered wood fiber for the entire play area; and (2) using a unitary material such as rubber matting for accessible surfaces and loose fill material such as sand, wood chips, or pea gravel for the rest of the play area. The estimated cost range for engineered wood fiber is $.85 to $3.00 per square foot installed and for rubber matting is $6.00 to $15.00 per square foot installed. The cost ranges are fairly wide due to the wide range of existing site conditions.

The medium-size play area examined in the regulatory assessment is for children age 5 to 12 years old and has a composite play structure with 4 levels and 10 elevated play components. For the baseline, 8 elevated play components are included and a transfer system is provided to the first level of the composite structure making 2 play components on that level accessible. The play area also has a set of swings and 4 other ground level play components. For the baseline, the swing set and 2 other ground level play components are included and the accessible route does not extend to any of the ground level play components where a combination of unitary and loose fill surfacing materials is used. The total baseline costs for the play area range from $16,446 to $24,361 using engineered wood fiber, and from $16,197 to $26,116 using a combination of unitary and loose fill materials.

Providing a transfer step between the first and second levels to make a play component on the second level accessible and adding another play activity to both the first and second levels so that at least 50 percent of the elevated play components are accessible

would increase the equipment costs $1,871, plus $374 to $748 for installation. Adding 2 play activities at the ground level so that the number of ground level play components equals at least 50 percent of the total number of elevated play components would increase equipment costs $992, plus $199 to $397 for installation. Where engineered wood fiber is used for the entire play area, the surfacing costs would increase $238 to $786 because the use zone is made larger by the addition of 2 ground level activities. Where a combination of unitary and loose fill materials is used, the surfacing costs would increase $2,447 to $5,811 because additional unitary material is needed to extend the accessible route to reach the base of one of the elevated play components and each of the ground level play components. The total costs for the play area applying the proposed rule would range from $20,120 to $29,155 using engineered wood fiber (a 21 percent change over the baseline), and from $21,937 to $32,592 using a combination of unitary and loose fill materials (a 38 percent change over the baseline).

The small play area examined in the regulatory assessment is divided by age groups. One area is for infants and toddlers up to 24 months old. The other area is for children age 2 to 5 years old. The infant and toddler area is not affected by the proposed rule and thus there is no cost impact for that area. The area designed for children age 2 to 5 years old has a composite play structure with 4 elevated play components on one level, a sand and water play table, portable painting easels, and 3 imaginative play items on the ground level. For the baseline, a transfer system is provided to the composite play structure making at least 50 percent of the elevated play components accessible. The sand and water table and the paint easels are located along an existing sidewalk when in use since they are not required to be located over impact alternating material, and one of the imaginative play items is located on an accessible route within the play area. The total baseline costs for the play area range from $12,548 to $16,980 using engineered wood fiber, and from $12,961 to $17,639 using a combination of unitary and loose fill materials. The proposed rule would not require any changes over the baseline for the small play area. The proposed rule allows accessible routes in play areas smaller than 1,000 square feet to be 44 inches minimum clear width which may offer some cost savings over the 60 inches minimum clear width specified in the ASTM F 1487–95 standard.

The large play area examined in the regulatory assessment is for children age 5 to 12 years old and has a composite structure with multiple decks on 4 levels and 20 elevated play components. For the baseline, 19 elevated play components are included and a transfer system is provided to a deck on the first level which is connected by a bridge to another deck on the same level, making 5 play components on that level accessible by a transfer system. The play area also has a set of swings, an independent slide, a sand play area, and 7 other ground level play components. For the baseline, the swing set, the independent slide, the sand play area, and 3 other ground level play components are included and the accessible route is located along a side of the sand play area but does not extend to any of the other ground level play components where a combination of unitary and loose fill surfacing materials is used. The total baseline costs for the play area range from $40,223 to $54,578 using engineered wood fiber, and from $40,965 to $54,409 using a combination of unitary and loose fill materials.

In addition to providing access to at least 25 percent of the elevated play components by a transfer system, the proposed rule would require at least 25 percent of the elevated play components to be accessible by ramp since the composite play structure has 20 or more elevated play components. A sloped earth berm is used to gain 24 inches elevation along the accessible route outside the use zone and a ramp is used to connect the berm to a 36 inch high deck, making 4 play components on that deck accessible. The berm costs $4,100, including a retaining wall, paving, fill, landscaping materials, and installation. Using a ramp and landings to reach the same elevation as the berm (24 inches) would cost from $4,205 to $18,420 depending on the type of equipment and surfacing materials used. Berms may be more economical than ramps for elevation gains of 2 feet or less, especially if these natural topographic conditions exist on a site and can be incorporated into the play area with ramp access. In addition to the berm and ramp, the size of the deck connected by the ramp is increased and a play activity is added to the deck so that at least 25 percent of the elevated play components are accessible. The additional cost for the berm, ramp, increasing the size of the deck, and adding a play activity to the deck is $6,892, plus $1,378 to $2,757 for installation.

