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Tuesday
September 6, 1988

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 13; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Doris Tucker, 202-523-3419

CHICAGO, IL

WHEN: September 19; at 9:15 a.m.
WHERE: Room 3320, Federal Building, 230 S. Dearborn St., Chicago, IL
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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300 and 531

Delegation of Authority to Agencies

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to remove the requirement for agencies to have delegation agreements in order to approve certain personnel actions. All agencies will now be able to approve superior qualifications appointments, waivers of time in grade requirements based on hardship or inequity, and training agreements within the limits formerly specified in delegation agreements.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: In 1979, OPM used the authority granted by the Civil Service Reform Act to delegate to agencies authority to approve various personnel actions that previously had to be approved by OPM. Some of these authorities were delegated directly, but others required agencies to negotiate delegation agreements.

On April 21, 1988 (53 FR 13124), OPM issued proposed regulations eliminating the requirement for agencies to have delegation agreements in order to exercise several commonly used authorities. Most agencies have had agreements covering those authorities for several years and have used the authorities properly. The reporting requirements contained in the agreements merely create an unnecessary paperwork burden. The limits on agencies' delegated authority previously contained in delegation agreements will be included in applicable regulations and FPM instructions to ensure that extreme or atypical cases are reviewed and approved by OPM.

Comments on the proposed regulations were received from nine Federal agencies and one employee organization, which all supported the proposal. The employee organization suggested, however, that the regulations provide appeal procedures for employees who believe an agency's decision is improper. We did not adopt this suggestion because the authorities being delegated do not involve the types of actions (separation, furlough, loss of grade or pay) that are subject to appeal. Rather, the authorities involve new appointments, promotions, or reassignments. Candidates for new appointment have no appeal rights since they can decline an employment offer they find unsatisfactory. Procedures used to select employees for promotion or reassignment are subject to grievance procedures (although nonselection by itself may not usually be the basis for a complaint). Employees who believe the authorities to establish training agreements or waive time in grade requirements are being improperly applied have recourse through the grievance process.

Based on the favorable reaction, OPM is adopting the proposed delegations, as follows:

Waiver of time in grade requirements based on undue hardship or inequity (5 CFR 300.603). An agency head or his or her designee (who may be at any organizational level) may waive time in grade requirements to permit promotion of no more than three grades in an individual case that meets the definitions of hardship or inequity contained in the regulation. All waivers involving promotions or more than three grades must be approved by OPM.

Appointments above the minimum rate in grades GS-11 and above based on the appointees' superior qualifications (5 CFR 531.203(b)). Agencies may establish salaries under this regulation that do not exceed the candidates' existing pay by more than 20 percent. Rates exceeding that limit must be approved by OPM.

Training agreements. Agencies may develop and implement plans under which intensive training is to be used as a substitute for time in grade requirements, as long as the plans do not permit consecutive accelerated promotions of any trainees. Plans providing for consecutive accelerated promotions will continue to require OPM approval.

OPM is also issuing an FPM letter delegating to agencies: (1) Authority to approve training agreements under which intensive training may be substituted for normal qualification requirements; and (2) authority to approve payment of candidates' travel expenses for interviews when a position at grade GS-10 or above is so unique in terms of its duties, responsibilities, and/or performance requirements that a preemployment interview is necessary for a final determination of applicants' qualifications. Specific conditions for use of those authorities and additional instructions and guidance on use of the authorities delegated by these regulations are set out in the FPM letter.

All actions taken under the delegated authorities must be consistent with instructions set out in the regulations and FPM, with merit promotion policy, and with other applicable laws and requirements. OPM will retain oversight responsibility and may review agencies' use of the delegated authorities during personnel management evaluations. OPM may suspend or withdraw an agency's or organization's delegated authority if the organization's use of the authority is inconsistent with merit principles or if a pattern of error or misuse shows that the organization cannot manage the delegated authority successfully.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations affect only the procedures used to appoint and assign certain Federal employees.

List of Subjects

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 531

Administrative practice and procedure, Government employees, wages.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Parts 300 and 531 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised as set forth below, and the authorities following individual sections and subparts are removed:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; §§ 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204; E.O. 11478, 3 CFR 1966–1970 Comp., p. 803.; § 300.104 also issued under 5 U.S.C. 7701 et seq.; § 300.301 also issued under 5 U.S.C. 3324.; § 300.603 also issued under 5 U.S.C. 1104.

2. In § 300.603, (a) introductory text and paragraph (a)(1) are revised, the semicolon at the end of (a)(2) is removed and a period inserted, the semicolon and the word "or" at the end of (a)(3) are removed and a period inserted, paragraph (a)(4) is removed, and new paragraphs (d) and (e) are added to read as follows:

§ 300.603 Exceptions to restrictions.

(a) Section 300.602 of this part does not prevent the advancement of an employee when:

(1) The advancement is made under the provisions of a training agreement established in accordance with instructions in chapter 338 of the Federal Personnel Manual. However, an agency may not make promotions of more than two grades in 1 year solely on the basis of a training agreement or a series of training agreements, and may not approve training agreements that provide for consecutive promotions of any employee at rates exceeding those prescribed in section 300.602 of this part. Training agreements that provide for consecutive accelerated promotions must be approved by OPM.

* * * * *

(d) Section 300.602 (a) and (b) of this part does not prevent the advancement of an employee to a position no more than three grades above the employee's current grade when:

(1) The employee meets all other qualification requirements for the position; and

(2) The agency head or his or her designee determines that waiver of the time in grade requirements is needed to avoid undue hardship to the agency or inequity to the employee resulting from an unavoidable situation that cannot be corrected through valid actions other than promotion of the particular employee. Each promotion authorized under this paragraph must be approved individually by the agency head or his or her designee.

(e) Section 300.602 (a) and (b) does not prevent the advancement of an employee in a situation not covered by paragraphs (a) through (d) of this section when OPM authorizes the advancement to avoid undue hardship or inequity, in an individual case of a meritorious nature.

PART 531—[AMENDED]

3. The authority citation for Part 531 is revised to read as follows, and the authority citations following any subparts or sections are removed:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; Section 531.203 issued under 5 U.S.C. 5333 and 5334; Section 531.204 issued under 5 U.S.C. 5334 and 5402; Section 531.205 issued under 5 U.S.C. 5305 and 5402, E.O. 11721, as amended; Section 531.305 issued under 5 U.S.C. 5333, E.O. 11721, as amended; Subpart D issued under 5 U.S.C. 5301, 5335, and 5338, E.O. 11721, as amended; Subpart E issued under 5 U.S.C. 5336 and 5338, E.O. 11721, as amended.

4. In § 531.203, paragraph (b)(1) is revised to read as follows:

§ 531.203 General provisions.

* * * * *

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment to a position in Grade 11 or above of the General Schedule made at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate. Prior approval of OPM is required if the proposed rate exceeds the candidate's existing pay by more than 20 percent (unless the position is in the Library of Congress).

* * * * *

[FR Doc. 88–20102 Filed 9–2–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–30; Special Condition No. 25–ANM–20]

Special Conditions: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the installation of a longitudinal partition in the cabins of Boeing Model 767 airplanes. This installation is a novel or unusual design feature when compared to the interior configurations envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This special condition contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–2121.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1987, The Boeing Company applied for a change to their Type Certificate No. A1NM for installation of a longitudinal partition in their Model 767 series airplanes. The Model 767, which is currently approved under Type Certificate No. A1NM, is a pressurized, low-wing, transport category airplane powered by two turbofan engines.

Under the provisions of § 21.101 of the FAR, The Boeing Company must show that the Model 767, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or the applicable regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 767 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model 767 must comply with the noise certification requirements of Part 36 and the engine emission

requirements of Special Federal Aviation Regulations (SFAR) 27.

Novel or Unusual Design Feature

The Model 767-300 will incorporate the installation of an opaque, longitudinal partition installed in the forward cabin separating two small passenger cabin sections. This installation is considered to be a novel or unusual design feature when compared to the interior configurations envisioned in the airworthiness standards of Part 25 of the FAR.

The partition is installed near the centerline of the airplane, starting at a lavatory and extending aft for five rows of seats. The partition is the full height of the cabin, and will prevent passenger crossover from one aisle to the other throughout its length. Additionally, there will be some obstruction of visibility of the cabin in the vicinity of the partition.

The 767-300 is currently approved for a maximum capacity of 290 passengers, and The Boeing Company has proposed a passenger capacity of 235 with the longitudinal partition installed. Of the 235 passengers, less than 10 percent (23) will be seated in the areas divided by the longitudinal partition.

Due to the novel or unusual design feature associated with the installation of a longitudinal partition, a special condition is considered necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in the type certificate. Although the initial installation will be in 767-300 series airplanes, the partition may be installed in any series of the Model 767. The special condition would therefore be applicable to any Model 767 series airplane in which this feature is installed.

Discussion of Comments

Notice of Proposed Special Condition No. SC-88-4-NM for the Boeing Model 767 series airplanes was published in the **Federal Register** on July 11, 1988 (53 FR 26086). Seven commenters responded to the notice.

Two commenters disagree with the need for special conditions. They contend that the proposed special condition does not impose any requirements in addition to those already in effect. Furthermore, they contend that the longitudinal partition is not novel or unique since other airplanes have been approved with similar features. These commenters believe the special condition should be withdrawn.

The FAA does not concur that the special condition would not impose any new airworthiness standards. The special condition is intended to preserve the presently required evacuation capability of the airplane, and it may result in limitations or requirements that would not otherwise be imposed.

The FAA concurs that approval has been granted in the past for certain other interior features, such as galleys, lavatories, and closets, oriented along the longitudinal axis of the airplane. The proposed partition, however, is the longest interior feature with passenger seats installed on both sides. Furthermore, it is the first significant longitudinal structure installed solely for the purpose of separating passengers. In this case, first class passengers are separated from business class passengers. The FAA considers that the current regulations do not contain standards which adequately address such a cabin feature.

Several commenters suggest that a full-scale evacuation demonstration should be conducted to ensure that the intent of both existing regulations and the special condition is satisfied.

A new, full-scale evacuation demonstration would be one means to aid in demonstrating compliance with the special condition; however, it is not necessarily the only means to do so. Any combination of analysis and available test data which shows that the longitudinal partition does not have a significant adverse effect on the emergency evacuation capability of the airplane may be used.

Several commenters express concern on the impact of the partition on emergency lighting, exit rating, structural integrity of the partition, uniform exist distribution, and flight attendant direct view.

As part of the normal certification of an interior arrangement for an airplane, compliance with all existing airworthiness requirements must be demonstrated. The areas of concern noted by the commenters are all addressed directly in the current regulations. The impact of the partition would be assessed during the normal evaluation of the total interior arrangement with respect to these regulations. For example, with respect to emergency lighting, the applicant will have to show that the emergency lighting levels comply with § 25.812. With respect to flight attendant direct view, the evaluation will ensure that the view is consistent with the standards established for previously approved interior configurations. Additionally, it should be noted that the Model 767 will have one fewer set of lateral class dividers installed than it would have if the longitudinal partition were not installed. There is, therefore, no need for additional standards in those regards.

One commenter suggests establishing limits on size and location for longitudinal dividers of this type.

This special condition was developed for the specific design which has been presented for approval. Any new design in which the location, size, or passenger arrangement is changed would require a re-evaluation and possibly the development of new special conditions. For this reason, it is not considered appropriate or necessary to consider prospective future designs as part of this action.

One commenter expresses concern that a completely opaque partition would prevent visual and verbal communication between persons on opposite sides of the partition. The commenter suggests that transparent or retractable panels should be incorporated into the partition to allow for communication from one side of the partition to the other. The commenter also believes that persons should be able to move from one aisle to the other along the length of the seating area. This commenter is also interested in ensuring that emergency instructions and passenger safety cards are consistent with the resultant escape routes.

The FAA concurs that verbal and visual communication of information is important in the event of an emergency evacuation. The FAA considers that the most significant communication is from the flight attendant to the passengers. This communication occurs primarily in the vicinity of the functioning exits and also in the aisles when the attendants are directing passengers to the functioning exits. The impact of the partition on this communication will therefore be addressed in the finding of compliance with the special condition. As noted in the preamble to the notice, the partition will limit, to some extent, the locations at which persons in the forward cabin can cross from one aisle to another. For the number of passengers that can be accommodated by the interior arrangement, it must be shown that the evacuation capability of the airplane is not compromised. As proposed by the commenter, transparent or retractable panels may be acceptable means of complying with the special condition; however, other methods may be equally acceptable. It is not appropriate for this special condition to impose specific designs. Operators are presently required to provide appropriate passenger information cards and other emergency instructions under the provisions of Part 121 of the FAR.

Therefore, no further standards are needed in those regards.

Finally, one commenter expresses concern that the partition will place a barrier between passengers and available exits should a fire occur on one side of the airplane. The commenter recommends that a longitudinal partition should be a prohibited design. The commenter also raises questions about visibility of exits, crews, and emergency lighting.

As noted previously, the partition would preclude persons from crossing from one aisle to another at any location other than a crossaisle. It should be noted, however, that passengers in single-aisle airplanes have no other aisle to which they can cross over. Considering that the Model 767 is required by existing regulations to have a crossaisle in the immediate vicinity of each emergency exit, the portion of the cabin on each side of the longitudinal divider is analogous to the cabin of a single-aisle airplane in that regard. In both cases, the primary escape route is forward or aft along the main aisle to the emergency exit. In a single-aisle airplane, this condition extends throughout the entire cabin, whereas it would only extend for less than one-half of the forward cabin of the Model 767. The inability of persons to cross from one aisle to another at a location other than a crossaisle would therefore not be inconsistent with presently accepted standards for emergency egress.

Compliance with existing requirements for marking emergency exits will also ensure the same degree of passenger exit awareness that would exist without the partition installed. There is therefore no need for additional standards in that regard.

Under standard practice, the effective date of this final special condition would be 30 days afer publication in the **Federal Register**. As the intended type certification date for the installation of the longitudinal partition in a Boeing 767 airplane is late August 1988, the FAA finds that good cause exists to make this special condition effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Boeing Model 767 series airplanes with longitudinal partitions installed:

In addition to applicable Part 25 requirements, the applicant must show that the longitudinal partition does not have a significant adverse effect on emergency evacuation of the airplane. Evaluation of the installation must specifically consider the degree to which the partition creates a physical obstruction to movement, or impairs the ability of occupants to visually identify and evaluate the availability of exits and escape paths.

Issued in Washington, DC, on August 23, 1988.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 88-20112 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-49]

Establishment of Airport Radar Service Areas; Washington and Wisconsin; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of the Green Bay Austin Straubel Field, WI, Airport Radar Service Area (ARSA). There was an inadvertent error in the coordinates for the airport reference point in the final rule as published.

EFFECTIVE DATE: 0901 u.t.c., October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-11936, published May 27, 1988, established ARSA's at Green Bay, WI, and one other location (53 FR 19740). There was an inadvertent error in the coordinates for the airport reference point for the Green Bay, WI, ARSA. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88-11936, as published in the **Federal Register** on May 27, 1988, (53 FR 19740) is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Green Bay Austin Straubel Field, WI [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Green Bay Austin Straubel Field (lat. 44°29'17"N., long. 88°07'39"W.); and that airspace extending upward from 1,900 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport.

Issued in Washington, DC, on August 25, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-20110 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 87-AWP-32]

Establishment and Alteration of Restricted Areas, Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-2309 located near Yuma, AZ. R-2309 provides airspace to contain a tethered aerostat balloon which is to be deployed from ground level to 15,000 feet mean sea level (MSL). The descriptions of Restricted Areas R-2307 and R-2308A are amended slightly to accommodate the establishment of R-2309. Part 71 is also amended to reflect R-2309 in the Continental Control Area.

EFFECTIVE DATE: u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 21, 1988, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Area R-2309 (53 FR 9124). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The Aircraft Owners and Pilots Association recommended, however, that R-2309 be depicted on aeronautical charts prior to balloon deployment and that the tether line be marked with strobe lights. The area will be depicted on aeronautical charts concurrent with balloon deployment. Since the balloon is to be contained within a restricted area, strobe lights are not required under Section 101.11. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish Restricted Area R-2309 near Yuma, AZ, to provide airspace to contain a tethered aerostat balloon operated by the U.S. Customs Service. The aerostat system provides radar surveillance for the detection of low altitude aircraft attempting to penetrate the area. The establishment of R-2309 also requires minor amendments to the descriptions of Restricted Areas R-2307 and R-2308A. In addition, the Continental Control Area is amended to include R-2309.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air naviation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas and continental control area.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. §71.151 is amended as follows:

R-2309 Yuma, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. § 73.23 is amended as follows:

R-2309 Yuma, AZ [New]

Boundaries. A circular area 1½ nautical miles in a radius centered at lat. 33°00'58" N., long. 114°14'31" W.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. United States Customs Service.

R-2307 Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309"

R-2308A Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309"

Issued in Washington, DC, on August 26, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-20111 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Correction

August 30, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; technical correction notice.

SUMMARY: The Federal Energy Regulatory Commission, on June 1, 1988, issued a final rule (Order No. 497) in Docket No. RM87-5-000, 53 FR 22,139 (June 14, 1988). The rule established standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation service. This notice makes technical corrections to the FERC Form No. 592 that was attached to the issued copy of the final rule.

EFFECTIVE DATE: August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, DC 20426, (202) 357-8844.

SUPPLEMENTARY INFORMATION: In addition to publishing this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document and the complete text of revised FERC Form No. 592 during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE. Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a moden by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice and the complete text of revised Form 592 will be available on CIPS for 10 days from the date of issuance.

The following technical corrections have been made to FERC Form No. 592.

1. The introductory paragraph in Section IV "When to Submit" has been revised to be consistent with § 250.16(d)(1) of the regulations promulgated in Order No. 497. The new paragraph reads as follows:

The information required to be filed as tariff provisions and the data relating to affiliate transportation requests for which transportation has commenced thirty (30) days or more previously, which have been denied, or which have been pending more than six months, must be filed initially with the Commission by September 12, 1988. Thereafter, data other than transportation request log data must be filed quarterly until December 31, 1989, if any changes occur.

2. A filing schedule by Schedule/Record ID has been inserted as the last paragraph in Section IV "When to Submit". The schedule is as follows:

Schedule/ Record ID	When to file
X1/01	With each filing.
X1/02	Each month when changes occur in the transportation request log during the previous month. Report only new transactions and transactions from previous filings in which changes have occurred.
X1/03	If the Node ID (character position 26) is 1 or 2, when transportation request is initially reported in Schedule X1, Record 02. Previously filed information is updated monthly.
	If the Node ID (character position 26) is 3, within 15 days after the close of any billing period during which any transportation rate or reservation fee was discounted.
X1/04	Within 15 days after the close of any billing period during which any transportation rate or reservation fee was discounted.
X1/05	With initial filing and quarterly when changes occur.
X1/06	With each filing as required.

3. A new General Instruction 2(B) has been added to state that "NA" should be entered wherever a character item is inapplicable. The other instructions have been relettered accordingly.

4. Previous General Instruction 2(D) has been revised to be consistent with Record 04, *i.e.*, all rates and/or reservation fees should be reported in cents per MMbtu as fixed decimal numbers, format f(10,2).

5. A new General Instruction 7(D) has been added to specify the state code to be used in the form.

6. Schedule X1, Record 02 has been modified as follows:

a. The record heading has been changed from "The Transportation Service Data Record" to "The Transportation Request Record."

b. The character positions for Items 7 and 8, "Position in Queue" and "Total Number of Requests in Queue", have been revised to allow five digits for each entry.

Item 7 will now occupy character positions 28-32 and Item 8 will occupy positions 33-37. Character Positions for items in the remainder of the record have been revised accordingly.

c. The character positions for Item 32, "Area Code" (for the producing area), and Item 33, "Ultimate End User Location" (FIPS state code), have been expanded to allow up to ten entries for each item. If more than ten codes are required for either item, use a footnote. Character positions 176-195 contain the producing area codes and positions 196-215 contain the end user location codes.

7. Schedule XI, Record 03 has been modified as follows:

a. The record heading has been changed from "The Receipt/Delivery Point Request/Contract Record" to "The Receipt/Delivery Point Record."

b. The items formerly numbered 35 thru 37 and 39 thru 41, *i.e.*,—"Maximum Deliverability at Receipt Point", "Maximum Contract Rate at Receipt Point", "Minimum Contract Rate at Receipt Point", "Maximum Deliverability at Delivery Point", "Maximum Contract Rate at Delivery Point", and "Minimum Contract Rate at Delivery Point", have been deleted since they were not included as reporting requirements in the regulatory text of Order No. 497.

c. The method for reporting receipt and delivery points has been revised to collect a list of receipt points and a list of delivery points associated with a specific transportation request as opposed to specific paths of receipt/delivery points. Record 03 is filed with Record 02 to list requested receipt and delivery points.

8. Schedule X1, Record 04 has been modified as follows:

a. The record heading has been changed from "The Receipt/Delivery Point Operational Data Record" to "The Delivery Point Operational Data Record."

b. Data element No. 34 "Receipt Point ID" has been deleted (*see* IV(c), *supra*). The character positions for items in the remainder of the record have been revised accordingly.

8. Data items have been renumbered in FERC Form No. 592 and the General Instructions have been modified to be consistent with certain provisions of Order No. 493-A, *e.g.*, acceptability of filing on 18-track magnetic tape cartridge, and the formatting of data filed on diskette exactly as specified for magnetic tape filings.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20157 Filed 9-2-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 82F-0161]

Indirect Food Additives; Adhesives and Components of Coatings; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting an error in § 175.300(b)(3)(xxxiii) (21 CFR 175.300(b)(3)(xxxiii)) that was inadvertently introduced into that regulation in 1984. At that time, FDA amended the food additive regulations to provide for the safe use of castor oil, sulfated, sodium salt as a miscellaneous material in resinous and polymeric coatings for food-contact use (49 FR 13138; April 3, 1984). The CAS Reg. No.

for sulfated castor oil was inadvertently listed in the regulation rather than the CAS Reg. No. for castor oil, sulfated, sodium salt. This document corrects that error.

DATES: Effective September 6, 1988; written objections by October 6, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 3, 1984 (49 FR 13138), FDA published a final rule which amended 21 CFR 175.300(b)(3)(xxxiii) by listing the use of castor oil, sulfated, sodium salt as a miscellaneous material in resinous and polymeric coatings for food-contact use. However, the regulation inadvertently listed the CAS Reg. No. for sulfated castor oil instead of the CAS Reg. No. for castor oil, sulfated, sodium salt. The agency is, therefore, amending 21 CFR 175.300(b)(3)(xxxiii) to correct the "CAS Reg. No. 8002-33-3" given for "Castor oil, sulfated, sodium salt" to read "CAS Reg. No 68187-76-8."

Any person who will be adversely affected by this regulation may at any time or before October 6, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES; ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 175.300 [Amended]

2. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(xxxiii) in the entry for the miscellaneous material, "Castor oil, sulfated, sodium salt" by revising "(CAS Reg. No. 8002-33-3)" to read "(CAS Reg. No. 68187-76-8)".

Dated: August 26, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-20140 Filed 9-2-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 234, 235, and 240

[Docket No. R-88-1410, FR-2434]

Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule will permit a change in present HUD practice concerning the use of mortgage forms in HUD single family mortgage insurance programs. Under this change, HUD will no longer be required to approve complete mortgage forms for use in each jurisdiction. Instead, HUD may require each mortgage to use HUD-approved uniform language reflecting current HUD policies, along with language required by particular jurisdictions or programs, in mortgages which must be enforceable in the jurisdiction where the property is located. The effect of this rule will be to permit local jurisdictions more freely to incorporate standard local requirements into mortgage forms used for HUD-insured mortgages.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, (202) 755-3046 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Current HUD/FHA regulations require an insured single family mortgage to be on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated. This requirement dates from the 1930's when the FHA was in the forefront of developing modern residential lending practices. The FHA developed mortgage and note forms for each state which ensured that mortgagees would use instruments compatible with program requirements and good mortgage banking practices. The forms also reflected local law and practice, and there was some uniformity among the forms. The FHA mortgage and note forms have been produced and distributed up to the present at no cost to the mortgagees.

Later, the Veterans Administration (VA) developed its separate note and mortgage forms for use with VA programs. Use of approved forms was optional. VA made the forms available to its program participants. Recently, the Va concluded that it was no longer necessary for that agency to provide mortgage forms for each jurisdiction. This conclusion was based on the fact that VA regulations specify certain required and prohibited mortgage provisions. The VA regulations also provide that mortgage instruments for any VA guaranteed or insured mortgage

are "amended and supplemented" to conform to the regulations.

In the early 1970's, the Federal National Mortgage Association/Federal Home Loan Mortgage Corporation (FNMA/FHLMC) forms were developed for use with those entities' programs. The FNMA/FHLMC forms consist in large part of so-called "uniform covenants" which reflect the increasingly national nature of mortgage lending with so-called "non-uniform covenants" reflecting the law and practice in a particular state. The forms carry out specific policies of those organizations on such matters as due-on-sale clauses, but they generally represent a consensus of views on the kind of provisions to be included in a modern well-drafted mortgage. There are major similarities in approach between the FNMA/FHLMC "uniform covenants" and the corresponding provisions in a representative FHA mortgage. The FNMA/FHLMC documents indicate the feasibility of a national approach to most common mortgage provisions. While FNMA/FHLMC prescribe the specific language and format for documents, they do not distribute documents free of charge but rely on the mortgage banking community to arrange for actual production of the documents.

HUD has examined the approaches of FNMA/FHLMC and VA, and has found merit in portions of their approaches. None of these organizations find it necessary to control the printing and distribution of mortgage instruments. HUD has also permitted mortgagees and forms companies to engage in private printing and distribution although many mortgagees have preferred to obtain the forms from HUD free of charge. After careful study, HUD was attracted to the concept of a uniform approach for provisions which need not vary by locality. In addition, HUD was attracted to the approach of having the mortgagees print their own forms.

Thus, HUD is changing the regulations to permit a new approach for its single-family mortgage insurance programs which preserves the advantages of the FNMA/FHLMC and VA approaches and avoids some of their drawbacks. The new approach is described in detail in a Notice of Proposed Policy published at 53 FR 25434, July 6, 1988. If HUD adopts the new approach, the Department would not print or distribute mortgage forms, and would not approve complete mortgage forms for each jurisdiction. Instead, HUD would require each mortgagee to use HUD-approved "uniform covenants" which reflect current HUD policies.

This final rule permits HUD to continue indefinitely with its current approach to mortgage forms. However, the Department currently expects that after the rule takes effect, the Department will issue a final notice, based on the Notice of Proposed Policy and any public comment, which adopts the new approach and ends HUD production of single family mortgage forms. This rule is being published in advance of the final notice so that the rule can take effect during 1988 in accordance with procedural requirements of section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)). (See discussion under "Effective Date.")

This final rule amends § 203.17 by including a definition of the term "mortgage" in subsection (a)(1) which is based on a portion of the statutory definition in section 201(a) of the National Housing Act. (The remainder of the definition, concerning the requirement for fee simple title or a leasehold meeting certain requirements, already appears at § 203.37.) Subsection (a)(2) of the section provides that the mortgage shall be in a form meeting the requirements of the Federal Housing Commissioner. The subsection permits the Commissioner to prescribe a complete mortgage form. For each case in which the Commissioner does not prescribe a complete form, subsection (a)(2) specifically authorizes the Commissioner to prescribe uniform covenants for mortgage forms, as well as other language or the substance of language necessary for non-uniform covenants for use in particular jurisdictions or for certain mortgage insurance programs. In addition, subsection (a)(2) provides that the mortgage shall contain any additional provisions necessary for the mortgage to be a valid and enforceable secured debt under the laws of the relevant jurisdiction. Provisions concerning property standards and disbursement of funds contained in the existing § 203.17(a) have been moved into new paragraphs (e) and (f), since they cover subjects distinct from the required form of the mortgage.

Similar amendments based on the amendments to § 203.17 have been made to §§ 213.507, 220,101, 221.5, 234.25, 235.22 and 240.16.

Because the term "mortgage" is now defined at § 203.17(a)(1), § 203.251(d) has been amended to reference the new subsection as containing the definition of the term "mortgage."

Conforming amendments have been made to §§ 200.163, 203.43c, 203.43h, 203.43i, 203.44, 204.251, 213.501, 213.530, 234.1, and 234.70.

The Department is also deleting an obsolete requirement that a mortgage on a condominium unit must incorporate a regulatory agreement. This requirement appears in §§ 221.60(l)(5), 221.65(k), 222.10(d) and 235.20(e), and is related to provisions in §§ 221.60(l)(3), 221.65(i), 222.10(c) and 235.20(d) which permit HUD to require a regulatory agreement applicable to a condominium association and its members. These provisions correspond to former requirements of the Department's principal mortgage insurance program for condominium units under Part 234.

Prior to amendment on September 8, 1987, 52 FR 33807, § 234.26(e) specifically authorized the Secretary to require a regulatory agreement in a provision similar to §§ 221.60(l)(3), 221.65(i), 222.10(c) and 235.20(d). All specific reference to a regulatory agreement has now been deleted from Subpart A of Part 234, and the Department does not require a regulatory agreement as a condition of mortgage insurance for condominium units under Part 234. Although Part 234 did not contain an equivalent of §§ 221.60(l)(5), 221.65(k), 222.10(d) or 235.20(e), an equivalent provision appeared in the handbook for the § 234 program (HUD Handbook 4265.1, paragraph 4–2). The handbook provision is not enforced because regulatory agreements are no longer required, as reflected in the recent amendment of Part 234.

Regulatory agreements are also no longer required for condominium units under Part 221, 222 and 235. There is therefore no purpose to the requirements in §§ 221.60(l)(5), 221.65(k), 222.10(d) and 235.20(e) that mortgages refer to regulatory agreements and the Department is deleting the provisions.

Procedural Requirements: This rule permits a revision of HUD's internal practices and procedures for prescribing the contents of mortgage forms to be used for its single family mortgage insurance programs. This revision by itself will not have any effect on the substantive rights of the mortgagor or mortgagee, because the substantive content of the mortgage is not determined by its manner of production. HUD will continue to prescribe the substance of each mortgage. Whether or not HUD approves complete mortgage forms, it will still prescribe much of the actual language to be used in forms. A mortgage produced by a mortgagee under this rule would differ in form from the current approved form for the jurisdiction (including any supplementary instructions for form

modifications contained in current handbook and mortgagee letters). However, the important substantive obligations of mortgagor and mortgagee would not change.

In the past, HUD has used its prescribed mortgage forms as a means for ensuring compliance with validly adopted substantive requirements, not as an independent means for imposing substantive requirements on mortgagors or mortgagees. In the future, HUD will apply its mortgage forms procedure in the same manner. Because there is significant variation in language among current HUD-approved mortgage forms for different jurisdictions, a change to uniform covenants for most substantive matters necessarily would result in some language change from the current HUD mortgage in each jurisdiction. We do not view these changes as substantive changes in policy. However, HUD has invited public comment on proposed new mortgage language through the Notice of Proposed Policy previously mentioned, to ensure that any mortgage language changes which might be adopted after this rule is effective have been thoroughly reviewed. Changes will not be put into effect until any public comments have been thoroughly considered.

The deletion of certain current rule provisions requiring a mortgage to incorporate a condominium regulatory agreement will remove provisions which are obsolete and not currently enforced, and conform the various miscellaneous references to condominiums in other parts to the principal condominium regulations in Part 234.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after the effectiveness of the action. However, because of the lack of substantive effect of this rule alone, and the notice and comment period already provided with the Notice of Proposed Policy, the Secretary has determined that separate advance notice and public comment procedures for this rule are unnecessary.

This rule would not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic export markets.

This rule is exempt from the requirements of the National Environmental Policy Act under 24 CFR 50.20(k).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 [53 FR 13854] pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The mortgage insurance programs listed in the Catalog of Federal Domestic Assistance under the following numbers are covered by this rule: 14.105, 14.108, 14.113, 14.117, 14.118, 14.120, 14.122, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.130, 14.132, 14.133, 14.134, 14.135, 14.137, 14.138, 14.139, 14.151, 14.166.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and Community development, Mortgage insurance, Organization and functions (government agencies), Reporting and recordkeeping requirements, Minimum property standards, and Incorporation by reference.

24 CFR Part 203

Home improvement, Loan programs, Housing and community development, Mortgage insurance, Reporting and recordkeeping, Urban renewal.

24 CFR Part 204

Mortgage Insurance.

24 CFR Part 213

Mortgage Insurance, Cooperatives.

24 CFR Part 220

Home improvements, Loan programs—Housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Cooperatives, Grant programs—Housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 240

Mortgage insurance, Fee title purchase.

Accordingly, HUD is amending 24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 234, 235 and 240 as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 continues to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701–1715z—18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 200.163 is amended by revising paragraphs (b)(5)(iii) and (d)(1) to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(b) * * *

(5) * * *

(iii) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary.

* * * * *

(d) * * *

(1) That the mortgage is executed on a form which meets the requirements of the Secretary.

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

3. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

4. Section 203.17 is amended by revising paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 203.17 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part, except § 203.43c, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located, and may

refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

(2)(i) The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner (A) shall require specific language in the mortgage which shall be uniform for every mortgage, and (B) may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. (ii) Each mortgage shall also contian any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

* * * * *

(e) *Property Standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

5. Paragraphs (b) introductory text and (b)(1) of § 203.43c are revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(b) As used in connection with the insurance of mortgages under this section and § 203.437 of this part: (1) The term "mortgage" shall mean a first lien given to secure a loan made to finance the unpaid purchase price of a Corporate Certificate together with the applicable Occupancy Certificate of a cooperative ownership housing corporation in which the permanent occupancy of the dwelling units is restricted to members of such corporation, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

* * * * *

6. Paragraph (c) of § 203.43h is revised to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

(c) *Approval of lease and mortgage.* The lease must be on a form prescribed by HUD.

The mortgage must be on a form which meets the requirements of § 203.17(a)(2). Before HUD will insure any mortgage under this section, the mortgagee must demonstrate that the Bureau of Indian Affairs, U.S. Department of Interior, has approved both the lease and mortgage.

* * * * *

7. The last sentence in paragraph (b) of § 203.43i is revised to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(b) * * * The first lien requirement contained in § 203.17 also does not apply to mortgages insured pursuant to section 247 of the National Housing Act.

* * * * *

8. The first sentence of paragraph (h) of § 203.44 is revised to read as follows:

§ 203.44 Eligibility of open-end advances.

* * * * *

(h) A mortgagee may amend or modify any mortgage meeting the requirements of § 203.17(a)(2) by adding such provisions as it deems necessary for the purposes of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. * * *

9. Paragraph (d) of § 203.251 is revised to read as follows:

§ 203.251 Definitions.

* * * * *

(d) "Mortgage" is defined at § 203.17(a)(1).

* * * * *

PART 204—COINSURANCE

10. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 244 and 211, National Housing Act (12 U.S.C. 1715z–9 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Paragraph (d) of § 204.251 is revised to read as follows:

§ 204.251 Definitions.

* * * * *

(d) "Mortgage" is defined at § 203.17(a)(1) of this chapter.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

12. The authority citation for Part 213 continues to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Paragraph (b) of § 213.501 is amended by adding the following sentence to the end of that paragraph:

§ 213.501 Definitions.

* * * * *

(b) * * *

The term "mortgage" is further defined at § 203.17(a)(1) of this chapter.

* * * * *

14. Section 213.507 is revised to read as follows:

§ 213.507 Form, lien.

(a) *Mortgage form.* The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located. The mortgage shall be executed by a mortgagor who meets the qualifications set forth in this part.

(b) *Property standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(c) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

15. The first sentence of paragraph (h) of § 213.530 is revised to read as follows:

§ 213.530 Eligibility of open end advances.

* * * * *

(h) A mortgagee may amend or modify any mortgage meeting the requirements

of § 213.507(a) of this chapter by adding such provisions as it deems necessary for the purposes of making open end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

16. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

17. In § 220.101, paragraph (a) is revised and a new paragraph (d) is added to read as follows:

§ 220.101 Mortgage provisions.

(a) The lender shall present for insurance a note and security instrument in a form meeting the requirements of the Commissioner. The Commissioner may prescribe a complete note and security instrument. For each case in which the Commissioner does not prescribe a complete note and security instrument, the Commissioner shall require specific language in the note and security instrument which shall be uniform for every note and security instrument, and may also describe the language or substance of additional provisions for all notes and security instruments as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each note and security instrument shall also contain any additional provisions necessary to create a valid and enforceable secure debt under the laws of the jurisdiction in which the property is located.

* * * * *

(d) Prior to endorsement, the entire principal amount of the loan shall have been disbursed to the borrower or to his or her creditors for his or her account and with his or her consent.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

18. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l) sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. Section 221.5 is revised to read as follows:

§ 221.5 Mortgage form.

(a) The term "mortgage" as used in this Subpart A has the same meaning as in § 203.17(a)(1) of this chapter.

(b) The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, shall require specific language in the mortgage which shall be uniform for every mortgage, and may also describe the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(c) The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

20. In section 221.60, paragraph (l)(5) is revised to read as follows;

§ 221.60 Eligibility requirements for low income homeowners.

* * * * *

(l) * * *

(5) *Mortgage covenant concerning common expenses and assessments.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

21. In section 221.65, paragraph (k) is revised to read as follows:

§ 221.65 Eligibility requirements for low and moderate income purchaser of family unit in condominium.

* * * * *

(k) *Payment of common expenses.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

* * * * *

22. The authority citation for Part 222 continues to read as follows:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

23. In Section 222.10, paragraph (d) is revised to read as follows:

§ 222.10 Requirements for family unit in condominium.

* * * * *

(d) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

24. The authority citation for Part 234 is revised to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

25. Paragraph (d) of § 234.1 is revised to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(d) "Mortgage" means a first lien covering a fee interest or eligible leasehold interest, in a one-family unit in a multifamily project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

* * * * *

26. Section 234.25 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) as follows:

§ 234.25 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in a particular jurisdiction or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and

enforceable secured debt under the laws of the jurisdiction in which the property is located.

* * * * *

(d) *Property standards.* The mortgage must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(e) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

27. The first sentence of paragraph (h) of § 234.70 is revised to read as follows:

§ 234.70 Eligibility of open-end advances.

* * * * *

(h) A mortgagee may amend or modify any mortgage form meeting the requirements of § 234.25(a) by adding such provisions as it deems necessary for the purposes of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

28. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. Section 235.20 is amended by revising paragraph (e) to read as follows:

§ 235.20 Requirements for family unit in condominium.

* * * * *

(e) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership.

* * * * *

30. Section 235.22 is amended by revising paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 235.22 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part has the same meaning as defined in either § 203.17(a)(1) of this chapter, § 203.43c(b)(1) of this chapter, or § 234.1(d) of this chapter, as applicable, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trusts," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) The mortgage shall be in a form meeting the requirements of the Commissioner. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

* * * * *

(e) *Property standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

31. The authority citation for Part 240 continues to read as follows:

Authority: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

32. Paragraph (a) of § 240.16 is revised and new paragraphs (d) and (e) are added to read as follows:

§ 240.16 Mortgage provisions.

(a) *Mortgage form.* (1) The term "mortgage" as used in this part means a lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed" or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) The mortgage shall be in a form meeting the requirements of the Commissioner. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

* * * * *

(d) *Lien status.* The mortgage shall be a first lien upon the fee simple title and a first or second lien upon the leasehold.

(e) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his or her creditors for his or her account and with his or her consent.

Dated: July 27, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 88-20066 Filed 9-2-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8217]

Certain Cash or Deferred Arrangements Under Employee Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the **Federal Register** publication on Monday, August 8, 1988, beginning at 53 FR 29658 of the final regulations which were the subject of Treasury Decision 8217. T.D. 8217 relates to certain cash or deferred arrangements under employee plans.

DATES: These provisions are effective for plan years which begin after December 31, 1979.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee Benefits and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-377-9372) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, final regulations relating to certain cash or deferred arrangements under employee plans were published in the **Federal Register** (53 FR 29658). The amendments were made to conform to changes in the applicable tax law made by the Revenue Act of 1978.

Need for Correction

As published, the final regulations contain typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the Treasury Decision (T.D. 8217), which was the subject of FR Doc. 88-17720 (53 FR 29658), is corrected as follows:

Paragraph 1. On page 29668, column 2, § 1.401(k)-1 (d)(2)(ii)(B)(*2*), which reads, "(*2*) Purchase (excluding mortgage payments) of a principal residence of the employee; or" is removed and the language "(*2*) Purchase (excluding mortgage payments) of a principal residence for the employee; or" is added in its place.

Paragraph 2. On page 29673, column 1, § 1.401(k)-1 (h)(3)(ii), the third line of (ii), which reads, "pre-ERISA money purchase plan, plan" is removed and the language "pre-ERISA money purchase pension plan, plan" is added in its place.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-20148 Filed 9-2-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt No. 14]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Per Diem Based Payment Method for Mental Health Services in Psychiatric Hospitals and Units

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the comprehensive CHAMPUS regulation, 32 CFR Part 199 (DoD 6010.8-R) to establish a new method of paying for mental health care in psychiatric hospitals and units. Rather than continuing to pay billed charges the new method pays each hospital a prospectively determined rate for each day of hospital care provided. For hospitals with sufficient CHAMPUS caseload, the rates will be based on each hospital's own charges to CHAMPUS. For hospitals with CHAMPUS caseloads too low to determine statistically valid hospital-specific rates, the rates will be based on average CHAMPUS charges in the region. Rates are revenue neutral for fiscal year 1988 with respect to CHAMPUS payments to psychiatric hospitals.

EFFECTIVE DATE: This final rule is effective for all inpatient hospital admissions in psychiatric hospitals and exempt units occurring on or after January 1, 1989.

ADDRESSES: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

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SUPPLEMENTARY INFORMATION:

I. Synopsis

Beginning last October, CHAMPUS stopped purchasing most hospital care on the basis of paying whatever was billed. At that time, most CHAMPUS medical and surgical hospital care began to be paid on a prospective basis under a DRG system. This action was taken to begin some prudent restraint of CHAMPUS' staggering cost growth by adopting a payment system that creates incentives for cost-effectiveness. This DRG system is being further expanded for fiscal year 1989. Mental health services in psychiatric specialty hospitals and units, however, are widely viewed as not amenable to a DRG method of payment and therefore has not been included in the DRG system.

Thus, these mental health services remain one of the last surviving remnants of billed charges purchasing by CHAMPUS. The result is a continuing acute need to begin to pay for mental health services in specialty hospitals in a more cost-effective manner. Under the current retrospective charge-based approach, CHAMPUS costs for mental health care have been skyrocketing, rising 30 percent in 1987 alone.

This final rule establishes a payment method for mental health hospital services in psychiatric hospitals and units that creates incentives for efficiency, assures fair payment to providers and begins needed restraint of CHAMPUS cost growth.

As background, in an effort to find a better payment system, DoD arranged for the RAND Corporation to examine the feasibility of a per diem payment system. This June, DoD published for comment a proposed rule, based on the RAND analysis, to begin paying psychiatric hospitals and units on a per diem basis.

The proposed rule stimulated comments, meetings, and Congressional action that have culminated in a revised per diem approach that will be equitable for providers, contain costs for CHAMPUS, and maintain access for beneficiaries.

Among the major features of the per diem system established by this final rule is that a hospital will receive a per diem payment based on its own average daily charges to CHAMPUS. This will assure recognition by CHAMPUS of the particular circumstances that individual hospitals experience, such as patients, treatment methods, and the like. A hospital that serves too few CHAMPUS patients for a statistically valid hospital-specific rate to be determined will be paid a rate based on the average daily CHAMPUS charges of hospitals in the same geographic region. Recognition of individual hospital and regional differences in treatments and costs is responsive to the primary thrust of comments and recommendations from providers.

Another key feature is that this system begins approximately revenue neutral for providers. Except for the very highest charges, beginning this January, each hospital-specific per diem payment will be virtually the same amount as the hospital's full allowable average daily charges have been this fiscal year. Other hospitals' payment rates will on average reflect area wage levels and teaching costs and on average will equal current charges in the region.

An important feature for CHAMPUS is that future increases in the per diem rates will be limited to those which Congress prescribes for these hospitals under Medicare. Instead of paying any increase hospitals may charge, CHAMPUS will pay reasonable increases tied to inflation.

These restrained increases will also aid CHAMPUS beneficiaries who will see increases in their cost-shares also

restrained. At the same time, the modest nature of this change will insure that hospitals continue to serve CHAMPUS beneficiaries and continue to provide the same level of quality care.

In summary, CHAMPUS can no longer afford to continue paying psychiatric hospitals and units whatever they charge. At the direction of Congress, CHAMPUS is implementing a prospective per diem payment system for these facilities. Effective January 1, 1989, this new payment system begins approximately revenue neutral for the providers, recognizes hospital-specific differences for many hospitals and geographic differences for the others, and introduces constraints on future cost growth. It is vitally needed, reasonable, and equitable.

II. Background

A. Need for Rule

Last year CHAMPUS began paying for most inpatient hospital care on a prospective basis according to diagnosis-related groups (DRGs). This year, in a separate rule, CHAMPUS is incorporating most other care and hospitals into the DRG system. The DRG system, however, has been found to be an inappropriate method of payment for mental health services. As a result, psychiatric hospitals and units will continue to be exempt from the DRG system and will be paid according to a new method established here.

The need for a new payment method is reflected in CHAMPUS spending patterns. During the past few years, about 20 percent of total CHAMPUS medical benefit expenditures has been for mental health related care and these costs have been skyrocketing. A large part of the skyrocketing costs has been in the inpatient setting where days of care and cost per day have both been registering large increases. The new payment method addresses one of those cost growth dimensions, cost per day, which grew over 17 percent in the past year.

B. Proposed Rule

In order to find a cost-effective, equitable method of paying for mental health hospital care on a prospective basis, instead of continuing on a costly retrospective charge basis, DoD contracted with the RAND Corporation. RAND studied CHAMPUS claims for mental health care and found that the data suggested a per diem reimbursement system with a higher payment for the first day and a lower one for subsequent days. RAND found no significant difference in the per diem by age, by DRG, or by length of stay.

On June 3, 1988, DoD published a proposed rule based on the RAND analysis. That notice proposed a system in which all mental health inpatient hospital care would be paid on prospectively-determined national per diem amounts. A different per diem amount would be established for specialty hospitals and units and for non-specialty hospitals and units and the first day of care would be paid at a higher rate than subsequent days. The per diem amounts would be calculated to be revenue neutral in the January 1986 through June 1987 base period.

C. Congressional Action

In June 1988, the House Appropriations Committee reported that it "strongly supports" the efforts of DoD to develop a prospective payment system for mental health "due to the extremely high cost of mental health care benefits paid under CHAMPUS." The Committee further directed DoD "to proceed with its proposal on a mental health care prospective health care system". (See House Report No. 100-681, 100th Congress, 2nd Session, page 34.) This proposal was the per diem system published in the June 3, 1988 **Federal Register**.

The Senate Appropriations Committee Report on the Department of Defense Appropriations Bill concurred with the House on the need for improvement and suggested revisions to the proposed rule. The Report said:

> The Committee concurs with the House Committee on Appropriations that reform of the CHAMPUS payment system for mental health hospital care is appropriate. The Committee is concerned, however, that a national average per diem approach may not recognize differences among psychiatric hospitals in the types of programs they provide. The Committee would be supportive of hospital-specific payments as part of the reimbursement system, and, therefore, encourages DOD to include in its revised payment method some recognition of hospital-specific average charges while at the same time providing incentives to promote efficiency and constrain costs.
>
> The Committee reiterates that specific attention should be addressed to additional fee adjustment criteria, including regional/geographical cost factors, and the needs of facilities with CHAMPUS mental health care inpatient admissions markedly higher than the national average.
>
> The Assistant Secretary of Defense (Health Affairs) should report to the Committees on Appropriations how the Department has addressed these concerns in their rulemaking. (Senate Report No. 100-402, 100th Congress, 2nd Session, page 52.)

This final rule reflects this Congressional direction.

D. Number and Types of Public Comment

We received a total of 24 individual written comments addressing a variety of issues. The types and volume of commenters were as follows:

Hospital Associations	7
Medical Associations	2
Hospitals	14
Physicians	1

Below we summarize each of the major provisions of the rule and provide an analysis of the comments we received and our responses. We also provide an analysis of a number of general comments that relate to the process employed in the development of the rule and not to any specific provisions of the rule itself.

III. General Description of the CHAMPUS Per Diem Payment System for Psychiatric Hospitals and Units

A. Hospital-Specific Rates (Section 199.14(a)(2)(ii))

In a revision to the proposed rule responsive to many comments received, psychiatric hospitals and units with sufficient CHAMPUS volume to permit a valid calculation will be paid on the basis of hospital-specific per diem rates, subject to a cap of the 80th percentile of charges for this group. These rates will be based on all paid CHAMPUS claims in each of these hospitals for the period July 1, 1987 to May 31, 1988, trended forward to represent fiscal year 1988. By adopting a focus on hospital-specific rates, the final rule reflects agreement with concerns expressed by commenters that national rates inadequately recognize varied circumstances at the individual hospital level.

However, the final rule does preserve one aspect of the proposed rule's reference to national norms by not fully recognizing the very highest charges of individual hospitals. This is done under an approach consistent with that which CHAMPUS uses for professional fees. Congress established a cap on the level at which CHAMPUS pays professional providers. This cap is at the 80th percentile of all charges for each particular service. We are using a comparable approach here and capping the hospital-specific rates at the 80th percentile of average daily charges for all mental health and substance abuse discharges from these hospitals. The base period cap is currently calculated to be $629. This cap preserves one of the desirable attributes of the proposed rule's reference to nationally prevailing payment rates. Although we now conclude that the proposed rule's use of national average payment amounts

overemphasized conformity to national payment norms, preservation of a national cap targeted to a few providers that most deviate from prevailing norms holds onto a desirable feature, while mostly recognizing individual hospital variations.

Psychiatric hospitals and units with very low CHAMPUS volume (less than 25 discharges in a year) will be paid on the basis of regional specific per diem rates, based on all paid CHAMPUS claims from each region for the period July 1, 1987 to May 31, 1988 trended forward to represent fiscal year 1988. These regional rates beginning January 1 are listed in the attached table 1. They range from $332 to $475, with almost all being over $400. Use of regional rates, rather than a national rate is another significant revision responsive to a number of comments received.

Comment—Referring to the proposed rule's use of national per diems, a number of commenters indicated that a national per diem fails to recognize cost variations in the types of patients treated (different ages and severity of illness) and the type of treatment programs used.

Many commenters referenced the research sponsored by the psychiatric hospital industry (Schumacher, D., et al. "Prospective Payment for Psychiatry: Feasibility and Impact." *New England Journal of Medicine*, Vol. 315, No. 21, 331–1336, Nov. 20, 1986) that concluded that DRGs do not adequately predict length of stay or costs in psychiatric hospitals and, further, that individual institutions could substantially gain or lose under a system of average per diem reimbursement that was not adjusted for the institution's actual costs. Commenters also cited research sponsored by the Department of Health and Human Services (DHHS) with similar findings.

Response: We have changed our approach and will recognize individual hospital differences in patients treated and in programs provided. We will pay each higher volume hospital a per diem rate based on its own charges for CHAMPUS patients in a base period. Hospitals with annual CHAMPUS volume too low to support a statistically accurate calculation of a hospital-specific rate will be paid a regional-specific per diem rate until its annual volume reaches an adequate level. Regional-specific rates for these lower volume providers is consistent with Senate Appropriations Committee direction.

The research cited in the comments regarding the inadequacy of DRGs as a classification system of mental illness related to psychiatric hospitals and units. We did not propose nor are we promulgating a DRG system for these hospitals.

Some of the findings of the DHHS-sponsored research cited by the commenters focused on the need to recognize differences between specialty providers and non-specialty providers in the delivery of psychiatric care. The regional-specific rates are for lower volume specialty providers only. Non-specialty providers will be handled differently as specified in another final rule.

Comment—The national average per diem system fails to give hospitals a sufficient amount of time to adjust to a new payment system by phasing into national rates as Medicare did.

Response—As noted above, we will not be using a national system. We are paying hospital-specific rates for hospitals with sufficient CHAMPUS volume. For hospitals with lower volume, we are paying regional rates. Part of the Medicare phase-in included regional rates.

