

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed finding involves no technical standards.

F. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to a rule that is determined to be "economically significant," as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed finding is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

G. Enhancing the Intergovernmental Partnership under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities. This rule would be implemented at the federal level and would impose no compliance obligations on any party. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule would not significantly or uniquely affect the communities of Indian tribal governments. This rule would be implemented at the federal level and would impose no compliance obligations on any party. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 83

Environmental protection, Administrative practice and procedure, Confidential business information,

Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: January 29, 1999.

Carol M. Browner,

Administrator.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1309

RIN 0970-AB54

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Administration on Children, Youth and Families is issuing this Notice of Proposed Rulemaking to implement a statutory provision that authorizes Head Start grantees to use grant funds to finance the construction and major renovation of Head Start facilities.

DATES: In order to be considered, comments on this proposed rule must be received on or before April 9, 1999.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2219, 330 C Street, SW., Washington, DC 20201, Monday through Friday, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205-8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive

health, nutritional, educational, social and other services. In addition, Section 645A of the Head Start Act provides authority to fund programs serving infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs.

Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997, Head Start served 794,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. Tribal grantees can exceed this limit under certain conditions. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Proposed Regulation

The authority for this Notice of Proposed Rulemaking (NPRM) is section 644(g) of the Head Start Act (42 U.S.C. 9839). Paragraph (g) was added by Public Law 103-252, Title I of the Human Services Amendments of 1994. Section 644(g) states that the Secretary may authorize the use of federal financial assistance to make payments for capital expenditures, such as expenditures for the construction and major renovation of facilities. Authorization for the use of grant funds in this manner requires a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities (including public school facilities) will inhibit the operation of such programs, and that construction of such facilities is more cost effective than the purchase or renovation of available facilities. The Act also provides that grant funds may be used to pay the cost of amortizing the

principal and paying interest on loans. It directs the Secretary to establish uniform procedures for Head Start agencies to request approval to use grant funds to construct new facilities or make major renovations to existing facilities.

A Notice of Proposed Rulemaking (NPRM) on Purchase of Head Start Facilities was published in the **Federal Register** on December 1, 1994 (59 FR 61575). The Final Rule on Purchase of Head Start Facilities, published elsewhere in this issue of the **Federal Register**, does not address construction or major renovation since the statutory change concerning construction and major renovation occurred too close to publication of that NPRM to permit the inclusion of procedures covering construction and major renovation. We recognize, however, that procedures covering the purchase, construction and major renovation of facilities using Head Start grant funds should be consistent and should be brought together in one place. Therefore, the procedures on construction and major renovation when made final will amend the final rule on purchase of Head Start facilities so that 45 CFR part 1309 will cover, in one single rule, the use of grant funds to purchase, construct and make minor renovations to Head Start facilities.

The proposed rule:

- Defines major renovation to mean structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area. Major renovation also means extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.
- Specifies what information the grantee must provide to establish eligibility to be awarded grant funds to construct or make a major renovation to a Head Start facility.
- Requires that a grantee receive approval from HHS of the final working drawings and specifications for construction or major renovation before it advertises for bids.
- Requires that all construction and major renovation contracts be on a lump sum fixed-price basis.

III. Section by Section Discussion of the NPRM

We propose to revise the heading of Part 1309 to reflect the addition of major renovation and construction requirements in this part. The revised heading is "Head Start Facilities Purchase, Major Renovation and Construction."

Section 1309.1—Purpose and application

We propose to revise § 1309.1 to include reference to the applicability of part 1309 to the construction or major renovation of Head Start facilities in addition to the purchase of such facilities.

Section 1309.3—Definitions

We propose to revise § 1309.3 by adding five definitions. The definition for "construction," a new definition, is based on the statutory language found in section 644(g)(2)(A) of the Head Start Act, which states that grant funds may be used to pay for "construction of facilities that are not in existence on the date" the Secretary determines the grantee meets the statutory criteria for eligibility. In addition, we revised the definition of "acquire" to encompass construction in whole or part.