Adding a transfer system to the sand play area and 4 play activities at the ground level so that the number of ground level play components equals at least 50 percent of the total number of elevated play components would increase equipment costs $3,039, plus $608 to $1,216 for installation. The surfacing costs would increase $128 to $450 where engineered wood fiber is used for the entire play area because the use zone is made larger by the addition of the ramp, and $2,735 to $7,800 where a combination unitary and loose fill materials is used because additional unitary material is needed to extend the accessible route to reach the required number of ground level play components. The total costs for the play area applying the proposed rule would range from $51,546 to $67,590 using engineered wood fiber (a 26 percent change over the baseline), and from $54,796 to $74,471 using a combination of unitary and loose fill materials (a 35 percent change over the baseline).

The regulatory assessment also examines the potential cost impact of the proposed rule on soft contained play structures. The proposed rule would require at least one entry point to be located on an accessible route where three or fewer entry points are provided, and at least two entry points to be located on an accessible route where four or more entry points are provided. Transfer systems are permitted. The proposed rule would add $400 to $1,200 in equipment and surfacing costs on a structure with three or fewer entry points and $800 to $2,400 on a structure with four or more entry points, which is 2 percent to 6 percent of the original structure cost.

The variety of play area designs is nearly limitless. It is not possible to examine every design and develop precise cost data for the proposed rule. From the designs examined in the regulatory assessment, some general conclusions can be made. The total cost increase for play areas designed to meet the requirements of the proposed rule generally can be kept within 20 percent to 40 percent of the baseline that would be provided in the absence of the proposed rule. In the case of small play areas, there may be no additional cost incurred over the baseline. For soft contained play structures, the cost increase is expected to be 2 percent to 6 percent of the original structure cost. The most important factor in controlling cost is good design and careful planning to find the most efficient balance of costs, safety, maintenance, desired features, and accessibility.

The average cost of a play area has risen approximately 25 percent to 30

percent over the past seven years. This increase in cost is largely due to increased safety measures incorporated into the design of manufactured play equipment (both modular and individual play components) and resilient playground surfacing. Despite these increases in cost, equipment sales have increased by approximately 21 percent each year over the past five years.

Question 4. The Board is interested in what, if any, effects any increased cost to provide accessibility for children with disabilities will have on new play areas. Similar to what occurred with safety measures, is it reasonable to assume that any additional costs associated with accessibility will be absorbed? What alternatives will designers and operators consider in meeting the proposed accessibility guidelines without sacrificing play value? Will schools and parks consider decreasing the size of play areas to ensure that both children with and without disabilities will have equal opportunities?

The Play Equipment Section of the National School Supply and Equipment Association (NSSEA) maintains a voluntary reporting system for play equipment sales. Participating companies reported $205 million in equipment sales for 1996. Non-participating companies are estimated to have $125 million in equipment sales for 1996. Assuming installation costs at 30 percent of equipment sales, surfacing costs at 12 percent of equipment sales, and professional design fees, grading, landscaping, and other expenses at 10 percent of the equipment sales, the total estimated expenditures for play areas in 1996 is estimated to be $502 million, of which approximately 80 percent is for new construction. This amount does not include soft contained play structures, which are estimated to have $86 million in total expenditures for 1996, with approximately 85 percent of the amount for new construction. It is estimated that there are 250,000 play areas in the country and that licensed child care facilities operate 95,000 (38 percent) of the play areas, elementary schools operate 53,900 (22 percent) of the play areas, and parks operate 101,000 (40 percent) of the play areas. Assuming each of these entities builds new play areas in the same proportion as it operates them and a 20 percent to 40 percent cost increase based on the examples of the medium and large size play areas examined in the regulatory assessment, the economic impact of the proposed rule on elementary schools and parks is estimated to be $50 million to $100 million annually. For purposes of the proposed rule, it is assumed that licensed child care facilities have an average capacity of 65 to 70 children, that the children use the play areas in small groups, and that the play areas operated by those entities are likely to be small. Since no additional cost was projected in the example of the small play area examined in the regulatory assessment, no economic impact is estimated for small play areas operated by licensed child care facilities.

Question 5. The Board seeks information on licensed child care facilities, including the size of play areas operated, types of play equipment used, and current practices for providing access to new play areas.

For soft contained play structures, the economic impact of the proposed rule is estimated to be $1.5 million to $4.5 million annually.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* (RFA), was enacted to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.'' The Board has determined that this proposed rule is an economically significant regulatory action and therefore the preparation of an Initial Regulatory Flexibility Analysis (IRFA) is appropriate. Accordingly, pursuant to the RFA, the Board's IRFA is as follows.