Comment—Revenue neutrality in fiscal year 1989 will not be maintained for hospitals with the highest 1986–87 per diem charges.

Response—In the proposed rule, revenue neutrality was maintained for hospitals as a whole in the base period, January 1986–June 1987. This final rule moves the date of the approximate revenue neutrality calculation forward and changes the parameters of the calculation in favor of individual hospitals. Hospital specific rates will be calculated on the basis of the individual hospital's own CHAMPUS allowed charges in the July 1, 1987 to May 30, 1988 period, trended forward to represent fiscal year 1988 by the hospital market basket. Only the very highest charges (those above the 80th percentile) will not be recognized. The same later base period is also used for the regional-specific rates and no cap pertains. The per diem rates will not recognize, however, any charge increases for fiscal year 1989.

It should be noted that the rule contains a special provision which gives hospitals the opportunity to correct any errors in the rate calculations. (See § 199.14(a)(2)(ii)(C))

Comment—The per diem payment levels could be too low and jeopardize access to mental health services for CHAMPUS beneficiaries.

Response—As we described above, most hospitals serving higher volumes of CHAMPUS beneficiaries will be paid their own average charges in 1988. For hospitals serving fewer than 25 CHAMPUS patients in a year, their overall revenues should not be affected enough by CHAMPUS to impact access. Further, unlike hospitals in the CHAMPUS DRG system, psychiatric hospitals will not have their charges lowered to reflect costs. Thus, this system, based on *charges*, pays more than adequate amounts to assure full access to care.

Comment—With respect to the provision in the proposed rule calling for a higher amount for the first day of care than for all subsequent days, some commenters said the methodology used in determining the marginal costs for the first day and subsequent days was questionable.

Response—In the final rule, hospitals will be paid the same per diem rate for the first day of care and each subsequent day of covered care. Data are not available to determine the *cost* of providing care for each specific day of care. For the proposed rule we used average daily charges for each length of stay as a proxy for costs of each particular day of care. By paying a higher rate for the first day of care, we did not believe we were penalizing any cases and at the same time we believed we would be recognizing all the costs of short stays. However, in view of industry comments and because the full cost-accounting necessary for precise differentiation of rates for each day of care is not available, all days of care will be paid like amounts.

B. Regional Rates (Section 199.14(a)(2)(iii))

In further recognition of comments that criticized the proposed national rates, the final rule uses regional rates to pay hospitals that do not have enough CHAMPUS discharges upon which to base a valid hospital-specific rate. Regional rates take into account varying circumstances not recognized under national rates.

Regional per diem rates will be adjusted according to the appropriate area wage index and indirect medical education adjustment. Direct medical education costs will be reimbursed on a pass-through basis, but capital and bad debt costs will be included in the per diem rates. These adjustments were proposed to be used in connection with the national rates of the proposed rule.

Comment—A number of commenters indicated that there is significant variation in capital costs and that since these costs can be captured through the Medicare Cost Reports, a pass-through should be used.

Response—Since we will be paying hospital-specific amounts for facilities with any significant CHAMPUS case-load, a pass-through for these facilities

is irrelevant. For facilities with small CHAMPUS case loads, the fact that we are paying on the basis of charges, instead of costs, should more than compensate for any of the relatively small amount of capital costs incurred for these cases that are not reflected in the overall rate.

Comment—Bad debt should be a pass-through.

Response—In the past, CHAMPUS has not reimbursed hospitals for bad debt on beneficiary cost-sharing. In fact, our active-duty dependent beneficiaries have negligible cost-sharing requirements and many of our retiree beneficiaries have supplemental insurance which pays the cost-share. Further, we believe that basing payment rates on charges will more than adequately compensate hospitals for any bad debt our beneficiaries may incur.

C. Base Period and Update Factors (§ 199.14(a)(2)(iv))

The base period for calculating the hospital-specific and regional rates is Federal fiscal year 1988. As noted above, calculations will be based on actual claims paid during the period July 1, 1987 and May 31, 1988, trended forward to the 12-month period ending September 30, 1988 on the basis of the Medicare inpatient hospital market basket rate. CHAMPUS will update the rates each year, beginning with fiscal year 1990, based on the annual update factor promulgated by Medicare for Prospective Payment System Exempt facilities.

Comment—Since the Medicare and CHAMPUS populations are essentially different, a CHAMPUS-specific update factor should be used. Further, if hospitals do not receive full recognition of inflation, they will incur substantial losses and may eliminate services to CHAMPUS patients.

Response—Just as we think that it is important for the Government to promulgate a uniform update factor for both the CHAMPUS and Medicare DRG systems, we think it is important to be consistent and promulgate the same update factor that Medicare uses for psychiatric facilities and units. Congress establishes these factors each year considering input from PROPAC, the health care industry and HCFA. We will comply with the Congressionally-approved update factors. It is also noteworthy that because our system is based on charges rather than costs, it is unlikely hospitals will be incurring losses.

D. Higher Volume Hospitals (Section 199.14(a)(2)(v))

As noted above, a significant revision to the proposed rule responsive to many comments is the provision for hospital-specific per diem rates for psychiatric hospitals and units with sufficient CHAMPUS volume to permit a valid calculation. Implementation of this approach raises several issues.

Among these is the establishment of some reasonable standard for accurately determining a hospital's true rate based on that hospital's record of claims in the base year. There must be a significant number of claims in the base year to permit a reasonable degree of confidence that the per diem amount indicated from those claims is a true reflection of the normal circumstances of that hospital. After consultation with the Rand Corporation, it was determined that the minimum number of observations needed to estimate a hospital's average daily charges to within ten percent of its true value 75% of the time is 25 observations. Thus, the final rule provides for hospital-specific rates for providers with 25 or more discharges in the base year. A list of hospitals that meet the 25 or more discharges criteria and who will be receiving hospital-specific rates in FY 1989 is contained in Table 2 attached to this rule. (If a hospital believes it was erroneously omitted from the list it may contact the Director of OCHAMPUS or a designee and demonstrate that it should be included.)

Another issue arises in connection with any hospital that had fewer than 25 admissions in the base year but that in a subsequent year has 25 or more discharges. The final rule provides that that hospital or unit will begin to be paid on the basis of a hospital-specific rate during the following fiscal year. The amount will be calculated by constructing a base year proxy for that hospital. The proxy will be based on the hospital's average daily charge in the year in which the hospital just had 25 or more discharges, adjusted by the percentage change in average daily charges from all higher volume hospitals and units between the year in which the hospital had 25 or more CHAMPUS discharges and the base period. (See § 199.14(a)(2)(v)(B))

To illustrate, suppose a hospital has 15 CHAMPUS admissions in the base period, 20 in FY-1989 and 25 in FY-1990. Payments during FY-1989 and FY-1990 would have been based on the applicable regional rates. The hospital-specific per diem for that hospital, which will begin to apply in FY-1991, will be calculated by taking the hospital's average daily charge in FY-1990, adjusting it back to the base period by the percent change in average daily charges for all high volume hospitals from the base period to FY-1990, applying the cap (if applicable), and updating the base period per diem to FY-1991 by the same update factors as apply to other higher volume hospitals.

Another issue that arises in connection with the policy of paying higher volume hospitals on the basis of a hospital-specific per diem is whether any special provision should be made for new hospitals. The final rule reflects the conclusion that special provision should be made to assure proper recognition of what may be high capital costs and other special circumstances of new hospitals. This conclusion is consistent with the Medicare policy of recognizing special circumstances of new hospitals. (Medicare exempts new hospitals from cost limits for three years.)

The special provision in the final rule (see § 199.14(a)(2)(v)(C)), in addition to establishing a hospital-specific rate prospectively from the year in which the hospital first reaches 25 or more admissions, allows for a retrospective adjustment for up to two years to pay the hospital what would have been paid had the hospital been considered a higher volume hospital during that prior period.

As an illustration, suppose the example used just above involved a new hospital. Once the base year proxy is determined, the applicable hospital-specific rates for FY-1989 and FY-1990 would be calculated. The difference between the total amount that would have been paid to the hospital had these hospital-specific rates been used in FY-1989 and FY-1990 and the total amount that was paid based on the regional per diem rates will be reflected in a retrospective adjustment.

Finally, there arises the issue of whether a hospital that initially or subsequently is a higher volume hospital but later becomes a lower volume hospital should continue to be paid a hospital specific rate. The answer in the final rule is that the hospital specific rate is maintained because once a statistically valid rate is established based on a year in which the hospital had at least 25 discharges, it becomes the basis for all future rates. The number of discharges thereafter have no bearing on the validity of the hospital specific per diem.

E. Applicability of Final Rule (Section 199.14(a)(2)(i))

The final rule reflects revisions to the proposed rule regarding applicability of the per diem system to alcohol and substance abuse cases in psychiatric facilities and mental health cases in other than PPS-exempt psychiatric facilities. These revisions are consistent with several comments received.

Comment—The proposed rule would pay alcohol and substance abuse cases in psychiatric facilities on the basis of DRGs. Medicare does not include such cases in its DRG system and CHAMPUS should not either. Mandatory use of DRGs for those dually diagnosed patients being treated for alcohol or drug abuse and for psychiatric illness creates a complicated, unusable combination of reimbursement systems.

Response—We agree that alcohol and substance abuse cases in psychiatric facilities should be treated the same as mental health cases and paid according to the per diem rates. (See § 199.14(a)(2)(i)(B)) Consistent with the Medicare program, all other alcohol and substance abuse cases will be paid under the CHAMPUS DRG-based system.

Comment—The Medicare model should be followed for the mental health services delivered in non-exempt units and scattered beds of general hospitals.

Response—We agree and will do so. This regulation amendment only applies to PPS-exempt psychiatric hospitals and units. (See §§ 199.14(a)(2)(i)(A) and 199.14(a)(2)(vii)(A)). In a separate regulatory action, the CHAMPUS DRG-based payment system is being established as the method of paying for mental health services in non-exempt units and scattered beds of general hospitals under § 199.14(a)(1). It is noteworthy that we specifically solicited comment on this option, which was not selected for the proposed rule, and received several comments recommending its adoption.

F. Hospital-Based Professional Providers (Section 199.14(a)(2)(vi))

For hospitals paid on a hospital-specific basis, mental health services of hospital-based professionals will be considered to be included or excluded in the per diem rate to the same extent they were included or excluded by the hospital in its claims in the base period. Any changes in hospital policy in this regard must be reported to the Director, OCHAMPUS, or a designee in advance so that the rates can be adjusted accordingly.

For hospitals paid on a regional basis, all mental health related services provided by hospital-based health professionals are included within the per diem rate.

Comment—The per diem payment fails to differentiate those hospitals with closed staffs that include charges of professional services in their billings from those hospitals with open staffs whose physicians bill separately.

Response—All hospital-specific rates will reflect each hospital's own method of billing for mental health services rendered by hospital-based professionals. That is, each hospital's-specific rate shall reflect the total charges submitted during the base period for all mental health related revenue codes on the hospital claim for (UB-82). Claims for professional mental health service charges routinely submitted separately by the hospital were not included in the per diem calculation, and this practice can continue. Additionally, any hospital paid on a hospital-specific basis will be allowed to change its billing methodology only as described under § 199.14(a)(2)(vi).

Regional rates assume all hospitals included the professional mental health service charges for their hospital-based professionals on the hospital claim form and, therefore, are reflected in the regional per diem rate. Hospitals subject to the regional rates may not bill separately for hospital-based professional mental health services under any circumstances. It is expected that the number of CHAMPUS cases for these hospitals are too small for this portion of their CHAMPUS payment to have any meaningful impact.

Under both the hospital-specific and regional rate reimbursement systems, hospitals may bill separately for non-mental health related professional services. Also, individual professional providers not employed or under contract to the hospital may continue to bill for their professional services provided to hospital inpatients.

G. Effective Date

The effective date is for all admissions on or after January 1, 1989. We had planned to make this Regulation change effective on October 1, 1988 but in order to allow adequate time to assure smooth claims processing and to provide facilities extra time in which to verify the consistency of their records with those of OCHAMPUS we extended the effective date.

IV. General Issues

Comment—A number of commenters expressed concern that the proposed payment system was based on a study by the RAND Corporation that was not published and not subjected to review by industry, other researchers and the internal RAND organization.

Response—Although the RAND analysis has not yet been formally published, their methods, data base and findings were presented in the proposed rule. There is no requirement or practice that regulations be based on *published* reports by external organizations. Rather, regulations should be based on evidence that supports the propriety of a particular approach. That evidence, which happened to be collected and analyzed by an external research organization, was shared in the proposed rule.

Comment—In the same vein, a number of commenters expressed concern that the proposed regulation was developed "in secret" and published without consultation with industry and researchers and without Congressional hearings.

Response—Our plans to develop a new payment system were announced last year in the CHAMPUS DRG regulation promulgated September 1, 1987 and again in a Report to Congress last September stating our plan to proceed "during the upcoming year" to cover "mental health services under a DRG-based or some other prospective payment method."

The purpose of publishing a "proposed" rule is to consult with the public by eliciting comments. We have had a number of discussions with interested parties as well. Those discussions and the formal written comments have led to changes in the rule that we believe take into account the major concerns of the commenters. We are confident that the rule-making process has worked appropriately.

Comment—Some commenters suggested that the RAND findings did not conform to those of other researchers.

Response—Many of those studies were based on Medicare experience. The RAND analysis simply reflected the CHAMPUS experience based on the CHAMPUS claims. These claims reflect charges, of course, and it may be that Medicare costs show a different pattern of care than CHAMPUS charges.

Comment—Some commenters suggested that the 30-day comment period was too short and that issues of this importance should have no less than a 60-day comment period.

Response—The comment period conforms to statutory requirements, and we believe it is adequate to permit interested parties to consider the proposed rule and provide substantive comments. We have also had a number

of discussions with interested parties regarding issues contained in the proposed rule where we exchanged information, clarified issues, and listened to concerns and suggested solutions. Additionally, we continued to accept comments and input well after the official close of the comment period. We have no indication that we would have received additional information pertinent to the content of this rule had the comment period been longer.

Comment—A number of commenters suggested that we delay publication in order to further study the issue and to consider the results of ongoing demonstrations that include mental health care.

Response—The demonstrations, such as the fixed-price mental health project in Tidewater, Virginia and the CHAMPUS Reform Initiative (CRI) in California and Hawaii, are testing various approaches to overall reform of the delivery and financing system. Improving the method of payment for a group of providers is an entirely separate matter, and is in no way inconsistent with the demonstration objectives.

There is no reason to continue to study the revised mental health payment system further before implementing this regulation change. The approach makes only modest changes in payment levels overall and to each individual hospital. It is based on sound payment principles, addresses only daily payment rates, and is backed by Congressional direction to proceed now.

Comment—Some commenters suggested that it is inappropriate to promulgate a rule when actual payment rates were not provided in advance to permit impact analyses.

Response—Since we will be paying each hospital that has relatively high CHAMPUS volume a rate based on its own CHAMPUS charges, the impact of this rule is negligible. For hospitals with low CHAMPUS volume, the impact is likely to be insubstantial as well.

Similarly, the comments suggesting the necessity for a regulatory impact analysis are not valid since there will not be a significant effect on a substantial number of hospitals.

Comment—Some commenters appeared to misunderstand the construction of the data base and assumed we had excluded interim bills.

Response—That is not correct. We initially separated out all interim bills and combined the bills for the same stay. The combined bills were then added back into the data base.

Comment—We received a comment suggesting that this new system may result in substantial administrative burden for hospitals.

Response—It is hard to see how hospitals could find it burdensome to know in advance precisely how much they will receive for each day of care for a CHAMPUS beneficiary. There are no cost-reports to fill out, no retrospective adjustments (except for new hospitals), and no pass-throughs that require any significant bookkeeping.

Our proposed rule solicited comments on a number of options not selected for the proposed rule. These include: (1) The application of a cost-to-charge ratio to CHAMPUS charges; (2) reduced payments for later days of care; (3) limited update factor; and (4) DRG-based payments for services in general hospitals.

We received no comments in favor of the first 3 options. We did receive favorable comments on option 4 and are adopting it in another regulation.

Lastly, it has been suggested that if the final rule deviates substantially from that which was proposed, the public should be given an opportunity to officially comment again after publication of the final rule.

We believe that any deviations we have made from the proposed rule are simply reflections of the bulk of comments we received. We are not introducing new issues or concepts not already addressed in the proposed rule, comments, or Congressional action. Thus, there is no official comment period following this final rule. However, we are always interested in hearing suggestions on better ways to carry out our mission and welcome suggestions and input on an ongoing basis.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by redesignating paragraph (f)(3)(ii)(B) as paragraph (f)(3)(ii)(C), by adding a new paragraph (f)(3)(ii)(B), and by revising the redesignated paragraph (f)(3)(ii)(C), as follows:

§ 199.4 [Amended]

* * * * *

(f) * * *

(3) * * *

(ii) *Inpatient cost-sharing.* Cost sharing amounts for inpatient services shall be as follows:

* * * * *

(B) *Services subject to the CHAMPUS mental health per diem payment system.* The cost-share is dependent upon whether the hospital is paid a hospital-specific per diem or a regional per diem under the provisions of § 199.14(a)(2). With respect to care paid for on the basis of a hospital specific per diem, the cost-share shall be 25% of the hospital-specific per diem amount. For care paid for on the basis of a regional per diem, the cost share shall be the lower of a fixed daily amount or 25% of the hospital's billed charges. The fixed daily amount shall be 25 percent of the per diem adjusted so that total beneficiary cost shares will equal 25 percent of total payments under the mental health per diem payment system. These fixed daily amount shall be updated annually and published in the **Federal Register** along with the per diems published pursuant to § 199.14(a)(2)(iv)(B).

(C) *Other services.* For services exempt from the CHAMPUS DRG-based payment system and the CHAMPUS mental health per diem payment system and services provided by institutions other than hospitals, the cost-share shall be 25% of the CHAMPUS-determined allowable charges.

* * * * *

3. Section 199.6(a)(8) is amended by revising the third sentence thereof to read as follows:

§ 199.6 [Amended]

(a) * * *

(8) *Participating provider.* * * * Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in § 199.14(a)(1) or the CHAMPUS mental health per diem payment system in § 199.14(a)(2) must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. * * *

4. Section 199.14 is amended by redesignating paragraph (a)(2) as (a)(3), by adding a new paragraph (a)(2) and by revising the introductory text of redesignated paragraph (a)(3) as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(a) * * *

(2) *CHAMPUS mental health per diem payment system.* The CHAMPUS mental health per diem payment system shall be used to reimburse for inpatient

mental health hospital care in specialty psychiatric hospitals and units. Payment is made on the basis of prospectively determined rates and paid on a per diem basis. The system uses two sets of per diems. One set of per diems applies to hospitals and units that have a relatively higher number of CHAMPUS discharges. For these hospitals and units, the system uses hospital-specific per diem rates. The other set of per diems applies to hospitals and units with a relatively lower number of CHAMPUS discharges. For these hospitals and units, the system uses regional per diems, and further provides for adjustments for area wage differences and indirect medical education costs and additional pass-through payments for direct medical education costs.

(i) *Applicability of mental health per diem payment system*—(A) *Hospitals and units covered.* The CHAMPUS mental health per diem payment system applies to services covered (see paragraph (a)(2)(i)(B) of this section) that are provided in Medicare prospective payment system (PPS) exempt psychiatric specialty hospitals and all Medicare PPS exempt psychiatric specialty units of other hospitals. In addition, any psychiatric hospital that does not participate in Medicare, or any other hospital that has a psychiatric specialty unit that has not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare, may be designated as a psychiatric hospital or psychiatric specialty unit for purposes of the CHAMPUS mental health per diem payment system upon demonstrating that it meets the same criteria (as determined by the Director, OCHAMPUS) as required for the Medicare exemption. The CHAMPUS mental health per diem payment system does not apply to mental health services provided in other hospitals.

(B) *Services covered.* Unless specifically exempted, all covered hospitals' and units' inpatient claims which are classified into a mental health DRG (DRG categories 425–432, but not DRG 424) or an alcohol/drug abuse DRG (DRG categories 433–437) shall be subject to the mental health per diem payment system.

(ii) *Hospital-specific per diems for higher volume hospitals and units.* This paragraph describes the per diem payment amounts for hospitals and units with a higher volume of CHAMPUS discharges.

(A) *Per diem amount.* A hospital-specific per diem amount shall be calculated for each hospital and unit with a higher volume of CHAMPUS discharges. The base period per diem amount shall be equal to the hospital's average daily charge in the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section. The base period amount shall be updated in accord with paragraph (a)(2)(iv) of this section.

(B) *Cap.* The base period per diem amount may not exceed the eightieth percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals.

(C) *Review of per diem amount.* Any hospital or unit which believes OCHAMPUS calculated a hospital-specific per diem which differs by more than five dollars from that calculated by the hospital or unit may apply to the Director of OCHAMPUS or designee for a recalculation. The burden of proof shall be on the hospital.

(iii) *Regional per diems for lower volume hospitals and units.* This paragraph describes the per diem amounts for hospitals and units with a lower volume of CHAMPUS discharges.

(A) *Per diem amounts.* Hospitals and units with a lower volume of CHAMPUS patients shall be paid on the basis of a regional per diem amount, adjusted for area wages and indirect medical education. Base period regional per diems shall be calculated based upon all CHAMPUS lower volume hospitals' claims paid during the base period. Each regional per diem amount shall be the quotient of all covered charges divided by all covered days of care, reported on all CHAMPUS claims from lower volume hospitals in the region paid during the base period, after having standardized for indirect medical education costs and area wage indexes and subtracted direct medical education costs. Regional per diem amounts are adjusted in accordance with paragraph (a)(2)(ii)(C) of this section. Additional pass-through payments to lower volume hospitals are made in accordance with paragraph (a)(2)(iii)(D) of this section. The regions shall be the same as the federal census regions.

(B) *Review of per diem amount.* Any hospital that believes the regional per diem amount applicable to that hospital has been erroneously calculated by OCHAMPUS by more than five dollars may submit to the Director of OCHAMPUS or designee evidence supporting a different regional per diem. The burden of proof shall be on the hospital.

(C) *Adjustments to regional per diems.* Two adjustments shall be made to the regional per diem rates.

(*1*) *Area wage index.* The same area wage indexes used for the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(*2*) of this section) shall be applied to the wage portion of the applicable regional per diem rate for each day of the admission. The wage portion shall be the same as that used for the CHAMPUS DRG-based payment system.

(*2*) *Indirect medical education.* The indirect medical education adjustment factors shall be calculated for teaching hospitals in the same manner as is used in the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(*2*) of this section) and applied to the applicable regional per diem rate for each day of the admission.

(D) *Annual cost pass-through for direct medical education.* In addition to payments made to lower volume hospitals under this paragraph, CHAMPUS shall annually reimburse hospitals for actual direct medical education costs associated with services to CHAMPUS beneficiaries. This reimbursement shall be done pursuant to the same procedures as are applicable to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(G) of this section).

(iv) *Base period and update factors*—(A) *Base period.* The base period for calculating the hospital-specific and regional per diems, as described in paragraphs (a)(2) (ii) and (iii) of this section, is federal fiscal year 1988. Base period calculations shall be based on actual claims paid during the period July 1, 1987 through May 31, 1988, trended forward to represent the 12-month period ending September 30, 1988 on the basis of the Medicare inpatient hospital market basket rate.

(B) *Alternative hospital-specific data base.* Upon application of a higher volume hospital or unit to the Director of OCHAMPUS or designee, the hospital or unit may have its hospital-specific base period calculations based on claims with a date of discharge (rather than date of payment) between July 1, 1987 through May 31, 1988 if it has generally experienced unusual delays in claims payments and if the use of such an alternative data base would result in a difference in the per diem amount of at least $5.00. For this purpose, the unusual delays means that the hospital's or unit's average time period between date of discharge and date of payment is more than two standard deviations longer than the national average.

(C) *Update factors.* The hospital-specific per diems and the regional per diems calculated for the base period pursuant to paragraphs (a)(2) (ii) and

(iii) of this section shall be in effect for federal fiscal year 1989; there will be no additional update for fiscal year 1989. For subsequent federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. Hospitals and units with hospital-specific rates will be notified of their respective rates prior to the beginning of each federal fiscal year. New hospitals shall be notified at such time as the hospital rate is determined. The actual amounts of each regional per diem that will apply in any federal fiscal year shall be published in the **Federal Register** prior to the start of that fiscal year.

(v) *Higher volume hospitals.* This paragraph describes the classification of and other provisions pertinent to hospitals with a higher volume of CHAMPUS patients.

(A) *In general.* Any hospital or unit that had an annual rate of 25 or more CHAMPUS discharges of CHAMPUS patients during the period July 1, 1987 through May 31, 1988 shall be considered a higher volume hospital during federal fiscal year 1989 and all subsequent fiscal years.

All other hospitals and units covered by the CHAMPUS mental health per diem payment system shall be considered lower volume hospitals.

(B) *Hospitals that subsequently become higher volume hospitals.* In any federal fiscal year in which a hospital, including a new hospital (see paragraph (a)(2)(v)(C) of this section), not previously classified as a higher volume hospital has 25 or more CHAMPUS discharges, that hospital shall be considered to be a higher volume hospital during the next federal fiscal year and all subsequent fiscal years. The hospital specific per diem amount shall be calculated in accordance with the provisions of paragraph (a)(2)(ii) of this section, except that the base period average daily charge shall be deemed to be the hospital's average daily charge in the year in which the hospital had 25 or more discharges, adjusted by the percentage change in average daily charges for all higher volume hospitals and units between the year in which the hospital had 25 or more CHAMPUS discharges and the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section.

(C) *Special retrospective payment provision for new hospitals.* For purposes of this paragraph, a new hospital is a hospital that qualifies for the Medicare exemption from the rate of increase ceiling applicable to new hospitals which are PPS-exempt psychiatric hospitals. Any new hospital that becomes a higher volume hospital, in addition to qualifying prospectively as a higher volume hospital for purposes of paragraph (a)(2)(v)(B) of this section, may additionally, upon application to the Director of OCHAMPUS, receive a retrospective adjustment. The retrospective adjustment shall be calculated so that the hospital receives the same government share payments it would have received had it been designated a higher volume hospital for the federal fiscal year in which it first had 25 or more CHAMPUS discharges and the preceeding fiscal year (if it had any CHAMPUS patients during the preceeding fiscal year). Such new hospitals must agree not to bill CHAMPUS beneficiaries for any additional costs beyond that determined initially.

(D) *Review of classification.* Any hospital or unit which OCHAMPUS erroneously fails to classify as a higher volume hospital may apply to the Director of OCHAMPUS or designee for such a classification. The hospital shall have the burden of proof.

(vi) *Payment for hospital based professional services.* Lower volume hospitals and units may not bill separately for hospital based professional mental health services; payment for those services is included in the per diems. Higher volume hospitals and units, whether they billed CHAMPUS separately for hospital based professional mental health services or included those services in the hospital's billing to CHAMPUS, shall continue the practice in effect during the period July 1, 1987 to May 31, 1988 (or other data base period used for calculating the hospital's or unit's per diem), except that any such hospital or unit may change its prior practice (and obtain an appropriate revision in its per diem) by providing to OCHAMPUS notice in accordance with procedures established by the Director of OCHAMPUS or designee.

(vii) *Leave days.* CHAMPUS shall not pay for days where the patient is absent on leave from the specialty psychiatric hospital or unit. The hospital must identify these days when claiming reimbursement. CHAMPUS shall not count a patient's leave of absence as a discharge in determining whether a facility should be classified as a higher volume hospital pursuant to paragraph (a)(2)(v) of this section.

(viii) *Exemptions from the CHAMPUS mental health per diem payment system.* The following providers and procedures are exempt from the CHAMPUS mental health per diem payment system.

(A) *Non-specialty providers.* Providers of inpatient care which are not either psychiatric hospitals or psychiatric specialty units as described in paragraph (a)(2)(i)(A) of this section, or which otherwise qualify under that paragraph, are exempt from the CHAMPUS mental health per diem payment system. Such providers should refer to § 199.14(a)(1) for provisions pertinent to the CHAMPUS DRG-based payment system.

(B) *DRG 424.* Admissions for operating room procedures involving a principal diagnosis of mental illness (services which group into DRG 424) are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(C) *Non-mental health services.* Admissions for non-mental health procedures in specialty psychiatric hospitals and units are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(D) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt.

(E) *Hospitals outside the U.S.* A hospital is exempt if it is not located in one of the 50 states, the District of Columbia or Puerto Rico.

(3) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health per diem payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

* * * * *

Linda Bynum,

OSD Federal Register Alternate Liaison Officer, Department of Defense.

August 30, 1988.

TABLE 1.—REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

[Less than 25 CHAMPUS discharges in a year]

[Editorial Note: This table will not appear in the Code of Federal Regulations]

United States Census Region	Rate[1]
Northeast:	
New England	$409
Maine, New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut	
Mid-Atlantic	475
New York; New Jersey; Pennsylvania	

TABLE 1.—REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME—Continued

[Less than 25 CHAMPUS discharges in a year]

[Editorial Note: This table will not appear in the Code of Federal Regulations]

United States Census Region	Rate[1]
Midwest:	
East North Central	399
Ohio; Indiana; Illinois; Michigan; Wisconsin	
West North Central	332
Minnesota; Iowa; Missouri; North Dakota; South Dakota; Nebraska; Kansas	
South:	
South Atlantic	410
Delaware; Maryland; D.C.; Virginia; West Virginia; North Carolina; South Carolina; Georgia; Florida	
East South Central	448
Kentucky; Tennessee; Alabama; Mississippi;	
West South Central	419
Arkansas; Louisiana; Texas; Oklahoma	
West:	
Mountain	425
Montana; Idaho; Wyoming; Colorado; New Mexico; Arizona; Utah; Nevada	
Pacific	439
Washington; Oregon; California; Alaska; Hawaii	

1 The wage portion of the rate, subject to the area wage adjustment, is 74.39%.
Beneficiary cost-share (other than dependents of activie duty members) is the lower of $142 per day or 25% of the hospital billed charges.

Table 2.—High CHAMPUS Volume Speciality Psychiatric Hospitals and Units [More than 25 CHAMPUS discharges in a year]

[**Editorial Note:** This table will not appear in the Code of Federal Regulations.]

Alabama

Charterwood Hospital—Dothan, Alabama
Hill Crest Hospital—Birmingham, Alabama
Huntsville Hospital—Huntsville, Alabama
Jackson Hospital—Montgomery, Alabama

Arizona

Palo Verde Hospital—Tucson, Arizona
Ramsey Canyon Hospital—Sierra Vista, Arizona
Tucson Psychiatric Institute—Tucson, Arizona

California

Alvarado Parkway Institute—La Mesa, California
Antelope Valley Hospital—Lancaster, California
Careunit Hospital of Los Angeles—Newport Beach, California
Charter Grove Hospital—Corona, California
Charter Hospital of Long Beach—Long Beach, California
College Hospital—Cerritos, California
Community Hospital of the Monterey—Monterey, California
Eskaton American River Hospital—Carmichael, California
Everett A. Gladman Memorial Hospital—Oakland, California
Fair Oaks Hospital—Santa Ana, California
First Hospital Vallejo—Vallejo, California
Grossmont District Hosptial—La Mesa, California
Harbor View Medical Psych Unit—San Diego, California
Memorial Hospital Medical Ctr.—Long Beach, California
Mercy Hospital and Medical Ctr.—San Diego, California
Paradise Valley Psych Unit—National City, California
Riverside Community Hospital—Riverside, California
San Bernardino Community Hospital—San Bernardino, California
San Luis Rey Hospital—Encinitas, California
Sharp Cabrillo Hospital—San Diego, California
St. Josephs Hospital of Orange—Los Angeles, California
Villa View Community Hospital—San Diego, California
Vista Hill Hospital—San Diego, California
Western Medical Center—Anaheim, California
Westwood Hospital—Los Angeles, California
Woodview-Calabasas Hospital—Calabasas, California

Colorado

Cedar Springs Psych Ctr.—Colorado-Springs, Colorado
Penrose Hospitals—Colorado-Springs, Colorado

District of Columbia

Psychiatric Institute-Washington, DC—Washington, DC

Florida

Baptist Hospital Physicians—Pensacola, Florida
Baptist Medical Psych Unit—Jacksonville, Florida
Bay Medical Center—Panama City, Florida
Charter Hospital of Jacksonville—Jacksonville, Florida
Charter Hospital of Tampa Bay—Tampa, Florida
Circles of Care Inc.—Melbourne, Florida
Florida Hospital—Orlando, Florida
Horizon Hospital—Clearwater, Florida
Memorial Hospital of Tampa—Tampa, Florida
Orlando General Hospital—Orlando, Florida
St. Johns River Hospital—Jacksonville, Florida
St. Josephs Hospital—Tampa, Florida
St. Vincents Medical Center—Jacksonville, Florida
Tallahassee Psychiatric Center—Tallahassee, Florida
West Florida Regional Psych Unit—Pensacola, Florida
Wuesthoff Memorial Psych Unit—Rockledge, Florida

Georgia

Charter By The Sea—St. Simons Island, Georgia
Charter Hospital Augusta—Augusta, Georgia
Charter Hospital of Savannah—Savannah, Georgia
Charter Lake Hospital—Macon, Georgia
Coliseum Psychiatric Hospital—Macon, Georgia
Greenleaf Center Inc.—Valdosta, Georgia
Houston Medical Center—Warner Robins, Georgia
Memorial Medical Center—Savannah, Georgia
Phoebe Putney Memorial Hospital—Albany, Georgia
Ridgeview Institute—Smyrna, Georgia
University Hospital—Augusta, Georgia

Kentucky

Lincoln Trail Hospital—Radcliff, Kentucky

Louisiana

Briarwood Hospital—Alexandria, Louisiana
Humana Hospital Brentwood—Sheveport, Louisiana

Missouri

St. Johns Regional Health Ctr.—Springfield, Missouri

Mississippi

Charter Hospital of Jackson—Jackson, Mississippi
CPC Sand Hill Hospital—Gulfport, Mississippi
Gulf Oaks Hospital—Biloxi, Mississippi
Singing River Hospital—Pascagoula, Mississippi

Nebraska

St. Joseph Mental Health Ctr.—Omaha, Nebraska

Nevada

Charter Hospital of Las Vegas—Las Vegas, Nevada

Monte Vista Center—Las Vegas, Nevada

New Mexico

Charter Hospital of Albuquerque—Albuquerque, New Mexico
Charter Hospital of Santa Teresa—Santa Teresa, New Mexico
Heights Psychiatric Hospital—Albuquerque, New Mexico
HSA Valley View Hospital—Las Cruces, New Mexico
Memorial Hospital—Albuquerque, New Mexico

North Carolina

Brynn Marr Hospital—Jacksonville, North Carolina
Wayne Memorial Hospital—Goldsboro, North Carolina

Oklahoma

Great Plains Hospital—Lawton, Oklahoma
Jim Taliaferro CMH Ctr.—Lawton, Oklahoma

South Carolina

HSA Coastal Carolina Hospital—Conway, South Carolina
Medical University Hospital—Charleston, South Carolina
Southern Pines Hospital—Charleston, South Carolina

Tennessee

Charter Lakeside Hospital—Bartlet, Tennessee
Clarksville Memorial Hospital—Clarksville, Tennessee
Tennessee Christian Medical Ctr.—Madison, Tennessee

Texas

Baywood Hospital—Webster, Texas
Brazos Psychiatric Hospital—Waco, Texas
Charter Hospital Corpus Christi—Corpus Christi, Texas
Charter Lane Hospital—Austin, Texas
Charter Real Hospital—San Antonio, Texas
Colonial Hills Hospital—San Antonio, Texas
CPC Oak Bend Hospital—Fort Worth, Texas
HCA Hill Country Hospital—San Antonio, Texas
Santa Rosa Medical Ctr.—San Antonio, Texas
St. Johns Hospital—San Angelo, Texas
St. Joseph Psych Unit—Houston, Texas
Sun Valley Hospital—El Paso, Texas

Virginia

Charter Colonial Institute—Newport News, Virginia
Dominion Hospital—Falls Church, Virginia
Poplar Springs Hospital—Petersburg, Virginia
Portsmouth Psychiatric Center—Portsmouth, Virginia

Washington

Puget Sound Hospital—Tacoma, Washington

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VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Use of Credit Reports on Proposed Reamortizations, Claims Under Guaranty and Repurchased Vendee Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulations to require the submission of credit reports on proposed loan reamortizations and in connection with the filing of claims under the guaranty and the filing of requests for repurchase of vendee loans. Present regulations authorize VA to require credit reports in connection with loan applications, but not with vendee loan repurchases, claims or reschedulings, as required under the provisions of OMB Circular A-129, Managing Federal Credit Programs.

EFFECTIVE DATE: These regulations are effective October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3668.

SUPPLEMENTARY INFORMATION: Under the provisions of OMB Circular A-129, Managing Federal Credit Programs, agencies must obtain credit reports in connection with loan applications, loan reschedulings, when vendee loans are repurchased by the Government, and when claims are filed under the guaranty on loans made or guaranteed by the Government. Present regulations authorize VA to require credit reports in connection with loan applications, but not with vendee loan repurchases, claims or rescheduling.

On May 28, 1987, VA published in the **Federal Register** (52 FR 19891) proposed regulatory amendments to require credit reports in connection with vendee loan repurchases, claims and loan reschedulings. Two public comments were received on the proposed regulatory amendments, one from an industry trade group and the second from a lender. The industry trade organization noted that the regulation change would place a burden on loan servicers in the form of unreimbursed administrative costs. It further suggests that VA allow servicers to make a claim of $60 for each credit report submitted to VA as a way of eliminating the need for evidence of payment and to compensate servicers for their administrative costs. The final rule provides that the actual cost of the credit report will be allowed in the guaranty of repurchase claim if it is reasonable and customary in the locality. We believe that the administrative costs associated with obtaining the credit report and minimal, since most lenders/servicers already have established procedures for obtaining such reports. Evidence of payment for the credit report will not be required, since our local offices are familiar with the typical costs of credit reports in their jurisdiction. In maximum claim cases, the claim payment may exceed the maximum amount normally payable in order to cover the cost of the credit report.

This commenter also wrote that obtaining credit reports to assist in VA's debt collection efforts is not related to a servicer's foreclosure, repurchase or loan servicing responsibilities. We do not agree. All loan holders have servicing programs which are intended to meet their own business needs. Holders of federally guaranteed loans have additional responsibility to demonstrate proper ability to service loans adequately to protect the interests of the Government as guarantor. Adequate servicing includes taking necessary action to preserve the liability of all obligors and to provide VA with data which will facilitate the Government's efforts to seek reimbursement for paid claims from the liable obligors. The credit report is the best source of information which is readily available to satisfy this servicing responsibility. In addition, providing the credit report will verify that the holder has complied with the requirements to report the delinquency to a credit reporting agency.

The commenter also noted that there may be delays by credit bureaus in providing credit reports during peak periods of refinances and new originations. We do not believe this will be a problem. If the credit reports are requested timely during loan termination, they should be received prior to submission of the claim. For repurchase claims, holders will have to order the report in sufficient time to be

received and included with the repurchase claims.

The commenter advised that holders should be able to include the cost of the credit report as part of the account arrears in cases where the borrower attempts to reinstate prior to submission of a repurchase claim. VA concurs. Borrowers can be required to be reimburse the holder for the cost of the credit report in connection with reinstatement of the loan.

The commenter also noted that not all original veteran borrowers or transferees are presently liable for repayment of the loan, the holders should not be required to obtain credit reports on these individuals. VA concurs. The regulations refer to "debtors" in describing those individuals on whom credit reports should be obtained. The use of the word debtor is in fact intended to convey that credit reports are only required on individuals who remain indebted, and are presently liable obligors.

The second commenter, a lender, suggests that VA reimburse holders for the actual costs of credit reports rather than establishing a maximum allowable fee. VA will reimburse holders for the actual costs of the credit reports, provided that such costs do not exceed those which are reasonable and customary in the locality.

The requirements for and limitations on reamortization of VA-guaranteed loans are set forth at 38 CFR 36.4279 and 36.4314. These sections are amended to require that the borrower(s) be a reasonable credit risk at the time of reamortization, as determined by the holder of the loan, based upon a review of the borrower'(s) creditworthiness, including a review of a credit report(s) on the borrower(s) by the holder. The holder would also be required to include the credit report(s) in its submission to the Administrator advising of the terms of the reamortization. This requirement should serve as a further assurance that reamortization agreements will only be entered into when they are likely to be in the best financial interest of the borrower(s), the lender, and the Government as guarantor of the loan.

The costs and expenses which may be included in claims on VA-guaranteed loans are prescribed in regulations at 38 CFR 36.4276 and 36.4313. These sections are amended to allow the cost of a credit report(s) to be included in the claim. New §§ 36.4316(c) and 36.4283(j) are added to provide that claims must include a copy of a current credit report(s) on the debtor(s). The current § 36.4283(j) is redesignated as § 36.4283(k). Except for the new requirement for a credit report(s), this change simply describes in regulatory form the current practice whereby lenders file claims in accordance with procedural guidance made available to all lenders.

A vendee loan is a loan made by the Administrator to finance the sale of a property acquired by the Administrator after foreclosure of a guaranteed loan. These loans are usually sold to investors, offen with a guarantee that VA will repurchase the loan in the event of default. A new § 36.4600(c)(16) has been added to require that holders of vendee loans obtain and forward to the VA a current credit report(s) on the debtor(s) when requesting VA to repurchase the loan. Section 36.4600(e)(3) is revised to provide for reimbursement to the holder of the cost of obtaining the credit report(s).

The Administrator hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, Title 5, United States Code, sections 601–612. The cost of the credit report(s) required to be submitted with claims and repurchase requests would be reimbursable. The cost of credit reports required for proposed reamortizations may be collected by the lender from the individual borrower(s) requesting the reamortization. Individuals are not included in the definition of small entities under the Regulatory Flexibility Act. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The regulatory amendments have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in §§ 36.4283(j), 36.4316(c) and 36.4600 (c) and (e) of these regulatory amendments have been approved by the Office of Management and Budget (OMB) under OMB control number 2900–0480.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

These amendments are proposed under authority granted the Administrator by sections 210(c), 1803(c)(1), 1819(g) and 1820 of Title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: August 3, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is amended to read as follows:

PART 36—[AMENDED]

1. In § 36.4276 paragraph (b)(6) is revised and paragraph (b)(7) is added to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Administrator in connection with the claim,

(7) Any other expense or fee that is approved in advance by the Administrator.

* * * * *

(Authority: 38 U.S.C. 1820(g))

2. § 36.4278 [Amended]

In § 36.4278(e)(3) remove the word "his" and add, in its place, the words "his or her".

3. In § 36.4279 paragraphs (a), (b) and (d) are revised to read as follows:

§ 36.4279 Extensions and reamortizations.

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may, by written agreement between the holder and debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial prepayment pursuant to § 36.4211, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s).

* * * * *

(d) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed loan, together with cop(y)(ies) of the credit report(s) obtained on the debtor(s).

(Authority: 38 U.S.C. 1812)

4. § 36.4282 [Amended]

In § 36.4282(b) remove the words "his" where it appears, and insert in its place, the words "his or her," and in the same paragraph, remove the word "he" wherever it appears, and insert in its place the words "he or she."

5. In § 36.4283, paragraph (j) is redesignated paragraph (k) and a new paragraph (j) and an OMB control number are added to read as follows:

§ 36.4283 Foreclosure or repossession.

* * * * *

(j) A claim for the guaranty must include a cop(y)(ies) of a current credit report(s) on the debtor(s).

(Authority: 38 U.S.C. 1812)

* * * * *

(Information collection requirements contained in paragraph (j) were approved by the Office of Management and Budget under control number 2900-0480.)

6. In § 36.4313 paragraph (b)(6) is revised and paragraph (b)(7) is added to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Administrator in connection with the claim,

(7) Any other expense or fee that is approved in advance by the Administrator.

(Authority: 38 U.S.C. 1820(a)(3))

* * * * *

7. In § 36.4314 paragraphs (a), (b) and (e) are revised to read as follows:

§ 36.4314 Extensions and reamortizations.

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may by written agreement between the holder and the debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial prepayment pursuant to § 36.4310, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s).

* * * * *

(e) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed or insured loan, together with a cop(y)(ies) of the credit report(s) obtained on the debtor(s).

(Authority: 38 U.S.C. 1803(c)(1))

8. In § 36.4316 paragraph (c) and an OMB control number are added to read as follows:

§ 36.4316 Continued default.

* * * * *

(c) A claim for the guaranty must include a cop(y)(ies) of a current credit report(s) on the debtor(s).

(Authority: 38 U.S.C. 1832)

(Information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2900-0480.)

9. In § 36.4600 paragraph (c)(16) is added, paragraph (e)(3) is revised, and an OMB control number is added to read as follows:

§ 36.4600 Sale of loans, guarantee of payment.

* * * * *

(c) * * *

(16) To obtain and forward a current credit report(s) on the debtor(s) to the Administrator when requesting that the Administrator repurchase the loan.

(Authority: 38 U.S.C. 1803(c)(1) and 1820)

* * * * *

(e) * * *

(3) The holder may be reimbursed for the cost of a current credit report(s) on the debtor(s) which is (are) forwarded to the Administrator along with the request for repurchase and for any other costs or expenses incurred which are approved in advance by the Administrator as being necessary to protect the Government's interest.

* * * * *

(Authority: 38 U.S.C. 1803(c)(1) and 1820)

(Information collection requirements contained in paragraphs (c) and (e) were approved by the Office of Management and Budget under control number 2900-0840.)

[FR Doc. 88-19964 Filed 9-2-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 30, 50, 69, 70, 90, 147, 167, 169, and 188

[CGD 88-072]

OMB Control Numbers; Reporting and Recordkeeping Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1980, all regulations which contain reporting or recordkeeping requirements must be approved by the Director, Office of Management and Budget (OMB). Once approved, these regulations are assigned an OMB Control Number. OMB Control Numbers for regulations within Title 46, Code of Federal Regulations are displayed in a Table appearing in the Subchapter or Part to which they relate. This document updates the display tables to include OMB Control Numbers assigned to certain regulations in Chapter I of Title 46, Code of Federal Regulations, and makes minor corrections.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, (202) 267-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking. In accordance with 5 U.S.C. 553(b), the Coast Guard finds that notice and opportunity for

comment are unnecessary and contrary to the public interest. This rulemaking simply updates the display tables of OMB Control Numbers assigned for regulations containing reporting or recordkeeping requirements and makes minor technical corrections. The Coast Gaurd has also determined that good cause exists under 5 U.S.C. 553(d), for making this rulemaking effective in less than 30 days after publication. The OMB Control Numbers displayed have been previously assigned during rulemaking procedures for the regulations to which they relate. Therefore, this rulemaking has no substantive effect.

Drafting Information

This rule was drafted by Lieutenant Comander Don M. Wyre, Administrative Law Branch, Regulations and Administrative Law Division, Office of Chief Counsel.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers and makes technical corrections to the display tables. No new substantive requirements are imposed. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

This rule imposes no new or additional reporting or recordkeeping requirements on the public.

Environmental Impact

The environmental impact of this rule is so minimal that further environmental documentation is unnecessary.

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

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 147

Arms and munitions, Hazardous materials transportation, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 188

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

This document is issued under the authority of 44 U.S.C. 3507, 49 CFR 1.45.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

PART 30—[AMENDED]

1. The Table in § 30.01-2(b), is amended by adding new entries in sequential order to read as follows:

§ 30.01-2 [Amended]

* * * * *

(b) *Display.*

* * * * *

§ 31.10-21 2115-0554
§ 31.10-22 2115-0554

* * * * *

PART 50—[AMENDED]

2. The Table in § 50.01-20(b), is revised to read as follows:

§ 50.01-20 [Amended]

* * * * *

(b) *Display.*

* * * * *

46 CFR part or section where identified or described	Current OMB control No.
Parts 50 through 64	2115-0142

PART 69—[AMENDED]

3. The Table in § 69.01-21(b), is amended by adding a new entry in sequential order to read as follows:

§ 69.01-21 [Amended]

* * * * *

(b) *Display.*

* * * * *

§ 69.02-20 2115-0567

* * * * *

PART 70—[AMENDED]

4. The Table in section 70.01-15(b), is amended by adding a new entry in sequential order to read as follows:

§ 70.01-15 [Amended]

* * * * *

(b) *Display.*

* * * * *

§ 71.50-5 2115-0554

* * * * *

PART 90—[AMENDED]

5. Subpart 90.01 is amended by adding a new § 90.01-15 to read as follows:

§ 90.01-15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 91.40-3	2115-0554
§ 91.40-5	2115-0554

PART 147—[AMENDED]

6. Part 147 is amended by adding a new § 147.01-8 to read as follows:

§ 147.01-8 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 147.9	2115-0139
§ 147.30	2115-0139
§ 147.40	2115-0139
§ 147.60(c)(2)	2115-0139

PART 167—[AMENDED]

7. Subpart 167.01 is amended by adding a new § 167.01-20 to read as follows:

§ 167.01-20 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 167.15-35	2115-0554

PART 169—[AMENDED]

8. In Subpart 169.100, § 169.117 is amended by redesignating the existing text as paragraph (a), by redesignating the existing table as paragraph (b), adding a heading for paragraph (b), and amending the entry for § 169.233 in the table to read as follows:

§ 169.117 [Amended]

(a) * * *

(b) *Display.*

* * * * *

§ 169.233 2115-0554

* * * * *

PART 188—[AMENDED]

8. Subpart 188.01 is amended by adding a new § 188.01-15 to read as follows:

§ 180.01-15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 189.40-3	2115-0554
§ 189.40-5	2115-0554

Dated: August 26, 1988.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Chief Counsel.

[FR Doc. 88-20179 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 88-22]

Puget Sound Tug & Barge Co.; Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule exempts Puget Sound Tug & Barge Company from the tariff filing requirements of section 18(a) of the Shipping Act, 1916, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, and the rules of 46 CFR Part 550 for the transportation of general cargo in non-self-propelled barges from Seattle, Washington, to the vicinity of Kivalina, Alaska, during 1988 and 1989. This exemption, which will relieve Puget from regulatory requirements, is warranted because their proposed operation will present few of the compliance issues usually associated with regular "liner" services.

EFFECTIVE DATE: This amendment to Part 550 is effective September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Puget Sound Tug & Barge Company ("Puget") has filed an application for an exemption pusuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833(a) ("1916 Act") from the tariff filing and rate regulatory requirements of certain sections of the 1916 Act and the Intercoastal Shipping Act, 1933, ("1933 Act") for transportation by Puget during 1988 and 1989 of general cargo from Seattle, Washington, to the vicinity of Kivalina, Alaska. Specifically, Puget requested exemption from the tariff filing and rate regulatory requirements of sections 2, 3, and 4 of the 1933 Act, 46 U.S.C. app. 844, 845, and 845a, and sections 16, 17, and 18 of the 1916 Act, 46 U.S.C. app. 815, 816, and 817, for all transportation service performed by Puget during 1988 and 1989 for the carriage of general cargo in non-self-propelled barges in tow of towing vessels on approximately six one-way voyages annually from Seattle, Washington to the coast of Alaska above the Arctic Circle at a point near the village of Kivalina, via the Gulf of Alaska, the Bering Sea, and the Chukchi Sea.

The Commission published Notice of Filing of the Puget application in the **Federal Register** (53 FR 16587) and requested comments thereon from interested persons. No protests or comments were received in response to the Commission's Notice of Filing.

After consideration of the Puget application, the Commission has determined to grant, in part, the exemption sought by Puget. The facts of Puget's proposed service demonstrate that the operation will present few of the compliance issues usually associated with regular "liner" services in more competitive trade environments. Puget will be discharging cargo at a mining site rather than at a commercial port and will serve only shippers associated with the mining project. Rates will be individually negotiated to take into account the unique needs of those involved in the mining operation. Accordingly, the Commission finds that the exemption from the tariff filing

requirements and related rate level regulations of sections 2 and 3 of the 1933 Act and section 18(a) of the 1916 Act is warranted for Puget's proposed service during the 1988 and 1989 shipping seasons.