The second definition we propose is "incidental alterations and renovations." This definition is added to distinguish such alterations and renovations from major renovations which are defined also in this proposed rule. Alterations and renovations are considered "incidental" if they readily modify a facility to meet program requirements, if the cost of the alterations and renovations do not exceed the lesser of \$150,000 or 25 percent of total direct costs expected to be approved for the grantee's budget period, and the renovations or alterations do not meet the definition for major renovations described below. A third new definition is for "major renovation," which has two parts. Major renovation means structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of an existing facility to increase its floor area, or extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.

Classification as a major renovation will have two consequences: the grantee will be able to pay the principal and interest on a loan to finance the work, and the grantee will be required to meet the preliminary eligibility and other criteria found in this regulation.

The fourth and fifth new definitions we propose are for the terms "suitable facility" and "useable facility." The terms are necessary because section 644(g) of the Head Start Act requires that a determination be made that no "suitable" facility is available within a community before a grantee can be permitted to use grant funds for the

construction or renovation of a facility. The term "suitable" means a facility in the grantee's service area that is owned by the grantee or is available for lease or purchase, is useable as a Head Start facility, and is not more expensive to purchase, own or lease than other comparable facilities. The term "useable" is included and intended to describe a facility not in need of renovation to increase its size or to bring it into compliance with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

Section 1309.10—Application

We propose to revise the heading of § 1309.10 to read "Applications for the purchase, construction and major renovation of facilities." We also propose to revise § 1309.10, which appears in the final rule on purchase of Head Start facilities which is published today, to include requirements for application for the construction and major renovation of facilities with Head Start funds. The proposed provision will establish requirements for applications from Head Start grantees who wish to obtain funds to: (1) Purchase existing facilities; (2) continue to pay costs of purchases begun during the period from December 21, 1986 to October 7, 1992; (3) construct new facilities; (4) renovate facilities which they own or lease; or (5) purchase facilities for the purpose of renovating them to make them usable for their Head Start programs. With the exception of existing paragraphs (f) and (r) which we have redesignated (e) and (q), we propose modifications in all of the existing provisions of § 1309.10 to apply to applications for construction and major renovation as well as for purchase of existing facilities. We propose to incorporate the existing paragraph (d) into a new paragraph (b). In addition, a proposed amendment to the newly redesignated paragraph (l) requires that a grantee proposing to undertake a major renovation of a leased facility must have a lease with a duration of at least five years from the date the renovation is completed. We propose to add to the newly redesignated paragraph (m) a requirement for an assessment of the impact of proposed construction or major renovation under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). We propose further that before submitting an application under proposed section 1309.10, grantees seeking funds for construction or for major renovations must establish

their eligibility under one of two new provisions proposed as §§ 1309.49 and 1309.50.

Section 1309.11—Cost comparisons for purchase, construction and major renovation of facilities

We are proposing to amend § 1309.11, which appears as a final rule published today, to apply to cost comparisons for construction and major renovation of facilities. We are proposing to amend the heading of this section to read "Cost comparisons for purchase, construction and major renovation of facilities" to apply the proposed provisions of § 1309.11 to cost comparisons for construction and major renovation of facilities. Paragraph (a) of the proposed rule requires that a cost comparison be conducted subject to the proposed paragraph (c) which is expanded to include not only purchase of facilities but also comparisons required for construction and major renovations of facilities. In conformance with section 644(g)(1) of the Head Start Act, paragraph (c)(2) of the proposed rule will require Head Start grantees requesting funding for the construction of a new facility to compare the cost of constructing to the cost of owning, purchasing or leasing an alternative facility which may be made useable as a Head Start facility by means of renovation of the facility. Paragraph (c)(3) proposes that grantees applying for funding to undertake a major renovation of a facility must compare the cost of the proposed renovation, including the cost of purchasing the facility to be renovated (if the grantee is proposing to purchase the facility) to the cost of constructing a facility of similar size. ACF proposes to request grantees to furnish this information in order that it may properly exercise discretion in selecting grantees to receive funding under section 644(g) of the Head Start Act. We are proposing that paragraph (e) include clarification that the period of comparison for renovations of leased facilities is the period of the lease remaining after the major renovation is completed. Paragraph (f) is identical to the final rule.