I. Need For and Final Objectives of the Guidelines

The Access Board is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (ADA) to ensure that new construction and alterations of facilities covered by titles II and III of the ADA are readily accessible to and usable by individuals with disabilities. Titles II and III of the ADA cover a wide variety of recreation facilities such as boating and fishing facilities, golf courses, parks, places of amusement, play areas, sports facilities, and trails. While these facilities are covered by the existing provisions of ADAAG, some recreation facilities have unique features for which additional provisions and special application sections are needed.

In July 1993, the Access Board convened the Recreation Access Advisory Committee (RAAC) to make recommendations concerning the development of additional guidelines to address areas unique to recreation facilities. The RAAC issued a report in July 1994 which addressed the various types of recreation facilities and identified the features of each facility type that were not adequately addressed by ADAAG. In September 1994, the Board published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on the RAAC's recommendations. Following the issuance of the ANPRM, the Access Board established a regulatory negotiation committee on accessibility guidelines for play areas in March 1996. The regulatory negotiation committee developed these proposed guidelines which address newly constructed and altered play areas.

As proposed, these guidelines address access to ground level and elevated play components. Additional ground level accessible play components may be required, depending on the type of vertical access provided to elevated structures. The guidelines are based on children's anthropometric dimensions and other resource information, including children with disabilities using a variety of assistive devices. Where possible, the guidelines are based on independent use of the facility by children with disabilities. The guidelines also address access for parents and care givers who may have a disability.

The guidelines maintain safety standards consistent with ASTM F 1487–95 and provide information to assist designers, operators, and owners to effectively incorporate access into their designs. The guidelines are intended to be reasonable in terms of cost relative to these benefits.

II. Description and Estimate of the Number of Small Businesses to Which These Guidelines Will Apply

These guidelines address play facilities covered under titles II and III of the ADA and ensure that the construction or alteration of those facilities is readily accessible to and usable by individuals with disabilities. Title II of the ADA covers buildings constructed or altered by, on behalf of, or for the use of State and local governments, while title III of the ADA addresses places of public accommodation and commercial facilities.

Small Businesses

The term *small business* is defined by the RFA as having the same meaning as the term *small business concern* under section 632 of the Small Business Act, 15 U.S.C. 632. A *small business concern* is defined as ''one which is independently owned and operated and which is not dominant in its field of operation.'' The Administrator of the

Small Business Administration may provide additional criteria by which a concern may be determined to be a small business concern.

There are 10 industry categories established by the Small Business Administration which are applicable to these guidelines. However, as discussed below, many of the categories noted are overbroad in the inclusion of potential businesses affected by these proposed guidelines and accordingly the number of potential business provided in the census data is higher than the actual estimate. For example, in the category of landscape counseling and planning services, only those businesses which are engaged in designing play areas would be impacted by the provisions proposed in these guidelines. Similarly, in the category of amusement parks and kiddie parks, these guidelines would apply to play areas in those facilities, but do not address mechanical rides, refreshment stands or picnic grounds. Additional examples are discussed in the list of categories of businesses potentially affected by the guidelines which follows:

(1) *Establishments primarily engaged in the manufacturing of sporting and athletic goods.* This category would include gymnasium and playground equipment; golf and tennis goods; baseball, football, basketball and boxing equipment; fishing tackle; roller skates and ice skates; billiard and pool tables; and bowling alleys and equipment.[5] These establishments are considered to be small businesses if they have 500 or less employees. (See 13 CFR 121.201.) Census data indicates that there are 2,115 such entities, of which 98% or 2,064 are considered small businesses.[6] However, because these guidelines are limited to equipment manufactured for play areas, this category is over inclusive and many of the manufacturers included in the census data for this class would not be impacted by these guidelines.

(2) *Establishments primarily engaged in child day care services.* This would include the care of infants or children, or providing prekindergarten education, where medical care or delinquency correction is not a major element. These establishments may or may not have substantial educational programs. They generally care for prekindergarten or preschool children, but may care for older children when they are not in school.[7] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 43,449 such establishments, of which 99% or 43,321 are small business concerns.[8]

(3) *Elementary and secondary schools.* This would include elementary and secondary schools furnishing academic courses, ordinarily for kindergarten through grade 12. Included in this industry are parochial schools and military academies furnishing academic courses for kindergarten through grade 12, and secondary schools which furnish both academic and technical courses.[9] With respect to private schools, these establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 16,646 elementary or secondary schools which are private or military establishments, of which 91% or 13,341 are small business concerns.[10] Because these guidelines address play areas, typically only the elementary schools, and not secondary schools, included in the census data would be impacted. With respect to public schools, there are 60,052 elementary public schools.[11] However, only those elementary schools operated by government entities with populations of less than 50,000 are considered small entities for purposes of the RFA.[12]

(4) *Civic, Social, and Fraternal Associations.* This category would include organizations engaged in civic, social or fraternal activities.[13] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 39,962 such establishments, of which 99% or 39,883 are small business concerns.[14] However, many of the entities identified in the category and included in the census data would not be impacted by these guidelines. For example, this category includes booster clubs, citizens' unions, university clubs, tenant associations and other such organizations. Only those entities such as parent-teacher associations or community groups which might be engaged in providing play facilities would be impacted by the guidelines.