The Commission does not find, however, that Puget should be granted an exemption from the various proscriptions of sections 16 and 17 of the 1916 Act. The paucity of practical transportation alternatives to the mine site appears to warrant some measure of continued regulatory oversight by the Commission as to Puget's dealings with the mine project subcontractors or other potential shippers to the Alaskan site. Puget has not, in the Commission's view, presented any evidence or argument which would warrant an exemption from the specific proscriptions of sections 16 First and 17. The Commission, therefore, finds that exemption from the tariff filing requirements fulfills the basic thrust of Puget's application, without need or compelling reason to extend additional exemption authority.

In accordance with section 35 of the Shipping Act, 1916, the Commission finds that the exemption granted herein will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, or small governmental jurisdictions.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared.

List of Subjects in 46 CFR Part 550

Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 18(a), 35, and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a, and 841a; and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; the Federal Maritime Commission amends Part 550 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b and 847.

2. In § 550.1 add a new paragraph (i) to read as follows:

§ 550.1 Exemptions.

* * * * *

(i) Transportation by Puget Sound Tug & Barge Company of general cargo in non-self-propelled barges from Seattle, Washington, to the vicinity of Kivalina, Alaska, during 1988 and 1989.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20041 Filed 9-2-88; 8:45 am]

BILLING CODE 7630-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-432; RM-6002]

Radio Broadcasting Services; Chickasaw, AL; Quitman, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Chickasaw, Alabama, and modifies the Class A license of JAB Broadcasting, Inc. for Station WDLT(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Additionally, Channel 255A is substituted for Channel 252A at Quitman, Mississippi, and the license of Quitman Broadcasting Company for Station WYKK-FM is modified accordingly to accommodate the Chickasaw allotment.

Channel 252C2 can be allotted to Chickasaw, AL, consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, with a site restriction 27.3 kilometers west. The reference coordinates utilized in this determination are 30-47-10 and 88-21-30. Moreover, Channel 255A can be allotted to Quitman, MS, in conformity with our Rules, at the present transmitter site of Station WYKK-FM, the coordinates of which are 32-03-51 and 88-43-29. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-432, adopted August 1, 1988, and released August 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW.; Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by revising the entry for Chickasaw by removing Channel 252A and adding Channel 252C2; also § 73.202(b), the Table of FM Allotments for Mississippi, is amended by revising the entry for Quitman by removing Channel 252A and adding Channel 255A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20095 Filed 9-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-527; RM-5953]

Radio Broadcasting Services; Cocoa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of EZY Communications, Inc., substitutes Channel 257C2 for Channel 257A at Cocoa, Florida, and modifies its license for Station WEZY-FM. Channel 257C2 can be allotted to Cocoa in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 28-21-24 and West Longitude 80-43-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-527, adopted August 5, 1988, and released August 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Florida is amended by revising the entry for Cocoa by removing Channel 257A and adding Channel 257C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20094 Filed 9-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-45; RM-6008]

Radio Broadcasting Services; Estherville, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jacobson Broadcasting Company, Inc., substitutes Channel 240C2 for Channel 240A at Estherville, Iowa, and modifies its license for Station KLIR-FM to specify operation on the higher powered channel. Channel 240C2 can be allotted to Estherville in compliance with the Commission's minimum distance separation requirements with a site restriction of 29 kilometers (18 miles) northwest. The coordinates for this allotment are North Latitude 43-35-27 and West Longitude 95-05-21. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-45, adopted August 1, 1988, and released August 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Estherville, Iowa, is amended by removing Channel 240A and adding Channel 240C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20092 Filed 9-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-273; RM-5254]

Television Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of G. Weaver Corporation, allots Channel 46 to Panama City Beach, Florida, as the community's first local television allotment. Channel 46 can be allotted to Panama City Beach in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 30-10-42 and West Longitude 85-48-18. This allotment is not affected by the Commission's temporary freeze on the filing of construction permit applications for vacant channels in the vicinity of certain metropolitan areas. See *Order*, 52 FR 28346, July 29, 1987. Weaver's alternative proposal for the allotment of Channel 24 to Panama City Beach is not adopted since the use of Channel 46 no longer requires a transmitter site restriction in the vicinity of Tyndall Air Force Base and it removes a conflict with the proposed allotment of Channel 24 at Tallahassee, Florida, in MM Docket 87-114. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-273, adopted August 5, 1988, and released August 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television Broadcasting

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Florida is amended by adding the following entry, Panama City Beach, Channel 46.

Federal Communiciations Commission.

Steve Kaminer,

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

[FR Doc. 88-20093 Filed 9-2-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 12

[Docket 45256; Amdt. 3-4]

Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Correction notice.

SUMMARY: This rule makes editorial corrections to the recently published final rule which effected the republication of the Department's Transportation Acquisition Regulation (TAR) (48 CFR Chapter 12). The final rule was published in the **Federal Register** on Thursday, July 28, 1988 (53 FR 28396) and will be effective on August 29, 1988.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION: Contact Charles Ventura at 400 Seventh Street SW, Room 9100, Washington, DC 20590, phone number (202) 366-4271.

SUPPLEMENTARY INFORMATION: The final rule amending 48 CFR Chapter 12, was preceded by an interim final rule which was published at 52 FR 44522 on November 19, 1987. The final rule added section 1205.303, Announcement of contract awards. In the first sentence of this section, the words "and modifications" were included inadvertently. This correction notice is to correct this discrepancy.

List of Subjects in 48 CFR Chapter 12

Government procurement.

This correction notice is issued under delegated authority under 49 CFR Part 1.59 (q).

Dated: August 31, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation makes corrections to 48 CFR Chapter 12 as follows:

PART 1205—PUBLICIZING CONTRACT ACTIONS

1205.303 [Corrected]

1. Section 1205.303 is corrected by deleting the words "and modifications" in the first sentence.

[FR Doc. 88-20143 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Five National Wildlife Refuges to the List of Open Areas for Migratory Game Bird, Upland Game, and Big Game Hunting, and Two to the List for Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding five national wildlife refuges (NWRs) to the list of open areas for migratory game bird, upland game, and/or big game hunting, and two NWR's to the list for sport fishing. The Service has determined that such uses will be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343-4313.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which each refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management, and must otherwise be in the public interest. This rulemaking opens five refuges to hunting and two to sport fishing. Refuge-specific regulations for these refuges are contained in separate rulemaking documents on refuge-specific hunting and fishing regulations.

On May 6, 1988, at 53 FR 16296, the Service published a proposed rule to open five NWRs to hunting and two to sport fishing. Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received on the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from 43 parties. Several comments were similar or identical to those received on previous proposed rulemakings opening refuges to hunting and/or fishing contending generically that hunting on refuges is illegal, not in the spirit for which refuges are created, violates the Endangered Species Act, or is not in compliance with the National Environmental Policy Act or various other laws or regulations. These issues have been addressed by the Service, see *e.g.*, 51 FR 30655 of August 28, 1986, the final rule opening seven refuges to hunting and 11 to sport fishing, and the Service will not here repeat its responses given in that rulemaking.

Substantive comments on issues not already addressed in hunting and fishing plans, Environmental Assessments or Section 7 Endangered Species Act consultations (all of which were available for public review during the comment period) are responded to below:

Issue: While some parties categorically supported or opposed hunting per se, some took literal issue with the idea of hunting on a "refuge."

Response: NWRs are not established for the protection of individual members of each species; moreover, NWRs are established for a variety of purposes other than strict protection of wildlife. Each individual national wildlife refuge must be managed primarily for the major purpose(s) for which it was established. Such purposes may include providing for environmental education, the protection of hardwood forests, designated bird species or endangered species, or providing fish and wildlife oriented recreation including but not limited to bird watching, fishing or hunting. By law (see *Conformance with Statutory and Regulatory Authorities* below) any area may be used for any purpose when determined compatible with the major purposes for which it

was established. As a form of recreation to almost 17 million people, hunting, when compatible with refuge purposes is considered to be a valid activity that is often the only practical form of population control for some species, notably big game.

Issue: The frequency, duration, extent or manner of deer hunting on the Supawna Meadows NWR in New Jersey was commented upon most frequently, including thoughtful and substantive comments by Congressman William J. Hughes of the Second District of New Jersey.

Response: The data obtained from the first-time hunt, together with that from field work, will form the basis upon which State and Service biologists will evaluate the degree to which the objectives of the hunt were met and upon which to make future recommendations.

Issue: The New Jersey refuge deer hunts should be substantial enough (not token) to reduce or eliminate crop and landscape depredations and automobile accidents in the surrounding areas.

Response: While the refuge hunter density of one hunter per 25 acres (1/25) is not nearly as dense as the 1/15 sometimes permitted elsewhere in the State, the Service believes refuge hunting program objectives will be met. This conservative hunter density is thought prudent for this first-time opening and will provide baseline data upon which to make future recommendations.

Issue: Several residents in the vicinity of the Supawna Meadows NWR commented that high deer populations on the refuge caused extensive economic damage to crops, landscaping and home gardens as well as numerous automobile accidents.

Response: One objective of the Supawna Meadows NWR hunt is "to maintain the deer population at a level compatible with refuge habitat."

Issue: Reducing deer will reduce the number of deer ticks and the threat of Lyme disease.

Response: Deer ticks (*Ixodes dammini*) inhabit a variety of hosts, the white-footed mouse in particular. The argument that reducing deer numbers will reduce the threat of Lyme disease to humans cannot be supported by the literature currently available.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Secretary administers the Refuge System through the Service.

The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of these permitted forms of recreation.

In accordance with the NWRSAA and the RRA, the Secretary has determined that the hunting and fishing openings described below will be compatible and consistent with the primary purposes for which each of the refuges listed was established, and that funds are available to administer these programs. The hunting and fishing programs will be within State and Federal (migratory game bird) regulatory frameworks. A discussion of the compatibility of the hunting and fishing programs with the purpose(s) for which each refuge was established and the availability of funding for each program, was discussed in the proposed rule, referenced above.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that opening these refuges to hunting and fishing will generate approximately 71,550 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and the 1987 Economic Report of the President (Consumer Price Index), total annual receipts generated from purchases of food, transportation, hunting and fishing equipment, fees, and licenses associated with these programs are expected to be approximately $2,406,429 or substantially less than $100 million. In addition, since these estimated receipts will be spread over several States, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule would have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. These openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal Government of law enforcement, posting, etc., needed to implement activities under this rule would be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approved No.
Economic and public use permits	1018-0014

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National

Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 [41 FR 51131]. Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C), environmental assessments (EAs) were prepared for these refuge openings. Based upon the EAs, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared, where appropriate, pursuant to the Endangered Species Act.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. It is Service policy to conduct hunting within the framework of State laws, regulations and seasons. To delay opening the refuges to hunting may cause confusion to the public, deny a benefit to the public and small related businesses and would not be in the best interest of the Service or the public. Thus the Department of the Interior concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act to make these regulations effective upon publication in the **Federal Register.**

Primary Author

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, Parts 32 and 33 of Chapter I Title 50 of the *Code of Federal Regulations* are amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.11 is amended by adding Cache River NWR, AR, and Salt Plains NWR, OK, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Arkansas

Cache River National Wildlife Refuge

* * * * *

Oklahoma

* * * * *

Salt Plains National Wildlife Refuge

* * * * *

3. Section 32.21 is amended by adding Cache River NWR, AR, Little River NWR, OK, and Salt Plains NWR, OK, alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

* * * * *

Oklahoma

* * * * *

Salt Plains National Wildlife Refuge

4. Section 32.31 is amended by adding Cache River NWR, AR, Edwin B. Forsythe NWR, NJ, and Supawna Meadows NWR, NJ, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

* * * * *

New Jersey

Edwin B. Forsythe National Wildlife Refuge

* * * * *

Supawna Meadows National Wildlife Refuge

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460K, 664, 668dd, 715i.

2. Section 33.4 is amended by adding Cache River NWR, AR, and Little River NWR, OK, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

* * * * *

Oklahoma

Little River National Wildlife Refuge

* * * * *

Dated: August 15, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–20079 Filed 9–2–88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing the U.S. Exclusive Economic Zone off Southeast Alaska to commercial fishing for all salmon species. This action is necessary to control the harvest of coho salmon by the commercial troll fishery and is intended to ensure that weak coho salmon stocks are not overharvested.

DATE: This notice is effective at 2359 hours Alaska Daylight Time (ADT), Wednesday, August 31, 1988. Public comments are invited until October 1, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C.

3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the treaty (article I (6) and 1988 amendment of annex IV, chapter 5).

The troll fishery opened on July 1 for all salmon species (53 FR 25492, July 7, 1988). It was closed for harvesting chinook salmon on July 12 because it had taken its chinook quota (53 FR 26779 July 15, 1988). On July 26, it was closed completely for 10 days to protect coho salmon (53 FR 28403, July 28, 1988).

The troll fishery was closed again on August 14 for 10 days (53 FR 31010, August 17, 1988) to provide further protection for coho because all indicators showed the coho salmon in Southeast Alaska still to be well below average in abundance. During the closure, the Alaska Department of Fish and Game conducted some test troll fishing and monitored the coho harvests in the commercial net and sport fisheries in inside waters, and after the troll fishery reopened on August 25, it monitored the troll fishery as well as the other fisheries. The results of these studies confirm previous information that the coho stocks continue to be weak, although they have showed some slight improvement in the northern area.

As of August 26, the area-wide, cumulative coho harvest by the troll fishery is only about 37 percent of the 1981–1985 average (with the average harvest per boat per day during the recent opening ranging from 8 to 77 percent of the 1981–1985 average catch per boat per day for this time of year); the cumulative gillnet coho harvest is about 50 percent of the average; and the cumulative sport coho harvest is about 30 percent of the average.

It is possible that the Secretary and the Alaska Department of Fish and Game will reopen the troll fishery north of Cape Fairweather and maybe in some other small areas of State waters early in September if the coho stocks show significant improvement.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

The Secretary, in reviewing the available information on the coho stocks and fisheries, has detemined that the effect of overall fishing effort, the catch per unit of effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a closure of the troll salmon fishery if coho stocks are to be conserved and managed adequately.

Accordingly, the Secretary is closing the EEZ as of 2359 hours, ADT, Wednesday, August 31, 1988. He is taking this action in conjunction with the Alaska Department of Fish and Game closure of the troll fishery in State waters.

The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). However, § 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: August 31, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-20173 Filed 8-31-88; 4:51 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 172
Tuesday, September 6, 1988

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management OPM is proposing to amend its regulations concerning the processing of garnishment orders for child support and/or alimony. The proposed regulations would amend the section pertaining to amounts that are excluded from garnishment for support orders.

DATE: Comments should be received by November 7, 1988.

ADDRESS: Send or deliver comments to James M. Strock, General Counsel, Office of Personnel Management, Room 7H09, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 632-5090.

SUPPLEMENTARY INFORMATION: The proposed amendments were made necessary by the enactment of the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335 (June 6, 1986), which provided for contributions from the salaries of Federal employees for the Thrift Savings Fund. Because all contributions to the Thrift Savings Fund, including Government contributions, are subject to garnishment in accordance with 5 U.S.C. 8437(e), the Federal Retirement Thrift Investment Board recommended that Thrift Savings Fund contributions be excluded in determining the obligor's "aggregate disposable earnings". This recommendation has been adopted in these proposed amendments.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for Part 581 continues to read as follows:

Authority: 42 U.S.C. 659, 661-662; 15 U.S.C. 1673; E.O. 12105

2. Section 581.103 is amended by redesignating paragraph (c)(4) as (c)(6); adding paragraphs (c)(4) and (c)(5) and revising paragraphs (c)(1) through (c)(3) to read as follows:

§ 581.103 Moneys which are subject to garnishment.

* * * * *

(c) *For obligors generally.* (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;

(ii) Retirement;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' benefits when payable to the obligor;

(2) Refunds of retirement contributions where an application has been filed;

(3) All moneys in the obligor's Thrift Savings Fund account in accordance with section 8437(e) of title 5 of the United States Code;

(4) Amounts received under any Federal program for compensation for work injuries; and

(5) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(6) Exceptions. * * *

* * * * *

3. In § 581.105, paragraph (e) is revised to read as follows:

§ 581.105 Exclusions.

* * * * *

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

* * * * *

[FR Doc. 88-20103 Filed 9-2-88; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 890

Federal Employees Health Benefits Program; Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) premium payments to certain experience-rated carriers. The regulations would enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

DATES: Comments must be received on or before October 6, 1988.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634.

SUPPLEMENTARY INFORMATION: OPM recently contracted with the consulting firm of Towers, Perrin, Forster & Crosby (TPF&C) to undertake a comprehensive evaluation of the FEHB Program. Details of the study and recommendations for more efficient administration of the FEHB Program are described in the TPF&C report entitled "Study of the Federal Employees Health Benefits Program." One of the recommendations contained in the report is that OPM pay enrollment charges to experience-rated carriers via a letter of credit (LOC) to improve the government's cash management practices. In evaluating this recommendations, OPM considered the United States Department of the Treasury regulations (31 CFR Part 205), which require the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000. Upon review of the Treasury regulations, we have concluded that the establishment of the LOC method would not alter the basic financial relationships that currently exist under the FEHB Program, nor would it affect the rate setting process. Premiums would continue to be made available to experience-rated carriers for the payment of claims and administrative expenses at the same time and in the same amount as the current payment process. Where a carrier has so authorized, the underwriter would also have access to the account. As a result of our evaluation of this recommendation, we are proposing a LOC premium payment process for the FEHB Program to become effective January 1, 1989.

The specifics of the proposed LOC premium payment process for carriers are as follows. (An underwriter authorized by a carrier to withdraw funds from the LOC account would follow the same withdrawal procedures specified for the carrier.)

(1) The Department of the Treasury would establish a LOC account at a financial institution designated by each applicable carrier.

(2) OPM would direct Treasury to make funds available to each carrier's LOC account on the second and fourth Thursday of each month and would mail a notice to each carrier advising it of the amount made available.

(3) To withdraw funds from its LOC account, the carrier would present a voucher, which is a standard Treasury form, to its financial institution. The financial institution would send an electronic request for the funds to the Treasury via the district Federal Reserve Bank (FRB) or its branch through FRB New York.

(4) Treasury would validate the request and electronically transfer either the funds or a notice of rejection via FRB New York and the district FRB or its branch to the carrier's financial institution. The funds would be available on the same or next banking day, depending on when the transaction was initiated.

(5) Each carrier's LOC account would be credited monthly with interest earned at a marketable Treasury security rate based on the average balance in its LOC account during the month.

The carrier would have access to the LOC acount, including daily drawdowns, without the necessity of prior OPM approval. The carrier must, however, be prepared to demonstrated that it meets the Treasury regulatory requirement that the timing and amount of drawdowns be as close as administratively feasible to the actual disbursement. To ensure that the carrier has adequate working capital, the carrier would be allowed to hold a minimum amount of cash requirements outside its LOC account. Generally, this amount will be less than one (1) day's working capital. Upon implementation of LOC, carriers would be required to use existing FEHB cash and investments before initiating a drawdown. The LOC system would enable OPM to monitor the amounts drawn down by carriers. Should OPM discover that a carrier has withdrawn funds in excess of the amounts needed to meet on-hand claims and other authorized expenses, or has, in any other way, abused the privilege of direct access to its LOC account, the drawdown process may be shifted to one in which prior OPM approval is required.

The amount made available to each carrier's LOC account represents an OPM obligation to disburse premium payments and the LOC balance would be reported as an account receivable on the carrier's annual accounting statement and a liability on the books of the FEHB Program. As the balance in the LOC account would be considered a carrier-held asset for the purposes of gauging reserve level requirements, formula-driven transfers to or from the contingency reserve to the LOC account and vice-versa would be in accordance with current regulations (5 CFR 890.503). Similarly, the LOC account would be eligible for special contingency reserve transfer, if the carrier can demonstrate good cause.

To support drawdowns transacted by the carrier, OPM would require detailed cash flow information with both the interim and annual accounting statements. More frequent reporting of detailed transactions may be required should a pattern of drawdowns be observed that leads OPM to suspect that funds in excess of daily requirements have been withdrawn from the LOC account. As with all carrier operations, financial transactions involving the LOC account would be subject to audit by OPM and the General Accounting Office.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.101, a definition for "letter of credit" is added to paragraph (a).

§ 890.101 Definitions; time computations.

(a) * * *

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter-of-credit arrangement for the payment of recurring premiums under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" includes any balance in the carrier's letter-of-credit account.

* * * * *

3. In Subpart E, a new § 890.505 is added to read as follows:

§ 890.505 Recurring premium payments to carriers.

(a) *Recurring payments to carriers to community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b) *Recurring payments to experience-rated carriers.* Prior to each contract year, OPM will estimate the amount of premiums that will be paid to each experience-rated carrier participating in the program during the following contract year.

(1) If the estimate reveals that a carrier and its authorized underwriter will receive less than a total of $120,000 during the following contract year, OPM will pay to the carrier the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the FEHB Fund.

(2) If the estimate reveals that a carrier and its authorized underwriter will receive a total of $120,000 or more during the following contract year, OMP will make payments on a letter-of-credit basis. Premium payments received for the plan less the amounts credited to the contingency and administrative reserves will be made available for carrier and/or underwriter drawdown not later than 30 days after receipt by the FEHB Fund. Carriers will use the letter-of-credit account in accordance with 31 CFR 205 and guidelines issued by OPM.

[FR Doc. 88-20100 Filed 9-2-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 88-15]

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency; Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: In proposed rule document 88-18802 published on August 19, 1988, beginning on page 31705, a table describing the computation of the amount of the semiannual assessment paid by each bank did not include certain information. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Financial Economist, Economic and Policy Analysis Division, (202) 447-1924, or Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880.

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for 12 CFR Part 8 continues to read as follows:

Authority: 12 U.S.C. 481, and 3102 and 26 DC Code 102.

2. On page 31708, in § 8.2(a), the table is corrected to add X_4, X_5, Y_3, X_3 in ascending order in Columns A, B, C, and E, respectively, and .0000741 in descending order in Column D.

* * * * *

Dated: August 30, 1988.

Ford Barrett,

Assistant Director, Legislative and Regulatory Analysis Division.

[FR Doc. 88-20181 Filed 9-2-88; 8:45 am]
BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871-0007]

Eugene M. Addison, M.D. et al.; Huntsville Physicians; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, fourteen Huntsville, Texas physicians from dealing collectively with any HMO plan; boycotting or refusing to deal with any HMO or health plan; denying hospital staff privileges because the applicant is associated with an HMO or health plan; or trying to change the hospital's rules or the medical staff bylaws to limit the participation of any physician in running the medical staff or hospital because of his or her affiliation with an HMO or health plan.

DATE: Comments must be received on or before November 7, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gee, FTC/S-3115, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Physicians, Trade practices.

In the Matter of Eugene M. Addison, M.D.; B. Jack Atkins, M.D.; Michael C. deBerardinis, M.D.; Alvin Gebert, M.D.; James M. Hanna, M.D.; J. Stan Hines, M.D.; Michael Koehl, M.D.; J. Darrel Martin, M.D.; Charles W. Monday, Jr., M.D.; William L. Nix, M.D.; Glen Oliver, M.D.; Howell Towler, M.D.; Paul Vilardi, M.D.; Gene Wilson, M.D.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Eugene M. Addison, M.D., hereinafter referred to as proposed respondent, and others, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the proposed respondent and counsel for the Federal Trade Commission that:

1. Proposed respondent is a board-certified family practitioner engaged in the practice of medicine pursuant to the laws of the State of Texas governing the practice of medicine. Proposed respondent's business address is 1909 22nd Street, Huntsville, Texas 77340.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. He further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order the following definitions shall apply:

A. "Third-party payer" means any person or entity that engages in the process of reimbursing, purchasing, or paying for health care services provided to any other person. Third-party payers include, but are not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations ("HMOs"); preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

B. "Respondent" means Eugene M. Addison, M.D., his employees, agents and representatives.

II.

It is ordered that the respondent, directly, indirectly, or through any corporate or other device, in connection with his activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, do forthwith cease and desist from organizing, entering into, continuing, cooperating in, or carrying out, any agreement or understanding, either express or implied, with any physician:

A. To deal on collectively determined terms with any HMO or health plan or program offered by any third-party payer;

B. To boycott or threaten to boycott, to refuse or threaten to refuse to deal with, to withdraw or threaten to withdraw from participation in, or not to participate or threaten not to participate in, any HMO or health plan or program offered by any third-party payer;

C. To exclude, deny, or delay any applicant from appointment to the medical staff of Huntsville Memorial Hospital ("the Hospital") for the reason, either in whole or in part, that such applicant practices to any extent, or is associated in any way, with any HMO or other health plan or program offered by any third-party payer; or

D. To change, or attempt to change, the bylaws of the medical staff of the Hospital or the rules and regulations of the Hospital in such a way as to reduce or eliminate the participation of any physician on the medical staff of the Hospital in the governance of the medical staff or Hospital or from holding any leadership position on the medical staff of the Hospital, for the reason either in whole or in part that such physician practices to any extent, or is associated in any way, with any HMO or other health plan or program offered by any third-party payer.

Provided, however, that nothing in this order shall prohibit the respondent from entering into any agreement with any physician with whom the respondent practices medicine in partnership or in a professional corporation, or who is employed by the same person as the respondent.

III.

A. It is further ordered that the respondent file a written report with the Commission within ninety days of the date the order is served, and annually for five years on the anniversary of the date the order was served, and at such other times as the Commission may by written notice to the respondent require, setting forth in detail the manner and form in which the respondent has complied and is complying with the order.

B. It is further ordered that the respondent, for a period of five years after the date the order is served, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities prohibited by Part II of this order, including, but not limited to, all communications generated by the respondent or that come into the respondent's possession, custody, or control, from the Hospital, other physicians, or any third-party payer,

that mention, discuss or refer to any HMO or any other program that operates in whole or in part on other than a fee-for-service basis offered by any third-party payer that is considering, attempting, or actually doing business in the Huntsville area, or any health care facility or provider in any way associated with such HMO or program.

Huntsville Physicians, Unnamed Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from fourteen physicians ("proposed respondents") in Huntsville, Texas. The agreements would settle charges by the Federal Trade Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by conspiring to block or impede the entry and development of health maintenance organizations ("HMOs") in the Huntsville area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements, proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that each of the proposed respondents is engaged in the independent practice of medicine as a sole practitioner, and except for one family practice specialist they all specialize in fields other than primary care. Prior to 1985, no HMOs operated in the Huntsville area and physicians provided virtually all medical services on a fee-for-service basis.

According to the complaint, in early 1985 Sanus Texas Health Plan ("Sanus"), an HMO that wanted to enter the Huntsville area, agreed to a contract with the Family Practice & Surgery Clinic, Inc. ("the Clinic"). Sanus is a "gate-keeper" plan, under which the HMO seeks to control costs and utilization by having a panel of primary care physicians serve as the "gate-keepers" for health care services. The Clinic at that time consisted almost entirely of primary care physicians—specifically, family practice specialists. The Clinic agreed to serve as the "gate-keeper" for persons enrolled in Sanus, providing the initial medical treatment and determining when the patient needed to be seen by a specialist in a field other than primary care. Except in emergencies, the HMO would not be obligated to pay for health care services other than those provided by the primary care "gate-keeper" or a physician to whom he or she has referred the patient.

After the proposed respondents became aware of the contract between Sanus and the Clinic, they agreed among themselves to act together to impede the growth and development of HMOs in the Huntsville area and to restrict competition from the Clinic. According to the complaint, the proposed respondents agreed to take the following actions, among others, to further their goals: to act collectively in negotiations with HMOs to attempt to obtain more advantageous terms of participation; to engage in a collective refusal to participate with HMOs seeking to operate in the Huntsville area; and to engage in a collective effort to restrict or eliminate the hospital privileges of the Clinic physicians who are affiliated with an HMO.

Pursuant to this agreement, the proposed respondents sent a letter to the Huntsville Memorial Hospital ("the Hospital"), the only hospital in Huntsville, urging that it not enter into a participation agreement with Sanus. The proposed respondents also agreed no longer to act independently in their dealings with HMOs but rather to act concertedly. They negotiated jointly with Sanus and ultimately decided jointly not to participate. Similarly, they agreed not to participate with a second HMO, Maxicare-Texas, Inc., when it tried to enter the area after also first entering into a contract with the Clinic. Finally, after the Clinic recruited a non-primary care specialist to join it and participate with the HMOs, the proposed respondents attempted to change the Hospital bylaws to place unreasonable restrictions on the privileges of the Clinic physicians and other physicians who participated in any HMO that might try to enter the Huntsville area.

The complaint alleges that the proposed respondents' actions have injured consumers by, among other things:

A. Lessening or restraining competition among physicians in the Huntsville area;

B. Lessening or restraining competition between HMOs and other third-party payers for subscribers in the Huntsville area; and

C. Causing the cost to consumers of plans offered by HMOs and other third-party payers to be higher than it would be in a fully competitive situation.

The Proposed Consent Order

The proposed consent order would prohibit each of the proposed respondents from entering into, organizing, or carrying out any agreement with any other physician: to deal on collectively determined terms with any HMO or health plan; to boycott, refuse to deal with, withdraw from participation in, or not participate in, or to threaten any of the foregoing actions, with respect to any HMO or health plan; to exclude, deny, or delay any applicant for medical staff privileges because the applicant is affiliated with an HMO or health plan; or to change or attempt to change the medical staff bylaws or the Hospital's rules or regulations to limit the participation of any physician in the governance of the medical staff or Hospital or from holding a leadership position in the medical staff because that physician is affiliated with an HMO or other health plan.

The proposed order would not prohibit a proposed respondent from entering into agreements with another physician if the proposed respondent practices with that physician as a partner or in a professional corporation, or if the proposed respondent and the other physician are employed by the same person. For example, a proposed respondent and his partner could make a joint decision regarding participation with an HMO. This provision recognizes that partners in a group practice are not competitors and thus for purposes of the antitrust laws constitute one economic entity.

The order would also require each of the proposed respondents to file compliance reports with the Commission sixty (60) days after service of the order, annually for five years, and at such other times as the Commission may require.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any of the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 88-20084 Filed 9-2-88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3440-8]

Approval and Promulgation of Implementation Plans; Dearborn, Lake and Porter Counties, IN

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO_2 emission limits and plans for Dearborn, Lake and Porter Counties. USEPA's action is based upon revision requests which were submitted by the State to satisfy the requirements of Part D and section 110 of the Clean Air Act (Act).

DATE: Comments on these revisions and the proposed USEPA actions must be received by October 6, 1988.

ADDRESSES: Copies of the SIP revisions and support documentation are available at the following addresses for review: [It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V Office.]

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

A copy of today's revision is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6034

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for SO_2.[1] See 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.315 for Indiana.[2] For these areas, Part D of the Act required the State to revise its SIP to provide attainment of the primary NAAQS by December 31, 1982. These SIP revisions must also provide for attainment of the secondary NAAQS as soon as practicable.

The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). In addition, section 110(a)(2) of the Act requires the State to adopt rules sufficient to assure attainment and maintenance of the SO_2 NAAQS in the unclassifiable and attainment areas in the remainder of the State.

Status of Indiana SO_2 SIP

On March 12, 1982 (47 FR 10813), and May 13, 1982 (47 FR 20583), USEPA approved or conditionally approved Indiana's SO_2 SIP for most areas of the State. In the March 12, 1982, rulemaking, USEPA conditionally approved the plan for Lake County and disapproved the plans for Dearborn and Porter Counties. It took no action in both of those rulemakings on one of three compliance methods contained in Indiana's 1980 SO_2 regulation (325 IAC 7-1), i.e., the sulfur content in fuel averaging method which is based on 30-day averaging.

On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's approval of the SO_2 emission limits in Indiana's revised plan, because USEPA did not rulemake on the 30-day averaging compliance method contained in the rule. See *Indiana & Michigan Electric Company (IMEC) v. USEPA*, 733 F.2d 489. Based on this decision and another recent decision, *Sierra Club v. Indiana-Kentucky Electric Company*, 716 F.2d 1145 (7th Cir. 1983, USEPA determined that there were no federally enforceable SO_2 emission limits regulating most existing sources in Indiana; [3] and Indiana no longer had an approvable SO_2 plan.

On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana SO_2 plan. That notice proposed to disapprove Indiana's overall SO_2 plan, because the 30-day averaging compliance methodology in the rule (325 IAC 7-1-3) was inconsistent with protection of the 3-hour and 24-hour SO_2 NAAQS; and the stack test methodology, which is consistent with short-term emission limits, was not independently enforceable. For 77 of Indiana's 92 counties, this was the only basis for the proposed disapproval of Indiana's SO_2 plan.[4] For the remaining 15 counties, technical deficiencies were noted as well.[5]

USEPA's February 4, 1987, notice indicated that correction of the identified deficiency in the compliance methodology rule would allow USEPA to reinstate its March 12, 1982 (47 FR 10813), final approval for these 77 counties.

On March 12, 1987, Indiana submitted to USEPA for "parallel processing" [6] its

[1] The primary SO_2 NAAQS is violated when, in a calendar year, either: 1) the annual arithmetic mean value of SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 ug/m^3) (the annual primary standard), or 2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 ug/m^3 more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1300 ug/m^3 more than once.

[2] Portions of Lake and Porter Counties are designated "Does not meet primary standards", i.e., primary nonattainment for SO_2, while the remaining portions of these counties are designated "Better than national standards", i.e., attainment. Dearborn County is designated "Cannot be classified", i.e., unclassifiable, for SO_2.

[3] New sources constructed under, (or existing sources limited by construction of new sources under), USEPA-approved new source review (NSR) regulations, USEPA's prevention of significant deterioration (PSD) regulations, or USEPA's new source performance standards (NSPS) regulations remain bound by the SO_2 emission limitations required by these regulations or permits issued based on these regulations. These limits continue to be fully enforceable; and, unless they are supplemented by more stringent limits in the revised county-specific rules, these limits are inherent parts of the Indiana SO_2 attainment plans being proposed for approval in today's notice.

[4] These 77 Counties are: Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Decator, Dekalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jennings, Johnson, Knox, Kosciusko, LaGrange, Lawrence, Madison, Marshall, Martin, Miami, Monroe, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putham, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Wabash, Warren, Washington, Wells, White, and Whitley. All of these counties are designated "Better than National Standards" for SO_2 (40 CFR 81.315).

[5] The remaining 15 counties are: Dearborn, Floyd, Gibson, Jefferson, Lake, LaPorte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne Counties. USEPA has recently approved Indiana's plan for eight of these counties (Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne). USEPA proposed rulemaking on Warrick, Floyd and Morgan Counties on August 3, 1988 (53 FR 29236 and 29239). Indiana's plan for Gibson County was also recently proposed for approval. Today, USEPA is proposing rulemaking on the last three of these counties (Dearborn, Lake, and Porter).

[6] The generic procedures for "parallel processing" are described at 47 FR 22073 (June 7, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any

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proposed revised compliance methodology rule, 325 IAC 7-1-3.1, as preliminarily adopted by the Board on March 4, 1987.[7] The revised compliance methodology rule replaces 325 IAC 7-1-3 in the 1980 version of 325 IAC7-1.

The revised rule includes a stack test compliance method and either a 30-day or a calendar month averaging fuel analysis method (depending upon the size of the source), each of which may be used at any time to determine compliance or non-compliance with source emission limitations.[8] However, a determination of non-compliance through the use of one method cannot be refuted by evidence of compliance through the other method. It also includes recordkeeping and reporting requirements.

In accordance with the February 4, 1987, proposed rulemaking notice, on July 17, 1987 (52 FR 27016), USEPA (1) proposed for parallel processing to approve 325 IAC 7-1-3.1, because it provides for the independent use of stack testing to determine compliance with the SO_2 emission limits in 325 IAC 7-1; (2) proposed to reinstate the other provisions of 325 IAC 7-1; and (3) proposed to reinstate its approval of Indiana's plan for the 77 counties, based on the revised compliance methodology.

On October 21, 1987, Indiana submitted 325 IAC 7-1-3.1, as promulgated by the State on September 24, 1987. On January 19, 1988 (53 FR 1354), USEPA approved this rule for inclusion into the Indiana SO_2 SIP statewide; reinstated the other general provisions of 325 IAC 7-1 (1980), i.e., 325 IAC 7-1-1, 2 (except for any emission limits in the 15 counties), 4, 5, 6, and 7 statewide; and, based on its approval of the revised compliance methodology, reinstated its approval of Indiana's SO_2 plan for the 77 counties.

Indiana has also submitted county-specific plans for parallel processing for the other 15 counties, including Dearborn, Lake, and Porter Counties. These plans consist of source-specific emission limits for certain sources, with the remainder of the sources in each county limited by the underlying 6.0 pounds per million British Thermal Units (lbs/MMBTU) emission limit in 325 IAC 7-1-2.[9] Additionally, all sources are subject to the remaining requirements of 325 IAC 7-1, as modified with new compliance methodology 325 IAC 7-1-3.1. (As noted before, the general requirements of 325 IAC 7-1 (with the exception of the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2) were reinstated as a portion of the Indiana SO_2 SIP for all counties, and new compliance methodology 325 IAC 7-1-3.1 was approved for all counties on January 19, 1988.)

USEPA is proposing to approve, under parallel processing, Indiana's SO_2 plans for Dearborn, Lake, and Porter Counties. This proposed approval specifically includes (1) the source-specific emission limits and other requirements in Indiana's county-specific rules, and (2) the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2, which is applicable to all other sources not specifically listed in the county-specific rules (except the sources described by footnote 3 and in Lake County). Under USEPA's parallel processing procedures, these county-specific rules must be fully State-adopted, enforceable, and submitted as a revision to Indiana's SO_2 SIP before USEPA can take final rulemaking action to approve them.

Specific plans for each county follow. Additionally, technical support documents more fully explaining each plan are available at the addresses listed in the front of this notice.

Dearborn, Lake and Porter Counties

On February 4, 1987 (52 FR 3452), USEPA proposed to disapprove the Indiana sulfur dioxide (SO_2) State Implementation Plan (SIP) for Dearborn, Lake and Porter Counties. In response to USEPA's proposed rulemaking, revised SIPs were submitted by the State of Indiana. Based on the available technical support, the revised emission limitations,[10] along with the revised compliance test method rule, constitute an acceptable SIP for Dearborn, Lake and Porter Counties.

Dearborn County

USEPA noted two major deficiencies with the SIP for Dearborn County in its February 4, 1987, proposed rulemaking: (1) A compliance test method inconsistent with the short-term SO_2 NAAQS, and (2) several technical problems with the State's attainment demonstration. On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7-1-3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana (see 53 FR 1354). Thus, this issue has been resolved.

On April 20, 1988, the State submitted for parallel processing a revised rule, 326 IAC 7-1-20, for Dearborn County. (The previous SO_2 plan for Dearborn County was withdrawn on December 22, 1987.) The new rule specifies the following emission limitations for the four main sources in the County:[11]

(a) Indiana Michigan Power Co.—Tanners Creek:

Units 1-3
- 1.2 lbs/MMBTU

Unit 4
- 8.3 lbs/MMBTU prior to October 1, 1989[12]
- 6.60 lbs/MMBTU, on or after October 1, 1989
- 5.24 lbs/MMBTU, on or after August 1, 1991

(b) Schenley Distillers:

Boilers 1, 2, 3, 6, 7, 8
- 0.6 lbs/MMBTU

Boilers 4, 5, 9
- Restricted to natural gas

Boilers 6, 7, 8
- 40 tons per year, combined

(c) Seagrams and Sons:

Boilers 5 and 6
- 1.92 lbs/MMBtu, except Boiler 5 is limited to
- 1.07 lbs/MMBTU when Boiler 6 is bruning any fuel other than natural gas

(d) Diamond Thantcher Glass:

Furnaces 1 and 2
- 1.4 lbs/MMBTU

The rule also specifies reporting requirements for Boilers 6, 7, 8 at Schenley's (for the tons per year limit) and Boilers 5 and 6 at Seagrams.[13]

deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, then USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, then USEPA may publish a rulemaking notice reproposing action, as necessary.

[7] For the exact language of 325 IAC 7-1-3.1, see 52 FR 27017 (July 17, 1987).

[8] Although the rule contains a 30-day averaging compliance methodology for certain sources and monthly averaging for others, for purposes of this notice, this combination of methodologies will be referred to as "30-day averaging".

[9] Indiana has recently recodified its rules from Title 325 to Title 326. All rules in today's notice will be codified under Title 326 when submitted instead of 325. This in no way affects the substance of the rules, and USEPA will take final action upon then using the codification in which they are promulgated and submitted by the State.

[10] These limits are enforceable by the stack test method in 325 IAC 7-1-3.1, thus protecting the 3-hour SO_2 NAAQS. All sources in Dearborn, Lake, and Porter Counties must be in compliance with the emission limits in Indiana's SO_2 rule at all times, as determined by 325 IAC 7-1-3.1. Malfunctions are regulated by 325 IAC 1-1.5, as approved on February 14, 1984 (49 FR 5618).

[11] All other sources in the county remain governed by 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2(b).

[12] Coal delivered to Tanners Creek after July 1, 1988, may not exceed an SO_2 emission rate equivalent to an emission limit of 6.6 lbs/MMBTU.

[13] USEPA believes that the alternative emission restrictions in the rule for Seagrams and the annual

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USEPA accepts the final compliance date of August 1, 1991, for Dearborn County sources. Dearborn county is currently designated as unclassifiable for SO_2. Section 110 of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, but not later than 3 years from the date of approval of the plan, and attainment of the secondary NAAQS within a reasonable time. USEPA believes that the State's final compliance date is consistent with these requirements.

As technical support for its revised emission limitations, the State has performed a new modeling analysis.[14] Indiana used the ISCST model (rural, UNAMAP Version 6). Complex I (UNAMAP Version 6) was also used in the VALLEY screening mode. USEPA believes that these are the appropriate guideline models for this situation. Dearborn County meteorological data were used, where available. Stack height credit at Cincinatti Gas and Electric Company's Miami Fort (a large power plant in Ohio) and Tanners Creek was limited, based on the stack height regulations (see discussion below). Based on a screening analysis, the worst-case operating loads were determined to be 50% at Miami Fort-Unit 5, 75% at Thatcher Glass, and 100% at all other sources. Building downwash was modeled for stacks at Miami Fort and Schenley with heights less than "good engineering practice (GEP) formula heights". See the Stack Height Regulations below.

Two refined analyses were performed by the Indiana Department of Environmental Management (IDEM). In the first analysis, Indiana sources were modeled at their allowable emission limits under the current State permits, and Ohio sources were modeled at their allowable emission limits under the current SIP. This modeling predicted many violations of the primary annual, primary 24-hour, and secondary 3-hour NAAQS in Indiana, Ohio, and Kentucky. The highest violations in all three States were due solely to two Ohio sources, Miami Fort, Units 5 and 6, and, to a lesser extent, a DuPont facility. Although Indiana sources significantly contributed to some lesser violations, these violations would still occur even if the impact from Indiana sources was eliminated. However, these violations in the three States would be corrected if the culpable Ohio sources reduced emissions sufficiently to correct the highest (constraining) violation. Because these two Ohio sources caused so many of the high concentrations listed in the model output tables, it was not possible to identify the critical concentrations affected by Indiana sources. Consequently, in order to develop a control strategy for Indiana sources, IDEM reduced the modeled emission rate for Miami Fort, Units 5 and 6, from 5.0 to 1.2 lbs/MMBTU in the second anaylsis.[15] A discussion of the results of this analysis follow.

The critical 3-hour concentration due to Indiana sources was 1584 micrograms per cubic meter (ug/m^3) (versus the standard of 1300 ug/m^3) and the critical 24-hour concentration due to Indiana sources was 392 ug/m^3 (versus the standard of 365 ug/m^3). To correct the 3-hour violation, it is necessary to reduce the emissions at Tanners Creek, Unit 4 to 5.24 lbs/MMBTU. To correct the 24-hour violation, it is necessary to reduce emissions from Seagrams, Boilers 5 and 6.

These emission limitations provide for attainment of the SO_2 NAAQS in Dearborn County, but for the impact of Ohio sources. USEPA believes that Section 110 of the Clean Air Act does not oblige a downwind State to tighten its SO_2 SIP, where an upwind State's emissions cause violations both in the downwind State and within its own boundaries, and where the violations can be eliminated only by further control in the upwind State. Given that the highest constraining violations are due to out-of-State sources, that most violations would occur even if the impact from Dearborn County sources were eliminated, and that those reductions in emissions from Hamilton County sources which are estimated to be necessary to assure attainment in Ohio would (when combined with Indian's plan for Dearborn County) also assure attainment in Dearborn County, USEPA believes that Indiana's plan is consistent with the requirements of Section 110 of the Clean Air Act. Consequently, USEPA is proposing to approve the Dearborn County plan. USEPA will take whatever action is necessary to deal with the modeled violations due to Ohio sources.

Lake County

USEPA cited two major deficiencies with the SIP for Lake County in its February 4, 1987, proposed rulemaking: (1) the compliance test method was inconsistent with the short-term SO_2 NAAQS, and (2) the plan failed to ensure attainment of the primary and secondary NAAQS (based on numerous technical deficiencies in the State's modeling analysis). On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7-1-3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana (see 53 FR 1354). Thus, this issue has been resolved.

On August 15, 1988, the State submitted a revised rule, 326 IAC 7-1-8.1, for Lake County for parallel processing. (The previous SO_2 plan for Lake County was withdrawn on July 31, 1987.) The new rule imposes the following requirements:[16]

(1) Stack-specific "lbs/MMBTU" and/or "lbs/hour" limits for over 40 companies are included in the proposed rule. Limits for the largest emitting facilities are summarized below:

(a) AMAIZO:

Boilers 6-10

2.07 lbs/MMBTU and 784 lbs/hour

(b) AMOCO:

No. 1 Power Station, Boilers 1-7

0.2 lbs/MMBTU by September 1, 1990

No. 1 Power Station, Boilers 8

0.033 lbs/MMBTU by September 1, 1990

No. 3 Power Station, Boilers 1-6

0.4 lbs/MMBTU by December 31, 1988

limit for Schenleys necessitate additional source records and data beyond that required by 325 IAC 7-1-3.1. Such additional records and data are required by the Dearborn County rule. The rule does not, however, specify the methods to be used to obtain these data or state whether they can be used to determine compliance. USEPA requests clarification on these matters from the State during the comment period. Similar alternative emission limits exist in Lake and Porter Counties. See requirements for AMAIZO, AMOCO, Inland Steel, LTV Steel, Marblehead Lime, NIPSCO-Mitchell, and USX in Lake County and Bethlehem Steel and Midwest Steel in Porter County. The State should similarly clarify how it intends to use its reporting requirements in these counties as well.

In addition, there is no requirement within the Dearborn County rule for advance notification to either the State or USEPA when Seagrams switches between its two emission limit scenarios. Similarly, Inland Steel, NIPSCO-Mitchell, Stauffer Chemical, and USX in Lake County and Bethlehem Steel and Midwest Steel in Porter County have alternative emission scenarios. USEPA is considering whether such notification should be required. USEPA solicits comment on the need for such notification and on the minimum time, if any, within which notification should be required.

[14] The modeling techniques used in the attainment demonstrations for Dearborn, Lake, and Porter Counties are based on the modeling guidelines in place at the time the analyses were performed (i.e., "Guideline on Air Quality Models (Revised)", July 1986). Since that time, USEPA has promulgated a revision to its modeling guidelines (i.e., January 6, 1988, publication of "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987). Because the modeling was initiated prior to the latest revision of the guidelines, USEPA accepts the analyses for Dearborn, Lake, and Porter Counties as they stand.

[15] IDEM modeled Unit 7 at its actual height and Unit 8 at the height demonstrated to be Good Engineering Practice based on a recent fluid modeling study.

[16] All other sources in the county remain governed by the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2(b).

FCU 500
50 lbs/ton coke burned
FCU 600
35 lbs/ton coke burned
SRU Incinerator
0.033 lbs/MMBTU

(c) Commonwealth Edison (ComEd)—Stateline:

Boilers 1–3, 1–4
1.2 lbs/MMBTU

(d) Inland Steel:

4AC Station Boilers 401–404
1.18—1.5 lbs/MMBTU
10" Bar Mill Furnace
0.0 lbs/MMBTU by December 31, 1988
80" Hot Strip Mill Furnaces
Restricted to natural gas by May 31, 1990

Facilities burning Plant 2 coke oven gas must meet emission limits representing use of desulfurized coke oven gas by December 31, 1991. Inland must submit a compliance plan containing increments of progress towards achieving these limits by December 31, 1988.

(e) LTV Steel:

Boilers 3–8
0.896 lbs/MMBTU and total fuel oil/coke oven gas heat input limited to 993 MMBTU/hr
Nos. 3, 4, & 9 coke oven batteries underfired stacks
0.177 lbs/MMBTU

(f) Marblehead Lime:

Kilns
240 lbs/hour, new stack(s) at least 162 feet above grade required by September 30, 1990

(g) Northern Indiana Public Service Company (NIPSCO)—Mitchell:

Boilers 4,5,6,11
1.2 lbs/MMBTU by December 31, 1989, either Boiler 4 or 5 shall either burn natural gas or not operate; and by September 30, 1990, install nozzle on stack servings Boilers 6 and 11 to restrict diameter to 8.3 feet.

(h) Stauffer Chemical:

Acid Unit No. 3 and No. 4
Five compliance equations, depending on fuel oil usage in package boiler and preheater

(i) USX:

Tin Mill Boilers 1–5
restricted to natural gas by June 30, 1989
No. 2 Coke Plant Boilers House
1.07—1.2 lbs/MMBTU by December 31, 1988, only 4 of 8 boilers can burn coal or coke oven gas at any one time. Stacks for Boilers 3 through 6 must be raised to 133 feet by June 30, 1989
84" Hot Strip Mill
Amount of coke oven gas restricted, boiler/furnace limits, and combined fuel quality limitation
160"/210" Plate Mill
Limit changes if 46" mill shuts down

(2) Restrictions on the amount of fuel (coal, oil, and/or coke oven gas) that can be burned in certain source groups at LTV Steel and USX.

(3) All fossil fuel burning sources/companies in Lake County not specifically listed in 326 IAC 7–1–8.1 are restricted to natural gas (as opposed to the general 6.0 lbs/MMBTU emission limit in 325 IAC 7–1–2).

(4) Recordkeeping and reporting requirements:

(a) for AMAIZO, AMOCO, LTV Steel, Inland Steel, USX—daily fuel type usage in each facility, daily average sulfur content and heating value for each fuel type, calculated daily in lbs/MMBTU and in lbs/hour values for each facility, and, if applicable, number of units in operation at any one time),

(b) for NIPSCO—hourly fuel type usage in each boiler,

(c) for Stauffer Chemical—operate continuous emission monitor on Acid Unit No. 3 and 4 Stack and report daily average emission rate. Log fuel usage in package boiler and preheater.

(d) for Inland Steel—operate continuous emission monitors on No. 4AC Stacks 1, 2, and 3 to determine compliance.

USEPA proposes to approve Indiana's final compliance date of December 30, 1991, for Lake County. Portions of Lake County are currently designated as nonattainment for SO_2. Section 110 (and Part D) of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, and attainment of the secondary NAAQS within a reasonable time. USEPA believes the State's December 30, 1991, final compliance date (which is 3 years from the date of the plan's final approval, under the Consent Decree in *Sierra Club* v. *Thomas*, Civ. No. NA 86–194–C (S.D. Ind.)) is consistent with these requirements.

Modeling Analysis

As technical support for its revised emission limitations, the State has performed a new modeling analysis. Indiana used the ISCST model (urban, UNAMAP Version 6) to predict 3-hour and 24-hour concentrations. ISCLT (urban, UNAMAP Version 6) was used with a calibration equation to predict annual concentrations. The urban version of the models was selected based on the predominant urban land use types in the study area. Lake County meteorological data were used where available. Sources were generally modeled using ISCST at maximum emissions, except where the rule limits emissions below maximum.

In addition, the State performed a limited analysis of lake-induced fumigation conditions using the Lyons-Cole model. Because the ISC results were more constraining, the Lyons-Cole results were not considered in setting emission limitations. USEPA finds Indiana's modeling acceptable and proposes to approve Indiana's Lake County rule and plan.

Porter County

USEPA cited two major deficiencies with the SIP for Porter County in its February 4, 1987, proposed rulemaking: (1) the compliance test method was inconsistent with the short-term SO_2 NAAQS, and (2) the plan failed to ensure attainment of the primary and secondary NAAQS (based on numerous technical deficiencies in the State's modeling analysis). On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7–1–3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana (see 53 FR 1354). Thus, this issue has been resolved.