Section 1309.21 Recording of Federal interest and other protection of federal interest

We propose to apply the same provisions for the subordination of Federal interest for construction and major renovation of Head Start facilities as are found in the final rule for the purchase of facilities. We propose to revise paragraph (a) of this section to read "The Federal government has an interest in all real property and

equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the federal interest in such property to that of a lender which finances the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section." We are proposing some technical changes in paragraph (d) of this section by inserting the words "or at the commencement of major renovation or construction of a facility" after the word purchasing, and in (d)(1) we propose to substitute the words "acquisition or major renovation" for the word "purchase" and finally we propose to revise paragraph (f) by substituting the word "purchased" with the words "acquired or upon which major renovations have been undertaken."

Section 1309.23 Insurance, bonding and maintenance

In this section we propose to add a sentence clarifying that for facilities which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

Sections 1309.40 through 1309.43

The proposed revisions to §§ 1309.40, 1309.41, 1309.42, and 1309.43 replace the word "purchase" with "acquisition or major renovation." Sections 1309.41, 1309.42 and 1309.43 contain technical edits also.

A new subpart F has been added to cover very specific requirements on construction and major renovation of Head Start Facilities.

Section 1309.49—Eligibility—construction

Section 1309.50—Eligibility—major renovation

These two sections conform to section 644 (g)(1) in requiring applicants to demonstrate that the Head Start program serves an Indian Tribe or is available in a low-income or rural community and that the lack of a suitable facility in the grantee's service area will inhibit the operation of the program.

Applicants requesting funding for construction of facilities must demonstrate that there are no facilities available for lease or purchase or facilities that are available are not suitable for use by a Head Start program.

Grantees requesting funds for major renovations must demonstrate that there are no facilities available for lease or purchase or that facilities available are not suitable for use without major

renovations. Applicants for funding for major renovations and who are leasing the facilities must have a lease guaranteeing the use of the facility for a minimum period of five years from the time the renovations are completed.

We are proposing further in this rule that all applicants support, whenever possible, the determination that there are no suitable facilities with a written statement by a licensed real estate professional in the grantee's service area.

Section 1309.51—Approval of drawings and specifications

In this section we propose to require that grantees receive approval from the responsible HHS official of the final drawings and specifications for the proposed construction or major renovation before soliciting bids or awarding a contract for the work. The architect or engineer shall make a certification to the responsible HHS official of whether in his or her professional opinion the plans and specifications conform to Head Start programmatic requirements and are appropriate from a cost and technical point of view.

Section 1309.52—Procurement procedures

Paragraph (a) of this section refers to the Department's procurement policy, found in 45 CFR parts 74 and 92, and reiterates the basic rule that all facility transactions be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Paragraph (b) provides that all construction and major renovation contracts shall be on a lump sum fixed-price basis, and prohibits the grantee from entering into a contract without prior written approval of the responsible HHS official. Paragraph (c) requires prior written approval of the responsible HHS official for unsolicited modifications that would change the scope or objective of the project. In paragraph (d) we propose that all contracts for HHS-funded construction or major renovation of Head Start facilities contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and requiring the contractor to facilitate such access and inspection.

The intent of these provisions is to protect the grantee and the Department against substandard work and cost overruns.

Section 1309.53—Inspection of work

This section proposes that the grantee shall provide competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications. Also, a final architectural or engineering inspection report of the facility must be submitted to the responsible HHS official within 30 calendar days of substantial completion of the construction or major renovation. This is intended to insure that the project is being properly managed and that any problems or unusual circumstances are identified and dealt with as early as possible.

Section 1309.54—Davis-Bacon Act

Construction and major renovation contracts and subcontracts are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). In this section we propose that the grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. Grantees are required to comply with the requirements found in the Davis-Bacon Act and the regulations of the Department of Labor which implement that Act. Those regulations are found in Title 29 of the Code of Federal Regulations.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory authority for Head Start grantees to apply to use grant funds to construct or make major renovations to facilities. Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the construction or renovation of Head Start facilities is money that would have been spent otherwise by the program or other programs from the same appropriation amount.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork

requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Furthermore, the cost of the application process and other activities undertaken as a result of these regulations will not have a significant economic impact because the Head Start program covers 80% of the allowable costs of grantees under the program. The remaining costs associated with compliance are part of the share of costs grantees agree to meet from their own resources when they enter the Head Start program. For these reasons, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104-13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This NPRM contains information collection and record-keeping requirements in § 1309.10 (application), 1309.49 (eligibility construction), and 1309.50 (major renovation) which will be submitted to OMB for review and approval in accordance with the Paperwork Reduction Act.