(5) *Eating places.* This would include establishments primarily engaged in the retail sale of prepared food and drinks for on-premise or immediate consumption. Caterers and industrial and institutional food service establishments are also included in this industry.[15] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 262,563 such establishments, of which 98% or 256,281 are small business concerns.[16] As with previous categories, not all of the businesses identified in this category will be impacted by these proposed guidelines. Only those eating places which provide play areas for patrons such as fast serve restaurants will be affected by the guidelines.

(6) *Sporting goods stores and bicycle shops.* This category includes establishments primarily engaged in the retail sale of sporting goods, sporting equipment, and bicycles, bicycle parts, and accessories.[17] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 20,345 such establishments, of which 99% or 20,192 are small business concerns.[18] However, only those establishments which are engaged in the retail sale of playground equipment would be affected by these proposed guidelines.

(7) *Sporting and recreational camps.* This would include establishments primarily engaged in operating sporting and recreational camps, such as boys' and girls' camps, and fishing and

[5] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3949).

[6] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 3949 (U.S. Bureau of the Census data under contract to the SBA).

[7] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 8351).

[8] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 8351 (U.S. Bureau of the Census data under contract to the SBA).

[9] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 8211).

[10] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 8211 (U.S. Bureau of the Census data under contract to the SBA).

[11] Department of Education, National Center for Education Statistics, Digest of Education Statistics 1995, Table 5.

[12] 5 U.S.C. 601(5).

[13] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 8641).

[14] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 8641 (U.S. Bureau of the Census data under contract to the SBA).

[15] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 5812).

[16] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 5812 (U.S. Bureau of the Census data under contract to the SBA).

[17] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 5941).

[18] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 5941 (U.S. Bureau of the Census data under contract to the SBA).

hunting camps.[19] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 2,812 such establishments, of which 100% or 2,812 are small business concerns.[20]

(8) *Establishments of the type known as amusement parks and kiddie parks which group together and operate in whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands, and picnic grounds.*[21] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 861 such establishments, of which 93% or 797 are small business concerns.[22]

(9) *Establishments primarily engaged in landscape counseling and planning services.*[23] As determined by the Small Business Administration, these establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) According to the U.S. Bureau of the Census data, there are approximately 4,581 such firms, of which approximately 100% qualify as small businesses.[24]

(10) *Lumber and other Building Materials Dealers.* This would include establishments engaged in selling primarily lumber, or lumber and a general line of building materials, to the general public. While these establishments may sell primarily to construction contractors, they are considered as retail in the trade.[25] These establishments are considered to be small businesses if they have $5 million or less in annual receipts. (See 13 CFR 121.201.) Census data indicates that there are 19,713 such establishments, of which 85% or 16,718 are small business concerns.[26] Not all of the entities which are engaged in selling lumber and other building materials would be impacted by these guidelines. Many of the businesses included in this category are engaged in the sale of brick, tile, doors, flooring and other materials not typically utilized in a play area and therefore would not be affected by the requirements of this rule.

This rule applies to State and local governments under title II of the ADA and would therefore apply to parks and recreational areas operated by these entities. The National Recreation and Park Association estimates that there are 4,800 park and recreation departments operated by municipalities, public/private entities and counties. For purposes of the RFA, governments of cities, counties, towns, townships and villages are considered small governmental jurisdictions if they have a population of less than 50,000.[27] Available U.S. Census Bureau data does not identify the number of local governments which have populations of less than 50,000. The Board is seeking information on the number of small governmental jurisdictions which would be impacted by these guidelines.

III. Description of Reporting, Recordkeeping and Other Compliance Requirements

Owners and operators developing new play areas will be required to provide a minimum level of accessibility for children with disabilities. For components which are not elevated, at least one of each type of play component must be accessible. (See 16.1.1 Ground Level Play Components.) In many playgrounds, this will mean that at least one rocking or spring animal, or at least one sand digger in a series of diggers must be accessible. Accessible play components must be reachable by children seated in wheelchairs through accessible surfacing. (See 16.1.5 Accessible Play Components.)

For elevated play components, different levels of accessibility are required based on the size of the structures. Since additional costs are often incurred when providing ramp access to elevated structures, many small structures are not required to have ramp access. Instead, small structures are permitted to have a ''transfer system.'' (See 16.1.4 Transfer System.) ''Transfer systems'' provide an opportunity for children with disabilities to transfer from their wheelchairs or other mobility devices to use play components. To provide opportunities for children who are unable to transfer to the elevated structures, a certain percentage of additional accessible play components are required on the ground level. This requirement may be partially met through making ''one of each type'' of ground level play component accessible.