On August 15, 1988, the State submitted a revised rule, 326 IAC 7–1–21, for Porter County for parallel processing. (The previous SO_2 plan for Porter County was withdrawn on December 22, 1987.) The new rule's site-specific requirements are as follows:

(1) Bethlehem Steel:

(a) Certain boilers and furnaces are restricted to natural gas.

(b) Stack-specific "lbs/MMBTU" and/or "lbs/hour" limits which allows fuel oil to be used at the 80" strip mill in exchange for reductions at other units.

(c) Restrictions on the amount of coke oven gas that can be burned.

(d) Recordkeeping and reporting requirements include daily fuel type usage in each facility, daily average sulfur content and heating value for each fuel type, number of slab mill soaking pits burning coke oven gas each day, and calculated daily lbs/MMBTU and lbs/hour value for each facility. The Company is also required to notify the State at least 24 hours prior to the use of fuel oil in the 80" Mill furnaces.[17]

[17] Rule 326 IAC 7–1–21(a)(1)(C), as submitted, contains clerical errors in its numbering by containing two sets of subparagraphs (vi) and (vii); the second set of which are supposed to be numbered (xviii) and (xix). Additionally, in the second paragraph (vi), the rule actually applies to the alternative set of limits specified in subparagraphs (i) through (xvii), as opposed to the (i) through (v) specified in the rule as submitted. The State will correct these errors prior to USEPA's final rulemaking on the regulation.

(2) NIPSCO-Bailly:
Boilers 7 and 8
6.0 lbs/MMBTU

(3) Midwest Steel:
(a) Boilers
1.33 lbs/MMBTU

(b) Only 2 of 4 boilers may burn fuel oil greater than 0.3 lbs/MMTBU simultaneously.

(c) Recordkeeping and reporting requirements (hourly fuel type burned in each boiler).

(4) Air Products:
Boilers and Reformer
Restricted to natural gas.

USEPA proposes to approve Indiana's final compliance date of December 31, 1988. Porter County is currently designated as unclassifiable for SO_2. Section 110 of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, but not later than 3 years from the date of approval of the plan, and attainment of the secondary NAAQS within a reasonable time. USEPA believes the State's December 31, 1988, final compliance date is consistent with these requirements.

Modeling Analysis

As technical support for its revised emission limitations, the State has performed a new modeling analysis. Indiana used ISCST model (rural, UNAMAP Version 6). To support the use of the rural version of the model, two analyses were performed:

(a) A land use analysis consistent with USEPA's modeling guidelines, which identified more rural than urban land use types.

(b) A limited model-monitor comparison study, using 1983–1986 emissions, meteorology, and air quality data. This indicated that ISC-urban tends to overpredict 24-hour and generally 3-hour concentrations, while ISC-rural appears to be more accurate, but tends to underestimate the peak (top 5) 24-hour (by about 10%) and 3-hour (by about 60%) concentrations.

Given the better performance of ISCST-rural and the rural nature of the area, ISCST-rural was selected. To guard against the possible model underprediction, ambient data were used in developing emission limits. Based on a model-monitor comparison study, the modeled 24-hour concentrations were increased by 10%. The adjusted 24-hour modeled concentrations were then compared to the 24-hour NAAQS. (Although the State did not perform any 3-hour adjustments, it should be noted that the highest, second high modeled 3-hour concentration is 1014 ug/m^3 before application of the emission reductions and the coke oven gas "caps" noted above. These emission reductions are sufficient to protect the 3-hour SO_2 NAAQS and generally produce 3-hour concentrations that are less than 60% of the 3-hour NAAQS.)

Porter County meteorological data were used where available. All sources were modeled at maximum load, except where the rule limits the sources to less than maximum load. USEPA finds the modeling acceptable and proposes to approve Indiana's Porter County rule and plan.

Additional Issues

(A) Consistency with Stack Height Regulations

USEPA's July 8, 1985, stack height regulations [18] apply to stacks (and sources) which came into existence, and dispersion techniques implemented on or after December 31, 1970. Stack height credit for the purpose of establishing an emission limitation is generally restricted to GEP, i.e., the greater of 213 feet [65 meters (m)] or the GEP formula height (40 CFR 51.100(ii)). Credit for merged stacks is generally prohibited with the following four exceptions:

(1) Where total plant wide allowable SO_2 emissions do not exceed 5000 tons per year,

(2) Where the stack was originally designed and constructed with merged gas streams,

(3) Where such merging was before July 8, 1985, and was part of a change in operation that: (i) included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and (ii) did not result in an increase in the emission limitation or (if no limit was in existence prior to merging) in the actual emissions, or

(4) Where such merging was after July 8, 1985, ans was part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions for the pollutant affected by the change in operation.

Indiana identified 3 stacks in Dearborn County, 64 stacks in Lake County and 11 stacks in Porter County that exceed 65m. Indiana certified that all of these stacks were in existence prior to December 31, 1970 (and their heights are, therefore, creditable under the regulation), except for 2 stacks at Tanners Creek, 1 stack at Seagrams, 5 stacks at Bethlehem Steel, 9 stacks at USX, and 9 stacks at Inland Steel. Twenty-three of these twenty-six stacks were found to be less than applicable GEP formula height and are, therefore, creditable. The stacks serving Boiler #8 at USX and Boilers 1,2,3 at Tanners Creek are greater than GEP. The State's attainment demonstrations properly modeled these stacks at GEP formula height.

As to the twenty-sixth stack, IDEM documented that a 122m stack height for Tanners Creek, Unit 4 was in existence before December 31, 1970, and was so modeled. Note, the actual pre-1970 stack was 168m, which was replaced with a 122m stack in 1977. Thus, 122m is the proper stack height for modeling purposes.

Indiana identified one source in Dearborn County, seven sources in Lake County, and two sources in Porter County with SO_2 emissions greater than 5000 tons per year. In Porter County, one source (NIPSCo-Bailly) has a stack that was in existence before 1971, and the other source (Bethlehem Steel) has a separate stack for each unit.

In Dearborn County, merged stack credit (i.e., single stack serving multiple units) is an issue for only Tanners Creek, Units 1–3.[19] Based on information provided by Indiana on December 2, 1985, and January 26, 1987, which showed that the merging was conducted in conjunction with the installation of pollution control equipment and that the emission limits do not represent an increase in emissions, USEPA believes that merged stack credit is allowed.

In Lake County, two sources (ComEd-Stateline, NIPSCo-Mitchell) have stacks that were in existence before 1971, two sources (AMOCO, Stauffer Chemical) have a separate stack for each unit, and three sources (USX, LTV Steel, and Inland Steel) have either a separate stack for each unit or stacks that were in existence before 1971, with one exception. At Inland Steel, the three boilers in the No. 5 Boilerhouse were originally designed and constructed in 1977 with a single stack. Because the exemptions noted above have been satisfied, there are no dispersion technique issues. In addition, USEPA

[18] Certain provisions of these rules were remanded to USEPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). These are: grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height [40 CFR 51.100(kk)(2)], dispersion credit for sources originally designed an constructed with merged or multi-flue stacks [40 CFR 51.100(hh)(22)(ii)(A)]; and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula [40 CFR 51.100(ii)(2)].

[19] Note that total emissions for Schenley are less than 5000 tons per year; thus, merged credit for Boilers 6–8 is allowed.

believes that the nozzle for the stack serving Boilers 6 and 11 at NIPSCO is not a "dispersion technique" under Section 123 of the Clean Air Act, because it does not increase the final exhaust gas plume rise.

USEPA is proposing to approve all of the above as meeting the requirements of USEPA's July 8, 1985, stack height regulations. However for Inland Steel, the provision under which USEPA is proposing to approve credit has been remanded to USEPA (i.e., original design and construction exemption for merged stacks.) Thus, these emission limits are subject to review and possible revision as a result of the remand in *NRDC* v. *Thomas*. If USEPA's response to the *NRDC* remand modifies the appliable July 8, 1985, regulations, then USEPA will notify the State whether the emission limit for Inland Steel must be re-examined for consistency with the modified regulations. USEPA's proposed approval for this facility's emission limits is intended to avoid delay in the establishment of federally enforceable emission limits for all sources in Lake County, while awaiting resolution of the *NRDC* remand.

(B) PSD Increment Analysis

USEPA policy requires SIP relaxations submitted after June 19, 1978, to be evaluated for increment consumption. Because the SIP revisions for Dearborn, Lake and Porter Counties represent a decrease, rather than an increase in emissions, an increment analysis is not required.

(C) Interstate Impact

There are two States (ILlinois and Michigan) within 50 km (the normal range of the current guideline models) of Lake and Porter Counties. The Lake County modeling demonstrated attainment at receptors located in Illinois. To address attainment in the other cases, the State is relying on their demonstration of attainment within each County, coupled with the inclusion of each County's impact in the other Country (via the monitored background concentrations) and a decreasing concentration gradient in the direction of the nearby State. Based on this information, USEPA believes that the plans for these two counties will not cause a violation of the SO_2 NAAQS in any other nearby State.

As to Dearborn County, as stated above, emissions from sources in Dearborn County under Indiana's revised plan will not cause violations either in Ohio or Kentucky.

Conclusion

USEPA proposes to approve Indiana's rules and the plans for Dearborn, Lake, and Porter Counties. This proposed approval specifically includes (1) the source-specific emission limits and other requirements in Indiana's county-specific rules, and (2) the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2 which is applicable to all other sources not specifically listed in the county-specific rules (except the sources described by Footnote 3 and in Lake County). Under USEPA's parallel processing procedures, these county-specific rules must be fully state-adopted, enforceable, and submitted as a revision to Indiana's SO_2 SIP before USEPA can take final rulemaking action to approve them.

Under Executive Order 12291, today's action is not "Major". The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: August 23, 1988.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 88-20125 Filed 9-2-88; 8:45 am]

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40 CFR Part 52

[FRL 3440-9]

Approval and Promulgation of Implementation Plans; Gibson County, IN

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revision consists of Indiana's SO_2 emission limits and plan for Gibson County. USEPA's action is based upon revision requests which were submitted by the State to satisfy the requirements of section 110 of the Clean Air Act (Act).

DATE: Comments on this revision and the proposed USEPA action must be received by October 6, 1988.

ADDRESSES: Copies of the SIP revision and support documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

Comments on these proposed actions should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5 AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: Under Section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for SO_2.[1] See 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.315 for Indiana.[2] In addition, Section 110(a)(2) of the Act requires the State to adopt rules sufficient to assure attainment and maintenance of the SO_2 NAAQS in the unclassifiable and attainment areas in the remainder of the State.

Status of Indiana SO_2 SIP

On March 12, 1982 (47 FR 10813) and May 13, 1982 (47 FR 20583), USEPA approved or conditionally approved Indiana's SO_2 SIP for most areas of the State. In these rulemakings, USEPA took no action on one of three compliance methods contained in Indiana's 1980 SO_2 regulation (325 IAC 7-1), i.e., the sulfur

[1] The primary SO_2 NAAQS is violated when, in a calendar year, either: (1) the annual arithmetic mean value of SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 ug/m^3) (the annual primary standard), or (2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 ug/m^3 more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1300 ug/m^3 more than once.

[2] Gibson County is designated "Cannot be classified", i.e., unclassifiable.

content in fuel averaging method which is based on 30-day averaging.

On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's approval of the SO_2 emission limits in Indiana's revised plan, because USEPA did not rulemake on the 30-day averaging compliance method contained in the rule. See *Indiana & Michigan Electric Company v. USEPA*, 733 F. 2d. 489. Based on this decision and another recent decision, *Sierra Club v. Indiana-Kentucky Electric Company*, 716 F. 2d 1145 (7th Cir. 1983), USEPA determined that there were no federally enforceable SO_2 emission limits regulating most existing sources in Indiana;[3] and Indiana no longer had an approvable SO_2 plan.

On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana SO_2 plan. That notice proposed to disapprove Indiana's overall SO_2 plan, because the 30-day averaging compliance methodology in the rule (325 IAC 7-1-3) was inconsistent with the protection of the 3-hour and 24-hour SO_2 NAAQS; and the stack test methodology, which is consistent with short-term emission limits, was not independently enforceable. For 77 of Indiana's 92 counties, this was the only basis for the proposed disapproval of Indiana's SO_2 plan.[4] For the remaining 15 counties, technical deficiencies were noted as well.[5]

USEPA's February 4, 1987, notice indicated that correction of the identified deficiency in the compliance methodology rule would allow USEPA to reinstate its March 12, 1982 (47 FR 10813) final approval of these 77 counties.

On March 12, 1987, Indiana submitted to USEPA for "parallel processing" [6] its proposed revised compliance methodology rule, 325 IAC 7-1-3.1, as preliminarily adopted by the Board on March 4, 1987.[7] The revised compliance methodology rule replaces 325 IAC 7-1-3 in the 1980 version of 325 IAC 7-1.

The revised rule includes a stack test compliance method and either a 30-day or a calendar month averaging fuel analysis method (depending upon the size of the source), each of which may be used at any time to determine compliance or non-compliance with source emission limitations.[8] However, a determination of non-compliance through the use of one method cannot be refuted by evidence of compliance through the other method. It also includes recordkeeping and reporting requirements.

In accordance with the February 4, 1987, proposed rulemaking notice, on July 17, 1987 (52 FR 27016), USEPA (1) proposed to approve 325 IAC 7-1-3.1, because it provides for the independent use of stack testing to determine compliance with the SO_2 emission limits in 325 IAC 7-1; (2) proposed to reinstate the other provisions of 325 IAC 7-1; and (3) proposed to reinstate its approval of Indiana's plan for the 77 counties, based on the revised compliance methodology.

On October 21, 1987, Indiana submitted 325 IAC 7-1-3.1, as promulgated by the State on September 24, 1987. On January 19, 1988 (53 FR 1354), USEPA approved this rule for inclusion into the Indiana SO_2 SIP statewide; reinstated the other general provisions of 325 IAC 7-1 (1980), i.e., 325 IAC 7-1-1, 2 (except for any emission limits in the 15 counties), 4, 5, 6, and 7 statewide; and, based on its approval of the revised compliance methodology, reinstated its approval of Indiana's SO_2 plan for the 77 counties.

Indiana has also submitted county-specific plans for parallel processing for several other counties, including Gibson County. These plans consist of source-specific emission limits for certain sources, with the remainder of the sources in each county limited by the underlying 6.0 pounds per million British Thermal Units (lbs/MMBTU) emission limit in 325 IAC 7-1-2.[9] Additionally, all sources are required to meet the remaining requirements of 325 IAC 7-1, as modified with new compliance methodology 325 IAC 7-1-3.1. [As noted before, on January 19, 1988, the general requirements of 325 IAC 7-1 (with the exception of the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2) were reinstated as a portion of the Indiana SO_2 SIP for all counties and new compliance methodology 325 IAC 7-1-3.1 was approved for all counties.]

USEPA is proposing today to approve Indiana's SO_2 plan for Gibson county as submitted on May 11, 1988. This proposed approval specifically includes (1) source-specific emission limits and other requirements for Public Service Company of Indiana's (PSI) Gibson Station, the only source subject to such requirements in Indiana's county-specific rule for Gibson County, and (2) the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2, which is applicable to all other sources throughout the State not specifically listed in the county-specific rules (except those sources not listed which are described by Footnote 3). Under USEPA's parallel processing procedures, this county-specific rule must be fully State adopted, enforceable, and submitted as such as a revision of Indiana's SO_2 SIP before USEPA can take final rulemaking action to approve it.

A short discussion of Gibson County and USEPA's proposed action follow. Additionally, technical support documents more fully explaining the

[3] New sources constructed under, (or existing sources limited by construction of new sources under), USEPA-approved new source review (NSR) regulations, USEPA's prevention of significant deterioration (PSD) regulations, or USEPA's new source performace standards (NSPS) regulations remain bound by the SO_2 emission limitations, required by these regulations or permits issued based on these regulations. These limits continue to be fully enforceable, and, unless they are supplemented by more stringent limits in the revised county-specific rules, they are inherent parts of the Indiana SO_2 attainment plans being proposed for approval in today's notice. Public Service Company of Indiana's (PSI) Gibson Station currently has federally enforceable PSD limits for Unit 5.

[4] These 77 Counties are: Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Decator, Dekalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jennings, Johnson, Knox, Kosciusko, LaGrange, Lawrence, Madison, Marshall, Martin, Miami, Monroe, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putham, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Wabash, Warren, Washington, Wells, White, and Whitley. All of these counties are designated "Better than National Standards" for SO_2 (40 CFR 81.315).

[5] The remaining 15 counties are: Dearborn, Floyd, Gibson, Jefferson, Lake, LaPorte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne Counties. USEPA has recently taken final rulemaking approving Indiana's plan for eight of these counties (Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne). USEPA has also proposed rulemaking on Warrick, Floyd and Morgan Counties (53 FR 29236 and 29239, August 3, 1988). Today, USEPA is proposing rulemaking on Gibson County. It is rulemaking on the remaining three counties (Dearborn, Lake, and Porter) in a separate notice.

[6] The generic procedures for "parallel processing" are described at 47 FR 22073 (June 7, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, then USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, then USEPA may publish a rulemaking notice reproposing action, as necessary.

[7] For the exact language of 325 IAC 7-1-3.1, see 52 FR 27017 (July 17, 1988).

[8] Although the rule contains a 30-day averaging compliance methodology for certain sources and monthly averaging for others, for purposes of this notice, this combination of methodologies will be referred to as "30-day averaging".

[9] Indiana has recently recodified its rules from Title 325 to Title 326. All rules in today's notice will be codified under Title 326 when submitted instead of 325. This in no way affects the substance of the rules, and USEPA will take final action upon them using the codification in which they are promulgated and submitted by the State.

Gibson County plan are available at the addresses listed in the front of this notice.

Gibson County

USEPA cited two major deficiencies with Indiana's plan for Gibson County in its February 4, 1987, proposed rulemaking: (1) the compliance test method used was inconsistent with the short-term NAAQS for SO_2, and (2) the state failed to demonstrate that the emission limits in the plan ensure attainment and maintenance of the primary and secondary NAAQS. On October 21, 1987, the State submitted a revised compliance test rule.[10] On January 19, 1988 (53 FR 1354), USEPA approved this rule for all 92 counties in Indiana. Thus the first issue has been resolved.

On May 11, 1988, the State submitted a revised rule for Gibson County to replace the rule which USEPA proposed to disapprove on February 4, 1987, and which the State withdrew on December 22, 1987. The new rule specifies the following emission limitations for PSI Gibson Station (the only significant source in the county):

Unit 5: 1.2 lbs/MMBTU at all times.

For each of Units 1, 2, 3, and 4:

5.1 lbs/MMBTU prior to December 31, 1991;

3.57 lbs/MMBTU from December 31, 1991, through December 30, 1993;

3.13 lbs/MMBTU from December 31, 1993, through December 30, 1995; and

2.7 lbs/MMBTU from December 31, 1995, on.

The State has designed the limit of 3.57 lbs/MMBTU to protect the primary NAAQS. The 2.7 lbs/MMBTU limit is designed to protect the secondary NAAQS.

In addition, PSI Gibson is required to (1) commit to construct effective physical barriers to restrict public access to all areas of PSI Gibson property where modeled violations were predicted based on 3.57 lbs/MMBTU (or the equivalent limit) prior to December 31, 1991, and (2) prior to December 31, 1988, submit a compliance plan specifying control measures and increments of progress. (Note: this compliance plan may contain alternative individual emission limits for Units 1–4.) The rule further requires IDEM to present a compliance plan to the Indiana Air Pollution Control Board prior to November 30, 1989, and to submit the plan adopted by the Board to USEPA as a SIP revision by May 30, 1990.

The emission limits specified by 325 IAC 7–1–3.1, are enforceable by the stack test method in 325 IAC 7–1–3.1, thus protecting the 3-hour NAAQS.[11] If PSI were to elect to install pollution control equipment to meet the revised emission limitations, then 40 CFR Part 51 Appendix P, Section 2.1.2 would require a continuous emissions monitoring system for SO_2 to provide data that "may be used directly or indirectly for compliance determination or any other purpose deemed appropriate by the State."

USEPA evaluated the final primary standard compliance date of December 31, 1991, and the final secondary standard compliance date of December 31, 1995, for consistency with the requirements of the Clean Air Act. Gibson County is currently designated as unclassifiable for SO_2. For such an area, section 110 of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, but no later than 3 years from the date of approval of the plan, and requires attainment of the secondary NAAQS within a reasonable time. On May 11, 1988, IDEM provided an estimate of the actual time needed to accomplish three potential control strategies [fuel switching only, installation of flue gas desulfurization (FGD) only, and a combination of FGD and fuel switching]. USEPA has evaluated the State's compliance timeframe analysis and finds that the December 31, 1991, date for the 3.57 lbs/MMBTU emission limit, which is within 3 years of USEPA's final approval of the Gibson County plan (as proposed today),[12] is approvable.

In addition, the State has requested USEPA's approval of an emission limitation of 2.7 lbs./MMBTU to protect the secondary NAAQS, with a compliance date of December 31, 1995, seven years after the final approval of the SIP revision for this county. Section 110(a)(2) requires attainment of the secondary NAAQS within a "reasonable time," which is defined in 40 CFR 51.110 (c)(2) as three years unless social, economic, and environmental factors justify a longer period. The State's submittals, as further discussed in USEPA's Technical Support Document, demonstrate that this secondary compliance schedule is reasonable. PSI Gibson's emissions will be reduced to the point necessary for protection of public health within three years after USEPA's final approval of the SIP; a further emissions reduction is required in five years, and by December 31, 1995, PSI Gibson's currently allowable emissions will be reduced by approximately 47% to protect the public welfare to the extent required by the secondary NAAQS. This schedule is expeditious in its attainment of health and welfare benefits; it moderates the impacts on utility ratepayers, coal companies and their employees, associated with changing coal supplies or installing control equipment as necessary for the substantial reductions in PSI Gibson's emissions.

As technical support for its revised emission limitations, the State has performed new modeling analyses, including consideration of rollback calculations for monitored violations.[13] Indiana determined that the only major SO_2 source in Gibson County is the PSI Gibson Generating Station. Based on a screening analysis, the worst-case operating load for this source was determined to be 100%. The existing three stacks (500 feet) are less than the good engineering practice (GEP) formula height (617 feet). (For a further discussion of this issue, see the stack height regulations section below.) Building downwash was thus accounted for in the modeling. The modeling predicted that there would be no violations of the primary annual NAAQS at an emission limit of 3.6 lbs/MMBTU, no violations of the 24-hour NAAQS at 3.57 lbs/MMBTU, and no violations of the secondary 3-hour standard at 2.7 lbs/MMBTU.

It should be noted that the modeling techniques used in the attainment demonstration are based on the modeling guidelines in place at the time the analysis was performed [i.e., "Guidelines on Air Quality Models (Revised)", July, 1986]. Since that time, USEPA has promulgated a revision to its modeling guidelines [i.e., January 6, 1988, publication of "Supplement A to the Guideline on Air Quality Models, (Revised), July 1987]. Because the modeling was completed prior to the latest revisions, USEPA accepts the Gibson County analysis as it stands for the purpose of today's rulemaking action. USEPA wishes to make clear, however, that its proposed approval of the analysis for the plan today will not apply to any other analysis of Gibson County to support any future regulatory action, including any alterative emission limits which may be included in the company's compliance plan. The

[10] See 325 IAC 7–1–3.1.

[11] All sources in Gibson County must be in compliance with the emission limits in Indiana's SO_2 rule at all times, as determined by 325 IAC 7–1–3.1. Malfunctions are regulated by 325 IAC 1–1.5, as approved on February 14, 1984 (49 FR 5618).

[12] USEPA is under Court Order to take final action on this SIP by December 31, 1988. See *Sierra Club v. Thomas*, Civ. No. NA–86–194–C (S.C. Ind.).

[13] See "Technical Support Document for The Gibson County SO_2 Modeling Analysis", February 1988).

alternative limits must be supported by modeling performed in accordance with the USEPA's modeling guidelines in effect at that time.

Additional Issues

(1) Consistency with Stack Height Regulations

Pursuant to section 123 of the Clean Air Act, USEPA has promulgated regulations which restrict credit for stacks or sources in existence and dispersion techniques implemented on or after December 31, 1970. IDEM has determined that Stacks 1-3 at Gibson were not in existence before this date and are, thus, subject to the stack height regulations. Because the physical stack height does not exceed the applicable GEP formula height, the actual height is fully creditable. Under USEPA's 1985 regulations, merged stack credit is approvable for Units 1 and 2 together (Stack 1), and Units 3 and 4 together (Stack 2), because these units were originally designed and constructed with common stacks.

It should be noted, however, that on January 22, 1988, the U.S. Court of Appeals for the DC Circuit remanded this particular merged stack exemption to USEPA. If USEPA's response on the remand modifies the applicable provision, then USEPA will notify the State of the need to reexamine the emission limits for consistency with the modified provision.

(2) Prevention of Significant Deterioration (PSD) Increment Analysis

USEPA policy requires SIP relaxations submitted after June 19, 1978, to be evaluated for PSD increment consumption. The SIP revision for Units 1 through 4 represents a decrease in emissions compared to the current PSD limit, so an increment analysis is not required. The State's current modeling demonstrated that the off-plant impacts from Unit 5, based on actual emissions, will not exceed the applicable PSD increments [14] (i.e. modeling at maximum actual lbs/MMBTU values for 1986 and 1987 (1.1 lbs/MMBTU.) demonstrate attainment of the 24-hour PSD increment).

[14] Although modeling at the 1.2 lbs/MMBTU limit in the PSD permit predicts a highest, second high, 24-hour value of 98 ug/m^3 (and thus a violation of the PSD increment of 91 ug/m^3), PSD increment for this source is determined by considering actual emissions, not allowable. Maximum actual lbs/MMBTU values for 1986 and 1987 for Unit 5 do not exceed 1.1 lbs/MMBTU, and thus the increment actually consumed is less than 91 ug/m^3. Thus, at the actual emission levels, the 24-hour PSD increment is protected.

(3) Interstate Impact

The State modeling included receptors in Illinois, the only other State within 50 km., the outer range of USEPA guideline models. The predicted concentrations at these receptors are less than the NAAQS. Thus, Gibson is not expected to cause a violation of the SO_2 NAAQS in any nearby State.

USEPA proposes to approve Indiana's rule and plan for Gibson County.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: July 22, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-20126 Filed 9-2-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3440-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: On July 7, 1988 (53 FR 25509), USEPA proposed to rulemake and solicited public comment on a revision to the Ohio State Implementation Plan for Ozone. USEPA proposed to disapprove the State's request for a compliance date extension and a relaxation of emission limits for Navistar's (formerly called International Harvester) one surface coating line at its assembly plant, which is located in Springfield, Clark County, Ohio. At the request of the Navistar International Transport Corporation, Ohio Environmental Protection Agency, Motor Vehicle Manufacturers Association and Regional Air Pollution Control Agency in Dayton, Ohio, the public comment period is being extended until September 7, 1988, to allow additional time to develop comments on the issues presented in the proposed rulemaking.

DATES: Comments must be received on or before September 7, 1988.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, 5AR-26, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

Dated: August 25, 1988.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88-20128 Filed 9-2-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3440-4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Oshkosh, Winnebago County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions which were federally approved and permanent, resulted in the decrease in ambient concentrations, and (3) dispersion techniques were not responsible for the improvement in air

quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 6, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, (312) 886-6031, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Division (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Division (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Oshkosh, Wisconsin, was designated as not attaining the secondary TSP standard.[1] On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Oshkosh be redesignated to attainment of the TSP NAAQS.

USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) described USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985.

USEPA's specific criteria for TSP redesignations, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted three years of violation-free data for four sites in Oshkosh and 2 years of data from an additional two sites in Oshkosh. However, the WDNR failed to address the representativeness of the monitoring network at expected maximum TSP impact sites. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—For areas designated nonattainment for TSP, a TSP SIP was required which satisfied the requirements of section 110(a) and Part D of the CAA which involved providing for attainment and maintenance of the TSP NAAQS. To redesignate an area to attainment, USEPA-approved control strategy (i.e., Wisconsin State Implementation Plan (SIP)) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

USEPA approved the Wisconsin TSP SIP for Oshkosh on October 5, 1978. However, WDNR did not discuss this plan in relationship to any air quality improvement. The WDNR should have discussed the reasons for the original secondary nonattainment designation; the control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

The WDNR did cite the paving of unpaved lots and street sweeping as reasons for the improvement in the air quality. USEPA accepts paving as a permanent reduction. However, the WDNR should have noted the approximate number and location of the lots. Additionally, in USEPA's experience, street sweeping has not always proven to be effective. WDNR must document the street sweeping program (i.e., schedule of sweeping, silt loadings, and permanency, etc.) before USEPA can assess the effectiveness of the street sweeping program.

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR did not discuss how the air quality standard will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions for major sources and discuss why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future, the source

[1] The Oshkosh sub-city nonattainment area is defined as follows: North: Corner Irving Ave. East to Bowen St. West: Corner Ohio St. and West 11th Ave. North to Route 26/44, continue Northeast along Route 26/44 to intersection with Irving Avenue, South: Corner Ohio St. and West 11th Ave., East along West 11th Ave. to Lake Winnebago. East: Corner Irving Ave. and Bowen St., South along Bowen to Lake Winnebago. Remainder of Winnebago County, better than national standards.

would be required to undergo new source review procedures.

Criterion 4

Dispersion techniques—Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA proposes to disapprove the redesignation request to attainment from secondary nonattainment for a sub-city area of Oshkosh, Wisconsin, because the WDNR did not adequately document the reasons for the air quality improvement in Oshkosh; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), I certify that this proposed disapproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Oshkosh, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subject in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: March 18, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–20127 Filed 9–2–88; 8:45 am]

BILLING CODE 6560-50-M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Chapter 16

Federal Employees Health Benefits Acquisition Regulation Letter of Credit Arrangements for Carrier Reserves

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to require the use of letter of credit (LOC) arrangements for Federal Employees Health Benefits Program (FEHBP) premium payments to certain experience-rated carriers. The regulations would enhance OPM's financial management of the FEHB Program without altering the basic OPM/carrier financial relationships which currently exist.

DATE: Comments must be received on or before October 6, 1988.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: OPM recently contracted with the consulting firm of Towers, Perrin, Forster & Crosby (TPF&C) to undertake a comprehensive evaluation of the FEHB Program.

Details of the study and recommendations for more efficient administration of the FEHB Program are described in the TPF&C report entitled "Study of the Federal Employees Health Benefits Program." One of the recommendations contained in the report is that OPM pay enrollment charges to experience-rated carriers via a letter of credit (LOC) to improve the government's cash management practices. In evaluating this recommendation, OPM considered the United States Department of the Treasury regulations (31 CFR Part 205), which require the use of the LOC method for Federal program agencies having a continuing relationship with a contractor involving annual payments of at least $120,000. Upon review of the Treasury regulations, we have concluded that the establishment of the LOC method would not alter the basic financial relationships that currently exist under the FEHB Program, nor would it affect the rate setting process. Premiums would continue to be made available to experience-rated carriers for the payment of claims and administrative expenses at the same time and in the same amount as the current payment process. Where a carrier so authorized, the underwriter would also have access to the account. As a result of our evaluation of this recommendation, we are proposing a LOC premium payment process for the FEHB Program to become effective January 1, 1989.

The specifics of the proposed LOC premium payment process for carriers are as follows. (An underwriter authorized by a carrier to withdraw funds from the LOC account would follow the same withdrawal procedures specified for the carrier.)

(1) The Department of the Treasury would establish a LOC account at a financial institution designated by each applicable carrier.

(2) OPM would direct Treasury to make funds available to each carrier's LOC account on the second and fourth Thursday of each month and would mail a notice to each carrier advising it of the amount made available.

(3) To withdraw funds from its LOC account, the carrier would present a voucher, which is a standard Treasury form, to its financial institution. The financial institution would send an electronic request for the funds to the Treasury via the district Federal Reserve Bank (FRB) or its branch through FRB New York.

(4) Treasury would validate the request and electronically transfer either the funds or a notice of rejection via FRB New York and the district FRB of its branch to the carrier's financial institution. The funds would be available on the same or next banking day, depending on when the transaction was initiated.

(5) Each carrier's LOC account would be credited monthly with interest earned at a marketable Treasury security rate based on the average balance in its LOC account during the month.

The carrier would have access to the LOC account, including daily drawdowns, without the necessity of prior OPM approval. The carrier must, however, be prepared to demonstrate that it meets the Treasury regulatory requirement that the timing and amount of drawdowns be as close as administratively feasible to the actual disbursement. To ensure that the carrier has adequate working capital, the carrier would be allowed to hold a minimum amount of cash requirements outside its LOC account. Generally, this amount will be less than one (1) day's working capital. Upon implementation

of LOC, carriers would be required to use existing FEHB cash and investments before initiating a drawdown. The LOC system would enable OPM to monitor the amounts drawn down by carriers. Should OPM discover that a carrier has withdrawn funds in excess of the amounts needed to meet on-hand claims and other authorized expenses, or has, in any other way, abused the privilege of direct access to its LOC account, the drawdown process may be shifted to one in which prior OPM approval is required.

The amount made available to each carrier's LOC account represents an OPM obligation to disburse premium payments and the LOC balance would be reported as an account receivable on the carrier's annual accounting statement and a liability on the books of the FEHB Program. As the balance in the LOC account would be considered a carrier-held asset for the purposes of gauging reserve level requirements, formula-driven transfers to or from the contingency reserve to the LOC account and vice-versa would be in accordance with current regulations (5 CFR § 890.503). Similarly, the LOC account would be eligible for special contingency reserve transfers, if the carrier can demonstrate good cause.

To support drawdowns transacted by the carrier, OPM would require detailed cash flow information with both the interim and annual accounting statements. More frequent reporting of detailed transactions may be required should a pattern of drawdowns be observed that leads OPM to suspect that funds in excess of daily requirements have been withdrawn from the LOC account. As with all carrier operations, financial transactions involving the LOC account would be subject to audit by OPM and the General Accounting Office.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not change the amount of money credited to the carriers and the carriers will continue to have full and immediate access to their Treasury LOC account.

List of Subjects in 48 CFR Chapter 16

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 48 CFR Chapter 16 as follows:

1. The authority citation for Chapter 16 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITIONS OF WORDS AND TERMS

2. In Subpart 1602.1, subsections 1602.170–9 and 1602.170–10 are redesignated as 1602.170–10 and 1602.170–11 and a new subsection 1602.170–9 is added as follows:

1602.170-9 Letter of credit.

"Letter of credit" means the method, established in 31 CFR Part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter-of-credit arrangement for the payment of recurring premiums under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter-of-credit account.

PART 1632—CONTRACT FINANCING

3. In Subpart 1632.1, section 1632.111 is removed and new sections 1632.170, 1632.171, and 1632.172 are added to read as follows:

1632.170 Recurring premium payments to carriers.

The procedures for payment of premiums to FEHB Program carriers shall be those contained in 5 CFR 890.505.

1632.171 Clause—contracts without letter of credit payment arrangements.

The clause at 1652.232–70 shall be inserted in all FEHBP contracts without letter of credit payment arrangements.

1632.172 Clause—contracts with letter of credit payment arrangements.

The clause at 1652.232–71 shall be inserted in all FEHBP contracts with letter of credit payment arrangements.

PART 1652—CONTRACT CLAUSES

In Subpart 1652.2, subsection 1652.232–70 is renumbered as 1652.232–72 and new subsections 1652.232–70 and 1652.232–71 are added to read as follows:

1652.232-70 Payments—contracts without letter of credit payment arrangements.

As prescribed in 1632.171, the following clause shall be inserted in all FEHBP contracts without letter of credit payment arrangements:

PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of clause.)

1652.232-71 Payments—contracts with letter of credit payment arrangements.

As prescribed in 1632.172, the following clause shall be inserted in all FEHBP contracts with letter of credit payment arrangements:

PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier and/or underwriter drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not

renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of clause.)

[FR Doc. 88-20099 Filed 9-2-88; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672 and 675

[Docket No. 80872-8172]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 17 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Gulf FMP) and Amendment 12 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Bering FMP). Both amendments are pending approval by the Secretary of Commerce (Secretary). If approved, these amendments would: (1) Require U.S. vessels that receive groundfish harvested from the U.S. exclusive economic zone (EEZ) adjacent to Alaska to have a permit (Gulf and Bering FMPs); (2) establish prohibited species catch (PSC) limits for groundfish species, applicable to U.S. fishing vessels delivering their catch to foreign processing vessels (JVP) and to foreign fishing (Bering FMP); (3) establish rock sole as a target species separate from the "other flatfish" category (Bering FMP); and (4) remove the requirement to complete a resource assessment document annually by July 1 (Bering FMP). All but the last of these changes require regulatory implementation. The proposed regulations are necessary for the conservation and management of the gorundfish resources in the EEZ off Alaska and for the orderly conduct of the groundfish fisheries.

DATE: Comments on the two amendments, proposed rule and supporting documents, especially the environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), are invited until October 21, 1988.

ADDRESSES: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Individual copies of the amendments and the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501 (telephone 907-271-2809).

Comments on the information collection requirement should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ off Alaska are managed in accordance with the Gulf and Bering FMPs. The FMPs were developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Gulf FMP is implemented by regulations appearing at 50 CFR 611.92 and Part 672 and the Bering FMP by regulations appearing at 50 CFR 611.93 and Part 675.

The Council annually solicits management proposals from the general public and State and Federal agencies. The Council set a deadline of October 1, 1987 for receiving proposals for inclusion in Amendments 17 and 12 to the Gulf and Bering FMPs respectively. At its meeting on January 20-23, 1988, the Council reviewed 17 proposals to amend the Gulf FMP and 25 proposals to amend the Bering FMP. The Council selected two proposals to amend the Gulf FMP and six proposals to amend the Bering FMP for tentative inclusion in Amendments 17 and 12, respectively.

The Council's Gulf and Bering Plan Teams prepared draft EA/RIR/IRFA documents for these amendment proposals as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. For one proposal to amend the Bering FMP by changing the definition of optimum yield (OY), the Council prepared a draft supplemental environmental impact statement (SEIS). The Council reviewed these documents at its meeting on April 13-15, 1988 and decided to solicit public comment on the draft EA/RIR/ IRFA and SEIS documents. The draft EA/RIR/IRFA for Amendment 17 to the Gulf FMP is dated April 1988, that for Amendment 12 to the Bering FMP is dated May 18, 1988, and the draft SEIS is dated April 28, 1988. A notice of availability of the draft SEIS was published by the Environmental Protection Agency on May 6, 1988 (53 FR 16319).

At its June 21-24, 1988, meeting, the Council considered the testimony and recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), Plan Teams, fishing industry representatives and the general public on each amendment proposal and the EA/RIR/IRFA documents. For the Gulf FMP, the Council approved one amendment proposal for recommendation to the Secretary and deferred action on the other amendment proposal until its meeting on September 28-30, 1988. For the Bering FMP, the Council approved four amendment proposals for recommendation to the Secretary and deferred action on one amendment proposal until its September meeting. The Council chose the status quo or do nothing alternative on the sixth amendment proposal for the Bering FMP regarding the OY definition. Hence, the draft SEIS will not be made final at this time.

The Plan Teams have revised the EA/RIR/IRFA documents for Secretarial review according to the Council's decisions. These revisions incorporate the analysis of the single amendment proposal to the Gulf FMP with the analyses of the four Bering FMP amendment proposals because the Gulf FMP amendment is identical to one of the four Bering FMP amendments. Other supporting documents and this proposed rule also incorporate the amendments for both FMPs.

This proposed rule, if approved by the Secretary, would implement proposals recommended by the Council as Amendments 17 and 12 to the Gulf and Bering FMPs respectively. Two of these proposals effect the same management measure in the Gulf of Alaska and the Bering Sea and Aleutian Islands area. They are described below as proposed management measure one. The third and fourth amendment proposals pertain only to the Bering Sea and Aleutian Islands area and are described below as management measures two and three. A final amendment proposal would make a change in the Bering FMP that does not require Federal rulemaking to have effect.

1. Revised Federal Permit Requirements (Pertaining to the Gulf and Bering FMPs)

Under this proposed management measure, the general permit regulation at §§ 672.4(a) and 675.4(a) would be revised to require a Federal fishing permit of all U.S. vessels fishing for groundfish in, or receiving groundfish that were caught in, the EEZ adjacent to

Alaska. Currently, Federal permits are required of U.S. vessels fishing (which includes processing) in the EEZ. Hence, under the current regulation, a U.S. processing vessel operating within the EEZ is required to have a Federal fishing permit but operating seaward of the EEZ, over 200 miles offshore, or landward of the EEZ, within State of Alaska waters, is not required to have such a permit.

Weekly catch or receipt reports are required under §§ 672.5(a)(3)(iv) and 675.5(a)(3)(iv), of vessels that normally stay at sea for lengthy periods of time delaying the normal flow of harvest data from fish tickets submitted after fish are brought to shore. This delay of harvest data denies fishery managers information about fishing rates needed to avert exceeding catch limits and for timely reappportionment of groundfish that are surplus to the needs of domestic processors. The weekly catch/receipt report requirement was imposed on catcher/processor and mothership/processor vessels and implemented in 1987 to solve this problem of timely harvest data (52 FR 8592, March 19, 1987).

The NMFS soon discovered, however, that some mothership/processor vessels could avoid the weekly reporting requirement by operating in waters outside of the EEZ. For example, a U.S. processing vessel operating only in State waters but receiving groundfish caught in the EEZ would not be required under §§ 672.4 or 675.4 to have a Federal fishing permit. Without such a permit, this vessel also would not be required to submit weekly catch/receipt reports. In 1987, six U.S. vessels followed this example. They received and processed approximately 41,280 mt of EEZ-caught groundfish. Although the catches were eventually reported via fish tickets, the NMFS received these data much later than would have occurred had the vessels also submitted weekly catch/receipt reports. Absence or delay in reporting by one or more such vessels could cause inseason management problems, especially if they received amounts of EEZ-caught groundfish that were large relative to the size of the catch quota.

The proposed management measure would close this unintended permit-reporting loophole by revising §§ 672.4(a) and 675.4(a) to extend the permit requirement to vessels receiving fish that were caught or harvested in the EEZ off Alaska. This extension of the Federal permit requirement and, therefore, the weekly reporting requirement to U.S. vessels operating outside of the EEZ is not expected to significantly increase costs for the affected vessels because they will have already established the infrastructure for reporting receipts of groundfish via fish tickets.

2. PSC Limits for Groundfish Species Applicable to JVP and Foreign Fisheries (Pertaining to the Bering FMP)

Under this proposed management measure, an administrative procedure would be established similar to that in the Gulf FMP, whereby the Secretary, in consultation with the Council, would annually specify PSC limits for groundfish species that are fully apportioned to domestic fisheries. These PSC limits would apply to JVP and foreign fisheries. Any catch in these fisheries of a species subject to a PSC limit could not be retained and would have to be treated in the same manner as a prohibited species under § 675.20(c); that is, returned immediately to the sea with a minimum of injury. Each fish so caught and returned would be counted against the applicable PSC limit, and when that limit is reached, there would be a closure of any JVP or foreign fishery that is likely to catch the groundfish species to which the fully taken PSC limit applied.

PSC limits would be specified for each species group for which the total allowable catch (TAC) can be harvested completely by domestic fishermen (Domestic Annual Harvest or DAH, which includes both JVP and DAP). In practice, the PSC limits would be specified when the TAC is specified for each species and species group for a fishing year, and apportioned among DAP, JVP, and foreign fishing. The PSC limits applicable to JVP and TALFF would be based on estimates of incidental catches of species and species groups fully apportioned to DAH that necessarily occur while JVP and TALFF fisheries are conducting directed fishing for other groundfish species which are not fully utilized by domestic fishermen. PSC limits must also be low enough to avoid overfishing. In sum, the amount of a PSC limit for any particular groundfish species would be directly related to the amount of groundfish of other species which are apportioned to JVP and TALFF for directed fishing, so long as overfishing of the species fully utilized by U.S. fishermen did not occur. For example, an apportionment of groundfish species "A" to JVP may require specification of JVP PSC limits for groundfish species "B", "C", and "D", which are fully utilized by U.S. fishermen, but caught incidentally while fishing for species "A". The amounts of these bycatch allowance species in the PSC limits will depend on the amount of species "A" apportioned to JVP, and when during the fishing year PSC-retainable amounts of these species will be taken, so long as these amounts will not cause overfishing.

Amounts of groundfish assigned to PSC limits would be considered outside of the OY. As such, PSC limits for JVP and TALFF would be immune to harvesting by DAP fisheries under the processor preference amendments to the Magnuson Act and uncaught PSC limits would not be reassigned to the TAC in the current or succeeding years. The sum of the TAC and PSC limit for any one species would not exceed an amount that would lead to overfishing of that species and normally would not exceed the acceptable biological catch (ABC) estimate for that species. In the event that a JVP or TALFF PSC limit is required for a species for which the TAC would equal the ABC, then the TAC could be reduced to accommodate the PSC limit without exceeding the ABC, or the TAC plus the PSC limit could exceed the ABC, providing the Regional Director determines that doing so would not lead to overfishing.

In addition, provision is made for inseason adjustment of a PSC limit that becomes too low due to reapportionments of groundfish to JVP or TALFF, unanticipated harvest rates, or specifications based on erroneous information. Inseason adjustment of a PSC limit may result in the sum of the PSC limit and TAC for a species exceeding its ABC unless the adjustment would lead to overfishing of the species.

The purpose of this proposed management measure is to supplement and extend the effect of the "single species rule" (published April 14, 1987 at 52 FR 11992). This rule provided authority to (1) slow the harvest rate of any species of groundfish as its total catch approached its TAC by prohibiting directed fishing for that species, and (2) prohibit retention of any species of groundfish for which the TAC had been reached. The intent of the "single species rule" was to maintain fisheries for groundfish species for which the TAC had been reached. The intent of the "single species rule" was to maintain fisheries for groundfish species for which the TAC had not been reached despite the bycatch of groundfish species for which the TAC had been (or soon would be) reached, provided overfishing of the bycatch species would not occur. The "single species rule" worked well to prevent or delay the premature closure of profitable directed fishing on a groundfish species due to the fully harvested TAC of another

groundfish species. However, it fails to resolve two related conservation and management problems. The first is that the single species rule places no limit on the amount of a species discarded after its retention is prohibited because its TAC has been fully harvested. The second problem is that the single species rule does not apply to foreign fishing.

The first problem concerns the biological conservation of the Bering Sea and Aleutian Islands groundfish resource. The harvest limit, represented by the TAC for each species, is the primary control preventing excessive fishing mortality and ultimately overfishing. When the catch of a species approaches its TAC, the "single species rule" allows the Secretary to prohibit further directed fishing for that species. This means that a fisherman may retain bycatches of that species up to a certain percentage of fish or fish products onboard his vessel. Such retained bycatches are counted against the remaining TAC for that species. However, when the catch of a species reaches its TAC, under the single species rule, any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species. Although the resulting discard of further bycatches of this species contributes to its total fishing mortality, the amount of additional fishing mortality from this source is not counted against or controlled by any quota or limit, and further catches are restrained only when fishing mortality will result in overfishing.

In earlier years, fishing mortality resulting from bycatch discard was an insignificant part of the total fishing mortality for any groundfish species. This would remain true if directed fishing for, and retainable bycatches of, most groundfish species continued for all or most of the fishing year. The character of Bering Sea groundfish fisheries is rapidly changing, however, with persistent increase in domestic fishing effort. This increasing fishing effort is translating into shorter periods of allowable directed fishing for key high-valued species. Decreased time for directed fishing on a species means increased time during which it will be caught as a bycatch before and after its TAC is reached. The resulting increase in bycatch discard is becoming a significant portion of the total fishing mortality for many groundfish species. If it remains unlimited, the bycatch discard rate could lead to excessive fishing mortality and increase the risk of overfishing.

The second problem concerns management of allocations among domestic and foreign fisheries. Currently, any allocation of groundfish to foreign directed fishing must also include an allocation of species that are taken as bycatch. Because the "single species rule" does not apply to foreign fisheries, a foreign fishery cannot retain or discard bycatches of groundfish without accounting for such catches against an allocation for each species caught. The TACs of most bycatch species, however, can be fully harvested by domestic (DAP and JVP) fisheries, and under the Magnuson Act, foreign fisheries may be allocated only amounts of the OY surplus to domestic fishery needs. Therefore, if no amounts of groundfish species needed as bycatch are surplus to expected domestic harvests, then a foreign fishery would be required to forego its allocation of a species for directed fishing. Although a groundfish resource left unharvested by foreign fisheries may not appear to be a problem, the Magnuson Act specifically provides for foreign fishing of fish surplus to domestic needs. In recommending this proposed rule to the Secretary, the Council, as a matter of policy, has decided that a foreign nation should not necessarily forego a specified allocation of a target species due to the lack of an allocation of bycatch species.

A similar problem exists with respect to specification of groundfish for JVP. The processor preference amendments to the Magnuson Act provide for DAP priority access to allowable harvests of groundfish. This has been interpreted to mean that the specified DAP for any species is not a limit on DAP harvests if there is an unharvested amount of that species specified for JVP. The practical effect of this is similar to the foreign fishing problem in that specified amounts of a species necessary for JVP bycatches may be taken instead by DAP fisheries. Unlike the foreign fisheries, however, this event does not cause the elimination of directed fishing by JVP fishermen for a different species, but it does require the discard of the JVP bycatch species for which the specified JVP apportionment has been, or will be, fully harvested by DAP fishermen.

This proposed rule is intended to resolve these two conservation and management problems by (1) providing for a specific PSC limit on non-retainable catches in the same way that the TAC for a species limits retainable catches, and (2) providing foreign and JVP fisheries with groundfish PSC limits that are outside of the TAC and OY thereby providing assurance that a specified PSC limit will be available for non-retainable bycatch purposes only, regardless of DAP priority to allocations of retainable groundfish. Groundfish catches by foreign and JVP fisheries will be counted against their respective PSC limits only after their retainable catch limits, if any, have been taken. All foreign or JVP fishing likely to take significant amount of a prohibited groundfish species would cease when that species' PSC limit is reached unless the limit is increased by the Secretary under the inseason adjustment authority.

3. Rock Sole as a Distinct Target Species (Pertaining to the Bering FMP)

Under this proposed management measure, the list of species in Table 1 of 50 CFR Part 675 would be expanded to include rock sole as a distinct target species. This species currently is part of the "other flatfish" category which includes eight other species. Grouping these species into one target species category was done originally because there was little commercial interest in any one species of this group and their distribution was highly intermixed. Species of the "other flatfish" category most commonly are taken as bycatch in directed fisheries for yellowfin sole. In recent years, however, some DAP operators have developed in Japan a market for roe-bearing rock sole of between 10,000 mt and 20,000 mt annually.

Representatives of the DAP fishing vessel operators originally proposed amending the Bering FMP to prohibit JVP fisheries from targeting on rock sole during the period January 1 to April 1 when female rock sole contain roe. The petitioners contended that DAP fishermen can supply the existing market demand for roe-bearing rock sole but that additional supply from JVP fisheries would cause a significant price decrease. In addition, the petitioners stated that DAP-supplied rock sole are competitively disadvantaged relative to JVP-supplied rock sole due to an apparently discriminatory import duty.

After reviewing the analysis of this issue in the EA/RIR/IRFA and hearing public comments for and against the original proposal, a majority of the Council at its June 1988 meeting were not convinced that the DAP fishery for roe-bearing rock sole should be protected from competition by the JVP fishery. However, in recognition of the new commercial interest specifically in rock sole and the ability of fishermen to target their fishing opn rock sole, the Council approved a recommendation to separate this species from the "other flatfish" category. The fact that a sufficient data base exists for management of this species on

biological merits also contributed to the Council's decision on this issue.

The intent of this action is to accommodate the new commercial interest and targeting ability by providing for separate accounting of catch and stock abundance information without adversely affecting JVP harvests on the basis of alleged price sensitivity of DAP exports. Under the processor preference amendments to the Magnuson Act, however, DAP fisheries would have preferential access to the rock sole TAC. The regulatory effect of this action for fishermen would be an additional species for which catch reports would be required, and for the Council, an additional species for which TAC, DAP, JVP, TALFF and PSC limits would be annually specified. The additional reporting requirement for fishermen is expected to be a negligible additional burden since it involves writing one additional number of weekly reporting and fish ticket forms and since catch amounts of individual species probably are recorded anyway for business purposes.