The respondents to the information collection requirements in the rule are Head Start grantees who may be State or local non-profit agencies or organizations. The Department needs to require this collection of information in order to assure that grantees who apply for approval to construct or make major renovations to a facility with Head Start funds have followed certain necessary legal and administrative procedures. Also, these collection of information requirements are necessary for monitoring purposes.

The grantees who will be affected by these requirements will be those who request approval and are approved to construct or make major renovations to a facility for the purpose of operating a Head Start program. Based on the average number of grantees who requested approval from the Department since the statutory authority became effective, the estimated annual number of grantees that will be affected is 200.

The actual submittal of an application under § 1309.10 from a grantee to construct or make a major renovation to a facility is a one time activity which is preceded by a number of preparatory activities. We estimate the time it will take to prepare the application in accordance with the requirements of this rule is 40 hours per grantee, calculated over a period of time. On an annual basis, the total hours estimated for submittal of applications from grantees are 8,000.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collection of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collections of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Wendy Taylor.

List of Subjects in 45 CFR Part 1309

Acquisition, Construction, Facilities, Head Start, Real property, Renovation

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: August 3, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: September 15, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR part 1309 is proposed to be amended as follows:

1. The authority citation for part 1309 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. The heading of part 1309 is revised to read as follows:

PART 1309—HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

3. Section 1309.1 is revised to read as follows:

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as they apply to grantees operating Head Start programs under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in facilities purchased, constructed or renovated with Head Start grant funds.

4. Section 1309.3 is amended by revising the definition "acquire" and adding five new definitions to read as follows:

§ 1309.3 Definitions.

* * * * *

Acquire means purchased or constructed in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

* * * * *

Construction means new building, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

* * * * *

Incidental alterations and renovations means improvements to a facility which can be readily made, which are not considered major or structural renovations as defined in this section and the total costs of which do not exceed the lesser of \$150,000 or 25 percent of total direct costs approved for a budget period.

Major renovation means structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.

* * * * *

Suitable Facility means a facility that is owned by the grantee or is available for lease or purchase, is useable as a

Head Start facility and is not more expensive to purchase, own or lease than other comparable facilities in the grantee's service area.

Useable facility means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

5. Section 1309.10 is revised to read as follows:

§ 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under section § 1309.49 to apply for funds to construct a facility, or section § 1309.50 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be purchased, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility useable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation, a certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovation must be included.

(c) The cost comparison described in § 1309.11 of this part.

(d) The intended uses of the facility proposed for acquisition or major renovation, including information demonstrating that the facility will be

used principally as a Head Start center or a direct support facility for a Head Start program. If the facility is to be used for purposes in addition to the operation of the Head Start program, the grantee must state what portion of the facility is to be used for such other purposes.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee also will assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the previous purchase of a facility is unable to provide such statements based on circumstances which existed at the time of the purchase, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovation, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting of the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or previously purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that upon the completion of major renovation to a facility or construction of a facility that inspection by a licensed engineer or architect will

be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurances that the applicant will obtain a fee simple or such other estate or interest in the site of the facility to be acquired sufficient to assure undisturbed use and possession for the purpose of operating the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is situated, the application must describe the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility. If the grantee proposes to undertake a major renovation of a leased facility, the grantee must have a lease of at least five years duration from the date the renovation is completed.

(m) An assessment of the impact of the proposed purchase on the human environment if it involves more than a simple incidental alteration and renovation or any significant change in land use, including substantial increases in traffic in the surrounding area due to the provision of Head Start transportation services and an assessment of all proposed construction and major renovation pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and its implementing regulations (40 CFR parts 1500-1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR Part 24), and information about the costs that may be

incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of a previous purchase, a statement of the extent to which it has attempted to comply and will be able to comply with the provisions of § 1309.22 of this part.