When owners and operators alter a play area, they would be required to follow the proposed accessibility guidelines as it applies to the element that they are altering. For example, if an existing spring animal is altered, the accessibility guidelines for accessible ground level play components would apply. If no other accessible spring rockers are already provided, this would require the operator to design the altered spring rocker to be accessible for children with disabilities.

An important exception has been included in the proposed accessibility guidelines to limit the impact of alterations that may be triggered by safety surface replacement. As proposed, the guidelines would allow play equipment to be relocated to create safe use zones without triggering the alterations requirements of ADAAG 4.1.6 if the surface is not changed or extended for more than one use zone.

Several additional exceptions have been included within the proposed accessibility guidelines which will minimize the impact of the guidelines. Those exceptions include:

(1) *Application.* These guidelines apply to play areas designed for children ages two and over which is consistent with voluntary safety standards for playgrounds. They do not apply to play areas for children ages two and under. (See 16.1 Play Areas.)

(2) *Alterations.* As discussed previously, the guidelines allow play equipment to be relocated to create safe use zones without triggering the alterations requirements of ADAAG 4.1.6 if the surface is not changed or extended for more than one use zone. This will minimize the potential cost impact of creating safer play areas, while balancing the need for accessibility for children with disabilities. (See 16.1 Play Areas, Exception 1.)

(3) *Platform lifts.* This exception allows the use of a platform lift as part of an accessible route to an elevated structure. This provides designers and operators with another way to provide vertical access in these unique environments. (See 16.1 Play Areas, Exception 2.)

[19] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 7032).

[20] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 7032 (U.S. Bureau of the Census data under contract to the SBA).

[21] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 7996).

[22] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 7996 (U.S. Bureau of the Census data under contract to the SBA).

[23] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 0781).

[24] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 0781 (U.S. Bureau of the Census data under contract to the SBA).

[25] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 5211).

[26] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1993, Table 3, SIC 5211 (U.S. Bureau of the Census data under contract to the SBA).

[27] 5 U.S.C. 601(5).

(4) *Protruding objects.* This exception exempts play areas from the prohibitions against protruding objects contained in ADAAG 4.4 (Protruding Objects) except for the accessible route within a play area. Generally, elements mounted along circulation paths may not project more than 4 inches, if the leading edge is above 27 inches and below 80 inches. The regulatory negotiation committee considered the unique environment of the play area and believed that this requirement may have the effect of substantially altering the nature and design of a play area and therefore proposed an exception. (See 16.1 Play Areas, Exception 3.)

(5) *Accessible routes.* The guidelines permit the width of the accessible route in play areas to be reduced. These exceptions reduce the amount of accessible surfacing that is required where there are special conditions. The accessible route can be reduced to 44 inches, for example, in play areas with less than 1,000 square feet. This provision will assist the smaller child care facilities in meeting these guidelines. (See 16.1.3.1 Clear Width and Height, Exception 1.)

(6) *Soft contained play structures.* Soft contained play structures are designed to promote play inside the structure and are often found in fast serve restaurants and other retail establishments. Exceptions have been proposed which consider these unique environments and limit access to the entry points of the structure. (See 16.2 Soft Contained Play Structures.)

In addition to these exceptions, ADAAG Section 2.2 (Equivalent Facilitation) which would apply to these proposed guidelines, provides that covered entities may depart from the particular technical and scoping requirements where the result will provide substantially equivalent or greater access to and usability of the facility.

As discussed in further detail in this Regulatory Process section, the Board has prepared a regulatory assessment which examines the potential cost impact of these guidelines on three play areas including a small, medium and a large size play area. (See Executive Order 12866: Regulatory Assessment.) The baseline costs for the assessment were based on the Department of Justice's ''Americans with Disabilities Act Title II Technical Assistance Manual'' (1994) Supplement, administrative complaints, ASTM F 1487–95 and ASTM PS 83, and common industry practices. In small play areas, the proposed guidelines would not result in any additional costs; for medium size play areas, the cost increase would be approximately 21 to 38 percent depending on the type of surfacing materials used; and for larger play areas, the increased cost would be from 26 to 35 percent depending on the surface materials. For soft contained play structures, the proposed rule would result in an increase of 2 to 6 percent of the original structure costs.

As proposed, there are no recordkeeping requirements in these guidelines.

IV. Description of Steps Taken to Minimize the Significant Economic Impact Consistent with the Stated Objectives and Significant Alternatives Considered and Rejected

Efforts to Minimize Impact

As previously discussed, these proposed guidelines were the result of a regulatory negotiation process. The regulatory negotiation committee members included individuals representing small businesses and entities including the National Child Care Association, International Play Equipment Manufacturers Association, National Recreation and Park Association, National League of Cities, National Association of Counties, and the National Parent-Teacher Association. Various State and local government entities also participated in the discussions of the committee. Meetings of the committee were held in different locations across the country. At the conclusion of each day of a full committee meeting, public comment was invited and over 250 members of the public attended. In addition, the committee members visited play area sites operated by small entities. One of the committee meetings was held in conjunction with the National Recreation and Park Association Annual Congress and over 100 members of the public attended. The National Recreation and Park Association includes small municipal park and recreation agencies.