Classification

This proposed rule is published under section 304(a)(1)(C) of the Magnuson Act as amended by Pub. L. 99-659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of the fishery management plan amendment and regulations. At this time the Secretary has not determined that the amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment (EA) for these amendments and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Under Secretary of Oceans and Atmosphere of NOAA (Under Secretary) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA prepared by the Council. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this proposed rule, if adopted, would have significant effects on small entities. These effects have been discussed in the EA/RIR/IRFA, a copy of which may be obtained from the Council at the address above.

The Under Secretary determined that this proposed rule does not contain any new collection of information requirement subject to the Paperwork Reduction Act. Under Amendments 16 and 11a to the Gulf and Bering FMP's, respectively, an information collection requirement for catch/receipt and product transfer reports was approved under OMB Control Number 0648-0016 (53 FR 7756, March 10, 1988). Burden hour estimates under this approval included the six catcher/processor vessels discussed in the preamble of this rule. A proposed regulatory change that would result from Amendments 17 and 12 to the Gulf and Bering FMP's, respectively, better describes that catcher/processors, whether operating in the EEZ or not, with fish caught inside the EEZ, must complete weekly catch/receipt and product transfer reports.

The permit information requirement proposed in this notice has been approved under the Paperwork Reduction Act under OMB Control Number 0648-097. The burden hour estimates for this requirement is 30 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including, suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 31, 1988.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611, 672, and 675 are proposed to be amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1972 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by revising Table 1 in paragraph (b)(1)(ii) to include "rock sole" in the column headed "Target species."

3. Section 611.93 is amended by revising paragraph (b)(3)(ii)(A), and adding a new paragraph (b)(3)(ii)(D) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) Attainment of total allowable catch (TAC). When the Regional Director determines that the TAC for any target species or the "other species" category is or will be achieved prior to December 31 of any year, the retention of that species or species group is prohibited and it must be treated in the same manner as a prohibited species described in §§ 611.2 and 611.11 of this part. The Secretary may allow continued fishing for groundfish, other than the species or species group for which the TAC is or will be achieved, if the amount of such species group caught does not exceed the prohibited species catch (PSC) limit determined by the Regional Director as the minimum amount necessary to allow harvesting of the remaining TALFF of target species and that would not significantly risk overfishing the species or species group for which the TAC is or will be achieved.

(B) * * *

(C) * * *

(D) Prohibited species catch (PSC) limits. When the annual specification of initial TALFF as required under 50 CFR Part 675.20(a)(6) is zero for any target species or the "other species" category, the retention of that species or species group is prohibited and it must be treated in the same manner as a prohibited species described in §§ 611.2 and 611.11 of this part. The Secretary may allow fishing for groundfish other than the species or species group for which the TALFF is zero providing that the incidental catch of zero-TALFF species does not exceed the PSC limit prescribed for such species in the annual specification. Prescribed PSC limits for groundfish will be determined by the Regional Director, in consultation with the North Pacific Fishery

Management Council, as minimum amounts necessary to allow harvesting of the TALFF of target species and that would not significantly risk overfishing of the species or species group of which the TALFF is zero. The Secretary may adjust presecribed PSC limits within a fishing year if such limits become too low due to reapportionment of groundfish to TALFF, unanticipated harvest rates, or specifications based on erroneous information, providing that such adjustment will not significantly risk overfishing of the species or species group for which the TALFF is zero.

* * * * *

PART 672—[AMENDED]

4. The authority citation for 50 CFR Part 672 continues to read as follows:

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

5. In § 672.1, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 672.1 Purpose and scope.

(a) Regulations in this part implement the Fishery Management Plan for Groundfish of the Gulf of Alaska.

* * * * *

6. In § 672.4, paragraph (a) is revised to read as follows:

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska, or receive groundfish that were caught in the Gulf of Alaska, without first obtaining a permit issued under this section. Permits shall be issued without charge.

* * * * *

PART 675—[AMENDED]

7. In § 675.1, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 675.1 Purpose and scope.

(a) Regulations in this part implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

* * * * *

8. In § 675.4, paragraph (a) is revised to read as follows:

§ 675.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands Management Area, or receive groundfish that were caught in the Bering Sea and Aleutian Islands Management Area, without first obtaining a permit issued under this section. Permits shall be issued without charge.

* * * * *

9. Section 675.20 is amended by amending Table 1 in paragraph (a)(1) to include "Rock Sole" between "Arrowtooth Flounder" and "Other Flatfish" in the column headed "Species."

10. Section 675.20 is amended by revising the heading of paragraph (a); by redesignating paragraphs (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) as paragraphs (a)(7), (a)(8), (a)(9), (a)(10), and (a)(12) respectively; by revising new (a)(10) and (a)(12); by adding new paragraphs (a)(6), (a)(11) and (b)(1)(iv); and by revising paragraph (b)(2) to read as follows:

§ 675.20 General limitations.

(a) Harvest limits.

* * * * *

(6) Prohibited species catch (PSC) limits. When the Secretary determines, after consultation with the Council, that the TAC for any species or species group in any fishing year will be harvested by fishing vessels of the United States, the Secretary may specify PSC limits for that species or species group applicable to JVP and TALFF fisheries. Species for which a PSC limit has been specified under this paragraph shall be treated in the same manner as prohibited species under paragraph (c) of this section. Any PSC limit specified under this paragraph may not exceed an amount determined by the Regional Director to be the minimum amount necessary to harvest a groundfish species or species group for which there is a JVP or TALFF apportionment and which will not result in overfishing of the species for which the PSC limit is specified. The Regional Director will account for the JVP or TALFF catch of a species against an applicable PSC limit after any retainable JVP or TALFF members of that species have been taken and notice has been given under paragraph (a)(9) of this section that the JVP or TALFF fishery must treat that species as a prohibited species.

* * * * *

(10) If the Regional Director determines that directed fishing for groundfish other than the species or species group for which the TAC is achieved, as determined under paragraph (a)(9) of this section, may lead to overfishing of such species or species group, the Secretary will, in the notice required by that paragraph, also limit such directed fishing for other groundfish by any method, including area closures, gear restrictions, or prohibition of directed fishing, that will prevent overfishing of the species for which the TAC is achieved.

(11) When the Regional Director determines that a PSC limit applicable to a JVP or TALFF fishery for a groundfish species has been or will be reached, the Secretary will publish a notice in the **Federal Register** prohibiting any further JVP or TALFF fishing which is likely to catch significant amounts of the species for which the PSC limit has been or will be reached for the remainder of the fishing year.

(12) When making the determinations specified under paragraphs (a)(8), (9), (10) and (11) of this section, the Regional Director may consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(i) The risk of biological harm to groundfish for which the TAC or PSC limit will be or has been achieved;

(ii) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC or PSC limit will be or has been achieved; and

(iii) The negative effect of prohibitions or restrictions authorized under paragraphs (a)(8), (9), (10) and (11) of this section on the socioeconomic well-being of other domestic fisheries.

(b) * * *

(1) * * *

(iv) *Adjustments of PSC limits.* When the Secretary apportions or reapportions groundfish under paragraph (b)(1) of this section, the Secretary may, by notice in the **Federal Register,** increase proportionately any applicable PSC limit of a species or species group if such increase will not result in overfishing of that species or species group. Any adjusted PSC limit may not exceed the amount determined by the Regional Director to be the minimum amount necessary to harvest the groundfish species or species group affected by the apportionment or reapportionment.

(2) *Procedure.* (i) The Secretary will provide all interested persons an opportunity to comment on the proposed apportionments, retentions or PSC limit adjustments under paragraph (b)(1) of this section before such apportionments, retentions or adjustments are made, unless he finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefor in the notice of apportionment, retention or adjustment. No apportionment, retention or PSC limit adjustment may take effect until it has been published in the **Federal Register** as a notice with a statement of the findings upon which the apportionment, retention or adjustment is based. Comments provided for in this

paragraph must be received by the Secretary not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified. If the Secretary determines for good cause that a notice of apportionment, retention or PSC limit adjustment must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment, retention or adjustment will be received for a period of 15 days after its effective date. The Secretary will consider all timely comments in deciding whether to make a proposed apportionment, retention or PSC limit adjustment or to modify an apportionment, retention or adjustment that previously has been made, and shall publish responses to those comments in the **Federal Register** as soon as practicable.

(ii) Comments provided for in paragraphs (a)(7) and (b)(2)(i) of this section should be addressed to Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC, DAH, TALFF, or PSC limit figure is based or the data upon which any apportionment or retention of surplus DAH or reserve, or PSC limit adjustment, was or is proposed to be based at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska. These data will be available for a sufficient period to facilitate informed comment by interested persons.

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[FR Doc. 88-20174 Filed 9-1-88; 11:17 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 172
Tuesday, September 6, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Friday, September 16, 1988 from 10:30 a.m. until approximately 4:00 p.m. in the Amphitheatre of the Federal Home Loan Bank Board, Second Floor, 1700 G Street, NW., Washington, DC.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Judicial Review of Preliminary Challenges to Agency Action.
2. Agency Nonacquiescence in Decisions of Courts of Appeals.
3. Valuation of Human Life in Regulatory Decisionmaking.
4. Resolution of Claims Against Savings Institution Receiverships.
5. Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, DC 20037, telephone (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.
August 31, 1988.

[FR Doc. 88-20196 Filed 9-2-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Posting of Stockyards; Turlock Livestock; et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

CA-181 Turlock Livestock, Turlock, California
FL-131 Paxton Livestock Commission Company, Paxton, Florida
GA-201 Foister Auction & Sales Co., Baconton, Georgia
GA-202 Dismuke Livestock, Leesburg, Georgia
LA-140 Miller Livestock Market—De Ridder Branch, De Ridder, Louisiana
MN-185 Twin Cities Horse Sales, Cannon Falls, Minnesota
MN-186 Northern Minnesota Cattle Yards, Hines, Minnesota
NC-160 Boone Stockyard, Inc., Boone, North Carolina
NY-167 William Tyrrell, Lowville, New York
SC-144 Interstate Stock Barn, Inc., Pelzer, South Carolina
TN-185 Apison Livestock Auction Sales, Apison, Tennessee

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by September 21, 1988.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 30th day of August, 1988.

Harold W. Davis,
Director, Livestock Marketing Division.

[FR Doc. 88-20178 Filed 9-2-88; 8:45 am]
BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partly Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held Sep. 28, 1988, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of TAC Committee Communications.
6. Discussion of CAD/CAM Software.
7. Discussion of Shop Floor Computers/Controllers.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal

Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Anne Ferrell at (202) 377-2583.

Date: August 28, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-20172 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C-559-802]

Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of antifriction bearings (other than tapered roller bearings) and parts thereof ("bearings") as described in Appendix I attached to this notice. The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to suspend liquidation of all entries of bearings from Singapore that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of these products in an amount equal to the appropriate estimated net bounties or grants as specified in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by November 14, 1988.

EFFECTIVE DATE: August 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Eleanor Shea, or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 377-8330, 377-0184, or 377-2438.

SUPPLEMENTARY INFORMATION: .

Preliminary Determinations

Based on our investigations, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Singapore of bearings. For purpose of these investigations, the following programs are preliminarily found to confer bounties or grants:

- Monetary Authority of Singapore Rediscount Facility.
- Production of Export under Part VI of the Economic Expansion Incentives Act.

The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the Notice of Initiation in the **Federal Register** (53 FR 15084, April 27, 1988), the following events have occurred. On May 5, 1988, we presented a questionnaire to the Government of Singapore in Washington, DC, concerning petitioner's allegations. On July 12, 1988, we received responses from the Government of Singapore, NMB Singapore Limited (NMB Singapore) and Pelmec Industries (Pte) Limited (Pelmec Singapore), which are producers of bearings, and from Minebea Company Limited Singapore Branch (Minebea Singapore Branch), which acts as a trading company for NMB Singapore and Pelmec Singapore. Minebea Singapore Branch exports to the United States only bearings produced by NMB Singapore. On July 29, 1988, we issued a supplemental/deficiency questionnaire to the Government of Singapore and the respondent companies and received responses on August 12 and 15, 1988.

On May 27, 1988, the petitioner filed a request that the preliminary determinations be postponed for 65 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determinations until no later than August 29, 1988 (53 FR 21882, June 10, 1988).

Scope of Investigations

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Analysis of Programs

In our notice of initiation (53 FR 15084, April 27, 1988), we treated the products subject to investigation as one "class or kind of merchandise." On May 5, 1988, we issued a questionnaire requesting that the Government of Singapore identify all producers, manufacturers, and exporters of the subject merchandise in Singapore and forward the company section of the questionnaire to each company identified.

Subsequent to our notice of initiation, we received numerous comments from petitioner, respondents, and other interested parties in the countervailing duty investigations and in the concurrent antidumping investigations concerning whether the subject merchandise constitutes one or more than one class or kind of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at U.S. Customs Service and the International Trade Commission, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds or merchandise, as outlined in Appendix I attached to this notice. The July 13, 1988 decision memorandum is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

In its questionnaire response of July 12, 1988, the Government of Singapore identified Minebea Singapore Branch, NMB Singapore, and Pelmec Singapore as the three companies accounting for more than 90 percent of exports of the subject merchandise to the United States. On that same date, these three companies responded that they produce and/or export to the United States only ball bearings and parts thereof. As a result of our July 13, 1988 decision that the subject merchandise constitutes five separate classes or kinds of merchandise, the exports of the respondent companies are included in only one class or kind of merchandise subject to these investigations. However, import statistics collected by the Department indicate that Singapore exports products under basket TSUSA categories that may include bearings in the four class or kind categories other than ball bearings and parts thereof. For

this reason, our preliminary determinations apply to all classes or kinds of merchandise listed in Appendix I. If we verify that, in fact, producers and exporters in Singapore produce and/or export only ball bearings and parts thereof, any potential countervailing duty order will be issued only with respect to ball bearings and parts thereof and not to the remaining classes or kinds of merchandise.

Based on our July 13 decision that the subject merchandise constitutes five separate classes or kinds, we requested on August 8, 1988, that the Government of Singapore identify producers and exporters of bearings constituting classes or kinds of merchandise other than ball bearings and parts thereof and forward the company section of the questionnaire to those identified. In the supplemental response of August 12, 1988, the Government of Singapore identified Sundstrand Pacific as an additional producer and exporter of the subject merchandise, but did not specify the class or kind category under which its exports to the United States are classified. In a letter dated August 26, 1988, the Government of Singapore stated that it is attempting to classify the products that Sundstrand Pacific exports to the United States but has been unable to do so to date. The Government of Singapore has not identified any additional companies other than Sundstrand Pacific as a producer and/or exporter of the merchandise subject to these investigations. Because Sundstrand Pacific has not responded to our questionnaires, we have insufficient information concerning the products it produces and exports or the extent of its participation, if any, in the programs under investigation. Therefore, as best information available, we are applying the highest net bounty or grant rate that we have calculated in past countervailing duty proceedings against Singapore to Sundstrand Pacific's exports of bearings to the United States. This rate is 4.95 percent *ad valorem* as set forth in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Refrigeration Compressors from the Republic of Singapore* (53 FR 25647, July 8, 1988).

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is October 1, 1986, to September 30, 1987, which corresponds to the fiscal year of all respondent companies.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties Or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Singapore of bearings under the following programs:

A. Monetary Authority of Singapore (MAS) Rediscount Facility

Under the MAS Rediscounting Scheme, the MAS rediscounts pre-exempt and export bills of exchange. According to the responses, a qualifying exporter applies for financing from an approved bank, which then discounts the exporter's bills at an MAS-established rediscount rate plus a maximum spread of 1.5 percent. The bank subsequently rediscounts the bills at the MAS rediscount rate. The usual period for financing under this program is three months.

Because this program is available only to exporters, we preliminarily determine that it is countervailable to the extent that it is offered at preferential rates.

To determine whether financing under this program was made at preferential rates, we compared the interest rates charged on these loans to our short-term benchmark. For our benchmark, we are using the three-month rate on commercial bills in Singapore, as published in the "MAS Statistical Bulletin," for the same period. This is the rate that we applied in the *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore* (50 FR 9840, May 6, 1985) (*Textiles*), the last investigation in which this program was used. As in *Textiles*, we have added 0.5 percent to this rate to reflect bank commissions in Singapore. Based on this comparison, the rates on MAS financing through its rediscounting facility are below the benchmark; therefore, we preliminarily determine this program to be countervailable.

To calculate the benefit arising from this program, we followed our short-term loan methodology, which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

All three respondent companies participated in this program during the review period. According to the responses, individual discount transactions cannot be tied to exports of specific products to specific markets. To calculate the total benefit for NMB Singapore and Pelmec Singapore, we compared the amount of interest actually paid during the review period to the amount the companies would have paid at the benchmark rate. We calculated the value of the benefit attributable to Minebea Singapore Branch, a trading company, by first calculating the proportion of its sales to the United States of bearings produced by NMB Singapore to its total export sales (Pelmec Singapore does not trade to the United States through Minebea Singapore Branch). We then multiplied this proportion by the total benefit to Minebea Singapore Branch, measured by the difference between the amount of interest actually paid by the company during the review period and the amount it would have paid at the benchmark rate, and added this amount to the benefit calculated for NMB Singapore and Pelmec Singapore. Finally, we divided this total benefit by the total export sales of NMB Singapore and Pelmec Singapore and the mark-up attributable to Minebea Singapore Branch's U.S. sales of the subject merchandise produced by NMB Singapore during the review period. The estimated net bounty or grant under this program is 0.02 percent *ad valorem*.

B. Production for Export Under Part VI of the Economic Expansion Incentives Act (EEIA)

Under Part VI of the EEIA, 90 percent of a qualifying company's incremental export profit above a predetermined export base is exempt from corporate income tax. According to the responses, the export base is calculated by taking the average of the export profit levels in the three years preceding the application. The export base profit and ten percent of any incremental export profit are taxed at the normal corporate tax rate of 33 percent. If there is no export profit above the export base, no

exemption is permitted. According to the responses, the exemption cannot be carried forward or back.

An exporting company qualifies for the exemption if its export sales of a product are 100,000 Singapore dollars or more, and at least 20 percent of the value of its total sales of the product.

Because eligibility for this program is contingent upon export performance, we preliminarily determine that it is counteravailable. According to the responses, only NMB Singapore claimed an exemption under this program in the tax return filed during the review period. Because all products exported by NMB Singapore have been approved under this program, the company does not segregate exempted profits by product or market. Therefore, we calculated the benefit under this program by dividing the total value of NMB Singapore's tax savings associated with the exemption by the total value of NMB Singapore's and Pelmec Singapore's exports of all products to all markets and the mark-up on Minebera Singapore Branch's U.S. sales attributable to products produced by NMB Singapore during the review period. The estimated net bounty or grant under this program is 1.99 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Singapore of bearings under the following programs:

A. The Pioneer Industries Program Under Part II of the EEIA

Under Part II of the EEIA, profits that arise from projects approved as "Pioneer" activities are exempt from the corporate income tax of 33 percent. According to the responses, the Economic Development Board (EDB), which administers the program, approves applications only if they meet both of the following criteria:

(a) The project introduces technology, know-how or skills that are substantially more advanced than that of the average level prevailing in the industry; and

(b) There are no companies in Singapore performing a similar activity without being awarded pioneer status;

Additionally, proposed projects must meet one or more of the following criteria:

(c) The gross value-added per worker of the project is substantially higher than the relevant industry's gross value-added per worker; or

(d) The project supplies important parts and components to other industries; or

(e) The project generates substantial economic benefits (as measured by the level of fixed asset investments).

According to the responses, NMB Singapore enjoyed pioneer status from 1973 through 1978, at which time all of its pioneer benefits expired. Pelmec Singapore was granted pioneer status for the period July 15, 1980 through July 14, 1990. In its responses, the Government of Singapore specified how Pelmec Singapore's application met the eligibility criteria for pioneer status. The government also provided industry breakdowns of approvals and rejections for each year from 1978 through 1982, a window period that spans the two years prior to Pelmec Singapore's approval in 1980 and the following two years. During this period, the EDB approved applications covering a broad range of industries, including food, beverages, and tobacco; textiles, footwear, and leather; wood and cork products; paper and paper products; chemicals; petroleum and petroleum products; rubber; plastics; pottery and dinnerware; basic metals; fabricated metal products; non-electrical machinery; electrical machinery; electronic products and components; transport equipment; precision, photographic, and optical equipment; and other manufacturing.

Based on the information provided in the responses, there is no indication that the program has been administered in such a way as to grant special benefits to certain industries and not to others. Therefore, we preliminarily determine that benefits under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act. During verification, however, we will examine thoroughly how administrative discretion is exercised in the application and approval process.

B. Section 16 of the Income Tax Act (ITA)

The EDB administers section 16 of the ITA, which provides for an annual allowance of three percent plus an additional 25 percent for the depreciation of industrial buildings. In the *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (53 FR 16304, May 6, 1988) (*Wire Rod*) issued approximately two weeks after the initiation of the present investigation, we determined that this program is not countervailable because these allowances are the standard depreciation allowances permitted in Singapore. Since that determination, we have received no new facts or information on changed circumstances with respect to this program. Therefore, we continue to consider this program to be not countervailable.

C. Section 19A of the ITA

Section 19A of the ITA allows a company to depreciate all capital expenditures, with the exception of automobiles and robotics, over a three-year period. In *Wire Rod*, we determined that this provision is not countervailable because it is available to all enterprises in Singapore. Since that determination, we have received no new facts or information on changed circumstances with respect to this program. Therefore, we continue to consider this program to be not countervailable.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Singapore of bearings during the review period:

A. Tax Incentives Under the EEIA

The EEIA offers tax incentives under the following provisions:

- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part IX: Royalties, Fees and Development Contributions
- Part X: Research and Development Incentives
- Part XI: Warehousing and Servicing Incentives

According to the responses, none of the respondent companies claimed benefits under these programs on the tax returns filed during the review period. Part II, Pioneer Industries, and Part VI, Production for Export, are discussed in sections II.A. and I.B. of this notice.

B. Double Deduction of Export Promotion Expenses Under the ITA

Sections 14B and 14C of the ITA provide a double deduction for (a) approved overseas and domestic market trade fair expenses, (b) overseas trade office maintenance, (c) approved publications and advertising, and (d) foreign market development and trade missions. According to the responses, none of the respondent companies claimed benefits under these programs

on the tax returns filed during the review period.

C. Research and Development (R&D) Incentives

Section 14E of the ITA offers a double deduction for R&D expenses incurred by qualifying firms, and section 19B of the ITA permits a tax allowance for the writing down of R&D expenditures relating to know-how and patent rights. According to the responses, none of the respondent companies claimed benefits under these programs on the tax returns filed during the review period.

D. Other EDB Programs

The EDB administers three programs available for approved company activities. The Capital Assistance Scheme provides long-term, fixed-rate loans and loan guarantees to companies investing in new production activities. The Production Development Assistance Scheme supplies matching grants for technical improvements in products or processess to companies with at least 30 percent Singaporean ownership. The Initiatives in New Technology Program provides grants to cover employee training and manpower development costs in fields of new technology. According to the responses, none of the respondent companies have participated in these programs.

E. Research and Development Assistance Scheme (RDAS)

Government funding is available for R&D projects under the RDAS, administered by the Singapore Science Council. The purpose of the program is to encourage R&D. Both public institutions and private companies are eligible to apply. According to the responses, none of the respondent companies has participated in this program.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of all five classes or kinds of bearings from Singapore (as described in Appendix I) which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise in the amounts indicated below:

Manufacturers/producers/exporters	Estimated net bounty or grant (percent)
Sundstrand Pacific	4.95
All other companies	2.01

This suspension will remain in effect until further notice.

ITC Notification

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigation. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of these investigations (*i.e.*, those classified under items 681.1010, 681.1030, 681.3900, and 692.3295 of the *Tariff Schedules of the United States Annotated*) are nondutiable. Therefore, in accordance with section 303(a)(2), the U.S. International Trade Commission (ITC) is required to determine whether imports of these nondutiable products from Singapore materially injure, or threaten material injury to, a U.S. industry. If our final determinations are affirmative, the ITC will make its final determinations within 120 days after the Department makes its preliminary affirmative determinations, or 45 days after the Department makes its final determinations, whichever is later.

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protection order, without the written consent of the Assistant Secretary for Import Administration.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within ten days after the hearing transcript is available.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

August 29, 1988.

Appendix I

Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground

or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410) and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

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[C-549-802]

Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of antifriction bearings (other than tapered roller bearings) and parts thereof ("bearings") as described in Appendix I attached to this notice. The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to suspend liquidation of all entries of bearings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of these products in an amount equal to the appropriate estimated net bounties or grants as specified in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by November 14, 1988.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Eleanor Shea, or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Adminstration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8330, 377-0184, or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based on our investigations, we preliminary determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of bearings. For purposes of these investigations, the following programs are preliminarily found to confer bounties or grants:

- Short-Term Loans Provided under the Export Packing Credits Program

- Tax Certificates for Exports
- Electricity Discounts for Exporters
- Tax and Duty Exemptions under the Investment Promotion Act

The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the Notice of Initiation in the **Federal Register** (53 FR 15086, April 27, 1988), the following events have occurred. On May 5, 1988, we presented a questionnaire to the Government of Thailand in Washington, DC concerning petitioner's allegations. On July 12, 1988, we received responses from the Government of Thailand, NMB Thai Limited (NMB Thai) and Pelmec Thai Limited (Pelmec Thai). On August 1, 1988, petitioner submitted a critical circumstances allegation. On August 3, 1988, we issued a supplemental/deficiency questionnaire to the government and the respondent companies, and received responses on August 15, 1988. On August 8, 1988, we sent a letter to the Government of Thailand requesting that it identify any additional companies that export the subject merchandise to the United States and indicate what classes or kinds of merchandise each company produces and/or exports. The Government of Thailand addressed this request in its response of August 15, 1988.

On May 27, 1988, the petitioner filed a request that the preliminary determinations be postponed for 65 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determinations to no later than August 29, 1988 (53 FR 21882, June 10, 1988).

Scope of Investigations

For a complete description of the products subject to these investigations, see Appendix I attached to this notice.

Analysis of Programs

In our notice of initiation (53 FR 15086, April 27, 1988), we treated the products subject to investigation as one "class or kind of merchandise." On May 5, 1988, we issued a questionnaire requesting that the Government of Thailand identify all producers, manufacturers, and exporters of the subject merchandise in Thailand and forward the company section of the questionnaire to each company identified.

Subsequent to our notice of initiation, we received numerous comments from petitioner, respondents and other interested parties in the countervailing duty investigations and in the concurrent antidumping investigations concerning whether the subject merchandise constitutes one or more than one class or kind of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts at the U.S. Customs Service and the International Trade Commission, we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as outlined in Appendix I attached to this notice. The July 13, 1988 decision memorandum is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

In its questionnaire response of July 15, 1988, the Government of Thailand identified NMB Thai and Pelmec Thai as the respondent companies. On that same date, these companies responded that they produce and export to the United States only ball bearings and parts thereof. As a result of our July 13, 1988 decision that the subject merchandise constitutes five separate classes or kinds of merchandise, the exports of the respondent companies are included in only one class or kind of merchandise subject to these investigations. However, import statistics collected by the Department indicate that Thailand exports products under basket TSUSA categories that may include bearings in the four class or kind categories other than ball bearings and parts thereof. For this reason, our preliminary determinations apply to all classes or kinds of merchandise listed in Appendix I. If we verify that, in fact, producers and exporters in Thailand produce and/or export only ball bearings and parts thereof, any potential countervailing duty order will be issued only with respect to ball bearings and parts thereof and not to the remaining classes or kinds of merchandise.

Based on our July 13 decision that the subject merchandise constitutes five separate classes or kinds, we requested on August 8, 1988, that the Government of Thailand identify producers or exporters of bearings constituting classes or kinds of merchandise other than ball bearings and parts thereof and forward the company section of the questionnaire to those identified. In the supplemental response of August 15, 1988, the Government of Thailand stated that there are no additional producers or exporters of the subject merchandise in Thailand.

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is October 1, 1986 to September 30, 1987, which corresponds to the fiscal year of the respondent companies.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties Or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand or bearings under the following programs:

A. *Short-Term Loans Provided Under the Export Packing Credits Program*

Export packing credits are short-term loans which are provided through Thai commercial banks. According to the responses, these loans are used for either pre-shipment or post-shipment financing and can be rediscounted at the Bank of Thailand through its export refinancing facility.

The Bank of Thailand charges an interest rate of five percent per annum to commercial banks on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial banks are permitted to charge exporters no more than seven percent per annum for the purchase of such notes. For goods other than those listed in categories one and two, such as bearings, the repurchase and purchase rates are four percent and seven percent, respectively. Export packing credits are available for a maximum period of 180 days.

Because this program is available only to exporters, we preliminarily determine that it is countervailable to the extent that it is offered at preferential rates.

To determine whether financing under this program was made at preferential rates, we compared the interest rates charges to exporters during the review period to our short-term benchmark. For our benchmark, we are using the national average short-term interest rate on commercial debt in Thailand, as

reported in the responses of the Government of Thailand. This is the rate that we applied in the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from Thailand,* (52 FR 36987, 36988, October 2, 1987) *(Nails from Thailand),* the last investigation in which this program was used. Based on this comparision, the rates on export packing credits are below the benchmark; therefore, we preliminarily determine this program to be countervailable.

To calculate the benefit arising from this program, we followed our short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984). We compared the amount of interest actually paid during the review period to the amount the companies would have paid at the benchmark rate. Both Pelmec Thai and NMB Thai participated in this program during the review period. According to their responses, individual discount transactions cannot be tied to exports of specific products to specific markets. Therefore, we calculated the estimated net bounty or grant by dividing total benefits during the review period by total export sales during this period. The estimated net bounty or grant under this program is 1.28 percent *ad valorem.*

B. Tax Certificates for Exports

The Government of Thailand issues to exporters tax certificates which are freely transferable and which constitute a rebate of indirect taxes and import duties on inputs used to produce exports. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study published in 1980, based on 1975 data, and updated in 1985 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect domestic taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's customs duty drawback program or duty exemption program on imported raw materials, or when firms do not use imported materials in their production process. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to determine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect from December 1, 1981 to February 4, 1986 were set forth in the "Notification of the Ministry of Finance No. Or. 1/2524." These rates were based on the I/O study published in 1980. The "A" and "B" rates for exports of bearings based on the I/O study published in 1980 were 3.71 percent and 1.96 percent, respectively. New rates announced on February 5, 1986 were computed using the study published in 1985. Since 1986, the "A" rate has been 7.19 percent and the "B" rate has been 0.59 percent for exports of bearings. According to the responses, Pelmec Thai and NMB Thai claimed and received tax certificates at only the "B" rate during the review period.

To determine whether an indirect tax rebate system confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government property ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand* (50 FR 9818, 9820, March 12, 1985) (*Apparel from Thailand*), we examined Thailand's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. However, to the extent that the program rebates indirect taxes and import duties on non-physically incorporated inputs, we found that the remissions are excessive. Again, in *Nails from Thailand,* we applied our test and reiterated that these rebates are countervailable only to the extent that the remissions are excessive. In the present investigations, we will verify whether rebates under this program continue to reflect the incidence of indirect taxes and import duties on inputs.

For purposes of our preliminary determinations, to determine whether, and the extent to which, the tax certificates confer an excessive remission of indirect taxes, we calculated the indirect tax incidence under the most recent I/O table on physically incorporated inputs at FOB prices. Under our methodology, this is the allowable rebate rate. We then compared the authorized rebate rate, which is based on both physically and non-physically incorporated inputs, to the allowable rebate rate and found that there is an excessive remission of indirect taxes to exporters of bearings. The difference between the two rebate rates equals the net overrebate. On this basis, we calculate an estimated net bounty or grant of 0.20 percent *ad valorem.*

C. Electricity Discounts for Exporters

The Electricity Generating Authority of Thailand (EGAT), the Metropolitan Electricity Authority (MEA), and the Provincial Electricity Authority (PEA) provide discounts on electricity rates charged to producers of export products. According to the responses, this program provides discounts of 20 percent of the cost of electricity consumed to produce exports.

Any producer that consumes electricity in manufacturing products that are eligible to receive tax certificates for exports (*see* section I.B. of this notice) is eligible for the electricity discount. Once a producer has qualified for the electricity discount and has completed an export transaction involving eligible products, it may apply to the electricity authority from which it receives its electrically bill. The MEA or PEA then calculates the amount of the rebate and credits a deduction on a subsequent electricity bill.

Because these discounts are available only to exporters, we preliminarily determine that they are countervailable. Only NMB Thai participated in this program during the review period. To calculate the bounty or grant, we divided the total amount of electricity discounts received by NMB Thai during the review period by total export sales of both respondent companies during the same period. The estimated net bounty or grant is 0.25 percent *ad valorem.*

D. Tax and Duty Exemptions Under the Investment Promotion Act (IPA)

The IPA (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment (BOI), the IPA authorizes the exemption of import duties and certain taxes with respect to qualifying projects. Section 28 provides for exemption from payment of import duties and business taxes on machinery. Section 31 provides a three- to eight-year exemption for payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period. Section 34 provides an additional deduction from taxable income for dividends paid on the promoted activity. NMB Thai and Pelmec Thai claimed exemptions under sections 28, 31 and 34 only in the tax returns filed during the review period.

According to the responses, in determining whether to authorize an investment promotion certificate, the BOI examines a number of criteria and conditions including the supply and demand conditions in the Thai and overseas markets. For companies in "Production or Assembly of Electronics" (the industrial category under which bearing producers quality for IPA benefits), the BOI has found that new projects will not be viable unless they are able to sell overseas. Accordingly, the BOI places a requirement on companies receiving certificates that their products be "largely or fully exported."

Because benefits to the respondent companies under this program were contingent upon their export performance, we preliminarily determine that sections 28, 31 and 34 of the IPA confer bounties or grants on the respondent companies within the meaning of the countervailing duty law.

Under our tax methodology, we calculated the difference between the amount each company paid in income taxes with the section 31 exemption during the review period and the amount each would have paid absent the exemption. We next calculated the difference between the amount each company paid in taxes on dividends under section 34 during the review period and the amount each would have paid absent the program. Finally, we added these tax savings to the total import duty exemptions for imported machinery received under section 28 by each company during the review period, and divided this total benefit by the companies' total export sales during the review period. On this basis, we calculated an estimated net bounty or grant of 16.10 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Thailand of bearings during the review period:

A. *Rediscount of Industrial Bills*

The Bank of Thailand authorizes rediscounts for short-term promissory notes arising from industrial activity. The Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases. Commercial banks may charge their industrial customers a maximum of 7 percent per annum, while the rate charged to commercial banks by the Bank of Thailand for these notes is 5 percent per annum. According to the responses, neither of the respondent companies participated in this program during the review period.

B. International Trade Promotion Fund

This fund is used to finance export promotion activities such as marketing research and trade fairs. According to the responses, neither of the respondent companies applied for or received benefits under this program during the review period.

C. Export Processing Zones

Under The Industrial Estates Authority of Thailand Act, firms located in designated export processing zones and industrial estates receive tax and import duty exemptions on: (1) Machinery used for factory construction and operation; (2) goods imported for use in the production of exports; (3) items produced for export; and (4) items imported for re-export. According to the responses, none of the facilities of respondent companies are located in export processing zones.

D. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries

Section 6 of the "Royal Decree Issued Under the Revenue Code on Reduction and Exemption from Revenue Taxes" provides that business taxes imposed on the sale of goods that are used as inputs into finished goods may be reduced to 1.5 percent for finished goods sold in the domestic market and 0.1 percent for finished goods that are exported from Thailand. According to the responses, neither of the respondent companies claimed or received benefits under this program during the review period.

E. Tax Exemptions for Goodwill and Royalty Payments under the IPA

Section 33 of the IPA provides a five-year tax exemption for goodwill and royalty payments. According to the responses, neither of the respondent companies claimed benefits under the program on the tax return filed during the review period.

F. Double Deduction of Foreign Marketing Expenses and Foreign Taxes under the IPA

Section 36 of the IPA provides deductions from taxable income for foreign marketing expenses and foreign taxes. According to the responses, neither of the respondent companies claimed benefits under this program on the tax return filed during the review period.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of bearings from Thailand. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: 1) The alleged subsidy is inconsistent with the Agreement, and 2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we consider the following factors: 1) The volume and value of the imports; 2) seasonal trends; and 3) the share of domestic consumption accounted for by the imports. Petitioner's allegation that "critical circumstances" exist in these investigations is based on aggregated TSUSA categories. However, all merchandise imported under the categories specified by petitioner in its allegation, with the exception of TSUSA items 681.1010 and 681.1030, is dutiable, and under section 303 of the Act, dutiable merchandise is not subject to a critical circumstances allegation. For the nondutiable TSUSA categories 681.1010 and 681.1030, U.S. import statistics show that there have been no imports from Thailand for 1987 or the first six months of 1988.

Furthermore, there has not been a surge in imports under two basket TSUSA categories, items 681.3900 and 692.3295, which were not included in petitioner's allegation but which are nondutiable. No imports from Thailand have entered under item 681.3900 since March of 1987, and imports from Thailand under item 692.3295 were lower in the three months following the filing of the petition than in the three months preceding its filing.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we preliminarily determine that critical circumstances do not exist.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, We are directing the U.S. Customs Service to suspend liquidation of all entries of all five classes or kinds of bearings from Thailand (as described in Appendix I) which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise equal to 17.83 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigations. However, Thailand is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of these investigations (*i.e*, those classified under TSUSA items 681.1010, 681,1030, 681.3900, and 692.3295) are nondutiable. Therefore, in accordance with section 303(a)(2), the U.S. International Trade Commission (ITC) is required to determine whether imports of these nondutiable products from Thailand materially injure, or threaten material injury to, a U.S. industry. If our final determinations are affirmative, the ITC will make its final determinations within 120 days after the Department makes its preliminary affirmative determinations, or 45 days after the Department makes its final determinations, whichever is later.

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. Written views should be submitted in accordance with 19 CFR 355.33(d) and 355.34, and will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within ten days after the hearing transcript is available.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

August 29, 1988.

Appendix I

Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and

680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.50.00; 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rollling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-20162 Filed 9-2-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-357-404]

Certain Apparel From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain apparel from Argentina. We preliminarily determine the total bounty or grant to be 3.38 percent *ad valorem* for the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 15, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1053) the final results of its last administrative review of the countervailing duty order on certain apparel from Argentina (50 FR 9846, March 12, 1985). On March 30, 1987, an exporter, Pulloverfin S.A.I.C., and an importer, Che Amigo U.S.A., requested in accordance with 19 CFR 355.10 an administrative review of the order on certain apparel. We published the initiation on April 22, 1987 (52 FR 13268). The Department did not receive a request for an administrative review of the countervailing duty order on certain textile mill products. The Department has now conducted the administrative review on certain apparel in accordance with section 751 of the Tariff Act of 1930.

SCOPE OF REVIEW

Imports covered by the review are shipments of Argentine apparel, currently classifiable under the following items of the Tariff Schedules of the United States Annotated:

372.7540, 374.2500, 374.3530, 374.6500, 376.2830, 381,0540, 381.0542, 381.0546, 381.4130, 381.4160, 381.4770, 381.5650, 381.6240, 381.8930, 381.9035, 381.9540, 381.9547, 381.9549, 381.9585, 384.0207, 384.0208, 384.0212, 384.0237, 384.0239, 384.0320, 384.0330, 384.0340, 384.0350, 384.0360, 384.0370, 384.0407, 384.0408, 384.0415, 384.0416, 384.0423, 384.0424, 384.0437, 384.0438, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0497, 384.0608, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0905, 384.0943, 384.0945, 384.1000, 384.1319, 384.1321, 384.1611, 384.1612, 384.1613, 384.1680, 384.1920, 384.2105, 384.2115, 384.2120, 384.2125, 384.2205, 384.2216, 384.2816, 384.2818, 384.2821, 384.2850, 384.2910, 384.2914, 384.2915, 384.2930, 384.2934, 384.2950, 384.3752, 384.3753, 384.3777, 384.4614, 384.4647, 384.4765, 384.4925,

384.5234, 384.5275, 384.5276, 384.5277, 384.5278, 384.5279, 384.5299, 384.5526, 384.5930, 384.6310, 384.6330, 384.6340, 384.6350, 384.6360, 384.6371, 384.6372, 384.6385, 384.7010, 384.7020, 384.7215, 384.7220, 384.7510, 384.7522, 384.7528, 384.7532, 384.7534, 384.7536, 384.7538, 384.7542, 384.7544, 384.7546, 384.7548, 384.7552, 384.7554, 384.7556, 384.7558, 384.7562, 384.7595, 384.8024, 384.8025, 384.8027, 384.8073, 384.8225, 384.8300, 384.9115, 384.9445, and 704.6500.

The review covers the period January 1, 1986 through December 31, 1986 and ten programs.

Analysis of Programs

(1) Reembolso

The reembolso is a tax rebate paid upon export. It is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes, we consider the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

In our last administrative review (53 FR 1053, January 15, 1988), we found the requisite linkage for apparel but were unable to establish from the records of the verified companies the level of prior-stage tax incidence. We were able to verify the payment of certain final-state taxes. Consequently, we disallowed the amounts claimed for all prior-stage taxes and allowed certain final-stage taxes.

In this review the Argentine government provided a 1986 fiscal incidence study and cost structure for the apparel industry. The Argentine government also provided information regarding the amount of certain prior-stage taxes. However, the information is insufficient to establish the level of prior-stage tax incidence or to prove actual payment of prior-stage taxes during the period of review. Consequently, we are disallowing the amounts claimed for all prior-stage taxes. Based on our analysis of the final-stage taxes, we find that the amount of allowable indirect taxes rebated to apparel exporters was 3.27 percent *ad valorem* during the review period.

In September 1984, the Argentine government revised its export promotion law. The purpose of the successor law, No. 23.101, was to administer all export programs more efficiently. Effective October 16, 1986, Decree 1555/86 modified the reembolso program "to make the tax regime permanent and independent from other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The new decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than different rebate rates for each product or industry sector, there are now only three broad rebate levels. The rate for level I is 10 percent, level II is 12.5 percent, and level III is 15 percent. Based on a 1986 recalculation of the tax incidence of the apparel industry, Decree 1555/86 put apparel into level II.

To calculate the benefit, we compared the 12.5 percent rebate for level II with the allowable rebate of 3.27 percent. We prorated the resulting 9.23 percent overrebate over the number of days that the 12.5 percent rebate was in effect. On this basis, we preliminarily determine the benefit to be 1.92 percent *ad valorem* during the period of review. For purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit to be 9.23 percent *ad valorem.*

(2) Pre-export Financing

This preferential financing program makes pre-export loans available to exporters at an annual interest rate of one percent. The loans are denominated in australes but indexed to U.S. dollars. The funds are provided by the Central Bank of Argentina and disbursed by private commercial banks. The maximum term of the loan is 180 days, and the loan must be repaid no later than 60 days after the date of export. The interest on pre-export loans is payable at the end of each calendar quarter.

In 1986, the Central Bank limited the maximum loan amount for exporters of apparel to 65 percent of the contracted f.o.b. price. One of the 37 exporters of apparel received benefits from this program during the period of review.

To calculate the benefit for each loan, we compared the difference between the amount of interest due and the amount that would have been paid on comparable short-term commercial loans available in Argentina during the period of review. In our last review (53 FR 1053), we used as our benchmark the weighted-average interest rate on comparable short-term loans available from Argentine banks during the period of review. These were the regulated, unregulated and acceptance rates. In this review we do not have information on acceptance rates. As the best information available, we have averaged the unregulated interest rates reported in the Economic Memorandum published quarterly by the Central Bank of Argentina and the regulated rates provided by the Argentine government in its questionnaire response. Using this benchmark and adjusting for exchange rate differentials, we allocated the benefits over the company's total exports of apparel. We then weight-averaged the results by that company's proportion of total exports of this merchandise to the United States. We preliminarily determine the benefit from this program to be 1.46 percent *ad valorem* for the period of review.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of apparel did not use them during the review period:

(A) Post-export financing;

(B) Incentives for exports from southern ports;

(C) Tax reductions for investors;

(D) Regional tax incentives;

(E) Tax reductions for locating in industrial parks;

(F) Discounts of foreign currency accounts receivable;

(G) Low-cost loans for projects outside Buenos Aires; and

(H) BANADE loan guarantees.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 3.38 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 3.38 percent *ad valorem* of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Due to the change in the reembolso program, the Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 10.69 percent of the f.o.b. invoice price on all shipments of apparel from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This deposit requirement shall remain in effect until publication of the final results of the next administrative review. Interested parties may submit written comments on these preliminary

results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Jan W. Mares,

Assistant Secretary Import Administration.

Date: August 30, 1988.

[FR Doc. 88-20163 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-NS-M

[C-535-001]

Cotton Shop Towels From Pakistan; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan. We preliminarily determine the total bounty or grant to be 15.07 percent *ad valorem* for the period April 1, 1984 through December 31, 1984, and 16.65 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background:

On February 12, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 5219) the final results of its last administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). On March 25, 1986, an interested party, the Government of Pakistan, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on April 18, 1986 (51 FR 13273). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized System ("HS") item numbers with our product descriptions on a test basis. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Pakistani cotton shop towels currently classifiable under TSUSA item 377.2840. This product is currently classifiable under HS item number 6307.10.20. We invite comments from all interested parties on this HS classification.

The review covers the period April 1, 1984 thorugh December 31, 1985 and six programs.

Analysis of Programs

(1) Export Financing

The Export Finance Scheme ("EFS"), which is administered by the State Bank of Pakistan, grants short-term loans at below-market interest rates to exporters. The EFS has two parts. Under Part I, exporters may obtain financing on specific letters of credit or irrevocable contracts. Under Part II, exporters may establish a credit line based on 33 percent of the previous year's exports. During the current year, a company must export a value three times the amount of financing obtained under Part II. The exports used to obtain financing under Part I do not satisfy the export performance requirement under Part II. If exports fall short of the Part II requirement, there is an interest penalty of 20 percentage points. Because this program provides loans only to exporters at less than commercial rates, we preliminarily determine that it is countervailable.

During the review period, shop towel exporters were liable for interest payments on loans obtained under Parts I and II of the EFS. The terms of the loans varied from three to twelve months. To calculate the benefit, we took the difference between the actual interest paid and the interest that would have been paid if the loans were obtained at commercial rates. The State Bank of Pakistan does not publish average commercial lending rates. As the best information available, we used as our commercial benchmark the average lending rate reported by two Pakistani commercial banks. During the period of review, that rate was 14 percent. Since EFS loans can be tied to exports to specific countries, we allocated each firm's interest benefit on loans obtained for exports to the United States over its exports to the United States. We then weight-averaged the result by each firm's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 1.42 percent *ad valorem* for the 1984 period and 2.37 percent *ad valorem* for 1985.

(2) Compensatory Rebate Scheme

The Compenstory Rebate Scheme, which is administered by the Ministry of Commerce, provides a cash rebate to exporters of cotton shop towels. The rebate is calculated as a percentage of the f.o.b. value of the exported product. The rebate for shop towels was 7.50 percent until October 7, 1985, when the rate was raised to 10 percent.

While the Government of Pakistan claims that the purpose of the scheme is to rebate local government taxes upon export, it failed to provide any documentation linking the amount of the rebate to actual indirect taxes borne by shop towels. Therefore, we preliminarily determine that the Government of Pakistan pays the compensatory rebate without regard to specific duties and taxes incurred in the production of shop towels and that the full amount of the rebate is countervailable because the rebates are contingent upon export performance.

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of the rebate is known at the time of export, we calculate the benefit from this program on a credit-as-earned basis. Using the rate applicable to cotton shop towel exports made during the review period, we preliminarily determine the benefit from this program to be 7.50 percent *ad valorem* for the 1984 period and, based on a weighted-average of the different rates applicable in 1985, 8.12 percent *ad valorem* for 1985.

On May 29, 1986, Ministry of Commerce Circular 10(1) 86-E.II repealed the Compensatory Rebate Scheme. Therefore, we preliminarily determine that the benefit from this program, for purposes of cash deposit of estimated countervailing duties, is zero.

(3) Excise Tax, Sales Tax and Customs Duty Rebate Programs

The Central Bureau of Revenue administers the rebate of excise taxes, customs duties and sales taxes on both domestic and imported inputs used in exported products. During the review period, the excise tax rebate was 3.80 percent, the sales tax rebate was 0.11 percent, and the customs duty rebate was 0.37 percent. All the rebates were calculated on the basis of the f.o.b. value of exports.

The Government of Pakistan failed to provide any documentation linking the amount of these rebates to actual indirect taxes borne by shop towels. Therefore, we preliminarily determine that the Government of Pakistan pays these rebates without regard to specific duties and taxes incurred in the production of shop towels and that the full amount of the rebates is countervailable because the rebates are contingent upon export performance.

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of these rebates is known at the time of export, we calculate the benefit from these programs on a credit-as-earned basis. Using the rates applicable to cotton shop towel exports during the review period, we preliminarily determine the benefit from these programs to be 4.28 percent *ad valorem* for 1984 and 1985.

(4) Income Tax Reductions

The Government of Pakistan provides firms with a maximum 55-percent reduction of taxes on income generated from exports. The percentage of the reduction depends on the size of the company and the form of business ownership. Because this program is contingent upon export performance, we preliminarily determine that it is countervailable.

At verification, we were not able to substantiate any of the reductions reported in the Government of Pakistan's questionnaire response. Therefore, as the best information available, we have applied the highest income tax reduction benefit reported or a shop towel producer in the questionnaire response to all companies. On this basis, we preliminarily determine the benefit from this program to be 1.41 percent *ad valorem* for the 1984 period and 1.88 percent *ad valorem* for 1985.

(5) Import Duty Rebate

The Government of Pakistan provides a rebate of import duties on equipment used to manufacturer shop towels for export. One exporter used this program in 1985.

The rebate or import duties on items physically incorporated into exported merchandise is not a bounty or grant (see item (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade). However, equipment used to manufacturer shop towels is not physically incorporated in the exported product. Therefore, we preliminarily determine that this program is countervailable.

To calculate the benefit, we divided the amount of import duty reduction by the firm's total exports to all markets in 1985. We then weight-averaged the result by the firm's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for the 1984 period and 0.000028 percent *ad valorem* for 1985.

(6) Export Credit Insurance

We preliminarily determine that exporters of cotton shop towels did not use this program during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 15.07 percent *ad valorem* for the period April 1, 1984 through December 31, 1984, and 16.65 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

The Department intends to instruct the Customs Service to assess countervailing duties of 15.07 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after April 1, 1984 and on or before December 31, 1984. The Department also intends to instruct the Customs Service to assess countervailing duties of 16.65 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Because of the termination of the Compensatory Rebate Scheme, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 8.53 percent of the f.o.b. invoice price on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review including the results of this analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Timothy N. Bergan,

Acting Assistant Secretary Import Administration.

Date: August 26, 1988.

[FR Doc. 88-20164 Filed 9-2-88; 8:455 am]

BILLING CODE 3510-DS-M

[C-614-501]

Low-Fuming Brazing Copper Rod and Wire from New Zealand Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 13, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We have now completed that review and determine the total bounty or grant for the period August 1, 1986 through July 31, 1987 to be 2.42 percent *ad valorem*.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 26481) the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638, August 5, 1985). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. Such merchandise is currently classifiable under item numbers 612.6205, 612.7220 and 653.1500 of the Tariff Schedules of the United States Annotated and under item numbers 7407.21.50, 7408.21.00, 8311.30.60 and 8311.90.00 of the Harmonized System.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the total bounty or grant to be 2.42 percent *ad valorem* for the period August 1, 1986 through July 31, 1987.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 2.42 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after August 1, 1986 and on or before July 31, 1987.

Further, due to the termination of the Export Performance Tax Incentive, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: August 29, 1988.

Jan W. Mares,

Assistant Secretary Import Administration.