(q) Such additional information as the responsible HHS official may require.

6. Section 1309.11 is revised to read as follows:

§ 1309.11 Cost comparisons for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the cost of the proposed activity as provided under paragraph (c) of this section.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, previously purchased or renovated, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare the cost of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and useable as a Head Start facility or which can be made useable through incidental alteration or renovation, the cost of which shall be included in the cost comparison. In the case of an application for approval of the previous purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was

deemed inadequate by the responsible HHS official, the grantee had no previous facility, or if the grantee continued to use its previous facility after it purchased the current facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of owning, purchasing or leasing an alternative facility which can be made useable through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the cost of constructing a facility of comparable size.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including, but not limited to, cost of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison for purchase, construction or renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of previous purchases the period of comparison begins on the date the purchase took place.

(f) If the facility is to be used for purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of

Management and Budget cost principles.

7. Section 1309.21 is amended by revising paragraphs (a), (d), introductory text, (d)(1), and (f), introductory text to read as follows:

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the federal interest in such property to that of a lender which finances the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

(d) Immediately upon purchasing or at the commencement of major renovation or construction of a facility, or receiving permission to use funds for a previously purchased facility the grantee shall record the Notice of Federal Interest in the appropriate official records for the jurisdiction is located. The Notice shall include the following information:

(1) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;

(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

8. Section 1309.23 is amended by revising paragraph (a) to read as follows:

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the previous purchase of a facility the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it owns, and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section. For facilities which have been constructed or renovated, insurance coverage must begin at the commencement of the

expenditure of costs in fulfillment of construction or renovation work.

9. Section 1309.40 is revised to read as follows:

§ 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or to the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

10. Section 1309.41 is revised to read as follows:

§ 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the case of leased facilities) of the facility plus three years.

11. Section 1309.42 is revised to read as follows:

§ 1309.42 Audit of mortgage.

Any audit of a grantee which has acquired or made major renovations to a facility with grant funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit are payable with grant funds.

12. Section 1309.43 is revised to read as follows:

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under § 1309.50 of this part, or otherwise prior to the submission of an application under § 1309.10 of this Part or acquisition of the facility) are payable with grant funds, but require prior, written approval of the responsible HHS official.

13. A new subpart F is added to read as follows:

Subpart F—Construction and Major Renovation

Sec.
1309.49 Eligibility—Construction.
1309.50 Eligibility—Major renovation.
1309.51 Approval of drawings and specifications.
1309.52 Procurement procedures.
1309.53 Inspection of work.
1309.54 Davis-Bacon Act.

Subpart F—Construction and Major Renovation

§ 1309.49 Eligibility—Construction.

Before submitting an application under section 1309.10 for construction of a facility, the grantee must establish that:

- (a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and
- (b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable for use by a Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

§ 1309.50 Eligibility—Major renovation.

(a) Before submitting an application under § 1309.10, the grantee must establish that:

- (1) The Head Start program serves an Indian Tribe, or is available in a rural or other low-income community; and
- (2) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(b) In order to receive funding for major renovation of a leased facility, the grantee must have a lease that provides the Head Start program with a term of occupancy of at least five years from the time the renovation will be complete.

§ 1309.51 Approval of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until final working drawings and specifications have been approved by the responsible HHS official.

(b) Approval by the responsible HHS official shall be based on the

certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed construction or renovation, and on a determination that the drawings and specifications conform to Head Start programmatic requirements.

§ 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedures in 45 CFR parts 74 and 92, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) All construction and major renovation contracts for facilities acquired with grant funds require the prior, written approval of the responsible HHS official, and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project, including proposed modifications that would materially alter the costs of the project or increase the amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and requiring that the contractor shall facilitate such access and inspection.

§ 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

§ 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and the regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start

facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-22, RM-9426]

Radio Broadcasting Services; Ashland, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The State of Wisconsin Educational Communications Board proposing the allotment of Channel 275A to Ashland, Wisconsin, and reservation of the channel for noncommercial educational use. The channel can be allotted to Ashland without a site restriction at coordinates 46-35-24 NL and 90-53-00 WL. Canadian concurrence will be requested for the allotment of Channel *275A at Ashland.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-22, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.