Throughout its deliberations, the committee carefully considered and incorporated several alternatives which minimized the impact of the guidelines on small entities. Those provisions include the following:

(1) The Board's ANPRM requested public comment on the RAAC's recommendation to include a requirement that, in the design process, covered entities document accessible routes of travel for play areas, accessible points of access for elevated equipment and provision of play components accessible by ramp and transfer systems. The ANPRM also requested comment on requiring covered entities to document consultation with person with disabilities during the planning process of a play area. The majority of the comments received in response to this recommendation did not support the inclusion of a requirement for such documentation. The regulatory negotiation committee viewed the requirements for documentation as too onerous and not practical in all settings. The guidelines do not propose a recordkeeping requirement.

(2) The committee differentiated between play areas with a smaller number of play components and those with a greater number of components. As ramp access costs always exceed the costs of transfer access, the committee has proposed to require ramp access only on larger structures with a great number of components. For the ramp to be cost effective, the committee determined that the play structure should contain 20 or more play components before a ramp is required. (See 16.1.3 Exception 1.) In addition, the committee has proposed that platform lifts may be used in lieu of ramps to elevated play structures. (See 16.2.1 Access to Entry Points, Exception 2.)

(3) In play areas with less than 1,000 square feet, the guidelines provide that ground accessible routes shall be permitted to be 44 inches minimum clear width, a reduction from the 60 inches minimum clear width required in larger play areas. (See 16.1.3.1 Clear Width and Height.)

(4) Where soft contained play structures have three or less entry points, the committee has recommended that only one entry point be required to be on an accessible route. Where four or more entry points are provided, only two are required to be on an accessible route. (See 16.2.1 Access to Entry Points.)

(5) The committee proposed a maximum height for transfer platforms consistent with existing manufactured composite play structures. (See 16.1.4.1.2 Height.)

In addition to the foregoing provisions, the Access Board provides technical assistance and training to small businesses covered by the ADA and these guidelines. The Access Board's toll-free number allows callers to receive technical assistance at no cost and to order informational publications. The Access Board conducts in-depth training programs to advise and educate the general public, as well as architects and other professionals on the accessibility guidelines and requirements.

Significant Alternatives That Were Rejected

Throughout its deliberations, the regulatory negotiation committee addressed a number of alternatives to providing accessibility within a play area for children with disabilities. The major alternatives which were considered and rejected by the committee included the following:

(1) Requiring the entire surface of a play area to be accessible and requiring ramp access to all play components on an elevated structure. While both alternatives would ensure access for all children with disabilities in a play area, the cost was considered excessive. Many owners and operators have an established budget to work within when designing and constructing play areas. The cost impact of these alternatives would reduce the amount of ''play value'' and less play components would be designed or purchased. The guidelines identify only those areas where accessible surfacing is necessary so that children with disabilities can use and enjoy play components.

(2) Providing a lower level of access for children with disabilities. The committee considered requiring only transfer access to all of the elevated structures and requiring ramp access to a certain height. While these were considered lower cost alternatives, there was little support from committee members who felt that these approaches limited access for children with disabilities in a way that was not consistent with the intent and philosophy of the ADA. Specifically, the committee did not believe these approaches gave children with disabilities sufficient opportunity to interact and socialize with other children.

Executive Order 12612: Federalism

The proposed rule is issued under the authority of the Americans with Disabilities Act. Ensuring the civil rights of individuals with disabilities has been recognized as a responsibility of the Federal government. The proposed rule does not otherwise affect the relationship between the Federal government and the States or the distribution of power and responsibilities among the various levels of government to warrant an assessment of federalism implications under Executive Order 12612.

Executive Order 12875: Intergovernmental Partnership

The Access Board has involved State and local governments in the development of the proposed rule. The National Association of Counties, National League of Cities, National Recreation and Park Association, and National Association of Elementary School Principals were members of the regulatory negotiation committee. Members disseminated information regarding the rulemaking through their organizations and presented their concerns during the regulatory negotiation process. The regulatory negotiation committee also met in different cities and provided an opportunity for public comment at each meeting. In addition, the Access Board published an ANPRM requesting public comment on the Recreation Access Advisory Committee's report, which included recommendations for providing access to play areas. State and local governments commented on the ANPRM. The regulatory negotiation committee was convened in response to the public comments on the ANPRM to allow State and local governments and other interests affected by the rulemaking to be more directly involved in the development of the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Authorized by vote of the Access Board on July 9, 1997.