[FR Doc. 88-20165 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We preliminarily determine the net subsidy to be 3.59 percent *ad valorem* for all firms during the period March 7, 1986 through December 31, 1986, and 1.78 percent *ad valorem* for all firms during the period January 1, 1987 through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44827) a countervailing duty order on porcelain-on-steel cookingware from Mexico. On December 1, 1987, the Mexican exporters requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on January 27, 1988. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are pocelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. Such merchandise is currently classifiable under TSUSA item number 654.0818. These products are currently classifiable under HS item number 7323.94.00.20. We invite comments from all interested parties on this HS classification. The review covers the period from March 7, 1986 through December 31, 1987 and 11 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two

purposes: pre-export financing and export financing. Export loans are also available to importers. We consider loans to U.S. importers as loans to the corresponding Mexican exporters.

We consider both pre-export and export FOMEX loans to be export subsidies since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 45.40 to 96.00 percent. The annual interest rate for dollar-denominated FOMEX export financing ranged from 5.40 to 8.30 percent during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of reveiw were obtained between January 1986 and October 1987. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.). We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of funds to banks, for the years 1981 through 1984. We added this average difference to the 1986 and 1987 CPP rates. In this way we calculated annual benchmarks of 135.27 percent for pre-export peso loans obtained in 1986, and 167.05 percent for pre-export peso loans obtained in 1987.

To determine the effective interest rate benchmark for 1986 and 1987 dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 10.47 percent in 1986 and 9.81 percent in 1987.

The two known exporters, as well as their U.S. importers, of this merchandise used this program during the period of review.

We allocated the benefit from FOMEX loans tied to U.S. shipments over total exports of the subject merchandise to the United States. For the period March 7, 1986 through December 31, 1986, we preliminarily determine the benefit form this program to be 3.43 percent *ad valorem* for all firms. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the benefit from this program to be 1.36 percent *ad valorem* for all firms.

In May 1988, the Banco de Mexico changed the interest rates on FOMEX peso loans to 66.00 percent and on dollar loans to 7.70 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same metholdology used in calculating the assessment rates. For peso loans we used as our benchmark the sum of the most recent available CPP rate, *i.e.*, May 1988, and the average difference between the I.E. effective rates and the CPP rates for the period 1981 through 1984. For dollar loans we used as our benchmark the May 1988 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, a benefit of 0.35 percent *ad valorem* for all firms.

(2) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a subsidy because it restricts loan benefits to those enterprises located outside Zone IIIA.

One firm had a variable-rate, peso-denominated FONEI loan for an industrial mortgage outstanding during the period of review. We treated this variable-rate loan as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them with the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over the firm's total sales to all markets during the period of review. We then weight-averaged the resulting benefit by the firm's proportion of exports to the United States of this merchandise during the period of review. We preliminarily determine the benefit from this program to be 0.16 percent *ad valorem* for the period March 7, 1986 through December 31, 1986, and 0.42 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of cookingware did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);

(B) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);

(C) Bancomext preferential financing;

(D) Import duty reductions and exemptions;

(E) Energy subsidies (NDP preferential discounts);

(F) Article 15 loans;

(G) State tax incentives;

(H) Drawback adjusted for changes in exchange rates; and

(I) Accelerated depreciation.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 3.59 percent *ad valorem* for all firms during the period March 7, 1986 through December 31, 1986, and 1.78 percent *ad valorem* for all firms during the period January 1, 1987 through December 31, 1987.

Section 707 of the Tariff Act (the "Act") provides that the difference between the amount of a cash deposit, or the amount of any bond or security, for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is lower than the duty determined under the order, for merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the final injury determination by the International Trade Commission, which in this case was November 26, 1986 (51 FR 42946). The rate in our preliminary determination (51 FR 7878, March 7, 1986) was 2.29 percent *ad valorem*.

In accordance with section 705(a)(1) of the Tariff Act, the final determination in this case was extended to coincide with the antidumping final determination on the same products from Mexico. Because we cannot impose suspension of liquidation for more than 120 days without the issuance of a countervailing duty order, we terminated the suspension of liquidation for entries or withdrawals made on or after July 5, 1986 and before December 12, 1986, the date of publication of the countervailing duty order. Because we terminated suspension of liquidation during this period, we were precluded

by statute from collecting estimated countervailing duties, or requiring the posting of a bond or other security, for such entries or withdrawals. We reinstated suspension of liquidation and the requirement for collection of estimated countervailing duties for entries or withdrawals of the subject merchandise on the date of publication of the countervailing duty order, December 12, 1986.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 2.29 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 7, 1986 and on or before July 4, 1986. Entries or withdrawals between July 5, 1986 and December 11, 1986 are not subject to countervailing duties. The Department intends to instruct the Customs Service to assess countervailing duties of 3.59 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 12, 1986 and exported on or before December 31, 1986, and 1.78 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.77 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following.

Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: August 30, 1988.

[FR Doc. 88-20166 Filed 9-2-88; 8:45am]

BILLING CODE 3510-05-M

New Mexico Institute of Mining and Technology et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-203. *Applicant:* New Mexico Institute of Mining and Technology, Socorro, NM 87801. *Instrument:* Gas Isotope Mass Spectrometer, Model Delta-E. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice of 53 FR 22684, June 17, 1988. *Reasons for This Decision:* The foreign instrument provides an automated multielement multicollector (up to 6) analysis system for sequential analysis of CO_2, SO_2, H_2, and N_2.

Docket Number: 88-216. *Applicant:* Hawaii Institute of Geophysics, Honolulu, HI 96822. *Instrument:* Field Portable Remote Radon Detector, Model 611. *Manufacturer:* Alpha Nuclear Coporation, Canada. *Intended Use:* See notice of 53 FR 22686, June 17, 1988. *Reasons for This Decision:* The foreign instrument provides for continuous measurement of parent radionuclide concentrations at remote locations in a programmed sequence over several days.

Comment: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value of either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 88-20167 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-234R. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* Fluorescence Lifetime Instrument. *Manufacturer:* Photochemical Research Associates, Canada. *Intended Use:* See notice at 52 FR 30939, August 18, 1987. *Reasons for This Decision:* The foreign instrument provides time resolved single photon counting in the microsecond to millisecond range. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Docket Number: 88-082. *Applicant:* University of North Carolina, Chapel Hill, NC 27514. *Instrument:* Radon Gas Detector with Accessories, Model PMT-TEL. *Manufacturer:* Pylon Electronics, Canada. *Intended Use:* See notice at 53 FR 9958, March 28, 1988. *Reasons for This Decision:* The foreign instrument provides in situ measurements of radon with sensitivity to levels of 0.025 picocurie per liter of air. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Docket Number: 88-083. *Applicant:* National Bureau of Standards, Boulder, CO 80303. *Instrument:* Admittance Bridge, Model MkIII. *Manufacturer:* NORE Microwave, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 9958, March 28, 1988. *Reasons for This Decision:* The foreign instrument provides precise admittance measurement over the frequency range from 1kHz to 100 MHz. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Docket Number: 88-085. *Applicant:* University of Arizona, Tucson, AZ 85724. *Instrument:* Cytogenetic Scanning Analyzer System. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 53 FR 4307, February 18, 1988. *Reasons for This Decision:* The foreign instrument accurately locates metaphase chromosomes and provides a 1024 element CCD imaging array. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Docket Number: 88-102. *Applicant:* Georgia State University, Atlanta, GA

30303. *Instrument:* Stopped-Flow Dual-Beam and Scanning Spectrophotometer/Spectrofluorometer, Model SF-53. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 9959, March 28, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) submillisecond dead time, (2) dual beams, (3) four observation windows on the sample cell, (4) spectroscan, and (5) chemically inert flow paths. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20168 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al. Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-182. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* High Resolution Ion Energy Analyzer and High Precision Sample Manipulator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Reasons for this Decision:* The foreign article provides for simultaneous detection of energy and angular distribution over an angle of 30° in the energy range of 50 to 350 000 electron volts.

Docket Number: 88-183. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* 400 kV Heavy Ion Accelerator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Reasons for this Decision:* The foreign article provides an acceleration voltage of 400 kV, 0.05% ripple, a mass range to 200 amu and a beam current of 1 microampere on a target in a spot of 1 mm diameter.

Docket Number: 88-209. *Applicant:* University of Colorado, Boulder, CO 80309-0250. *Instrument:* Electron Microprobe, Model WDS/EDS. *Manufacturer:* JEOL, LTD., Japan. *Intended Use:* See notice at 53 FR 22685, June 17, 1988. *Reasons for this Decision:* The foreign instrument is capable of quantitative analysis of EDS/WDS signals and permits real time display of spectral acquisitions.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20169 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-213. *Applicant:* University of Illinois, Urbana, IL 61801. *Instrument:* Scanning Electron Microscope with Accessories, Model Stereoscan. *Manufacturer:* Cambridge Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 22685, June 17, 1988.

Comments: Amray, Inc., 160 Middlesex Turnpike, Bedford, MA 01730, provided timely comments opposing this application.

Decision: Denied. An instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The applicant states that (1) there are no domestic manufacturers making scanning electon microscopes (SEMs) and (2) the imperative (pertinent) features of the foreign instrument are high acceleration of 40 kV, a beam diameter of 5nm and a conjugate beam blanking scheme. The applicant's statement that there are no domestic manufacturers of SEMs is incorrect. Also, the Amray instrument's capabilities exceed the applicant's listed requirements (providing an accelerating voltage of 50 kV and a beam diameter of 4nm). Finally, the Amray SEM provides a conjugate beam blanking system.

In summary, the Amray instrument satisfies or exceeds the applicant's stated requirements. Accordingly, we deny this application.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20170 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Notre Dame; Decision of Application for Duty-Free Entry of Scientific Accessory

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-218. *Applicant:* University of Notre Dame, Notre Dame, IN 46556, *Instrument:* Low Energy Electron Diffractometer, Model SPA-LEED. *Manufacturer:* Leybold, West Germany. *Intended Use:* See notice at 53 FR 22666, June 17, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manfacturer. The accessory is pertinent to the intended uses.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20171 Filed 9-2-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Fish and Seafood Promotional Council; Meeting

Agency: National Marine Fisheries Service (NMFS), NOAA, DOC.

Time and Date: The meeting will convene at 8:15 a.m., October 5, 1988 and adjourn approximately 4:00 p.m., October 6, 1988.

Place: The Warwick Hotel, 4th and Lenora Streets, Seattle, WA 98111.

Status: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 14 industry members (15 authorized, one appointment pending) and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual plan and budget to the Secretary of Commerce for his approval that describes the marketing activities the NFSPC intends to carry out. Funding for NFSPC activities is provided for through Congressional appropriations.

Matters to be Considered

Portion Opened to the Public

October 5, 1988: 8:15 am–8:40 am—Opening remarks, approval of minutes from last meeting; 8:40 am–12:00 noon—Discussion/review of program objectives as stated in marketing plan and projected activities including overall coordinated effort and co-op advertising; 1:15–4:00—Review of projected activities including public relations "grass roots" campaign and seafood cook-off, update on status of marketing plan, advertising/public relations contract and publicity.

October 6, 1988: 9:00 am–12:00—Presentation of the results of the "Qualitative Consumer Attitude Study," discussion of environment/pollution media relations potential joint venture; 1:00–4:00—update on status of omnibus consumption study, discussion on "industry workshop," trade/trade show issues, future meeting agenda and other pending business.

Portion Closed to the Public: None.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Coordinator, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue NW, Room 618, Washington, DC 20235. Telephone: (202) 673–5327.

Dated: August 31, 1988.

Thomas J. Billy,

Acting Director, Office of Trade and Industry Services.

[FR Doc. 88–20176 Filed 9–2–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Shelf Stocking and Custodial function at Patrick AFB, FL will be examined for possible conversion to contract.

For further information contact Mr. Jack Flenner, HQ AFCOMS/XPMO, Kelly AFB, TX 78241–6290, telephone (512) 925–6692.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20131 Filed 9–2–88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133A]

Inviting Applications for a Research and Demonstration Project Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1989

Purpose: Provides support to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, for research and training for hearing loss assessments for native Hawaiian children.

Deadline for transmittal of applications: November 15, 1988.

Applications available: September 7, 1988.

Available funds: $500,000.

Estimated average size of awards: $250,000 per year for two years.

Estimated number of awards: 1.

Project period: 24 months.

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80(b) National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Parts 350 and 351.

Authority for this competition: The Department of Education Appropriations Act, 1988 provides that $500,000 shall be available on a competitive basis for research and training for hearing loss assessments for native Hawaiian children under section 204 of the Rehabilitation Act until September 30, 1989.

For applications or information contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

Program Authority: 29 U.S.C. 762(a).

Dated: August 30, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 88–20133 Filed 9–2–88; 8:45 am]

BILLING CODE 4000-01-M

Research and Development Centers Program

ACTION: Notice of cancellation of the grant competition for new awards in Fiscal Year 1989 for Citizenship and Character Education.

SUMMARY: On June 13, 1988, the Assistant Secretary for Educational Research and Improvement published a notice in the **Federal Register** (53 FR 22042) inviting applications for new awards under the Research and Development Centers Program for fiscal year 1989. In that notice, it was estimated that $500,000 would be available for new awards for a research and development center to study citizenship and character education.

In light of appropriations action for 1989, the Department of Education has determined that no funds will be available for new awards under the Citizenship and Character Education competition, and is therefore cancelling this competition. Institutions of higher education and other eligible organizations are asked not to submit applications for awards under this grant competition (CFDA No. 84.117Q). If applications are received, the applications will be returned to the senders without being reviewed.

This notice does not affect the grant competition for awards for a research and development center for the study of effective schooling of disadvantaged students (CFDA No. 84.117R). Applicants must submit their applications to the Department by the September 16 deadline established in the notice that was published in the **Federal Register** on May 10, 1988, (53 FR 16578).

FOR FURTHER INFORMATION CONTACT: For information regarding the

competition for the center to study citizenship and character education, applicants should contact Dr. Ivor Pritchard; for information regarding the competition for the center to study effective schooling of disadvantaged students, applicants should contact Dr. John Ralph, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Washington, DC 20208-5646. Telephone number (202) 357-6223.

Dated: August 31, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-20185 Filed 9-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Special Research Grant Program Notice 88-5: Nuclear Medicine Research

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: DOE's Office of Energy Research (OER) announces its interest in receiving applications for Special Research Grants that will support research in nuclear medicine. This program emphasizes the medical applications of nuclear technology, particularly the development of radiopharmaceuticals and instrumentation for imaging and other diagnostic and research procedures. Research efforts should be directed to developing improved methods for radioisotope production, instrumentation, radiopharmaceutical synthesis, and clinical feasibility studies.

Radiopharmaceutical research seeks to develop new radiopharmaceuticals (sometimes called "radioactive tracers") and conducts early (preclinical) biomedical studies on new compounds. While studies of brain and heart metabolism constitute the largest class of activities, the program also investigates radiopharmaceuticals for diagnosis and therapy involving other organs.

Clinical feasibility research includes in vivo testing of new radiopharmaceuticals in animals and, in selected cases, humans. Researchers funded through the program evaluate methods for studying, diagnosing, and treating diseases such as cardiopulmonary disease, mental disorders, cancers, other tumors, and metabolic disorders. Particle beam and heavy ion therapy research, partly radiopharmaceutical and partly clinical feasibility studies, is conducted to find ways to treat inoperable disorders in humans.

Instrumentation research focuses primarily on advanced radiation detectors, improved resolution of Positron Emission Tomography (PET) and other imaging techniques, and innovative applications of energy related technologies for noninvasively ascertaining the functioning and condition of internal organs.

DATES: To permit timely consideration for award in Fiscal Year 1989, applications submitted in response to this Notice should be received by the DOE, Division of Acquisition and Assistance Management by January 8, 1989.

ADDRESS: Completed applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Room G-236, Washington, DC 20545, ATTN: Program Notice 88-5.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Cho, Office of Health and Environmental Research, ER-73, Washington, DC 20545, (301) 353-5897.

SUPPLEMENTARY INFORMATION: This notice relates to the Nuclear Medicine Program, Human Health and Assessments Division, Office of Health and Environmental Research. The goal of this program is to develop new and improved methods and radiopharmaceuticals for using nuclear science and technology in diagnosis, therapy and research. It is anticipated that ten to fifteen awards will be made at approximately $150,000 per year. Multiple year funding of awards is expected subject to the availability of future funds.

Applications should be directed to state-of-the-art research that contributes to the following areas:

1. The development of generator systems for short-lived daughter radionuclides of use in medical diagnosis and studies of physiological processes.

2. Imaging Development for:

(a) Positron-emitters

(i) Development of better annihilation photon detectors

(ii) Development of a compact, less expensive cyclotron for radiosotope production

(iii) Development of more efficient automated systems for radiopharmaceuticals incorporating the short-lived positron-emitters

(b) Single photon emitters:

(i) Development of better instruments for SPECT imaging

(ii) Development of improved detectors and collimator design

(iii) Development of better reconstruction algorithms

(c) Computer software development for:

(i) Modeling of plasma kinetics and biodistribution of labeled monoclonal antibodies for radiation dose estimates prior to radioimmunotherapy

(ii) Quantitation of physiological and abnormal function of specific organs from serial camera images

(iii) Comparison of the efficacy of various parameters of organ function

(iv) Improved methods for analyzing three-dimensional data generated by SPECT or PET

3. Development and diagnostic applications of gamma-emitting radiopharmaceuticals for:

(a) Improved Tc-99m agents for organ imaging

(b) Better agents for imaging thrombi and atherosclerotic lesions

(c) Development of receptor-binding agents for more selective localization of various radionuclides in specific tissues or organs

(d) Better methods for labeling blood cellular components for study in cellular immunology

(e) Better bifunctional chelates for Tc-99m and other radioactive elements to conjugate monoclonal antibodies and other proteins

(f) Improved characterization of the radiochemical and labeling properties of intermediate half-life gamma emitters such as Ru-97 and Pb-203

4. The development of therapeutic applications of radionuclides, particlarly for radioimmunotherapy with labeled monoclonal antibodies. This research involves the production of radionuclides with optimum physical and chemical properties and their incorporation into radiopharmaceuticals, animal testing, and computer modeling for radiation dose estimates.

5. Design and development of an alternative (non-reactor) source of epithermal neutrons for use in boron neutron capture therapy.

6. Development of boronated compounds with selectivity for tumor cells and rapid blood clearance to ascertain clinical feasibility of boron neutron capture therapy.

In addition, information regarding preparation and submission of applications, eligibility, limitations, evaluation and selection process, and other policies and procedures are contained in the OER Special Research

Grant Application Kit and guide. The Application Kit and guide is available from DOE's administrative contractor, the Oak Ridge Associated Universities (ORAU). Telephone request may be made by calling (615) 576-3455 or FTS 626-3455.

Instructions for preparation of an application and on DOE research interests are included in the kit.

(The Catalog of Federal Domestic Assistance Number for this Program is 81.049)

Issued in Washington, DC., on August 26, 1988.

Ira M. Adler,

Deputy Director for Managment, Office of Energy Research.

[FR Doc. 88-20182 Filed 9-2-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3440-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Quality Assurance Pilot for Toxic Release Inventory Form R (EPA ICR # 1483).

Abstract: Twenty-five selected facilities who have submitted the Toxic Release Inventory Form "R" will be asked to participate in a pilot survey designed to assess the accuracy of the estimation techniques used in preparing the release and waste treatment efficiency data, and the methods of conducting site visits.

Burden Statement: The average industry burden for facilities participating in the site visits is estimated to be 46 hours. This includes time for reviewing survey materials and their own chemical data, as well as the debriefing by EPA contractor personnel.

Respondents: Facilities in SIC codes 20-39 that manufacture, import or process certain toxic chemicals above statutory thresholds. Participation will be voluntary.

Estimated No. of Respondents: 25.

Frequency of Collection: One time only.

Total Estimated Annual Burden: 1,250 hours.

Send comments regarding the burden estimates, or any other aspects of this collection of information, including suggestions for reducing these burdens, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20046

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses To Agency PRA Clearance Requests

EPA ICR #1249; Requirements for the Use of 1080 Collars for Livestock Protection; was approved 08/15/88; OMB #2070-0074; expires: 08/31/91.

EPA ICR #1290; Ethylene Oxide Monitoring and Recordkeeping Program; has been discontinued as of 08/17/88; OMB #2070-0080.

EPA ICR # 1348; FIFRA Sec. 24(c) Survey Questionnaire for State Special Local Need Registrations; has been discontinued as of 08/17/88; OMB #2070-0088.

Date: August 29, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-20130 Filed 9-2-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3440-5]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on June 14, 1988, the Environmental Protection Agency received an application from the Oregon Department of Environmental Quality, 811 SW. 6th Avenue, Portland, Oregon 97204, to determine if its Medium Volume PM_{10} Sampler should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

Carl J. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-20129 Filed 9-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59262B; FRL-3441-6]

Certain Chemical Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-16. The test marketing conditions are described below.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Alan Cole, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-382-3861).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the

application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-16: 1. During manufacturing and use of the substance at any site controlled by the applicant, any person under the control of the applicant, including employees and contractors, who may be exposed to the substance shall use the following equipment:

a. Any person who may be exposed to the substance dermally shall wear: i. Gloves determined by the applicant to be impervious to the substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the substance and associated chemical substances;

ii. Clothing which covers any other exposed areas of the arms, legs, and torso; and

iii. Chemical safety glasses or equivalent eye protection.

b. Any person who may be exposed to the substance via inhalation shall, at a minimum, wear a NIOSH approved category 21C respirator.

2. The Company shall inform all persons describing in paragraph 1. of the requirements of this Order both in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded, by means of the following statement: WARNING: Contact with skin or inhalation may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause oncogenicity, mutagenicity, developmental toxicity, and damage to mucous membranes. To protect yourself, you must wear protective gloves, clothing, chemical safety glasses, and a NIOSH approved category 21C respirator.

3. The applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Names of persons who have attended safety meetings in accordance with paragraph 2., the dates of such meetings, and copies of any written information provided in accordance with paragraph 2.

c. Any determination that the gloves are impervious to the TME substance as required by paragraph 1.a.i. above.

T-88-16

Date of Receipt: July 11, 1988.

Notice of Receipt: August 2, 1988 (53 FR 29086).

Applicant: Confidential.

Chemical: (G) Halo-sulfo aromatic ester, sodium salt.

Use: (G) Destructive use.

Production Volume: Confidential.

Number of Customers: None (site limited intermediate).

Test Marketing Period: One year, commencing on first day of manufacture.

Risk Assessment: EPA identified concerns for oncogenicity, mutagenicity, developmental toxicity, and damage to mucous membranes based on test data on chemical substances analogous to the TME substance. However, during manufacturing and use of the substance at the applicant's site, inhalation exposure to workers will be prevented by the use of a respirator and dermal exposure will be prevented by the use of dermal protective equipment. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 24, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88-20123 Filed 9-2-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Consolidated Proceeding; Josey Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Josey Communications, Inc.; Georgetown, TX.	BPH-870629NM	88-392
B. Elinor Lewis Stephens; Georgetown, TX.	BPH-870630MN	
C. Georgetown Community Radio, Ltd; Georgetown, TX.	BPH-870701MS	
D. Willis Jay Harpole d/b/a Georgetown Broadcasters; Georgetown, TX.	BPH-870701MT	
E. East Texas Limited Partnership; Georgetown, TX.	BPH-870701 MW	
F. Williamson County Communications, Inc.; Georgetown, TX.	BPH-870701NA	
G. William C. Grove; Georgetown, TX.	BPH-870701NC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, E, F
2. Comparative, All
3. Ultimate, All

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-20097 Filed 9-2-88; 8:45 am]

BILLING CODE 6712-01-M

Consolidated Hearing; Peoria Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city, and State	File No.	MM Docket No.
A. Peoria Broadcasting Co., Peoria, IL.	BPCT-870331LZ	88-381
B. Peoria Broadcasting Services, Inc., Peoria, IL.	BPCT-880209KJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard—A, B
Comparative—A, B
Ultimate—A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88-20098 Filed 9-2-88; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010776-035.
Title: Asia North America Eastbound Rate Agreement.
Parties:

American President Lines, Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mistsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment modifies the voting procedures when the private vote by telex on a tariff matter.

Agreement No.: 203-010905-002.
Title: Far East-U.S. Discussion Agreement.
Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification would substitute Nippon Liner System, Ltd., as a party to the agreement in place of Japan Line, Ltd. and Yamashita-Shinnihon Steamship Co., Ltd. The parties have requested a shortened review period.

Agreement No.: 203-011210.
Title: Euro-Gulf International, Inc./Deppe Linie GmbH & Co. Carrier Discussion Agreement.
Parties:

Euro-Gulf International, Inc.
Deppe Linie GmbH & Co.

Synopsis: The proposed agreement would permit the parties to exchange information, discuss matters of mutual interest and concern, reach non-binding agreements on rates and formulate cooperative service arrangements in the trade between Northern European ports and ports on the Atlantic Coast of Florida and U.S. Gulf ports.

By order of the Federal Maritime Commission.
Dated: August 31, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-20153 Filed 9-2-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002750B-004.
Title: Long Beach Preferential Assignment Agreement.
Parties:

City of Long Beach.
Sea-Land Service, Inc.

Synoposis: The agreement provides for the assignment of two gantry container cranes to Sea-Land Services, Inc. and restates the rental provisions in Paragraph 4 of the agreement in its entirety.

Agreement No.: 224-002491-005.
Title: Long Beach Terminal Agreement.
Parties:

City of Long Beach
International Transportation Service, Inc.

Synoposis: The agreement amendment: (1) converts the remaining option periods to a fixed term, (2) renegotiates the compensation to be paid through June 30, 1992, and (3) provides for construction of additional improvements.

Agreement No.: 224-200149.
Title: San Diego Terminal Agreement.
Parties:

San Diego Unified Port District
Pasha Maritime Services (PMS)

Synoposis: The agreement approves PMS as a terminal operator to perform handling and storage services for automobiles received at the Port of San Diego.

By order of the Federal Maritime Commission.

Dated: August 31, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20154 Filed 9-2-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011208.

Title: Westwood/Gearbulk Reciprocal Space Charter and Sailing Agreement.

Parties:

Westwood Shipping Lines.

Gearbulk Ltd. dba Gearbulk Container Services.

Synopsis: The proposed agreement would authorize the parties to charter space from one another and rationalize sailings, equipment, facilities, services and supplies.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 31, 1988.

[FR Doc. 88-20082 Filed 9-2-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applicants for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

T.L. Dillon & Company, 14926 Walters Road, Houston, TX 77068; Officer: Talmage Lee Dillon, Sole Proprietor

VAP International Freight Systems, Inc., Cargo Bldg. 80, Rm. 226, John F. Kennedy International Airport, Jamaica, N.Y. 11430; Officers: Angel J. Pipitone, President/Director; Christian Morsanutto, Chief, Exec. Officer, Vito A. Pipitone, Director/Stockholder; Gian Paolo Bonati, Director/Stockholder

Adora International Services, Rt. 18, Box 3184, Farm Road 1485 West, Conroe, TX 77302; Officer: Dora Gay Hogland, Sole Proprietor

IPS Freight Services Limited, 2202 Green Hollow Drive, Iselin, New Jersey 08830; Officers: Peter Maybury, President, Brien Edward Kehoe, Secretary, Terri Brennan, Director/Stockholder, Andrew Finn, Director/Stockholder

Movers Pak-Man, Inc., 2500 Teagarden Street, San Leandro, CA 94577; Officers: Bonnie L. Hamlett, Chairman, Darrell E. Hamlett, Secretary

Sesko International Inc., 4715 N.W. 72nd Avenue, Miami, FL 33166; Officer: William Abbadie, President

ABC Forwarding Co., 966 Hungerford Drive, Unit 27A, Rockville, Md 20850; Officer: Sam Salameh, Sole Proprietor

Ford International Forwarding, Inc., 132 Lafayette Street—7th Fl., New York, New York 10013; Officers: Rosemary M. Ford, Vice President/Secretary, John J. Lord, III, Vice President

Intermove Ltd., 1200 Main Street, Bridgeport, CT 06604; Officers: Kenneth M. Mercado, President, Thom Morganti, Stockholder, Jana Pirro, Stockholder

Atlantic Customs Brokers, Inc., 2261 Broadbridge Avenue, Stratford, CT 06497; Officers: Peter K. Schlesinger, President, Marilyn DiCicco, Vice President, Valerie B. Schlesinger, Secretary/Treasurer

Virginia Lovejoy Clement, 149 Ashley Hall Plantation Rd., Charleston, SC 29407; Officer: Virginia Lovejoy CLement, Sole Proprietor

Shandorry Freight Forwarding Inc., 10 Light Street, 10th Fl., Baltimore, Maryland 21202; Officers: Kenneth Eugene Milner, President, Michael Daly, Vice President, Marie Milner, Secretary

Hellmann International Forwarders, Inc., 400 Oceangate Ste. 320, Long Beach, CA 90802; Officers: Kurt I. Carlson, President/Treasurer, Gregg E. Borgeson, Vice President/Secretary, Jost Hellmann, Director, Klaus Hellmann, Director, Norbert Kern, Director

Luis Miguel Hallancia, 11302 S.W. 164 Terrace, Miami, Florida 33157; Officer: Luis Miguel Hallancia, Sole Proprietor

J.H. Bachmann California Inc., 624 So. Grand Ave., Suite 2700, Los Angeles, CA 90017-3328; Officers: Horts Rehling, President/Director, Edward Dubbers-Albrecht, Exec. Vice President, Hans H. Meyer, Secretary/Treasurer/Director

Transit Cargo Services, Inc., 45 John Street, New York, NY 10038; Officer: Miguel Guerrero, Jr., President/Stockholder

Future Freight Systems, Inc., 48 Third Street, So. Kearny, NJ 07032; Officer: Joseph Sade, President

Challenge Crating and Storage Inc.; 950 Eller Drive, P.O. Box 350582, Ft. Lauderdale, Florida 33335; Officers: Ian Elder, President, James Elder, Vice President, Irvine Smyth, Director

Ricardo A. Segebre, 15851 S.W. 284th Street, Miami, Florida 33033; Officer: Ricardo A. Segebre, Sole Proprietor.

By the Federal Maritime Commission.

Dated: August 31, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20175 Filed 9-2-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

American State Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a

written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 23, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American State Corporation,* Lawrenceburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of American State Bank, Lawrenceburg, Indiana.

2. *First Illini Bancorp, Inc.,* Galesburg, Illinois; to acquire 86.48 percent of the voting shares of First National Bank in Galva, Galva, Illinois. Comments on this application must be received by September 21, 1988.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Blunt Bank Holding Company,* Blunt, South Dakota; to become a bank holding company by acquiring 97.75 percent of the voting shares of Dakota State Bank of Blunt, S.D., Blunt, South Dakota.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20088 Filed 9-2-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1988.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *John O. Colquitt, Jr.,* Dalhart, Texas; to acquire 67.2 percent of the voting shares of First Dalhart Bancshares, Inc., Dalhart, Texas, and thereby indirectly acquire First National Bank in Dalhart, Dalhart, Texas.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20089 Filed 9-2-88; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bankshares, Ltd., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Guaranty Bankshares, Ltd.,* Cedar Rapids, Iowa; to engage *de novo* through its subsidiary, Guaranty Investment Co., Cedar Rapids, Iowa, in the leasing of real and personal property pursuant to § 225.25(b)(5); and community development pursuant to § 225.25(b)(6) of the Board's Regulation Y. Leases relating to real or personal property shall be entered into with lessees doing business in the State of Iowa or residing in the State of Iowa. Community development shall be limited to Linn County, Iowa, principally the cities of Cedar Rapids, Iowa and Marion and Hiawatha, Iowa.

2. *STAR Financial Group, Inc.,* Marion, Indiana; to engage *de novo* through its subsidiary, STAR BankCard Services, Inc., Marion, Indiana, in credit card services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20090 Filed 9-2-88; 8:45 am]

BILLING CODE 6210-01-M

Marietta Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Marietta Bancshares, Inc.*, Marietta, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Marietta, Marietta, Minnesota.

In connection with this application, Applicant also proposes to acquire The Marietta Insurance Agency, Marietta, Minnesota, and thereby engage in general insurance sales in a place where the population does not exceed 5,000 and Applicant's assets do not exceed $50M pursuant to § 225.25 (b)(8)(iii)(A) and (b)(8)(vi) of the Board's Regulation Y. These activities will be conducted in Marietta, Minnesota.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20091 Filed 9-2-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Dairy Processor Premerger Notification Reports

AGENCY: Federal Trade Commission.

ACTION: Notice of Reinstatement of the Dairy Merger Reporting Program.

SUMMARY: The Federal Trade Commission has reviewed and decided to reinstate its dairy merger enforcement program requiring a reporting form be filed with the agency before certain transactions are consummated to permit antitrust review at a time when effective remedial measures may be taken, where necessary. The agency has this authority under sections 3, 5, 6, 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 43, 45, 46, 49, and 50) and section 7 of the Clayton Act (15 U.S.C. 18).

On July 27, 1988, the Federal Trade Commission issued its resolution and order [1] that require prior notification of certain types of acquisitions in the dairy industry that may raise antitrust concerns. The agency has changed the reporting forms to lessen the reporting burden. The revisions in the forms are designed to reduce the number of reportable mergers and acquisitions and the amount of information required concerning each transaction.

In 1985, the agency rescinded its dairy merger enforcement policy (38 FR 17770-71 (July 3, 1973), *reissued as amended*, 43 FR 1992-94 (January 13, 1978), *amended*, 43 FR 28046-47 (June 23, 1978)), which had identified the types of fluid milk processing mergers and acquisitions that the Commission could be expected to challenge.

EFFECTIVE DATE: July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Eugene Kaplan, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326-2636.

SUPPLEMENTARY INFORMATION: Special Reports must be filed by companies engaged in the dairy industry 60 days prior to the consummation of any merger or acquisition involving any company processing more than 300 million pounds of Class I milk annually (excluding home delivery sales) or which when combined with the acquired company processes that amount, when (1) the acquired assets, stock or other share capital relate to any fluid milk processing plant or distribution facility which is within 250 miles of any such assets of the acquiring company, or (2) when the acquired company had fluid milk product sales totalling 50 million pounds or more or processed 50 million pounds or more of Class I milk during any of the preceding three years (excluding retail home delivery sales in each case). Transactions that are reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, are exempt from any requirements under the Dairy Merger Reporting Program.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-20083 Filed 9-2-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the resolution, order, and report forms are available from the Commission's Public Reference Branch, H-130, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Hearings on Physical Fitness of Children and Youth

AGENCY: President's Council on Physical Fitness And Sports (PCPFS).

ACTION: Notice of Hearings.

SUMMARY: This notice announces that a series of four public hearings will be held on the dates and times listed below. The U.S. Congress wishes to obtain detailed information on the status of youth fitness in the U.S. and internationally and has requested the PCPFS examine this issue in depth. The information collected will provide the basis for an updated report on youth fitness and programs in youth serving agencies such as schools, recreation centers, YMCA, YWCA, Scouts, etc. and will assist in the determination of future policies and programs of the Council.

DATES AND ADDRESSES: Public hearings on the physical fitness of children and youth will be held from 10 a.m. to 5 p.m. on the dates and locations listed below:

Thursday, October 6, 1988
Capital Conference Center, South Tower, 2nd Floor, 201 N. Illinois St., Indianapolis, IN 46204.

Wednesday, October 12, 1988
Los Angeles Athletic Club, Los Angeles Room 4th Floor, 431 West Seventh Street, Los Angeles, CA 90014.

Friday, October 14, 1988
Grand Kempinski Hotel, Cosmopolitan Room, 3rd Floor, 15201 Dallas Parkway, Dallas, TX 75248.

Monday, October 17, 1988
Security Exchange Commission, Room IC-30, 450 5th St. NW., Suite 7103, Washington, DC 20001.

Persons requesting to participate in the hearings should furnish a copy of their presentation 10 days before the hearing date at which they wish to appear. Any person desiring to be heard at one of the hearings should (1) Notify the Council in writing of their desire, or (2) call the Council at 202/272-3430. Any person wishing to submit a written statement *only* should do so before October 20, 1988. All correspondence

shall be addressed to: Youth Fitness Hearings, PCPFS, 450 5th St. NW., Suite 7103, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Lisa Kanner, Program Manager, President's Council on Physical Fitness and Sports, 450 5th St. NW., Suite 7103, Washington, DC 20001, (202) 272-3430.

SUPPLEMENTARY INFORMATION: To fulfill its responsibilities under Executive Order 12345 the PCPFS is seeking to obtain factual data and views from all interested and knowledgeable sources (individuals, institutions, organizations, agencies, etc.) with information and experience on the subjects of children and youth physical fitness in the areas outlined below. Specifically, the PCPFS is interested in any changes seen in the areas below since 1984 when the PCPFS held national public hearings on children and youth:

(1) The status of physical fitness as evidenced by research and clinical studies, including any comparisons to youth of other countries;

(2) Comparisons in youth fitness status and programming since 1984;

(3) Examples of model programs in school physical education, public recreation, community projects, youth agencies and elsewhere;

(4) Administrative and other issues that either detract from or contribute to the status of youth fitness (i.e. availability of trained leaders);

(5) Recommendations for policy and programs at the Federal, State and local levels to enhance the development of youth fitness opportunities for all youth to take part in fitness and sports activities.

Participants will be given 10 minutes each to make their presentation, followed by 5 minutes of questions by the hearing panel. No written verbatim record of the hearings will be made public. Hearing participants are requested to furnish a copy of their presentation at the hearing if it had not been delivered to the PCPFS office prior to the hearing date.

Each participant in the hearing and each presenter of a written statement is requested to conclude their remarks with a summary of their statement and recommendations for future policy and/or programs for physical fitness for children and youth.

Date: August 31, 1988.

Ash E. Hayes,

Ed.D., Executive Director.

[FR Doc. 88-20146 Filed 9-2-88; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 87P-0207]

Canned Pacific Salmon Deviating From Identity Standard; Extension of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the expiration date of a temporary permit to market test in interstate commerce canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate is being extended. This extension will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard of identity for canned Pacific salmon.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon which may result from the petition, or 30 days after termination of such proposal.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate to inhibit curd formation during retorting. The permit was issued in order to facilitate market testing of food that deviates from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of July 13, 1987 (52 FR 26186).

Bumble Bee Seafoods, Inc., has requested that the temporary permit be extended so the market test period can continue while the agency considers action on a petition submitted by the National Food Processors Association (NFPA) to amend the canned Pacific salmon standard. The petition was submitted by NFPA on behalf of Bumble Bee Seafoods, Inc., and the other salmon packers holding temporary permits. FDA has concluded that it is in the interest of consumers to issue the extension. FDA is inviting interested persons to participate in the market test under the conditions that apply to Bumble Bee Seafoods, Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HFF-410), Food and Drug Administration, 200 C St. SW. Washington, DC 20204. The notificaiton must include the amount of test product to be distributed, the areas of distribution, and labeling that will be used for the test product.

Therefore, FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon that may result from the petition or 30 days after termination of such proposal. All other conditions and terms of this permit remain the same.

Dated: August 26, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-20139 Filed 9-2-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1856]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 25, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Fair Housing Assistance Program Application (FR-2403)

Office: Fair Housing and Equal Opportunity

Description of the Need for the Information and its Proposed Use: This information collection redesigns the Fair Housing Assistance Program into one single funding mechanism combining competitive and non-competitive components. The information collection will provide HUD with the necessary information for regulation implementation. The requested information will also affect 120 public fair housing enforcement agencies eligible for funding.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application Kit	120		1		38		4,560
Cooperative Agreement	120		4		4		1,920
Recordkeeping	120		4		2		960

Total Estimated Burden Hours: 7,440

Status: Revision

Contact: Maxine B. Cunningham, HUD, (202) 755-0455; John Allison, OMB, (202) 395-6880

Date: August 25, 1988.

[FR Doc. 88-20159 Filed 9-2-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1855]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 23, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Issuer's Monthly Remittance Advice

Office: Government National Mortgage Association

Description of the Need for the Information and its Proposed Use: GNMA's issuers are required to provide summary information to the holder of each GNMA mortgage-backed security with respect to the current month's account transactions and calculations of the holder's fractional share of total cash distribution.

Form Number: HUD-11714 and 11714S

Respondents: Businesses or Other For-Profit

Frequency of Submission: Monthly

Reporting Burden:

	No. of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Issuer's monthly remittance ..	1,105		8,777		1/60		161,643

Total Estimated Burden Hours: 161,643
Status: Extension
Contact: Charles A. Clark, HUD, (202) 755-5535; John Allison, OMB, (202) 395-6880

Date: August 23, 1988.

[FR Doc. 88-20160 Filed 9-2-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Subchapter E—Education—Waiver for Academic Standards or Dormitory Criteria—25 CFR Part 36.

Abstract: Information is needed to control wholesale request for waivers and to ensure that minimum academic standards and the dormitory criteria are adhered to. Information will be used to determine the validity of waiving academic standards or dormitory criteria. The information collection will involve tribal governments and local school boards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Tribes and school boards.

Annual Responses: 23.33.

Annual Burden Hours: 233.

Bureau Clearance Officer: Cathie Martin (202) 343-3577.

Wilson T. Babby,

Deputy to the Assistant Secretary—Indian Affairs, (Office of Indian Education Programs).

[FR Doc. 88-20132 Filed 9-2-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CO-010-08-4333-11]

Motor Vehicle; Use Restriction Order; Moffatt County, CO

The following order, affecting the land captioned below was issued on September 9, 1988.

T. 11 N., R. 98 W., T. 10 N., R. 98 W., T. 9 N., R. 98 W., T. 8 N., R. 98 W. These lands will require that casual off road vehicle (ORV) use be limited to existing roads and trails to alleviate stress to the Sand Wash wild horse herd. The definition of existing roads and trails is "any linear path across the landscape that is detectable due to vegetative alteration or surface disturbance by previous passage of motor vehicles." This limitation will last until BLM determines that drought and stress problems are alleviated.

Trails in Sections 4 and 9 of T. 8 N., R. 98 W. will be posted with "Closed to Motor Vehicles" signs. The purpose of these closures is to study a potential soil erosion problem that exists on off-road motorcycle trails. The study will determine whether a significant soil erosion problem exists, and if so, what mitigation may be needed to alleviate the problem.

Vehicular use on the above captioned public lands will be restricted to all vehicular use pursuant to 43 CFR 8364.1 and 43 CFR 8341.2. Any person who knowingly and willfully violates this order may be subject to $1,000.00 fine and/or one year imprisonment.

Persons exempt from this order shall include law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management and persons acting under specific authorizations granted by the Bureau of Land Management.

William J. Pulford,

District Manager, Craig District Office, 455 Emerson St. Craig, CO 81625.

[FR Doc. 88-20081 Filed 9-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-010-08-4332-10; COC-48465]

Hearing on Withdrawal; Ruby Canyon of the Colorado River; Colorado

August 30, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on the proposed Bureau of Land Management withdrawal application for the protection of scenic and recreational values near Grand Junction, Colorado. This hearing will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on October 13, 1988, at 6:30 p.m. All comments or requests to be heard should be made by close of business on September 30, 1988, to the Colorado State Office, Bureau of Land Management.

ADDRESS: Howard Johnson's Hotel, Powderhorn Room, I-70 and Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Ruby Canyon segment of the Colorado River which was published on April 19, 1988 (53 FR 12826) is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310. This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, by September 30, 1988.

Richard D. Tate,

Acting Chief, Branch of Adjudication.

[FR Doc. 88-20108 Filed 9-2-88; 8:45 am]

BILLING CODE 4310-JB-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-324]

Carolina Power & Light Co. et al., Brunswick Steam Electric Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-62 issued to the Carolina Power & Light Company (the licensee), for operation of Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to extended fuel irradiation.

The proposed action is in accordance with the licensee's application dated September 4, 1987, as supplemented September 25, 1987 and October 2, 1987.

The Need for the Proposed Action

The proposed changes are needed to allow the licensee the flexibility of extending the fuel irradiation, thereby permitting operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel which would be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT) but not to exceed 60 GWD/MT.

The safety considerations associated with reactor operation with extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Brunswick Steam Electric Plant, Unit 2.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the continued construction and proposed issuance of an operating license for the Brunswick Steam Electric Plant, Units 1 and 2," dated January, 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendment dated September 4, 1987, as supplemented September 25 and October 2, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland, this 29th day of August, 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-20137 Filed 9-2-88; 8:45 a.m.]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16541; 811-406]

First Investors Natural Resources Fund, Inc.; Notice of Deregistration

August 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: First Investors Natural Resources Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 20, 1988, and amended on August 25, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005. Attention: Andrew J. Donohue, Esq., President.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Curtis R. Hilliard, Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is organized as a Maryland corporation and is registered as an open-end, diversified, management investment company under the 1940 Act. First Investors Management Company, Inc. is Applicant's investment adviser and together with First Investors Corporation is the principal underwriter of Applicant.

2. On November 13, 1986, the Boards of Directors of Applicant and First Investors International Securities Fund, Inc. ("International Fund"), having concluded that due to the relatively small size of both funds their continued separate existence was uneconomical for their shareholders and management, unanimously adopted resolutions approving the reorganization of the two funds and the submission of the Agreement and Plan of Reorganization ("Agreement") for approval by Applicant's shareholders.

3. On June 30, 1987, a majority of Applicant's shareholders approved the Agreement. In Investment Company Act Release No. 16143 (November 20, 1987) the SEC granted an order under sections 11(a), 11(c), 26(b), 17(b), and 17(d) of the 1940 Act and Rule 17d-1 thereunder on an application filed by Applicant, International Fund, First Investors Corporation, and First Investors Single Payment and Periodic Payment Plans for the Accumulation of Shares of First Investors Natural Resources Fund, Inc. ("Plan") to permit the exchange of shares between Applicant and International Fund and the substitution of shares of International Fund for shares of the Applicant under the Plan.

4. On December 31, 1987, pursuant to the Agreement, Applicant transferred all of its assets to International Fund in a tax-free exchange for shares of International Fund having the same aggregate net asset value, which shares were distributed on a pro rata basis in exchange for, and in cancellation of, the outstanding shares of Applicant. On the same date, International Fund shares were substituted for shares of Applicant held of record by First Investors Single Payment and Periodic Payment Plans for the Accumulation of Shares of First Investors International Securities Fund, Inc. (formerly "for the Accumulation of Shares of First Investors Natural Resources Fund, Inc."), a unit investment trust registered under the 1940 Act.

5. Expenses incurred in connection with the reorganization were borne by Applicant and International Fund based on the relative net asset value of the two funds, unless such expenses were specifically allocated to either fund. All expenses incurred in connection with the Special Meeting of Shareholders of Applicant to consider approval of the reorganization and the payment of any state stock transfer stamps and taxes were assumed by Applicant.

6. Applicant does not currently propose to engage in any business activities other than those related to its dissolution. In addition, Applicant has no securityholders or assets, no debts or other liabilities, and is not a party to any litigation or administrative proceeding. Applicant filed on February 25, 1988, and August 26, 1988, its Forms N-SAR for the periods ending December 31, 1987, and on June 30, 1988, respectively. Finally, Applicant will file a Certificate of Dissolution with the appropriate authority in the state of Maryland upon receipt of an order from the SEC pursuant to section 8(f) of the 1940 Act.

Applicant's Condition

If the requested order is granted, Applicant agrees to the following condition:

Applicant undertakes to file with the SEC the Form N-SAR for the six-month period ending June 30, 1988, and for any subsequent annual or six-month period up to and including the period ending immediately after the issuance of such order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20138 Filed 9-2-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

In the Matter of U.S.-Mexico Air Transportation Operations

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Order 88-8-67, U.S.-Mexico Route Authority, Docket 45728 (53 FR 28745, July 29, 1988).

SUMMARY: By this order, the Department changes procedural dates proposed in Show-Cause Order 88-7-43, July 26, 1988. Specifically, the Department determines that answers and competing applications to applications filed pursuant to Order 88-7-43, as well as to previously filed applications for U.S.-Mexico route authority, be due September 28, 1988 (September 15, 1988 for exemption applications) rather than 28 days (15 days for exemption applications) from the date that a final order in Docket 45728 is served.

ADDRESS: Answers and competing applications should be filed in Docket 45728, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45728.

ADDITIONAL INFORMATION: Questions regarding this action may be directed to Ms. Linda Lundell of the Licensing Division by calling (202) 366-2336 or by writing to the U.S. Department of Transportation, Licensing Division, 400 Seventh Street SW., Room 6412, Washington, DC 20590.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-20144 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 26, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures.

Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45767

Date Filed: August 22, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 19, 1988.

Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 179 to provide air transportation services between the United States and France. (Detroit-France and beyond).

Docket No. 45769

Date Filed: August 23, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 20, 1988.

Description: Application of Millon Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity authorizing it to perform scheduled all-cargo service between the United States on the one hand, and Bogota, Baranquilla, Cali, and Cartegena, Colombia on the other hand. Millon Air also requests authorization to combine the U.S. Colombia service with its scheduled service to/from other Central and South American points.

Docket No. 45786

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 23, 1988.

Description: Application of Evergreen International Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for Route 190-F or for a new certificate which would authorize Evergreen to engage in scheduled foreign air transportation of property and mail between any point or points in the United States or in any territory or possession of the United States, on the one hand, and any point or points in Argentina, Chile, India, United Kingdom, Saudi Arabia, Australia, New Zealand, Turkey, Switzerland and Malaysia, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-20145 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular 25.1309-1A, System Design and Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.1309-1A, System Design and Analysis. This AC, which replaces AC 25.1309-1, describes various acceptable means for showing compliance with the requirements of § 25.1309 (b), (c), and (d) of the Federal Aviation Regulations (FAR). These means are intended to provide guidance for the experienced engineering and operational judgment that must form the basis for compliance findings.

DATE: Advisory Circular 25.1309-1A was issued by the Manager, Aircraft Certification Division, Northwest Mountain Region, on June 21, 1988.

How To Obtain Copies: A copy may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on August 15, 1988.

Leroy A. Keith,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-20109 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-35]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 26, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 30, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25645	Hawaiian Airlines	14 CFR 108.23	To permit, to the extent necessary, the same latitude with respect to a "grace period" for the required annual security training as that permitted by § 121.401(b), which applies to all other recurrent training, flight checks or competence checks applicable to crewmembers and dispatchers as well as § 121.433(a) as it addresses recurrent training for Dangerous Articles and Magnetized Materials.
25665	Rocky Mountain Helicopters, Inc	CFR 135.293(b)	To allow pilots of petitioner, having passed a competency check in a particular make and model single-engine helicopter, to extend the results of this check and be deemed competent to operate other single-engine helicopters in the same class.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
25521	Bellair, Inc	14 CFR 135.203(a)(1)	To allow petitioner to operate under visual flight rules (VFR) outside of controlled airspace, over water and at an altitude between 100-500 feet under certain conditions. *Denial, August 22, 1988, Exemption No. 4973.*

[FR Doc. 88-20113 Filed 9-2-88; 8:45 am]
BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Nantucket Memorial Airport, Nantucket, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by town of Nantucket, Massachusetts for Nantucket Memorial Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Nantucket Memorial Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 15, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is August 19, 1988. The public comment period ends on October 18, 1988.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Nantucket Memorial Airport is in compliance with applicable requirements of Part 150, effective August 19, 1988. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 15, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirenents of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The town of Nantucket submitted to the FAA on February 4, 1988, a noise exposure map, descriptions and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Nantucket Memorial Airport from May 1986 to February 1988. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by town of Nantucket. The specific maps under consideration are Figures 13.3 and 13.4, along with the supporting documentation in Volume I: Noise Exposure Map of the Part 150 Study. The FAA has determined that the map for Nantucket Memorial Airport is in compliance with applicable requirements. This determination is effective on August 19, 1988. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Nantucket Memorial Airport, also effective on August 19, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 15, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, New England Region, Airports Division, ANW-610, 12 New England Executive Park, Burlington, MA 01803

Ms. Jo-Ann Norris, Airport Manager, Nantucket Memorial Airport, Macy Lane, Nantucket Island, MA 02554

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on August 19, 1988.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 88-20114 Filed 9-2-88; 8:45 am]

BILLING CODE 4910-13-M

Airport Improvement Program; Modification of Grant Assurances

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed modification of grant assurances.

SUMMARY: The FAA proposes to modify several of the current assurances required of a sponsor receiving a grant under the Airport Improvement Program (AIP). These revisions are necessary to reflect statutory changes in general requirements applicable to sponsors and to delete an out-of-date publication. The Secretary of Transportation is required to provide notice in the **Federal Register** and an opportunity for the public to comment upon proposals to modify assurances or to require any additional assurances under the AIP pursuant to new subsection 511(f) of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, enacted on December 30, 1987.

DATES: These proposed modifications to the Grant Assurances would be effective October 1, 1988. Comments must be submitted on or before October 6, 1988.

ADDRESS: Comments on the modifications to the Grant Assurances may be delivered or mailed to the Grants-in-Aid Division, APP-500, Room 618, FAA, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Benedict D. Castellano (Airports Program Specialist), Telephone (202) 267-8822.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from the sponsor (applicant) under *The Airport and Airway Improvement Act of 1982,* as amended by *The Airport and Airway Safety and Capacity Expansion Act of 1987,* Pub. L. 100-223. These assurances are submitted as Part V of the application for Federal assistance and are incorporated in all grant agreements by reference. The current assurances were published on February 3, 1988, at 53 FR 3104. As need dictates, the assurances must be amended from time to time to reflect new Federal requirements or to resolve problems arising in the grant program. Notice of any such changes proposed are published in the **Federal Register** and opportunity provided for comment by the public. FAA is planning to modify the assurances currently being used in order to reflect some changes in general requirements. In Assurance 1, *General Federal Requirements,* reference to A-102 is to be deleted and will be replaced with 49 CFR Part 18, the Department of Transporation's common rule implementing the new Office of Management and Budget Circular A-102. Also, to be added to this assurance is 49 CFR Part 30, the DOT's regulation implementing the foreign trade restriction contained in the Fiscal Year 1988 Continuing Resolution and the Airport and Airway Safety and Capacity Expansion Act of 1987. Both of these regulations apply to a sponsor seeking a grant under the Airport Improvement Program. In Assurance 13 of the Airport Sponsor assurances and Assurance 8 of the NonAirport Sponsor assurances, titled *Accounting System Audit, and Recordkeeping Requirements,* paragraph a. is to be changed to delete reference to the GAO publication, Guidelines for Financial and Compliance Audits of Federally Assisted Programs. Reference will be made to the Single Audit Act of 1984. Assurance 34 of the Airport Sponsor assurances, titled *Policies, Standards, and Specifications,* is being updated to include the most recent advisory circulars published by the FAA.

Issued in Washington, DC on July 28, 1988.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Assurances

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for

this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*[1]

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Hatch Act—5 U.S.C. 1501, *et seq.*[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended—42 U.S.C. 4601, *et seq.* [1 2]

f. National Historic Preservation Act of 1966—section 106—16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1974—16 U.S.C 469 through 469C.[1]

h. Flood Disaster Protection Act of 1973—section 102(a)—42 U.S.C. 4012a.[1]

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d-4.

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*[1]

n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—section 403—42 U.S.C 8373.[1]

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*[1]

q. Copeland Antikickback Act—18 U.S.C. 874.

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*[1]

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*[1]

t. Single Audit Act of 1984—31 U.S.C. 7501, *et seq.* [2]

Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs Executive Order 11246—Equal Employment Opportunity

Federal Regulations

a. 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.[3]

b. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

c. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

d. 49 CFR Part 24—Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs.[1]

e. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

f. 49 CFR Part 29—Debarments, Suspensions, and Voluntary Exclusions.

g. 49 CFR Part 30—Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.

h. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.[1]

i. 29 CFR Part 3—Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.[1]

j. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.[1]

k. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally Assisted Contracting Requirements).[1]

l. 14 CFR Part 150—Airport Noise Compatibility Planning.

Office of Management and Budget Circulars

a. A-87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.[3]

b. A-128—audits of State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

13. and 8. *Accounting System, Audit, and Recordkeeping Requirements.*

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

b. It shall make available to the Secretary and the Comptroller General of the United states, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

34. *Policies, Standards, and Specifications.* It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed below, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

Number	Subject
70/7460-1G	Obstruction Marking and Lighting.
150/5100-14A	Architectural, Engineering and Planning Consultant Services for Airport Grant Projects.
150/5200-30	Airport Winter Safety and Operations.
150/5210-5B	Painting, Marking, and Lighting of Vehicles Used on an Airport.
150/5210-7B	Aircraft Fire and Rescue Communications.
150/5210-14	Airport Fire and Rescue Personnel Protective Clothing.
150/5210-15	Airport Rescue and Firefighting Station Building Design.
150/5220-4A	Water Supply Systems for Aircraft Fire and Rescue Protection.
150/5220-10	Guide Specification for Water/Foam Type Aircraft Fire and Rescue Trucks.
150/5220-11	Airport Snowblower Specification Guide.
150/5220-12	Airport Snowsweeper Specification Guide.
150/5220-13A	Runway Surface Condition Sensor—Specification Guide.
150/5220-14A	Airport Fire and Rescue Vehicle Specification Guide.
150/5220-15	Buildings For Storage and Maintenance of Airport Snow Removal and Ice Control Equipment: A Guide.
150/5220-16	Automated Weather Observing Systems (AWOS) for Non-Federal Applications.

[1] These laws do not apply to airport planning projects.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and OMB Circular A-87 contain requirements for state and local governments receiving Federal Assistance. These requirements shall also be applicable to private sponsors.

Number	Subject
150/5220-17	Design Standards for an Aircraft Rescue and Firefighting Facility.
150/5300-4B	Utility Airports—Air Access to National Transportation.
150/5300-12	Airport Design Standards—Transport Airports.
150/5320-5B	Airport Drainage.
150/5320-6C	Airport Pavement Design and Evaluation.
150/5320-12A	Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.
150/5320-14	Airport Landscaping for Noise Control Purposes.
150/5325-4	Runway Length Requirements for Airport Design.
150/5340-1F	Marking of Paved Areas on Airports.
150/5340-4C	Installation Details for Runway Centerline Touchdown Zone Lighting Systems.
150/5340-5B	Segmented Circle Airport Marker System.
150/5340-14B	Economy Approach Lighting Aids.
150/5340-17B	Standby Power for Non-FAA Airport Lighting Systems.
150/5340-18B	Standards for Airport Sign Systems.
150/5340-19	Taxiway Centerline Lighting Systems.
150/5340-21	Airport Miscellaneous Lighting Visual Aids.
150/5340-23A	Supplemental Wind Cones.
150/5340-24	Runway and Taxiway Edge Lighting System.
150/5340-27A	Air-to-Ground Radio Control of Airport Lighting Systems.
150/5345-3D	Specification for L-821 Panels for Remote Control of Airport Lighting.
150/5345-5A	Circuit Selector Switch.
150/5345-7D	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
150/5345-10E	Specification for Constant Current Regulators and Regulator Monitors.
150/5345-12C	Specification for Airport and Heliport Beacon.
150/5345-13A	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-26B	Specification for L-823 Plug and Receptable, Cable Connectors.
150/5345-27C	Specification for Wind Cone Assemblies.
150/5345-28D	Precision Approach Path Indicator (PAPI) Systems.
150/5345-39B	FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers.
150/5345-42B	FAA Specification L-857, Airport Light Bases, Transformer Houses, and Junction Boxes.
150/5345-43C	Specification for Obstruction Lighting Equipment.
150/5345-44D	Specification for Taxiway and Runway Signs.
150/5345-45A	Lightweight Approach Light Structure.
150/5345-46A	Specification for Runway and Taxiway Light Fixtures.
150/5345-47A	Isolation Transformers for Airport Lighting Systems.
150/5345-49A	Specification L-854, Radio Control Equipment.
150/5345-50	Specification for Protable Runway Lights.
150/5345-51	Specification for Discharge-Type Flasher Equipment.
150/5345-52	Generic Visual Glideslope Indicators (GVGI).
150/5360-13	Planning and Design Guidelines for Airport Terminal Facilities.
150/5370-6A	Construction Progress and Inspection Report—Federal-Aid Airport Program.
150/5370-10	Standards for Specifying Construction of Airports.
150/5370-11	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
150/5370-12	Quality Control of Construction for Airport Grant Projects.
150/5390-2	Heliport Design.

[FR Doc. 88-20135 Filed 9-2-88; 8:45 am]
BILLING CODE 4910-13-M

[FAA Order 1100.154]

Organizations, Functions, and Authority Delegations: Authority to Agency Officials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim Delegations of Authority.

1. *Purpose.* This order contains interim delegations of authority to agency officials.

2. *Distribution.* This order is distributed to the branch level in Washington, regions, and centers with a limited distribution to all field offices and facilities.

3. *Background.* With the decision to restructure Washington headquarters organization and to implement straightline reporting of regional program divisions, the existing delegations of authority require modification.

4. *General Delegations Of Authority.*

a. *Executive Directors.* With respect to all matters within the executive director's sphere of responsibility, each executive director is authorized to:

(1) Take action and issue orders in the name of the Administrator, except for those matters for which the Administrator has specifically reserved authority or otherwise provided.

(2) Represent the Administrator.

(3) Act on any matter for which specific delegation of authority has been made to the executive director or to any element under the direction of the executive director.

(4) Exercise line authority over associate administrators, office, service, and center directors reporting directly to them. In the case of the Executive Director for Policy, Plans, and Resource Management, this includes the regional administrators.

b. *Chief Counsel.* With respect to all matters within the Chief Counsel's sphere of responsibility, the Chief Counsel is authorized to:

(1) Take action and issue orders in the name of the Administrator, except for those matters for which the Administrator has specifically reserved authority or otherwise provided.

(2) Represent the Administrator.

(3) Act on any matter for which specific delegation of authority has been made to the Chief Counsel or to any element under the direction of the Chief Counsel.

(4) Exercise line authority over the Assistant Chief Counsel in Washington headquarters and over the Assistant Chief Counsel (formerly regional and center counsel) for each region and center.

c. *Associate Administrators.* With respect to all matters delegated by the respective Executive Director to the associate administrators, each associate administrator is authorized to:

(1) Take action and issue orders in the name of the Administrator and the Executive Director, except for those matters for which the Administrator has specifically reserved authority or otherwise provided.

(2) Represent the Administrator and/or the Executive Director (excluding the Associate Administrator for Aviation Safety).

(3) Act on any matter for which specific delegation of authority has been made to the associate administrator or to any element under the direction of the associate administrator.

(4) Exercise line authority over the offices and services reporting directly to them and the respective regional program divisions. This includes the air traffic, airway facilities, flight standards, civil aviation security, aviation medical, airports, and aircraft certification functions. This authority may be redelegated to heads of offices and services, but no further redelegation is authorized.

d. *Associate Administrator for Aviation Safety.* The Associate Administrator for Aviation Safety exercises line authority over the regional safety managers.

5. *Specific Delegations and Limitations of Authority.*

a. The head of each office reporting directly to the Administrator derives authority from the Administrator. The head of each office and service reporting

to the Administrator through an executive director and/or associate administrator derives authority from the executive director and/or the associate administrator, except where specific delegations are made directly to the office or service head by the Administrator. Each associate administrator has full authority to exercise all authority directly delegated to each office and service head reporting to that associate administrator. Each executive director has full authority to exercise all authority directly delegated to each associate administrator, and to each office and service director reporting to that associate administrator, or reporting directly to that executive director.

b. Each office and service head can legally commit the agency only to the extent that authority to do so has been affirmatively delegated to that office or service head. The office and service head has supervisory authority with respect to the centralized operational responsibilities assigned to that organization. Except as the Administrator, executive director, or cognizant associate administrator may otherwise direct, heads of offices or services may redelegate, with authority to provide for the successive redelegation within the organization, the authority delegated to them.

c. With respect to program operations, all existing delegations of authority to regional directors are transferred to the appropriate associate associate administrators. This excludes the delegations of authority of the regional administrators which are under the executive direction of the Executive Director for Policy, Plans, and Resource Management as stated in paragraph 5f.

d. Regional program managers derive their authority from executive directors through the cognizant associate administrator and/or head of office or service (if so delegated) having program responsibility.

e. Due to the special nature of the Aircraft Certification Directorates, each regional aircraft certification division manager will serve as head of the Aircraft Certification Directorate. The Manager, Aircraft Certification Directorate, in the New England, Central, Southwest, and Northwest Mountain Regions has authority and responsibility for the aircraft certification program assigned. The division manager reports to the Director of Airworthiness. Since, all references to the Director of Airworthiness in Part 11 of the Federal Aviation Regulations should be construed as references to the Director, Aircraft Certification Service. The Manager, Aircraft Certification Directorate, in the New England, Central, Southwest, and Northwest Mountain Regions has authority to issue airworthiness directives, special conditions, and exemptions for the aircraft certification regulatory program functions assigned to their directorate in accordance with established rulemaking procedures. This delegation also includes issuance of notices of proposed action, leading to the issuance of these regulatory documents.

f. Regional administrators derive their authority from the Administrator through the Executive Director for Policy, Plans, and Resource Management. Except where the Administrator otherwise provides, they are delegated full authority to take all actions necessary to carry out their assigned responsibilities, within approved agency policies, program plans, guidelines, standards, systems, and procedures. The regional administrators exercise executive direction over the public affairs, communications control, civil rights, human resource management, budget, logistics, and management systems organizations. The appraisal, planning, international aviation, and emergency operations functions will also be under the executive direction of the regional administrators. The accounting function will continue to be performed by those regions now assigned this function.

g. Assistant Chief Counsels in Washington headquarters and for regions and centers derived their authority from the Chief Counsel. They are delegated full authority to take all actions necessary to carry out their assigned responsibilities, within approved agency policies, program plans, and procedures, including the coordination guidelines established by the Chief Counsel. They will continue to provide legal counsel, advice, and assistance to regional and center administrators, program managers, regional headquarters staff, and other cognizant organizations of the region and center. Since Regional and Center Counsel have been renamed Assistant Chief Counsel for each region and center, any references to Regional or Center Counsel in Part 11 and Part 13 of the Federal Aviation Regulations should be construed as meaning Assistant Chief Counsel.

h. Center directors derive their authority from the Administrator through an executive director. Except where the Administrator otherwise provides, the center directors are delegated full authority to take all actions necessary to carry out their assigned responsibilities, within approved agency policies, program plans, guidelines, standards, systems, and procedures. The civil aviation security functions come under the executive direction of the Washington headquarters.

i. With respect to budget formulation and resource management, all existing and specific delegations of authority will remain in effect. The Office of Budget retains the delegations of authority contained in Order 1100.2C, Organization—FAA Headquarters.

j. All existing general and specific limitations on delegation of authority in organization manuals, agency directives, regualtions, and other documents not inconsistent with this order remain in effect.

6. *Operational Line of Succession.*

a. Except for the operational line of succession required for continuity of FAA during a national emergency, as established in paragraph 308a of Order 1900.1D, FAA Emergency Operations Plan, the following officials, in the order indicated, shall act as Administrator, in case of the absence or disability of the Administrator, until the absence or disability ceases or, in case of a vacancy, until a successor is appointed.

(1) Deputy Administrator.

(2) Executive Director for Policy, Plans, and Resource Management.

(3) Executive Director for System Operations.

(4) Executive Director for Regulatory Standards and Compliance.

(5) Executive Director for System Development.

(6) Chief Counsel.

b. Officials initiating major FAA actions under delegated authority are responsible for keeping the Administrator informed of key events or developments having a significant management, political, or public relations impact on the agency. There is no single test for identifying the circumstances where notification is warranted. Coverage, costs, user impact, relationship to previous problems, and controversial issues are approximate indicators. The larger the values involved, the greater the necessity for advising the Administrator in advance.

7. *Implementation.* These delegations and limitations on delegations take effect immediately. Most of these delegations and limitations will be fully documented in changes to Order 1100.1A, FAA Organization—Policies and Standards; Order 1100.2B, Organization—FAA Headquarters; and Order 1100.5B, FAA Organization—Field. Directives, Federal Aviation Regulations (FAR), and other pertinent agency documents containing delegations of authority will be changed

or revised as appropriate, as time and resources permit.

T. Allan McArtor,

Administrator.

Issued in Washington, DC on August 24, 1988.

[FR Doc. 88-20177 Filed 9-2-88; 8:45am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 30, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0110.

Form Number: 1099-DIV.

Type of Review: Revision.

Title: Statement for Recipients of Dividends and Distributions.

Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 213,822.

Estimated Burden Hours Per Response: 2 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,305,405 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhaulf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-20155 Filed 9-2-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 31, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0056.

Form Number: SF 3881.

Type of Review: Extension.

Title: Payment Information Form, ACH Vendor Payment System.

Description: This information is being requested as a technological requirement. Treasury will use the information to electronically transmit payments to vendor's financial institutions. The affected public consists of large for-profit businesses. Gathering this information will result in vendors receiving payments in a more timely and efficient manner.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,000 hours.

Clearance Officer: Rita Franklin (301) 436-5300, Programs Section, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-20156 Filed 9-2-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the form(s) must be filled out, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to fill out the form; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 25, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Notice of Default and Intention to Foreclose.
3. VA Form 26-6850a.
4. This form is used by VA to perform supplemental servicing in an attempt to stop foreclosure. The information is used to coordinate actions between VA and the holder to ensure that all legal requirements regarding foreclosure and claim payment are met.
5. On occasion.
6. Businesses or other for-profit.
7. 91,029 responses.
8. 30,343 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Application for Education Benefits (Under chapter 30, 32, 34, Title 38, U.S.C.; section 903, Pub. L. 96–342; or chapter 106, Title 10, U.S.C.); and Notice of Eligibility to Education or Training Benefits (Under chapter 34, Title 38, U.S.C.).
3. VA Forms 22–1990 and 22–1990V.
4. These forms are used by veterans, servicepersons, and reservists to apply for education benefits and used by VA to determine eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 120,700 responses.
8. 90,193 hours.
9. Not applicable.

[FR Doc. 88–20085 Filed 9–2–88; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC on November 2, 1988, at 8:30 a.m.

The Committee will (1) review and make appropriate recommendations relative to the Veterans Administration's programs to assist Vietnam veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities, and other related matters; (2) advise the Administrator on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issues; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects of exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam. The meeting will be open to the public up to the seating capacity of the room.

Minutes of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10B/AO), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420. (Telephone: (202) 233–4117).

Dated: August 26, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–20116 Filed 9–2–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 172
Tuesday, September 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for September 6, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 6, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approvals;
2. Final Regulations Governing Member Insurance, 12 CFR Part 618, Subpart B;
3. Proposed Regulations Governing the Secondary Market, 12 CFR Parts 614, 620 and 621;
4. Final Regulations Governing Borrower Rights, 12 CFR Parts 614, 615 and 618;
5. FCA Policy Concerning New Capitalization Plans Governed by Capital Directive No. 1;

[1] **Closed Session**

6. Examination and Enforcement Matters; and
7. Update Regarding Jackson FLB/FLBA, in Receivership.

Dated: September 1, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-20263 Filed 9-1-88; 3:02 pm]

BILLING CODE 6705-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:00 a.m. on Tuesday, August 30, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to:

(1) Consider a recommendation regarding the Corporation's corporate activities;
(2) Consider matters relating to the possible closing of certain insured banks;
(3) Discuss a proposal for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and
(4) Consider a recommendation regarding the Corporation's assistance agreement with an insured bank;

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 31, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-20236 Filed 9-1-88; 12:34 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 5, 1988.

A closed meeting will be held on Wednesday, September 7, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 7, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan G. Katz,

Secretary.

August 30, 1988

[FR Doc. 88-20233 Filed 9-1-88; 12:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1407]

TIME AND DATE: 10 a.m. (CDT), Wednesday, September 7, 1988.

PLACE: Itawamba Community College, Technical Building, Lecture Demonstration Room, 653 Eason Boulevard, Tupelo, Mississippi.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on August 24, 1988

Action Items

New Business

A—Budget and Financing

A1. Amendatory Resolution to Supplemental Resolutions Authorizing TVA Power Bonds 1973 Series B and 1973 Series C.

B—Purchase Awards

B1. Requisition 19—Term Coal for the 160-MW Atmospheric Fluidized Bed Combustion Project at Shawnee Steam Plant.

C—Power Items

[1] C1. Transfer of Ceiling Funding From Watts Bar Nuclear Plant (WBN) Ebasco Contract No. TV-72101A to WBN Sargent & Lundy Contract No. TV-72103A.

C2. Proposed Supplement No. 3 to Contract No. TV-72102A with Stone & Webster Engineering Corporation to Provide Services Related to Special Projects at Watts Bar Nuclear Plant.

C3. Proposed Industrial Service Policy Revisions.

C4. Proposed Letter Agreement with Tennessee Valley Public Power Association (TVPPA) Covering TVA's Funding of Research, Demonstration, and Development Activities.

[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

C5. Agreement Between TVA and Cajun Electric Power Cooperative, Inc., to Provide for the Sale of Excess Energy From Cajun to TVA.

[1] C6. Proposed Decreases in Charges for Limited Interruptible Power (LIP) and in Prices Under Dispersed Power Price Schedule—CSPP.

D—Personnel Items

D1. Authorization to Enter Into a Contract with Shaw, Pittman, Potts & Trowbridge for Services in Connection with Nuclear Plant Licensing and Related Matters.

E—Real Property Transactions

E1. Abandonment of the Waynesboro-Lexington 46-kV Transmission Line Easement Located in Wayne County, Tennessee.

E2. Abandonment of the Athens-Dayton 69-kV Transmission Line-Tap to South Athens Easements Located in McMinn County, Tennessee.

E3. Proposed Letter Agreement on Relocation of TVA's Smyrna-South Nashville 161-kV Line to Clear Nashville Metropolitan Airport Expansion.

E4. Sale of Permanent and Temporary Easements of Portions of the Johnson City Power Service Center Property to the City of Johnson City, Tennessee, to Improve State Route 34.

E5. Abandonment of Portions of the Columbia-Franklin 46-kV Transmission Line Easement Located in Maury County, Tennessee.

F—Unclassified

F1. Extension of the Authority of James N. Pate as Assistant Secretary of TVA.

F2. Interagency Agreement with the Department of Commerce for Use of the Government Bankcard Program.

F3. Interagency Agreement Between TVA (National Fertilizer Development Center) and the U.S. Army Production Base Modernization Activity for TVA to Provide Engineering Services.

F4. Supplement No. 10 to Contract No. TV-68199A with W.S. Fleming & Associates, Inc., Providing for Research Activities by TVA in Support of the Mountain Cloud Chemistry/Forest Exposure Study.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 31, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88-20220 Filed 9-1-88; 10:59 am]

BILLING CODE 8120-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-08-4212-24; IDI-25539]

Realty Action; Lease of Public Land for Airport Purposes in Owyhee County, ID

Correction

In notice document 88-19317 appearing on page 32471 in the issue of Thursday, August 25, 1988, make the following correction:

In the first column under "T. 12 S., R. 5 E., B. M.," in the fourth line "N½SE¼NW¼," should read "N½SE¼NE¼NW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM 016634, NM NM 0559461, NM NM 0556981]

Proposed Continuation of Withdrawals; New Mexico

Correction

In notice document 88-15777 appearing on page 26683 in the issue of Thursday, July 14, 1988, make the following correction:

In the second column, under *Guadalupe Administrative Site*, the first line should read, "T. 24 S., R. 22 E.,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM 014018, NM NM 016580, NM NM 016634, NM NM 023844, NM NM 0220340, NM NM 1411, NM NM 0556981]

Proposed Continuation of Withdrawals; New Mexico

Correction

In notice document 88-16163 beginning on page 27242 in the issue of Tuesday, July 19, 1988, make the following correction:

On page 27242, in the third column, under *New Carrissa Lookout*, the third line should read, "Sec. 9, NW¼NE¼ NW¼."

BILLING CODE 1505-01-D

federal register

Tuesday
September 6, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 511 et al.
Section 8 Housing Vouchers; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 511, 813, 882, 887, 888, and 960

[Docket No. R-88-1332; FR-2170]

Section 8 Housing Vouchers

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes permanent regulations for the Housing Voucher Program, and makes conforming changes in other related HUD regulations. The purpose of the Housing Voucher Program is to assist eligible families to pay rent for decent, safe, and sanitary housing. The Housing Voucher Program has been administered as a demonstration program by publication of program requirements in Notices of Funding Availability (NOFA).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (35 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers: 2502-0123; 2502-0154; 2502-0161; 2502-0185; 2502-0348; 2502-0350; 2577-0067; and 2577-0083. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

The Housing Voucher Program is authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1347f(o)), which was added by section 207 of the Housing and Urban-Rural Recovery Act of 1983. The Department has implemented the Housing Voucher Program, which the authorizing legislation characterized as a demonstration program, by publishing Notices of Funding Availability. (See the **Federal Register** issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; March 31, 1986, 51 FR 10932; December 30, 1986, 51 FR 47064; February 19, 1987, 52 FR 5250; and March 23, 1988, 53 FR 9572.)

The Department published an advance notice of proposed rulemaking (49 FR 28413, July 12, 1984) with the first NOFA. This document advised the public that: If the demonstration became permanent, the Department might use the NOFA as the basis for rulemaking; the period for public comment, accordingly, might be abbreviated; and commenters should take the potential for rulemaking into account in commenting on the NOFA. In addition to the July 12, 1984, NOFA, the NOFAs published on May 8, 1985, and March 31, 1986 (the principal NOFAs for fiscal years 1985 and 1986, respectively), also sought public comment and indicated that they might be the basis for rulemaking. The NOFA for fiscal year 1987, published in February 19, 1987, advised the public (52 FR at 5251) that the Department would be publishing a proposed rule that would be based on that NOFA, and would provide a 30-day public comment period. On August 14, 1987, the Department published a proposed rule at 52 FR 30388, which sought public comment on the policies contained in the February 19, 1987 NOFA, as modified by the proposed rule. The latest NOFA was published on March 23, 1988, at 53 FR 9572. That NOFA continued the policies of the February 19, 1987 NOFA with modifications to implement certain provisions of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the HCD Act of 1987) and the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1988 (section 1(f) of Pub. L. 100-202, approved December 22, 1987).

This final rule codifies the Housing Voucher Program regulations at Part 887 of Title 24 of the Code of Federal Regulations.

Organization of this Rule

The NOFAs under which the Housing Voucher Program operated, in addition to setting out program requirements that were unique to the Housing Voucher Program, in general incorporated by cross-reference from the Certificate Program regulations in Part 882, Subparts A and B, of Title 24 of the Code of Federal Regulations, requirements that were common to the two Programs. Part 887 added by this final rule is self-contained, and therefore does not incorporate by cross-reference provisions contained in the Certificate Program regulations. It still, however, establishes wherever practicable policies that are common to the Certificate Program and are based on those provisions cross-referenced by the NOFAs.

The Department has organized Part 887 in a manner that should be easier for the public to use than current Certificate Program regulations. Subparts have been used to group related sections. In particular, Subpart J contains the additional or modified requirements that apply to certain special housing types. (In the current Certificate Program regulations, these provisions are scattered throughout the rule.) The rule also has been divided into more sections so that the table of contents will be a better finding aid.

The Department intends to revise the Certificate Program regulations to follow the organization of this rule.

Response to Public Comments and Discussion of Rule Changes

There follows a discussion of the public comments received in response to the August 1987 proposed rule and of the substantive changes in the final rule. References to NOFA provisions, unless otherwise noted, are to the February 19, 1987 NOFA (52 FR 5250).

The Department received 282 public comments in response to the August 14, 1987 proposed rule. In addition (although they were not solicited) the Department received 13 public comments in direct response to the February 1987 NOFA. These public comments have been placed in the Department's public

docket for this rulemaking and have been treated as responses to the proposed rule. The Department has previously solicited and received public comments in response to the NOFAs published on July 12, 1984 (38 comments), May 8, 1985 (10 comments), and March 31, 1986 (6 comments), (the principal NOFAs for fiscal years 1984, 1985, and 1986, respectively). The comments received in response to the July 12, 1984 NOFA were addressed in the preamble to the May 8, 1985 NOFA (see 50 FR 19487–19480).

1. Adequacy of rulemaking

Several commenters believed that the Department did not provide an adequate opportunity for comment because it used a NOFA to set out its policies, and urged HUD to return to the established, collegial procedures of proposed and final rules. Another commenter was concerned that the use of NOFAs instead of regulations to implement the Housing Voucher Program may have caused some PHAs to overlook some or all of the NOFAs issued after the PHAs received their funding and urged that Housing Voucher Program rule changes be handled through the normal rulemaking process. One commenter argued that complete rule text for the Housing Voucher Program should have been provided in the proposed rule.

Several of the comments concerning the adequacy of rulemaking were concerned with the opportunity to comment on particular issues rather the adequacy of the overall process. One commenter argued that HUD should not make a radical change in the Rental Rehabilitation Program without explicitly stating the intended change through a formal publication permitting timely public comment. Other commenters believed that the proposed rule did not adequately address the issue of economic displacement and thereby denied the public the opportunity to comment on this matter.

By seeking comment on the February 1987, NOFA, the Department was giving interested parties fair opportunity to comment on the policies it proposed to implement in the final rule. The February 1987 NOFA was the operative document for the Housing Voucher Program, hence many commenters would be able to comment based on actual experience. Proposed changes in policy were clearly identified in Part II.B.2., Anticipated Changes in the Housing Voucher Program, of the February NOFA and the one, albeit significant, additional proposed change was discussed in the proposed rule itself. The Department is as desirous as many of the public commenters to have the Housing Voucher Program regulations codified in the Code of Federal Regulations, but to have delayed seeking public comment until rule text had been developed would have only further delayed the development of effective regulations. The only changes to the Rental Rehabilitation Program involved in this rulemaking concern the connection between that Program and the Housing Voucher Program. It is clear from the amount and detail of the public comment addressed to this issue that the public has had a fair opportunity to comment on these issues.

Several commenters urged that the Program continue to be implemented through NOFAs. These commenters generally had objections to the concept of the Housing Voucher Program, preferring the Certificate Program concept. They believed that further study of the Program should be undertaken. One of these commenters noted that the report on the Housing Voucher Program developed for HUD by Abt Associates, Inc. states that it is the first in a series, is preliminary, and covers the first year's experience.

The Department believes that codified regulations are beneficial both to the program participants and to the Department. Any changes in policy that may be developed through further study of the Program can be implemented through rulemaking.

2. The Linkage between the Housing Voucher Program and the Rental Rehabilitation Program

Description of Current and Proposed Policies

The Department's proposal to "decouple" the Rental Rehabilitation Program and the Housing Voucher Program elicited the most public response, most of it opposed to any change in the policies in effect under the February 1987 NOFA. In brief, the Department under the February 1987 NOFA provided a special allocation of housing vouchers to PHAs participating in the Rental Rehabilitation Program. The PHA was to issue these housing vouchers (or certificates) to eligible families that would be displaced by rental rehabilitation activities (which included eligible families that would pay more than 30% of their income as rent after rehabilitation) or to families on a PHA's waiting list who agreed to move initially into a rental rehabilitation project. This "targeting," however, was limited to a number equivalent to the number of housing vouchers or certificates that were allocated before FY 1987 to the PHA for use in connection with the Rental Rehabilitation Program. The Department proposed to revise these policies to require a PHA to issue housing vouchers that were allocated specifically for rental rehabilitation purposes only to eligible families that are displaced from a rental rehabilitation project by physical rehabilitation activities. Under this proposal, housing vouchers could be used for eligible families that would have to pay more than 30% of their income as rent after rehabilitation, but would not be required to be so used. The PHA could not require, as a condition to receiving a housing voucher, that the family agree to move initially into a rental rehabilitation project. The proposed rule noted that "economic displacement" would be addressed in the final rule then being developed to implement statutory tenant selection preferences.

The "preference rule" was published on January 15, 1988, at 53 FR 1152. It took effect on March 4, 1988, and required PHAs and owners to implement its provisions by July 13, 1988. That rule implemented certain statutory provisions, applicable to HUD's various rental assistance programs, which require that, in selecting applicants for housing assistance, preference be given to families who occupy substandard housing, are involuntarily displaced, or are paying more than 50 percent of their income for rent. The preference rule did not contain implementing rule text for the Housing Voucher Program because this Housing Voucher final rule had not been published. The preference rule, however, amended certain Certificate Program regulations, which are incorporated by reference in the Housing Voucher Program NOFAs. The preference rule also contained a detailed preamble discussion of the effect of these Federal preferences on the Housing Voucher Program, in the context of the policies proposed in the February 1987 NOFA and the Housing Voucher proposed rule (see 53 FR 1123 and 1124). In particular, the preamble discussed the effect of the Federal preferences on those rental rehabilitation families who, under the Housing Voucher proposed rule, would no longer be provided housing vouchers from those housing vouchers allocated for use in connection with the Rental Rehabilitation Program, namely, rental rehabilitation families whose rents would be increased as a result of the rental rehabilitation activities. These families could meet a Federal preference for assistance from a PHA's waiting list if the families were paying more than 50 percent of their income for rent or if they

were living in substandard housing. PHAs are permitted to adopt a local preference to allow rental rehabilitation families who qualify for a Federal preference to be selected before other preference-eligible families. Generally, in order to qualify for a Federal preference based on rent burden, a family must be paying more than 50 percent of its income when the assistance is offered. The preference rule provides that a rental rehabilitation family will be considered to be paying more than 50 percent of its income for rent if it has been notified that following completion of rental rehabilitation its rent will be increased, and it in fact would be required, no later than 60 days from the date the family is issued a certificate (or housing voucher), to pay more than 50 percent of its income for rent. Further, the preference rule permits applicants without Federal preference to receive housing assistance ahead of applicants with a Federal preference provided that the number of families so admitted does not exceed 10 percent of the families that are initially admitted under the convered program. The preference rule preamble also noted that a PHA thus has the discretion to create a local selection preference for rental rehabilitation families whose rents exceed 30 percent, but not more than 50 percent, of their income.

The HCD Act of 1987, approved February 5, 1988, made several statutory amendments affecting the relationship between the Housing Voucher Program and the Rental Rehabilitation Program.

Section 143(a)(2) of the HCD Act of 1987 struck section 8(o)(4) of the 1983 Act, which required that HUD use substantially all housing voucher authority for families residing in dwellings to be rehabilitated with assistance under the Rental Rehabilitation Program and for families displaced as a result of rental rehabilitation assisted under that program or under section 533 of the Housing Act of 1949.

Section 149 of the HCD Act of 1987 added a new subsection (u) to section 8 of the 1937 Act, which reads as follows:

(u) In the case of lower income families living in rental projects rehabilitated under section 17 of this Act or section 533 of the Housing Act of 1949 before rehabilitation—

(1) Certificates or vouchers under this section shall be made [available] for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding; and

(2) At the discretion of each public housing agency or other agency administering the allocation of assistance, certificates or vouchers under this section may be made [available] for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or move from, the project.

In addition, the HUD-Independent Agencies Fisal Year 1988 Appropriation Act, Pub. L. 100-202, approved December 22, 1987 provides: "[O]f that portion of such [Housing Voucher Program] budget authority to be used to achieve a net increase in the number of dwelling units for assisted families, highest priority shall be given to assisting families who are involuntarily displaced, or who are or would be displaced in consequence of increased rents, as a result of rental rehabilitation program activities."

To implement these statutory amendments, the March 1988 NOFA contained program requirements for use of housing vouchers in connection with the Rental Rehabilitation Program that differed from the proposed requirements discussed above.

Under the March 1988 NOFA, there was no special allocation of housing vouchers for use in connection with the Rental Rehabilitation Program. Instead, a PHA was required to issue a housing voucher or certificate to any eligible applicant family that was forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, or (to implement HUD's FY1988 Appropriations Act) whose rent would exceed 50 percent of its adjusted income, as a result of rental rehabilitation activities (section III.I.(e)(1)(i)). HUD provided an additional housing voucher allocation to a PHA, if necessary, to ensure that PHAs met the obligation described in this paragraph (section III.D.(b)(3)).

The PHA also, in its discretion, could have preferred eligible families whose rent would exceed 30 percent, but would not exceed 50 percent, of their income as a result of rental rehabilitation activities (section III.I.(1)(ii)).

The March 1988 NOFA also placed PHAs on notice that, when they implement the Federal preferences under their certificate programs, they must also implement the same Federal preferences under their housing voucher programs (section III.I.(d)(1)).

This final rule's provisions with respect to providing housing vouchers for rental rehabilitation families are similar to the March 1988 NOFA requirements (see § 887.155(b) (1) and (2)). It should be noted, however, that there is no requirement in § 887.15(b) to issue a housing voucher to a family whose rent would exceed 50 percent of its adjusted income as a result of rental rehabilitation activities. That provision in section III.I.(e)(1)(i) of the March 1988 NOFA implemented the "highest priority" requirement in HUD's fiscal year 1988 Appropriation Act. Because the highest priority requirement applies only to fiscal year 1988 authority, it has not been included in this rule. Rather, § 887.155(b) implements section 8(u) of the 1937 Act.

The recently-enacted HUD-Independent Agencies Fiscal Year 1989 Appropriation Act, Pub. L. 100-404, approved August 19, 1988, contains the following proviso concerning the use of housing voucher assistance for families affected by Rental Rehabilitation Program activities:

Provided further, That of that portion of such budget authority under section 8(o) to be used to achieve a net increase in the number of dwelling units for assisted families, highest priority shall be given to assisting families who as a result of rental rehabilitation actions are involuntarily displaced or who are or would be displaced in consequence of increased rents (wherever the level of such rents exceeds 35 percent of adjusted income of such families, as defined in the regulations promulgated by the Department of Housing and Urban Development) * * *

The Department will provide additional guidance, through **Federal Register** notice, with respect to the obligations imposed by appropriations Acts. Because there has been a history of appropriations Act requirements in this area, § 887.155(b)(3) expressly provides that HUD will publish, by **Federal Register** notice, modifications to these policies that may be needed to implement any additional requirements imposed through appropriations Acts.

The following discussion of the rental rehabilitation issues raised by the public commenters takes into account the intervening statutory amendments discussed above.

The Department believes it is appropriate to reiterate the design and purpose of both programs and to discuss how these programs can be used to complement one another. The strength of the rental rehabilitation initiative derives from the separation of tenant and rehabilitation subsidies and the fact that the market feasibility of rehabilitated properties does not depend upon project-based assistance. The purpose of the Rental Rehabilitation Program is to provide affordable standard rental housing for lower income families, and to increase the availability of housing units for consideration by housing voucher holders and certificate holders. The Housing Voucher Program, like the Certificate Program, is intended to provide tenant-based assistance (assistance that follows the family if it

moves) so that the eligible family can afford standard housing.

The Department believes that the Rental Rehabilitation Program is a suitable housing production activity for increasing the supply of housing available to families with housing vouchers or certificates. It is also HUD's belief that the Rental Rehabilitation Program and the tenant-based housing assistance programs can be most effective if local agencies have the flexibility to use these program resources to meet local priorities and housing objectives. This final rule gives PHAs the maximum flexibility authorized by the HCD Act of 1987 for administering housing assistance at the local level.

This final rule requires PHAs to provide either a housing voucher or certificate to any family living in a rental rehabilitation property that is required to move because of construction, change in the use of the unit, or because the family is living in an overcrowded unit (§ 887.155(b)(1)). PHAs have the discretion to provide a housing voucher or certificate to families, living in rental rehabilitation projects and who apply for placement on the PHA's waiting list, that would have a rent burden greater than 30 percent of income after rehabilitation is completed (§ 887.155(b)(2)). We expect that the preferences used by a PHA for selecting families from its waiting list will minimize any economic hardship on families that suffer an increase in rent as a result of rental rehabilitation.

We do not believe it appropriate for HUD to dictate a community's priorities in the use of its housing resources; it is more appropriate that this decision be made at the local level. PHAs, rather than HUD, are in a much better position to decide whether a family that is living in a completed rental rehabilitation unit is more needy than a family living in substandard housing.

Concerns about Displacement and Continued Workability of Rental Rehabilitation Program

The predominant concern raised by the public commenters was that the changes proposed in the use of housing vouchers in connection with the Rental Rehabilitation Program would make that Program unworkable. Many commenters noted that the Rental Rehabilitation Program was based on a "split subsidy" concept, namely, a modest Rental Rehabilitation grant to assist the owner in rehabilitating the project and a rent subsidy, either housing vouchers or certificates, to assist eligible families to continue to live in or move from the rehabilitated project. The commenters stated that with no assurance of housing vouchers for eligible families who would continue to occupy the projects, owners would no longer participate in the Rental Rehabilitation Program or, if they did, would only rehabilitate vacant projects in order to avoid the economic, social, and political problems caused by displacement.

The commenters pointed out that, historically, 60 percent of the post-rehabilitation tenants received housing vouchers or certificates, but only three percent of the housing vouchers and certificates used in connection with the Rental Rehabilitation Program have been used to assist families that were displaced. Several commenters that were rental rehabilitation grantees noted that they would not approve a project if families would be displaced and have traditionally relied on housing vouchers and certificates to prevent displacement; other grantees indicated that their rate of displacement was below three percent. They also stated that because the rental rehabilitation grant is modest and there are no rent restrictions, the majority of eligible families living in rental rehabilitation projects could not afford the after-rehabilitation rents without housing vouchers or certificates. Without housing vouchers for families who seek to remain in place and for families who want to move into a rental rehabilitation project, the commenters believed it would be increasingly difficult for rental rehabilitation grantees to comply with the low income benefit requirements in § 511.10(a). Several commenters contended that lack of housing vouchers for rental rehabilitation families who seek to remain in place may cause opponents of the Rental Rehabilitation Program to seek the imposition of rent controls on the project or the use of project-based subsidies, and would also prevent owners from renting rehabilitated units to the families that most needed the housing.

The Department believes that by requiring assistance to displacees, by encouraging local cooperation and development of priorities, and by giving PHA's the discretion to choose among Federal preference holders, as well as the discretion to serve non-Federal preference holders, the issues raised by these commenters can be handled at the local level. We believe that communities operating both rental rehabilitation programs and housing voucher programs must, in fact, operate in concert in order to achieve their housing objectives.

"Rent controls" on rental rehabilitation projects are statutorily prohibited. The Department believes the market should dictate the rents. If the owner were to set the rents too high compared to the market, the occupants would move out to find cheaper units. However, if the owner's rents are reasonable in relation to other units in the neighborhood, then the occupants are likely to stay, even if rents are slightly higher, and other lower income families will seek out the vacant units.

Based on the demographics of rental rehabilitation projects, some commenters stated that the policies in the proposed rule, had they been in effect, would have caused the displacement of most of the families currently living in rental rehabilitation projects with Section 8 assistance. Such displacement would not only be "senseless and unnecessary," it would be inconsistent with HUD policy contained in 24 CFR 511.1 and 511.40, both of which provide that the most important of the uses of housing vouchers and certificates allocated in connection with the Rental Rehabilitation Program is to minimize displacement.

The Department does not agree with these commenters' conjecture as to the effect the current policies would have had on the Rental Rehabilitation Program, if they had been in effect in previous years. First, housing vouchers remain available, at the PHA's discretion, for economically burdened rental rehabilitation families. Second, we are not aware of any family living in a rental rehabilitation project that was physically displaced or had a post-rehabilitation rent burden greater than 50 percent of income and was not issued a housing voucher or certificate.

The commenters believed that, faced with this potential for displacement, owners would not rehabilitate occupied projects for several reasons: an unwillingness to displace families both on principle and because it is politically unacceptable, a reluctance to assume the costs of relocation, and concern over renting the vacated units. Rental rehabilitation grantees, the commenters asserted, would be faced with the unenviable choice of denying applications or risking economic displacement of tenants. They also noted that under section 17(b)(2)(F) of the 1937 Act and § 511.10(h)(1)(i), a structure may be assisted under the Rental Rehabilitation Program only if the rehabilitation will not cause the involuntary displacement of very low-income families by families who are not very low-income. Therefore, many otherwise desirable occupied projects would be statutorily ineligible for the Rental Rehabilitation Program. The owners that chose to remain in the

Rental Rehabilitation Program, they believed, would be compelled to rehabilitate vacant buildings, which, the commenters noted, is more costly because vacant buildings are generally in more deteriorated condition and are more subject to vandalism than are occupied projects.

Decoupling of the rental rehabilitation and housing voucher program would not make rental rehabilitation unworkable. It is important that grantees and owners work closely with the PHA and keep the PHA informed of rehabilitation schedules and completion dates. PHAs, on the other hand, are required to provide housing vouchers to families that are physically displaced and must advise housing voucher holders and certificate holders of any vacant rental rehabilitation units that are available or about to become available so that the families can consider these units. PHAs are also encouraged to provide housing vouchers or certificates to families living in rental rehabilitation properties that meet the 50 percent of income Federal preference for rent burden. PHAs may make up to 10 percent of their housing vouchers available to occupants of rental rehabilitation that do not have a 50 percent rent burden after taking into account the housing needs and urgency of other Federal preference holders.

One commenter also believed that the policies in the proposed rule would not support the intent of section 17(a)(2) of the 1937 Act, which lists supporting a rental rehabilitation grantee's program as one of the purposes for which HUD may reserve housing vouchers in connection with the Rental Rehabilitation Program. The commenters were concerned about the costs and effects of displacement, which they believed would result if occupied units were rehabilitated in the future. Among the concerns were the possibility of causing overcrowding (which may entail adding another criterion for selecting rental rehabilitation projects), exacerbating homelessness, and causing jurisdictions to use CDBG funds to cover the cost of relocation rather than for other purposes.

It is and continues to be this Department's policy to minimize displacement under the Rental Rehabilitation Program. Section 17(a)(2)(B) of the 1937 Act permits the Secretary to "reserve housing assistance" for persons displaced by rental rehabilitation and to support the grantee's program. As mentioned earlier, HUD requires that certificates and housing vouchers be provided to persons that are displaced by rental rehabilitation. Furthermore, housing voucher funds are allocated on a formula basis and more than 75 percent of all housing vouchers and certificates ever appropriated by Congress have been provided to cities participating in the Rental Rehabilitation Program.

Again, we emphasize that we have provided and will continue to provide housing resources to the local PHA. The PHA has a considerable amount of flexibility to accommodate assistance to families that would be adversely affected by rental rehabilitation activities. We cannot overemphasize the need for grantees and owners to work closely with the local PHA. Our experience indicates the more coordination and communication that takes place between the three parties throughout the rehabilitation process, the higher the likelihood of success of both programs working in a complementary manner.

Many commenters questioned why HUD was proposing decoupling when the Rental Rehabilitation Program with the current linkage to the Housing Voucher Program is working well. They referred to the Department's own evaluation of the Rental Rehabilitation Program as evidence of that Program's success. While acknowledging that HUD may have had concern with the slowness of leaseup of housing vouchers that may have been caused by using the housing vouchers in connection with the Rental Rehabilitation Program, the commenters believed that this problem has been corrected through permitting the immediate use of housing vouchers for general Housing Voucher Program purposes if the PHA can ensure that housing vouchers or certificates will be available as needed for rental rehabilitation purposes, and, in any event, increasing the rate of leaseup of housing vouchers should not be done at the expense of the Rental Rehabilitation Program. One commenter asserted that it was financially irresponsible for HUD to assist the rehabilitation of a project and then not provide the rental subsidy necessary to keep the project occupied.

The February 1987 NOFA was the first step in decoupling the two programs and has been working well. It is our belief that the policies in this final rule will result in additional improvements and will make both programs work better. PHAs are provided the flexibility and decisionmaking authority to balance the use of housing vouchers for families in rental rehabilitation properties with other housing needs in the community. PHAs, not HUD, are in the best position to make this local determination.

Nationwide, there are more than 750,000 housing vouchers and certificates under contract with PHAs in communities participating in the Rental Rehabilitation Program. Assuming a modest turnover rate of 10 percent, *i.e.*, the percentage of families that turn in their housing assistance each year, the participating PHAs have access to more than 75,000 housing vouchers or certificates without counting any new appropriations.

One commenter questioned what benefit HUD thought would be derived from the proposed changes. If increasing the rate of leaseup is HUD's objective, then HUD, in one commenter's opinion, should increase its allocation of freestanding housing vouchers and decrease the allocation of rental rehabilitation housing vouchers, but should not change the policies as proposed. Another commenter noted that decoupling would not result in any significant cost savings to HUD because the housing vouchers would just be used in the freestanding portion of the Housing Voucher Program.

The new policy eliminates the unnecessary burdens associated with the development of interim use agreements, tracking on a funding increment basis the number of housing vouchers or certificates used on an "interim use" or "immediate use" basis, and tracking "pay-backs" to assure that the terms of local agreements have been met. All of these unnecessary, time-consuming, administrative controls have been eliminated, and PHAs will have more time and more flexibility to work with grantees to meet local housing needs and objectives.

Reliance on Preference Rule for Economic Displacement Issues

Many commenters objected to the Department's proposal to rely on the then forthcoming "preference" rule to address the issue of "economic displacement", namely, assistance for families whose rent would increase as a result of rehabilitation. The commenters contended that by relying on the development of the preference rule, HUD provided little immediate direction to PHAs on this issue. They further believed that, although the statutory preferences would apply to many rental rehabilitation families, these families would not have any reasonable guarantee of a housing voucher. They noted that in jurisdictions with very long waiting lists for Section 8 assistance, even receiving a preference may be of little practical help in avoiding displacement, and also pointed out that the waiting lists might be closed. They were also concerned that a rental rehabilitation family might have to be

displaced or move into substandard housing to qualify for a preference.

The preference rule was designed to ensure that the majority of HUD assistance would be provided to the most needy families as required by law—families involuntarily displaced, families living in substandard housing, or families paying more than 50 percent of income for rent. This final rule permits PHAs to provide a higher preference to the rental rehabilitation families that meet the Federal preferences than to other Federal preference holders. This rule also requires PHAs to allow rental rehabilitation families that meet the Federal preferences to be placed on the waiting list even if the PHA's waiting list is closed.

Briefing Packet

A commenter stressed the importance of including information on local rental rehabilitation projects in the briefing packet, particularly in soft housing markets, because of the owner's responsibility to offer the units to lower income families for up to seven years. (The commenter's description of the owner's responsibility is not accurate. A rental rehabilitation owner has a duty, extending for seven years, to affirmatively market vacant units to attract eligible persons from all racial, ethnic, and gender groups (§ 511.10(m)(2)). The owner must also agree, for at least a ten-year period, not to discriminate against a prospective tenant on the basis of the tenant's receipt of, or eligibility for, housing assistance (§ 511.10(j)). Two commenters, however, objected to including this information in the briefing packet. One commenter indicated that it kept a master list of all units known to be available. It instructs families on the use of this list. This commenter believed that it would be an unnecessary expense to separate out rental rehabilitation projects.

It is very important that PHAs provide a list of completed rental rehabilitation projects with available units to families at the time they are issued a housing voucher or certificate and begin their housing search. We believe that the minimal amount of work required to keep the rental rehabilitation list up to date is more than offset by all of the other administrative burdens that this rule eliminates.

Targeting Housing Vouchers to Rental Rehabilitation Vacancies and Related Issues

A number of commenters specifically objected to the proposed elimination of a PHA's authority to target housing vouchers to families on its waiting list who agree to move initially into a rental rehabilitation project (targeting-in). (PHAs, under the February 1987 NOFA, retained authority to target-in housing vouchers, limited to a number of housing vouchers equal to the number of housing vouchers allocated to it before fiscal year 1987 for use in connection with the Rental Rehabilitation Program.) One commenter found these provisions to be confusing.

A commenter urged that PHAs should be given discretionary authority to target-in turnover housing vouchers or certificates to fill vacancies in a rental rehabilitation project. This commenter believed that such discretionary authority was particularly necessary in a soft housing market.

As with the policy, discussed above, concerning tenants residing in rental rehabilitation projects, the restriction on targeting-in was also criticized as discouraging owner participation in the Rental Rehabilitation Program. Many commenters believed that the limitation on, or elimination of, targeting-in hinders rental rehabilitation owners' ability to lease their units, particularly with respect to vacant buildings that have been rehabilitated. The commenters believed that without targeting-in it would be difficult or impossible to meet the low income benefit requirements in § 511.10(a). On the other hand, two commenters recommended eliminating targeting-in altogether. One commenter made this recommendation because it found it to be administratively difficult to contact hundreds of families on the waiting list to fill vacant units. The other commenter stated that targeting-in was one of the policies that caused difficulty and ill will when the PHA attempts to explain it to families on the waiting list.

The final rule does not permit PHAs to condition the initial use of a housing voucher for a vacant rental rehabilitation unit. This targeting-in procedure is contrary to the "finders-keepers" concept of the Housing Voucher Program and is administratively cumbersome for PHAs.