Patrick D. Cannon,

Chair, Architectural and Transportation Barriers Compliance Board.

Editorial Note: This document was received at the Office of the Federal Register on April 23, 1998.

For the reasons set forth in the preamble, the Architectural and Transportation Barriers Compliance Board proposes to amend Part 1191 of title 36 of the Code of Federal Regulations as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR Part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

Appendix A to Part 1191 [Amended]

2. Appendix A to Part 1191 is amended by adding and reserving a new section 15.

3. Appendix A to Part 1191 is amended by adding a new section 16 to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

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16. PLAY AREAS.

Definitions.

Composite Play Structure. Two or more play components attached or functionally linked to create an integrated unit that provides more than one play activity.

Elevated Play Component. A play component that is part of a composite play structure and approached above or below grade.

Ground Level Play Component. A play component that is approached and exited at the ground level.

Play Area. A portion of a site containing play components designed and constructed for children in a specified age range as designated by ASTM F 1487–95.

Play Component. An element intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural, and be stand alone, or part of a composite play structure.

Soft Contained Play Equipment. A play structure made up of one or more components where the user enters a fully enclosed play environment that uses pliable material(s) (e.g., plastic, netting, fabric).

Use Zone. The ground level area beneath and immediately adjacent to a play structure or equipment that is designated for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment as designated by ASTM F 1487–95.

16.1 Play Areas. Where provided, each play area designed for children ages 2 and over shall comply with the applicable provisions in section 4, except as modified or otherwise provided in this section.

Exception 1: This section does not apply to existing play areas where play equipment is relocated to create safe use zones and where the surface is not changed or extended for more than one use zone.

Exception 2: Platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes are permitted to be used as part of an accessible route within a play area.

Exception 3: The provisions of 4.4 shall not apply within the boundary of the play area.

16.1.1 Ground Level Play Components

(1) Where ground level play components are provided, at least one of each type shall comply with 16.1.5.

(2) Where elevated play components are provided, ground level play components complying with 16.1.5 shall be provided in a number at least equal to 50% of the total number of elevated play components.

Exception: Where ramp access is provided to each elevated play component, 16.1.1(2) shall not apply.

(3) Where more than one accessible ground level play components are provided, they shall be integrated in the play area.

16.1.2 Elevated Play Components. Where elevated play components are provided, at least 50% shall comply with 16.1.5.

16.1.3 Accessible Routes. At least one accessible route shall be located within the boundary of the play area and shall connect accessible play components, including accessible entry and exit points of accessible play components, and accessible elements.

Exception 1: Where less than 20 elevated play components are provided, accessible elevated play components required by 16.1.2 shall be permitted to be connected by a transfer system complying with 16.1.4 (See Table 1). An accessible play component may be used to connect to another accessible play component.

Exception 2: Where 20 or more elevated play components are provided, no more than 50% of the accessible elevated play components required by 16.1.2 shall be permitted to be connected by a transfer system complying with 16.1.4 (See Table 1). An accessible play component may be used to connect to another accessible play component.

TABLE 1

Number of elevated play components provided throughout a play area	Minimum percentage required to be accessible and accessed by transfer system or ramp	Minimum percentage required to be accessible and accessed by ramp	Total (percent)
1–19	50	none	50
20 plus	25	25	50

Exception 3: Handrails are not required at ramps located in the use zone of a play area.

16.1.3.1 Clear Width and Height. Accessible routes shall be 60 in (1525 mm) minimum clear width. Objects shall not protrude into the accessible route at or below 80 in (2030 mm) above the surface.

Exception 1: In play areas less than 1,000 square feet, ground accessible routes shall be permitted to be 44 in (1120 mm) minimum clear width. At least one turning space complying with 4.2.3 shall be provided where the accessible route exceeds 30 feet (9.14 m) in length.

Exception 2: Ground level accessible routes shall be permitted to be 36 in (915 mm) minimum clear width for a distance of 60 in (1525 mm) maximum, provided that multiple 36 in (915 mm) wide segments are separated by segments that are 60 in (1525 mm) minimum in length and 60 in (1525 mm) minimum in width.

Exception 3: Elevated accessible routes shall be permitted to be 36 in (915 mm) minimum clear width.

Exception 4: The clear width of elevated accessible routes shall be permitted to be reduced to 32 in (815 mm) minimum for a distance of 24 in (610 mm) maximum.

16.1.3.2 Ramp Slope and Rise. Ramps shall comply with 4.8 except as modified by 16.1.3.2.

16.1.3.2.1 Slope. The maximum slope for ground level accessible routes within the boundary of a play area shall be 1:16.

16.1.3.2.2 Ramp Rise. Where a ramp is a part of an elevated accessible route, the maximum rise of any ramp run shall be 12 in (305 mm).

16.1.3.2.3 Handrail Height. Top of gripping surfaces of handrails shall be 20 in (510 mm) minimum to 28 in (710 mm) maximum above the ramp surface.

16.1.4 Transfer Systems. Transfer systems connecting levels having accessible play components shall include transfer platforms complying with 16.1.4.1 or transfer steps complying with 16.1.4.2.

16.1.4.1 Transfer Platforms. Transfer platforms shall comply with 16.1.4.1.

16.1.4.1.1 Size. Platforms shall have a level surface 14 in (335 mm) minimum in depth and 24 in (610 mm) minimum in width.

16.1.4.1.2 Height. Platform surfaces shall be 11 in (280 mm) minimum to 18 in (455 mm) maximum above the ground or floor surface.

16.1.4.1.3 Transfer Space. A level space complying with 4.2.4 shall be provided along a 24 in (610 mm) minimum unobstructed side of the transfer platform.

16.1.4.1.4 Transfer Supports. A means of support for transferring shall be provided.

16.1.4.2 Transfer Steps. Transfer steps shall comply with 16.1.4.2.

16.1.4.2.1 Size. Transfer steps shall comply with 16.1.4.1.1.

16.1.4.2.2 Height. A transfer step shall be 8 in (205 mm) maximum high.

16.1.4.2.3 Transfer Supports. A means of support for transferring shall be provided.

16.1.5 Accessible Play Components. Accessible play components shall comply with 16.1.5.

16.1.5.1 Maneuvering Space. Maneuvering space complying with 4.2.3 shall be provided on the same level as the play components served. Maneuvering space shall have a slope not steeper than 1:48 in all directions. The maneuvering space required for accessible swings shall be located at the swing.

Exception: Maneuvering space is not required at accessible elevated play components connected only by a transfer system.

16.1.5.2 Clear Floor or Ground Space. Clear floor or ground space shall be provided at accessible play components and shall be 30 in (760 mm) by 48 in (1220 mm) minimum. Clear floor or ground space shall have a slope not steeper than 1:48 in all directions.

Exception: Clear floor or ground space is not required at accessible play components connected only by a transfer system.

16.1.5.3 Reach Ranges. Manipulative and interactive features of accessible play components shall be within the reach ranges specified in 16.1.5.3.1.

16.1.5.3.1 Forward and Side Reach. The high forward or high side reach, and the low forward or low side reach shall comply with Table 2 below and shall correspond to the age range of the primary user group;.

TABLE 2.—FORWARD AND SIDE REACH

Age Range	High Reach (not more than)	Low Reach (not less than)
Ages 2 through 5	36 in (915 mm)	20 in (510 mm)
Ages 5 through 12	40 in (1015 mm)	18 in (455 mm)

16.1.5.4 Height of Play Components. Where an accessible play component requires transfer to the entry point or seat, the entry point or seat shall be 11 in (280 mm) minimum and 24 in (610 mm) maximum above the required clear ground or floor space.

16.1.5.5 Transfer Supports. Where an accessible play component requires transfer to the entry point or seat, a means of support for transfers shall be provided.

16.1.6 Accessible Surfaces. Accessible surfaces located within play areas at ground level shall comply with 4.5.1 and 16.1.6.

16.1.6.1 Accessible surfaces located within play areas shall comply with the provisions of ASTM PS 83 Provisional Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (April 1997).

16.1.6.2 If located within use zones, accessible surfaces shall be impact attenuating and shall comply with ASTM F 1292.

16.1.7 Handrails. Where handrails are provided within a play area, the handrails shall have a diameter or width of 0.95 in (24.1 mm) minimum to 1.55 in (39.4 mm) maximum, or the shape shall provide an equivalent gripping surface.

16.2 Soft Contained Play Structures. Soft contained play structures shall comply with 16.2.

16.2.1 Access to Entry Points. Where three or fewer entry points are provided, at least one shall be located on an accessible route. Where four or more entry points are provided, at least two shall be located on an accessible route. Accessible routes shall comply with 4.3.

Exception 1: A transfer system complying with 16.1.4 shall be permitted.

Exception 2: Platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes are permitted to be used as part of an accessible route for soft contained play structures.

* * * * *

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Akron Fulton Airport, OH; withdrawn; comments due by 5-8-98; published 3-9-98

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Interest continuity requirement for corporations; comments due by 5-5-98; published 1-28-98

LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1116/P.L. 105–169

To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District. (Apr. 24, 1998; 112 Stat. 46)

H.R. 2843/P.L. 105–170

Aviation Medical Assistance Act of 1998 (Apr. 24, 1998; 112 Stat. 47)

H.R. 3226/P.L. 105–171

To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes. (Apr. 24, 1998; 112 Stat. 50)

S. 493/P.L. 105–172

Wireless Telephone Protection Act (Apr. 24, 1998; 112 Stat. 53)

S. 1178/P.L. 105–173

To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (Apr. 27, 1998; 112 Stat. 56)

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