Under the "finders-keepers" concept housing voucher and certificate holders are responsible for finding the units they will lease. The freedom to choose their own units in the rental market is a key feature of the Housing Voucher and Certificate Programs, which places the housing voucher or certificate holder in a position comparable to other families in the unsubsidized rental market. Targeting-in restricted the family's initial choice of dwelling unit to a specific project. It targeting-in were to be applied, it would override the PHA's tenant selection policies and preferences solely on the basis of a family's willingness or unwillingness to move into a specific unit, which has no connection to a family's need for housing assistance.

Owners should not be relying on a "guarantee" of rental income from a housing voucher or certificate holder in deciding whether or not to participate in the Rental Rehabilitation Program, nor should a grantee rely on housing vouchers or certificates to meet the lower income benefit requirement. Rather, the owner's decision should be based on market circumstances.

The Department agrees with some of the commenters that targeting-in was cumbersome to administer and that it was difficult to track the number of housing vouchers used for this purpose.

Two commenters argued that whenever a housing voucher was given to a family residing in a rental rehabilitation project, the family should be required to live in the project for one year. The Department does not agree. Under this rule, as well as in the NOFAs, a rental rehabilitation family that receives a housing voucher has the same right to seek housing of the family's choice as any other housing voucher holder. Another commenter believed that in-place tenants should receive housing vouchers but that the owners should not be able to charge rent in excess of the fair market rent. Under this rule, a rental rehabilitation family that receives a housing voucher and chooses to use it in-place is subject to the same rules as any other housing voucher family, including a non-rental rehabilitation family that chooses to use its housing vouchers in-place.

Immediate Use

Several comments concerned the "immediate" and "interim" use policies, which, when there was a separate allocation of housing vouchers in connection with the Rental Rehabilitation Program, permitted those housing vouchers to be used initially for general program purposes, provided they were "paid back." A State housing development authority, which favored retaining the then existing policies, noted that immediate use was already causing it problems because it is unable to return housing vouchers or certificates that were used on an immediate basis in one locality to the locality to which they were initially allocated for rental rehabilitation purposes. Another commenter believed that discretionary authority to use housing vouchers for rental rehabilitation purposes was preferable

to immediate use because under immediate use PHAs, particularly statewide PHAs, may be reluctant to use the housing vouchers immediately because of concern that no housing voucher or certificate would be available when needed for rental rehabilitation purposes.

Several commenters preferred to have less restrictive immediate use rules. They noted that in the past PHAs only had to consult with the local rental rehabilitation program administrator as to schedules and ensure that housing vouchers and certificates would be available when necessary. They believed that formal written agreements on interim use unnecessarily complicate the process and slow the PHA's ability to expedite leasing.

Under this rule (and the March 1988 NOFA), PHAs are free to use all of their housing vouchers for general program purposes. PHAs, however, are also subject to the requirement to issue housing vouchers to certain rental rehabilitation families. There is no need to "pay back" housing vouchers under these policies, since there is no separate rental rehabilitation allocation. While most housing vouchers issued under these policies have been used for general housing voucher purposes, our experience indicates that PHAs have done an excellent job in determining the number of housing vouchers or certificates that must be made available to meet the rental rehabilitation schedule, and the Department is not aware of any need for housing vouchers that PHAs have not been able to meet.

Method of Allocation and Effect on Small PHAs

Several commenters were opposed to HUD's proposal to continue allocating housing vouchers for use in connection with the Rental Rehabilitation Program. Some of these commenters were smaller rural PHAs that believed that the rental rehabilitation-related allocation of housing vouchers either prevented them from participating in the Housing Voucher Program or reduced their share of housing vouchers because they cannot participate in the Rental Rehabilitation Program. Another commenter was a State housing authority that had no rental rehabilitation community within its borders.

Several commenters criticized HUD's reduction of the ratio of housing vouchers allocated in connection with the Rental Rehabilitation Program from up to one housing voucher per $5,000 of rental rehabilitation grant money to up to one housing voucher per $7,500 of grant money. One commenter noted that the national average cost of rehabilitation is $3,700 per unit, which means that even with the 1/$5,000 ratio there would not be enough housing vouchers for every rehabilitated unit. A commenter noted that it made no sense to allocate housing vouchers on a ratio to rental rehabilitation grant amounts if the housing vouchers, for the most part, are not going to be used in concert with the Rental Rehabilitation Program. Another commenter made a similar point that it was not necessary to allocate approximately 50 percent of the housing vouchers for rental rehabilitation purposes when, historically, only three percent of the housing vouchers so allocated have been used for physical displacement. Several commenters cited the length of their waiting lists as the reason for wanting the higher ratio.

In fiscal year 1988, the Department changed the method for allocating housing voucher funds. HUD discontinued making a separate allocation of housing vouchers on a ratio of one housing voucher for each $7,500 of rental rehabilitation grants. Instead, housing voucher funds were allocated to HUD Regional and Field Offices on a formula basis which took into account housing need and costs. The extent to which the PHA had housing vouchers or certificates available for use by rental rehabilitation families was taken into consideration by Field Offices in determining which PHAs would be invited to submit applications. If the PHA did not have sufficient housing vouchers, including turnover housing vouchers and certificates from the PHA's total program, to enable the PHA to comply with its obligations with respect to rental rehabilitation families (see Part III.I.(e)(1)(i) of the March 1988 NOFA), then additional housing vouchers were provided to the affected PHA.

As a result of these changes more housing vouchers were available for allocation to small PHAs that were not located in a jurisdiction of a rental rehabilitation grantee. HUD plans to use a similar procedure in fiscal year 1989.

One commenter thought that the per-unit grant amount limit in the Rental Rehabilitation Program should also be raised from $5,000 to $7,500. While this comment is outside the scope of this rulemaking, the Department notes that it has published an interim rule (53 FR 25462, July 6, 1988), which implemented certain statutory amendments to the Rental Rehabilitation Program. That rule revised 24 CFR 511.10(e)(2) to establish a sliding scale for per-unit grant amount limits. The scale runs from $5,000 for a no bedroom unit to $8,500 for a three more bedroom unit. This change in the Rental Rehabilitation Program rules will also make it easier for grantees to rehabilitate vacant units, which generally require more substantial rehabilitation, but which do not have any potential for displacement. These newly standard units would then be available to housing voucher and certificate holders seeking units on the open market.]

One commenter contended that rental rehabilitation families must receive a housing voucher to remain in a rental rehabilitation project because HUD's use of the Fair Market Rent as the standard for what is "affordable" is unrealistic. This commenter noted that a family in its jurisdiction would have to have an annual adjusted income of $20,000 to "afford" rent equal to the two-bedroom FMR ($500), but the average annual income in its jurisdiction for a two-bedroom family was under $5,000. Local situations, such as those referred to by this commenter, are clearly relevant matters for a PHA to consider in determining the extent to which the PHA will exercise its discretionary authority to issue housing vouchers or certificates to eligible families whose post-rehabilitation rent would exceed 30 percent of their adjusted income.

A commenter suggested that since housing vouchers used in connection with the Rental Rehabilitation Program were being folded into the regular Housing Voucher Program, the Rental Rehabilitation Program should be folded into CDBG Program. The Rental Rehabilitation Program is not a component of the CDBG Program, but has a separate statutory authority; the commenter's suggestion therfore is not analogous to the revisions made in the Housing Voucher Program by this rule.

3. Comments Relating to the Housing Voucher Program Itself

Payment Standard—Affordability and Related Issues

Several commenters found the adoption in the February 1987 NOFA of a single payment standard system to be a significant improvement (see section III.J.). One commenter, however, stated that the simplification did not work because the payment standard provisions were still not understandable. The Department is not aware of any significant difficulties that PHA are having in understanding the payment standard provisions. Any individualized problems should be discussed with the appropriate field office.

This rule retains the concept of a single payment standard system (see § 887.351). The Department believes that the payment standard is understood by program participants.

Several commenters objected to the limit of two affordability adjustments within a five-year period (see section III.J.(e)(1)). Generally, these commenters recognized that the limitation was statutory, but urged that the statute be amended to permit annual adjustments. The limitation, they believed, jeopardized the continued affordability of housing for participants, particularly for large families and families whose incomes are lowest. They noted that the pending authorization Bill contained a provision for annual adjustments and urged HUD to support this amendment.

Section 887.351(c) of this rule gives PHAs the discretion to make annual affordability adjustments to the payment standard. This provision implements section 143(b)(1) of the HCD Act of 1987, which amended section 8(o)(6)(A) (previously section 8(o)(7)(A)) of the United States Housing Act of 1937 (1937 Act).

A few commenters questioned why consultation with local government was required when a PHA adjusted a payment standard (see section III.J.(f)). They believed it served little purpose other than to discourage a PHA from making an affordability adjustment. One commenter suggested that a PHA should be able to seek, without local government consultation, HUD approval to adjust the payment standard to the currently-published FMR. Another commenter recommended applying the Certificate Program annual adjustment factors.

Section 887.351(c) does not require PHAs to consult with the public and units of general local government before making affordability adjustments. Again this revision to previous policy implements a recent statutory amendment. Section 143(b)(2) of the HCD Act of 1987 struck section 8(o)(6)(D) (previously section 8(o)(7)(D)) of the 1937 Act, which had contained the consultation requirement. It should also be noted that PHAs are not required to obtain HUD approval before adopting a new payment standard schedule, and have the ability to determine the amount of the adjustment in the individual payment standard amounts.

Several commenters objected to the fact that an ACC is for a fixed amount (see section III.G.(d)). They argued that the amount of an ACC should be increased over its five-year term to ensure that there is no decrease in the number of families assisted. They believed that PHAs might be reluctant to make needed affordability adjustments because of their reluctance to decrease the number of families that can be assisted. A commenter suggested that there should be a floor on the payment standard, such as a requirement that the PHA increase the payment standard when a specified percentage of assisted families are paying more than 30 percent of their income as rent. Another commenter noted that the application requires the PHA to State the bedroom mix and family type. This commenter questioned whether PHAs had the flexibility to alter the mix to maintain financial feasibility; if not, then PHAs would have to stay within the ACC amount through attrition. Another commenter requested that the provision in the rule that states that a PHA may assist more families if there are available annual contributions under the ACC not needed for participating families should also expressly provide that a PHA may have to assist fewer families than originally indicated in order to remain within the amount contracted for in the ACC.

The amount contracted for, [in accordance with section 8(o)(6)(B) of the 1937 Act, includes 15 percent in excess of what is estimated to be needed in the first year for each of the five years of the ACC. Based on the Department's experience with contract amendments under the Certificate Program this should provide enough funding to cover payment standard adjustments. PHAs may alter the bedroom mix.

A commenter believed that using the two-bedroom FMR to determine fund reservation underestimates the amount actually needed based on the actual housing mix. The commenter also pointed out reserving funds based on the FMRs in effect at fund reservation but requiring that the initial payment standards be based on the FMRs in effect at the time the ACC is executed results in further loss in the number of units that may actually be assisted.

The two-bedroom FMR is used by the HUD field office for fund allocation purposes. It is not used to determine the actual amount of housing voucher budget authority that is reserved for a PHA under an ACC. The field office determines that amount based on the PHA's proposed bedroom distribution and estimates of family income.

A commenter believed that the five-year limit on the housing voucher ACC would cause underutilization of the housing voucher authority in the last year of the ACC. This commenter believed that the PHA will not be able to enter into housing voucher contracts during the last year of the ACC because PHAs are prohibited from signing such contracts with an owner for less than one year or for a period that extends beyond the ACC.

Funding for a PHA's housing voucher program is derived from funding increments ("projects") contractually committed by HUD for support of the PHA program. There is a separate ACC term for each funding increment. The initial term of the ACC for each funding increment is five years. Section 887.209(c)(2)(ii) provides that the term of the lease for a program family must begin "at least one year before the end of the term of the *last funding increment under the ACC.*" (As used in this regulation, the term "ACC" refers to a consolidated ACC document which contains the separate HUD funding commitments for successive funding increments for the PHA housing voucher program.) Thus the requirement only applies with respect to the most recent funding increment under the ACC at the time the lease begins, and does not apply to earlier funding increments under the ACC. The PHA may approve a lease, and may enter a voucher contract so long as there is at least one year left to run on the last funding increment under the ACC (even if there is less than one year left to run on one or more earlier funding increments). Thus the regulatory limitation will not have any practical effect on the family so long as the PHA continues to receive new program funding increments and there is at least one year left on the most recent increment. The prohibition on entering a lease unless there is a year left to run implements the statutory requirement prescribing the minimum lease term in Section 8 Existing Housing, including the Section 8 Housing Voucher Program. The lease between the tenant and owner must be for "at least one year" (unless the term of the assistance contract is shorter (section 8(d)(1)(B)(i) of the 1937 Act). Funding under the ACC is the source for assistance payments by the PHA to support the family's tenancy under the lease, and in particular to subsidize the family's tenancy during the minimum one year lease term. For the same reason, the rule provides (§ 887.209(c)(2)(iii)) that the housing voucher contract and the lease shall end if the PHA determines (in accordance with procedures prescribed by HUD) that funding under the ACC is insufficient to support continued assistance.

Payment Standard Amount

A commenter, referring to 24 CFR 882.106(a)(3), recommended that PHAs be permitted to raise payment standards to the level of the exception rents that

are approved by HUD under the Certificate Program for designated localities. The commenter believed that, under the NOFA, it could not set the payment standard above the applicable fair market rent (FMR).

This commenter was mistaken. Both the NOFAs and this final rule allow the PHA to establish a payment standard amount based upon the applicable FMR or *HUD-approved community-wide exception rent* (see section III.J.(c) and § 887.351). Community-wide exception rent means that the exception rent applies throughout the PHA's jurisdiction.

A commenter noted that the FMR area within its jurisdiction was very large and had several rental markets with rents varying by as much as $200 to $300. This commenter noted that participants in the lower rent areas receive an automatic reduction in the portion of their income spent for rent. Another commenter believed that PHAs should be allowed to set the payment standard amounts in a manner that would enable families to find modest but satisfactory units and suggested that the payment standard be permitted to range from 80 percent to 100 percent of the FMR.

The Department agrees that PHAs should have more flexibility to set the payment standard and, in § 887.351(b)(2), has provided PHAs the authority to adopt payment standard amounts that are not less than 80 percent of the applicable FMR or the HUD-approved community-wide exception rent. The rule continues to require that the PHA have one payment standard for each bedroom size within a FMR area. Families who lease units in the lower rent areas of a PHA's jurisdiction are simply using the shopper's incentive; they are getting less housing and paying less rent than if they rented in more expensive areas.

A commenter objected to HUD's proposal to conform the payment standard provision for single room occupancy (SRO) to the provision for the SRO Fair Market Rent in the Certificate Program, namely, 75 percent of the 0-bedroom FMR. Another commenter, however, noted that the SRO payment standard was the only payment standard requiring HUD approval and recommended that the SRO payment standard should be set at 75 percent of the congregate payment standard. Section 887.487(a) sets the payment standard for an SRO unit at 75 percent of the 0-bedroom fair market rent or, if applicable, of the community-wide exception rent, which is comparable to how the SRO Fair Market Rent has been set in the Certificate and Moderate Rehabilitation Programs. Use of 100 percent of the 0-bedroom FMR is not appropriate because SROs normally are smaller and have fewer amenities than do efficiency units. The Department recognizes that local conditions may warrant a higher payment standard, and has provided a mechanism in § 887.487(b) for a PHA to seek HUD approval of a SRO payment standard based on a higher percentage, not to exceed 100 percent.

Housing Vouchers versus Certificates

A few commenters took issue with assertions in the February 1987 NOFA that the Housing Voucher Program is more cost beneficial than the Certificate Program, citing the First Report on the Housing Voucher Program by Abt Associates, Inc. Some commenters believed that the features of the two programs should be merged to develop a program that has the flexibility of the Housing Voucher Program and the efficacy, equity, and effectiveness of the Certificate Program.

The Abt Report cited by the commenters concerned early program administration. The Department still believes that with operational experience, including modifications made by this rule, the Housing Voucher Program will prove more cost beneficial than the Certificate Program.

Targeting

A commenter believed that PHAs should be given authority similar to the authority that HUD had under section III.I.(e) to target housing vouchers to families living in certain projects. The Department has not adopted this suggestion. The special purposes for which housing vouchers may be targeted generally are based on activities identified in appropriations acts or in accompanying Conference Committee report tables. Under the targeting provisions the Department provides a PHA with additional housing voucher funding to be used for a specified purpose.

It was also recommended that the rule specify for each of the targeting categories whether the PHA or HUD would administer the housing vouchers. The Department has not adopted this suggestion. First, all housing voucher contracts have been administered by PHAs. Second, and more significantly, this rule provides a more general authority to target assistance than the NOFAs provided (see § 887.155(c)). Unlike the NOFAs, it does not list each of the specific purposes under which housing vouchers may be targeted. As noted above the specific purposes are a product of the appropriations process. They vary from year to year. It is not feasible to amend the rule each year to conform to the specific purposes that may be current.

Administrative Fees

There was a substantial amount of comment on the adequacy of administrative fees. In general, the commenters argued for an increase in the ongoing fee to at least the fee in the Certificate Program (7.65 percent of the two-bedroom FMR); some commenters urged that the fee for both programs be revised back to 8.5 percent. These commenters took issue with HUD's earlier claim that the Housing Voucher Program should be less costly to administer, contending that HUD has never provided any data which clearly supports this assertion. They stated that their experience indicates that the administrative work in the two programs is comparable or, if anything, the Housing Voucher Program is more expensive to administer. They argued that administering two parrallel programs creates administrative complexities; the financial management and planning for the Housing Voucher Program was difficult, complex, and time consuming; and the NOFA, itself, requires PHAs to "[A]ssist a family in finding an apartment in circumstances where, because of age, handicap, large family size or other reasons, it is unable to locate an approvable unit."

Section 144 of the HCD Act of 1987 added a new section 8(q), which establishes administrative fee requirements for both the Housing Voucher Program and the Certificate Program. Section 8(q)(1) requires the Secretary to establish a monthly fee (ongoing fee) equal to 8.2 percent of the two-bedroom fair market rent and authorizes the Secretary to increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas. Section 8(q)(2)(A) requires the Secretary to establish reasonable fees for (1) preliminary expenses (not to exceed $275) incurred by a PHA in connection with a new allocation of assistance, (2) costs incurred in assisting families who experience difficulty in obtaining appropriate housing, and (3) extraordinary costs approved by the Secretary. Section 8(q)(2)(B) requires that the same method be used to calculate fees under the Housing Voucher Program and the Certificate Program. Section 8(q)(3) contains the following overall limitation: "The Secretary may establish or increase a fee in accordance with this subsection

only to such extent or in such amounts as are provided in appropriations Acts."

This final rule (see § 887.103) does not contain specific dollar amounts for the administrative fees, because, as noted above, the amounts of the fees are subject to yearly appropriation action. The Department will establish the actual fee amounts each year based on its appropriation. The current administrative fees for the Housing Voucher Program are: an administrative fee equal to 6.5 percent per month of the two-bedroom fair market rent, a preliminar fee not to exceed $215, and a hard-to-house fee of $45 for each qualified family. These fees are based on the Department's fiscal year 1988 appropriation and were reflected in the revised operating plan for fiscal year 1988 submitted to, and accepted by the Committees on Appropriations of Senate and House of Representatives.

A commenter objected to basing the ongoing fee on FMRs because it believed that it was unfair to PHAs in less costly rental markets. The commenter noted that these areas were often rural and poor, but administrative costs were not necessarily lower than in other areas. It was suggested that if a PHA could lease up more units than estimated for the amount of funding if received, it should be able to get an increase in its administrative fee allotment or should be able to transfer funds from the HAP to cover the additional operating costs. Another commenter thought that the HUD Regional Offices should establish the split between the fee amount and the subsidy amount to take into account the individual characteristics of local housing authorities. It was also recommended that the hard-to-house fee be provided for housing a mentally handicapped person and that the preliminary fee be a flat amount rather than the lesser of a flat amount and actual expenses. The commenter believed that a flat fee would reduce the administrative burden of documenting expenses to HUD. One commenter requested that PHAs with large geographical areas be given special consideration in setting the administrative fees.

Section 8(q) of the 1937 Act permits the Department to increase the ongoing administrative fee "if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas," but again, "only to the extent or in such amounts as are provided in appropriations Acts." The Department will determine whether to provide a higher administrative ongoing administrative fee for these PHAs based on its fiscal year 1989 appropriation.

Housing Vouchers for Families with Income between 50 to 80% of Median

A commenter believed that the Housing Voucher Program was well suited for families with incomes between 50 and 80 percent of median income, and suggested that this class of family be generally eligible for housing vouchers.

The eligibility for housing vouchers of families with incomes between 50 and 80 percent of income has always been limited by statute to families who are displaced by rental rehabilitation activities or are previously assisted under the 1937 Act (see section 8(o)(3)). These restrictions appropriately focus housing voucher assistance on the more needy very low-income families. Two recent changes should be noted. First, section 103(b) of the 1987 Act amended section 16 of the 1937 Act to exempt from section 16(b)'s percentage limitations, dwelling units made available to, among others, lower income families that were displaced by rental rehabilitation activities. Second, the Department has recently reconsidered the issue of whether families that had incomes above 50 percent and qualified for housing vouchers as being previously assisted under the 1937 Act are subject to the section 16(b) percentage limitation (see 53 FR 15412, April 29, 1988, the proposed rule to implement section 16(c) of the 1937 Act, as added by section 103(a) of the HCD Act of 1987). In the preamble to that proposed rule, the Department stated that it "has determined that 'continuously assisted' families are also exempt because under section 8(o) of the 1937 Act . . . , a family is eligible without regard to income if it is continuously assisted. The statute does not require another determination of income eligibility and therefore the income of a family that receives a housing voucher does not trigger applicability of the percentage limitations proposed to be implemented by this rule" (53 FR 15413).

The effect of the above two changes is that there are no longer any eligible families with incomes above 50 percent of adjusted income that are subject to the percentage limitations in section 16(b) of the 1937 Act. Section 887.151, Eligibility requirements, accordingly, does not contain any provisions concerning compliance with section 16 of the 1937 Act, as were contained in section III.I.(b) of the March 1988 NOFA.

Shoppers Incentive, Rent Reasonableness, and Related Issues

Many commenters believed that PHAs should have some authority to disapprove a lease based upon the amount of rent payable to owners. They maintained that the lack of some form of rent reasonableness test was resulting in tenants paying too much rent and the waste of subsidy. These commenters noted that it was their experience that housing voucher-assisted families fail to negotiate a reasonable rent for their unit and were negotiating rents that were higher than the contract rents on similar units leased to certificate holders. They cited their own data and the Abt Associates, Inc.'s report on first year findings to support their contention. One commenter explained this phenomenon as follows:

> Under the Housing Voucher Program the family and landlord agrees on the rent, without approval by the PHA. The landlord is free to set the rent as high as the tenant is willing to pay. It is not a true "market" since the tenant isn't really paying "market rent" but "tenant rent." Tenants, as a rule, don't ask, "What is the contract rent or gross rent for this unit," but "What rent will I have to pay?", i.e., the tenant rent. When first under rental assistance, any new rent is so much less than what the tenant has been paying that the tenant fails to negotiate with an owner or compare rents.

The commenters believed that PHAs had information, such as the fact that other units were being rented to certificate holders at or below the FMR, which the PHA could use to help the family obtain a reasonable rent. They, therefore, urged that PHAs be given the authority to impose a rent reasonableness test. One commenter recommended that the test be appliable to the first rent increase, as well as to the initial rent.

Several commenters recommended that the rule contain a maximum percentage of adjusted income that a family could pay as rent. These commenters generally recommended 50 percent as the maximum, but 40 percent and 35 percent were also suggested.

Several commenters noted that while many tenants, as discussed above, were paying more than 30 percent of adjusted income as rent, there were many other families paying the minimum 10 percent of gross income as rent. The commenters claimed that this disparity in rent burden was primarily a function of whether the family used the housing voucher to rent the place in which they were living (low rent) or another unit (high rent). They claimed that the shopping incentive has caused the Housing Voucher Program to be more

expensive to the government than the Certificate Program. They also noted that the shopping incentive had been tried in the Certificate Program, but was eventually removed. These commenters generally recommended that HUD impose a minimum rent based on 30 percent of the family's adjusted income

The concerns expressed by these commenters are well taken, but that restrictions based on rent reasonableness must be balanced against maintaining a family's option to shop for the unit of its choice. Section 887.209(b) contains several revisions from current policy to address these concerns. It requires a PHA to advise the family on whether the rent requested is reasonable, based on rent for comparable units. It also requires the PHA, if the family requests assistance, to assist the family in negotiating a reasonable rent.

In addition, the PHA may disapprove a lease for a rent that is not reasonable, based on information the PHA has for comparable rental units. A PHA may exercise this authority in communities where the market is not functioning normally or where some families are not able to negotiate reasonable rents on their own (for example, where there is a concentration of ownership by a small number of landlords, or where rents charged to voucher holders are greater than rents charged to certificate holders living in comparable units). The PHA, however, may not disapprove a rent that is reasonable based on rent comparability test even if the PHA believes that the rent is more than the family can afford. It is still the family that, ultimately, decides what it is willing to pay for the unit, and no rent-to-income cap has been added to the rule. A PHA must document each case in which it disapproves a lease because the rent is not reasonable.

Handling Increments of Funding and Related Issues

A commenter was concerned that the February 19, 1987 NOFA continued to require PHAs to treat each funding increment separately. It was the commenter's understanding from training sessions that all funding was to be combined. The commenter questioned why there was no mention of commingling of five year ACC's or carryover of remaining funds in section III.G.(d)(2) concerning a PHA's obligation to plan administration of its program within amounts originally contracted for. Another commenter claimed that all allocations should run concurrently with the effective date of the ACC. When increments of units are approved, the effective date of the first requisition should be the same as any subsequent increment. The commenter believed that this change would make the Program much easier to administer. A commenter recommended that budgets for each housing voucher project be consolidated as they are in the Certificate Program.

The provisions of section III.G.(d)(2) are contained in § 887.101. This section continues the requirement that a PHA plan the administration of its program in a manner that will ensure that it remains within the amounts originally contracted for the funding increment. PHA budgets for the Housing Voucher Program are consolidated. The reader is referred to the discussion of funding for a PHA's housing voucher program in *Payment Standard—Affordability and Related Issues*, above, for an explanation of the manner of handling funding increments under this rule.

Vacancy Payments

Several commenters argued that claims for vacancy loss should be the same as in the Certificate Program (see § 882.105(b). These commenters believed that owners needed the additional incentive provided under the Certificate Program policies. Another commenter believed that, if a family moves at the end of a month without notice, there should be a vacancy payment for 30 days after tenant move-out.

Section 8(o)(4) of the 1937 Act prohibits housing voucher payments after the month during which the unit was vacated. The Department, therefore, cannot provide a vacancy loss payment comparable to that currently provided under the Certificate Program, and both the NOFA (section III.J (1)) and this rule (§ 887.353(c)) prohibit housing assistance payments for vacancies.

Claims for Damages under the Lease

Several commenters believed that the NOFA required a PHA to pay the landlord unpaid rent payable by the family not in excess of one month's rent. These commenters believed that the rule should be clarified to make PHAs liable for the difference between the payment standard and the security deposit, not the rent to owner and the security deposit. The commenters pointed out that, particularly without a rent reasonableness test, PHAs had no control over the rent to owner.

This rule (§ 887.215) continues the NOFA policy of determining the amount recoverable by an owner for damages under the lease by subtracting the amount of the security deposit from the amount the family owes under the lease. As in the NOFA, the amount paid by the PHA for amounts owed by the tenant under the lease may not exceed one month's rent to the owner. Because this provision is intended to provide the owner with some reimbursement for amounts owed by the family, it is more appropriate to use the rent to owner, which includes the family's share of the rent, than to use the payment standard to calculate the amount of the reimbursement. As noted above, this rule provides the PHA the discretion to review the reasonableness of the rent to owner based on rents for comparable units.

Program Size

A commenter claimed that a minimum of 20 to 25 units should be awarded whenever housing vouchers are provided to jurisdictions including multi-jurisdictional programs. The commenter believed that the 50 housing voucher minimum for initial allocations (section III.D. (d)(2)) was a step in the right direction but did not go far enough. Two commenters urged that the minimum initial allocation be 100 housing vouchers. They believed that small and rural PHAs may have to refuse housing vouchers because diseconomies would prevent them from administering two small programs, the Housing Voucher and Certificate Programs.

HUD is sensitive to the commenters' concern that housing voucher awards should be large enough to permit effective administration of the program. The Department, however, does not believe that embedding a fixed minimum number of housing vouchers in this rule is the best way to encourage effective program administration. The amount of assistance available for allocation, which varies from year to year, is a factor that must be considered. This rule, therefore, does not contain such a minimum. Rather, § 887.53 provides that the HUD Regional or Field Office may consider the number of housing vouchers that should be offered to a PHA to facilitate program administration and economies of scale.

Welfare Tenants

One commenter expressed concern over the inequity caused because the Housing Voucher Program does not consider maximum welfare shelter allowances in determining a family's subsidy. As a result, the commenter pointed out, welfare recipients can rent units above the payment standard and still pay less than 30 percent of income for rent, while a family without a welfare shelter allowance would have to pay that portion of the rent that is above the payment standard.

The Report on First Year Findings for the Freestanding Housing Voucher Demonstration pointed out that the lack of a welfare rent provision is one reason that the Housing Voucher Program has cost more than the Certificate Program. The Department submitted a legislative proposal to Congress in fiscal year 1988 to modify the formula for determining the housing assistance payment under the Housing Voucher Program by adding a welfare rent feature to the formula. Under the Department's legislative proposal, the amount of the assistance payment could not exceed the payment standard minus the higher of (a) 30 percent of adjusted income or (b) welfare rent. This proposal has not been enacted by Congress.

Allocation Preferences for PHA Applications and Related Issues

Several commenters objected to the policy in section III.F. (b)(1) for HUD to give preference to an application from a PHA "that demonstrates locally initiated efforts in support of its Section 8 Certificate and Housing Voucher Programs." They noted that eligible families in communities that were unable or unwilling to contribute additional support would be the ultimate losers under this policy. One commenter found the preference too broad to understand.

HUD has retained this preference (§ 887.63(b)(1)). This preference encourages local support and thus should increase the total amount of resources available to meet the needs of eligible families. As noted in the preamble of the February 1987 NOFA (52 FR 5252), the preference "is intended to admit of a variety of types of local contributions—whether cash or inkind, which enhance the locality's Section 8 Certificate and Housing Voucher Programs."

HUD was also urged by a few commenters to eliminate the preference in section III.F. (b)(2) for applications from PHAs "that provide families with the broadest geographical choice of housing, including inter-jurisdictional and interstate housing choice." Their argument was that the policy would prejudice those PHAs which, because of small program size or geographic isolation, would be unable to participate in such "portability" arrangements. One commenter recommended that, in addition to eliminating these two preferences, HUD also not allocate funds through State agencies, but allocate them to the extent possible on the basis of the jurisdiction's need for assistance.

HUD has retained this preference (§ 887.63(b)(2)), which is intended to provide families with greater freedom of movement. For example, a State agency could provide a family more choice than could a smaller PHA. Smaller PHAs, however, could improve their opportunity for a funding preference by participating in voluntary local exchange mobility programs.

One commenter recommended that preference be given to PHAs who have a high lease-up rate. HUD has not adopted this recommendation. Section 887.53, however, provides that PHAs, in determining which PHAs to invite to submit applications may take into consideration the extent to which a PHA has used housing vouchers and certificates it already has. A Field Office could exclude from invitation a PHA with a poor record of getting housing vouchers and certificates under lease.

Allocation Formula

A commenter complained that the allocation of funds under the February 1987 NOFA did not provide for a geographical distribution of funds. The commenter noted that there was no indication if any or all PHAs would have access to the housing vouchers held in the Headquarters reserve for emergencies and that the set-asides were not necessarily distributed geographically. Another commenter believed there is a need to ensure that housing vouchers are allocated to PHAs in rural areas where no Rental Rehabilitation Programs exist.

Eighty-five percent of the housing voucher funds will be allocated on a "fair share" basis to HUD Regional Offices, which in turn will reallocate the funds to HUD Field Offices on the same basis. The balance of the funds are placed in a Headquarters reserve and may be provided as an additional allocation to a PHA for specified purposes.

Shared Housing

The preamble to the February 1987 NOFA (52 FR 5255) advised the public that the Department intended to provide for shared housing in the final rule. (Share housing had not been implemented in the NOFAs.) This rule contains the special provisions concerning shared housing in Subpart K.

A commenter found the shared housing concept beneficial but believed that the payment standard under the NOFA was unreasonably high. The commenter proposed that the payment standard amount in shared housing should be determined by dividing the payment standard amount for the total number of bedrooms in the unit by the number of bedrooms actually used by the family. Under the commenter's suggestion a sharing family in a three bedroom unit that used one bedroom would have a payment standard equal to ⅓ of a three bedroom payment standard and if the family used 2 bedrooms the payment standard would equal ⅔ of the three bedroom payment standard. The Department has adopted this suggestion. Section 887.515 provides that the payment standard for a family in a shared housing unit is determined by multiplying the dollar amount of the payment standard for the entire unit by a ratio that is equal to the number of bedrooms indicated on the family's housing voucher divided by the number of bedrooms in the unit.

Two commenters recommended that HUD require separate leases and assistance contracts for each family in a shared housing unit because it would be unrealistic for the remaining family to pay the total rent when another family leaves the unit. The Department has adopted this recommendation; only individual lease shared housing is permitted under the Housing Voucher Program (§ 887.505).

Waiting List and Selecting Families

Section 887.153 contains the waiting list procedures. Paragraph (b) of this section contains the provisions governing suspending additions to the waiting list. It contains policies concerning when a PHA must add families claiming a Federal preference even though the PHA has suspended acceptance of new applications for its waiting list. These policies are the same as the Certificate Program policies in § 882.209(a)(7), as revised by the Federal preference rule (52 FR 1122, 1152). Section 887.153(d) is comparable to § 882.209(a)(9). The provision is intended to make clear that nothing than in the rule is intended to create or imply any right to participation in the program, other than as provided in the Federal preference requirements. The rule acknowledges, however, that an applicant may have a right, independent of the rule, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement (e.g., equal opportunity requirements under Title VI or Title VIII), and states that the rule is not intended to affect such a right of action.

A commenter suggested that a PHA should not be required to advertise the program or waiting list for a new allocation of units if its waiting list is sufficiently long, the program has been advertised previously, there are sufficient landlords in the program, and the PHA has at least 95% of its units under lease. Section 887.107, which is

based on § 882.207, sets out the circumstances when a PHA must notify the public of the availability of housing assistance, namely, when the PHA establishes a waiting list, reopens a waiting list, and at other times as may be necessary to ensure maximum use of the assistance. Section 887.107 is consistent with the commenter's suggestion because, generally, a PHA would not be required to advertise the availability of housing assistance while its waiting list is closed.

Another commenter asked that the rule be very specific in all cases where the first come, first served waiting list procedures do not apply. Section 887.157 contains detailed guidance on how to apply the Federal preferences, including the circumstances under which a PHA may provide assistance to applicants who do not qualify for a Federal preference before other applicants who do qualify. These Federal preference regulations are same as the Federal preference regulations published at 53 FR 1122 on January 15, 1988, for other assisted housing programs, including the Certificate Program. (The conforming amendments to Part 882 include a revision of § 882.219(b)(4) to insert the correct paragraph.) In addition, §§ 887.155(b) and (c) set out the selection procedures applicable, respectively, to families affected by rental rehabilitation activities and when HUD provides a PHA with housing voucher authority to be made available to a class of applicants based upon the identity or location of the property occupied by the applicants.

Briefing Families

The Department has simplified the briefing requirements (§ 887.163), to provide PHAs greater discretion in determining the information that should be provided.

One commenter objected to the requirement to include in the briefing packet "information on the range of neighborhoods in which the family may find units." The commenter believed the requirement to be an unnecessary burden because, in its experience, families were proving very resourceful in locating housing, including housing in areas the commenter would not have thought to list. The list in § 887.163 requires PHAs to provide information on the range of neighborhoods, so that families are aware of available housing resources outside of areas of minority and economic impaction.

Security Deposits

Many commenters believed that the security deposit requirements should be the same for both the Housing Voucher Program and the Certificate Program, but there was disagreement among the commenters as to what the policy should be. Several commenters recommended using the current Housing Voucher Program requirements, namely, the greater of 30 percent of the tenant's adjusted monthly income or $50. They pointed out that this policy allows the family to know what its security deposit will be when they are looking for housing, rather than after they have found a unit. Other commenters, while agreeing with the concept of a rent-based security deposit, as proposed in section II.B.2.(d) of the February 19, 1987 NOFA (52 FR 5255), recommended that there be a maximum security deposit amount. One commenter suggested a maximum of 20–30% of the monthly rent. Another commenter recommended that, as a means of encouraging owner participation, the owner should be allowed to determine the security deposit, but the rule should also retain the current security loss guarantee by the PHA for cases where the owner accepts a security deposit in an amount less than one month's rent. Finally, one commenter believed that the current policy, described above, was in conflict with a State law, which allows the owner to collect a security deposit equal to one and one-half times the monthly rent.

The Department has decided to implement a rent-based security deposit as it proposed to do. The Department believes that the PHA is in the best position to determine the appropriate maximum security deposit within its jurisdiction. Accordingly § 887.211, Security deposits, requires the PHA to adopt a policy, for determining the maximum security deposits, subject to the conditions that the maximum not exceed one month's rent and not be unduly high as to preclude participation by program applicants. As discussed above, § 887.215 continues the NOFA policy of determining the amount an owner can claim from the PHA as reimbursement for amounts owed by the tenant under the lease by subtracting the amount of the security deposit from the amount the family owes under the lease. The security deposit requirements are not in conflict with the State law that would permit a higher maximum security deposit. Complying with the HUD requirement does not prevent the owner from complying with the State law.

Eligible and Ineligible Housing

Section III.M. lists as an ineligible housing type a unit that is owned by a PHA that is administering the ACC. The February 1987 NOFA at 52 FR 5256 contained a proposal to broaden the exclusion to cover any unit that is substantially controlled by the PHA. Several commenters objected to the proposed change. They noted that PHAs were becoming more involved in various methods to increase the supply of low-income housing, including bond issues, joint ventures, State and local programs, and the use of redevelopment tax investments, which, they claimed, increased the supply of such housing with little or no Federal expenditures. They believed that the proposed change would discourage such activities and recommended that some controls be placed on using housing vouchers in these types of units rather than imposing a total prohibition. One commenter (citing section II.B.2.(h)(2) of the February 1987 NOFA) noted that while HUD was prohibiting the use of housing vouchers in PHA-controlled housing, it was proposing to allocate housing vouchers to HUD-owned projects.

Section 887.203(b)(2) provides, as proposed in the February 1987 NOFA, that housing that is owned or otherwise substantially controlled by the PHA may not be used in the program. Under the U.S. Housing Act of 1937 the Section 8 owner must be an entity separate and independent from the PHA. The Section 8 owner may not be an entity owned or controlled by the PHA. The rule provision is intended to clarify that a unit "substantially controlled" by the PHA is covered by the statutory and regulatory prohibition on PHA ownership of a program unit. The prohibition of ownership or control by the PHA administrator tends to minimize inherent conflicts between the interests of the Section 8 owner and the PHA's performance of its responsibilities as contract administrator; for example, the determination whether the unit meets the housing quality standards. The Department recognizes that the determination whether there is "substantial control" by the PHA may be difficult to interpret and apply to some forms of interaction and cooperation between the PHA and the ownership entity. Where questions are presented, the Department will decide the issues concerning applicability of the regulatory prohibition on a case-by-case basis, bearing in mind the necessity for compliance with the statutory and regulatory standard and for avoidance of program abuse, as well as the objective described by the commenter—to encourage PHA-participation in locally-designed housing efforts.

The proposed allocation referred to by the commenter is not a parallel

situation. HUD would not be administering an ACC with respect to a unit that it owns. Housing voucher assistance allocated for families living in HUD-owned units would not be used in a HUD-owned unit. Rather, the assistance would be made available to a family that is required to *vacate* the unit as a result of a HUD property management or property disposition decision or to a family to enable the family to afford the unit *after* it is sold by HUD.

Some commenters argued that manufactured housing was becoming an increasing component of affordable housing, and that a mechanism must be established to use housing vouchers to assist in paying "lot rent." A family may use its housing voucher to rent a manufactured home. Part of the rent for such a home would include the "lot rent." Assistance is available for this purpose under the Certificate Program. The Department, however, does not, at this time, plan to expand the Housing Voucher Program to include assisting families to pay "lot rent" to lease a space for the family's manufactured home, because the Department does not have statutory authority under the Housing Voucher Program analogous to that applicable to the Certificate Program for calculating the amount of assistance when the family leases only the maufactured home space.

Administrative Plan

The Department indicated in the preamble to the February 1987 NOFA its intention to limit the administrative plan to specifying only those policies and procedures where the PHA has discretion to establish local policy for the treatment of applicants and participants. Several commenters noted their agreement with this proposal. Section 887.61 contains the revised requirements for the administrative plan. This section calls for a combined administrative plan when a PHA is administering both the Housing Voucher Program and the Certificate Program. Conforming amendments have been made to the Certificate Program regulation.

Portability

The issue of portability of housing vouchers raised a substantial amount of conflicting but generally adverse public comment.

One commenter objected to the concept of portability on the ground that neither the Housing Voucher Program nor the Certificate Program is an entitlement program, but in the view of the commenter, they are "highly limited local programs funded with stringently limited federal dollars" and that portability creates a national preference for portability families at the expense of local assistance programs and the local families they serve. Several commenters claimed that portability removed the PHA's control over its program and budget. The principal objection to portability was the claim that it is very complicated and burdensome to administer. In particular, the billback procedures were singled out as creating "a web of financial entanglements" among numerous PHAs. Many commenters argued that the administrative fee, which is split on an 80/20 percent basis between the initial and receiving PHAs, is inadequate compensation for the additional administrative burdens involved in handling a portability family. Another commenter noted that the NOFA did not specify whether the initial PHA or the receiving PHA was responsible for paying a vacancy claim. The commenter assumed that if the initial PHA were responsible for the housing voucher contract, it would make the vacancy payment, but thought problems would arise because it would have to depend on the receiving PHA to verify the claim and determine the amount.

Some of these commenters characterized the provision that permitted an initial PHA to deny a portability request if the number of families so assisted by the PHA would be more than 15 percent of the units under lease in the initial PHA's housing voucher program as preferable to previous provisions, but other commenters saw the 15 percent provision as denying portability to a few families when it is generally available to all other families and still leaving an administratively complex portability system in place. Several commenters, noting the absence of any percentage limitation on the number of transfers a receiving PHA must accept, believed that incoming portability families could take precedence over long term residents, particularly in certain magnet cities. These commenters found such a result both unfair to waiting-list families and a potential source for litigation against them by disappointed waiting-list families.

The commenters suggested several changes in or alternatives to the current portability system, which they believed would make portability less burdensome. Several commenters believed that portability should be voluntary and that mandatory portability imposed unnecessary fiscal and administrative burdens on PHAs; another commenter would make portability mandatory for only 5 percent of the units under lease. Some of these commenters referred to the "mobility" policy as carried out in the Certificate Program as the best way to handle tenant moves from jurisdiction to jurisdiction. Another commenter believed that a housing voucher holder should not be allowed to use the portability feature if the holder owed money to the initial PHA, while another commenter would permit portability only for families already leasing a unit in the initial PHA's jurisdiction. It was also suggested that portability not be allowed between a county PHA and a city PHA within the county; the commenter believed that it made no sense to permit portability involving such short distances. Several commenters contended that portability hurts PHAs with lower payment standards, notably small and rural PHAs, when housing voucher holders within their jurisdictions move to jurisdictions with higher payment standards. Most of the commenters making this point were opposed to portability, but one commenter, who agreed with the concept of portability, urged that HUD develop a mechanism to provide supplemental funding to the initial PHA.

Several commenter stated that a far less administratively burdensome and a fairer alternative to the current portability system would be for HUD to provide portability housing vouchers to receiving PHAs through a headquarters reserve. When a transferring family left the program, the housing voucher would be returned to the reserve. Another approach suggested by some commenters would require the receiving PHA to provide its next available housing voucher to the transferring family and eliminate billing the initial PHA (some commenters would allow billing the initial PHA only if the receiving PHA did not have a housing voucher immediately available for the transferring family).

A commenter was concerned about the financial burden that would be imposed on the receiving PHA when it must make advances on behalf of the family moving into its jurisdiction and then wait for reimbursement from the initial PHA.

The Department has left the portability requirements (Subpart L) substantively the same as they have been under the part III.L. of the February 1987 and March 1988 NOFAs. In large part, this decision is based on the fact that the Department must develop a proposed rule to implement section 8(r) of the 1937 Act, as added by section 145 of the HCD Act of 1987. Section 8(r)

concerns portability with respect to both housing vouchers and certificates within the same, or a contiguous, metropolitan statistical area as the one in which the PHA approving the assistance is located. Section 8(r)(4) expressly provides that section 8(r) may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under section 8 of the 1937 Act. The Department will review its current portability requirements as part of the proposed rulemaking to implement section 145.

In the meantime, the Department will keep its current policies because portability provides an important option to assisted families to move to another jurisdiction to be nearer to employment opportunities, better schools, or a supporting network of family and friends. The availability of portability should not cause large numbers of families to undertake long moves. Based on general mobility rates for lower income families, no more than ten percent of housing voucher holders should use portability and most of these families should move within a metropolitan area.

PHAs may simplify the portability feature. They may issue one of their own housing vouchers to an incoming family rather than act as a receiving PHA. They may also join with other PHAs to set up a pool or an exchange system to permit families to move to other jurisdictions. Several metropolitan areas and a consortium of PHAs in Eastern Massachusetts, Connecticut, and New Hampshire have set up such systems.

Set-Aside to Aid in the Desegregation of Public Housing

One commenter, while sympathetic with the purpose of this set-aside, questioned whether HUD could comply with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 when the set-aside involves a race conscious selection process. This set-aside furthers these Civil Rights Acts by providing a means to remedy preliminary findings of noncompliance with Title VI when other efforts have not succeeded. Housing vouchers may be used to provide remedies to identified victims of practices or procedures in a PHA's public housing program that have been found to be in violation of Title VI. A PHA may not assign preferences or priorities for issuing housing vouchers on the basis of race or ethnicity of applicants, except for victims of discriminatory practices or procedures.

Interchangeability and Related Issues

Several commenters objected to the proposal to permit certificate holders to trade in their certificate for a housing voucher, if available (see Part II.B.2.(c), 52 FR 5255, February 19, 1987). Several commenters believed that the proposal would just add more complexity to both programs. One of these commenters wanted to know when the family would have the choice and whether the life of the housing voucher would be 120 days or the balance of the time remaining on the certificate. Another commenter believed that an interchangeability policy could result in owners putting undue pressure on certificate holders to get housing vouchers so that the owner could charge a higher rent. Other commenters appeared to favor the concept, but objected to the fact that housing voucher holders would not have the opportunity to trade in their housing vouchers for certificates. They believed that providing for interchangeability in both directions would enable HUD to analyze better the relative merits of the two programs.

This rule adopts interchangeability and permits a holder to trade in either a housing voucher or a certificate (see §§ 887.155(a)(1)(iv) and 882.209(a)(10)). The initial term of the housing voucher or certificate so issued may not exceed the term remaining on the certificate or housing voucher that has been traded-in, and extensions, if any, may not cause the total term to exceed 120 days (see §§ 887.165(c) and 882.209(d)(3)).

Two commenters also expressed concern with the provision in section III.I.(d)(4)(i), which permits an applicant family to refuse a housing voucher in order to wait for a certificate and to receive a housing voucher after it has refused a certificate. These commenters believed that it would greatly simplify the administration of both programs if the PHA had the authority to choose which type of assistance to offer an applicant family. Another commenter wanted to know if this provision could be interpreted as given the PHA the authority to choose which type of assistance to provide. Section 887.155(a)(1)(iii) codifies the policy permitting an applicant family to refuse a housing voucher to wait for a certificate. This section, however, provides more administrative flexibility to PHAs by eliminating the requirement to remove the family from the waiting list if it refuses the second form of assistance and permitting the PHA to establish policies in its administrative plan. Conforming Certificate Program changes have been made at § 882.209(a)(9).

Applications for Housing Vouchers and HUD Invitations for Applications

A commenter noted that section III.E.(c) required the application include for "targeted housing vouchers only" the identification of the size and composition of families to be assisted. The commenter believed that the requirement should be clarified to indicate whether the number of units by bedroom size and family composition must be specified for all types of housing voucher applications. Another commenter recommended that the HUD invitation for applications detail any priorities or preferences the inviting field office will use in evaluating the applications.

A PHA must indicate bedroom size, but not family composition, on any application for housing vouchers.

Utility Allowances

Several commenters suggested that the utility allowances be eliminated because they believed them to be confusing to both landlords and tenants. Utility allowances are included in the statutory requirements for determining the amount of the the housing voucher payment to be paid on behalf of a family (see section 8(o)(2)). It should be noted, however, that the utility allowance affects only the determination of a family's minimum rent (see § 887.353(a)(2)).

Term of Housing Vouchers

A commenter recommended that the term of the housing vouchers be extended to one year. The commenter believed that with a 60 to 120 day term there were families living in units that do not meet housing quality standards or whose landlords will not participate in the Housing Voucher Program and who would, therefore, have to allow their housing voucher to expire or would have to breach their existing lease in order to receive housing voucher assistance. The Department has not adopted this recommendation because it would be detrimental to families that can use their housing vouchers and certificates within the 60 to 120 days provided.

Lease

A commenter suggested that the lease and lease addendum be combined into one form. The lease addendum consists of the lease provisions required by HUD. The required provisions may be combined in a single form with other lease provisions.

Family Eligibility

A commenter suggested that a family should not receive a housing voucher or a certificate if the family has more than one damage claim that exceeds the security deposit by $200. Another commenter urged that a PHA be permitted to deny a housing voucher or certificate on the same grounds set out in sections III.P.(b)(2) and (3) for terminating tenancy. These grounds include a family history of disturbance of neighbors or destruction of property and of crime of physical violence to persons or property.

This rule (§ 887.403(a)(3) and (4)), as did the NOFAs, permits a PHA to deny a housing voucher to a family if the family owes rent or other amounts to the PHA in connection with section 8 or public housing assistance, or if the family has not reimbursed the PHA for any amounts paid to an owner by the PHA for rent or other amounts owed by the family. Neither this rule nor the NOFAs set a minimum amount that must be owed by the family before a PHA may deny the family a housing voucher. Rather, the decision to deny a housing voucher to a family based on the family's failure to reimburse the PHA is left to the discretion of the PHA based on its consideration of all the facts. (See 49 FR 12215, March 29, 1984.)

Section III.P.(b)(2) and (3), which is codified in this rule in § 887.213(b)(1), set out two examples of "other good cause" for which an owner may terminate a tenancy. They are: a family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property and criminal activity by family members involving crimes of physical violence to persons or property. The Department has not adopted the suggestion that these examples be added as grounds for a PHA to deny a family a housing voucher. These examples concern the question of a family's suitability as a tenant which is an owner's responsibility to assess, not the PHA's. As noted in § 887.155(a)(1)(ii):

> The owner selects the tenant for occupancy of a unit. The PHA may not establish selection criteria based on the applicant's suitability as a tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the owner concerning either the family's expected behavior as a tenant or its suitability as a tenant.

Double Subsidy

One commenter suggested that the FmHA Section 515 program be included in prohibition against double subsidy contained in section III.J.(k). The commenter urged that the mechanism for avoiding payment of double subsidy for tenants be structured in a way so that the excess subsidy remain with the PHA. Section 887.159 which contains the prohibition against double subsidy refers to the FmHA Section 521 Program (comparable to the Section 236 Rental Assistance Payments Program) as an example of a duplicative Federal housing subsidy and not the basic FmHA Section 515 Program (an interest reduction program comparable to the Section 236 Program). The Section 515 units have been included in § 887.209(b)(2) and are treated the same as Section 236 units for determining the rent to owner.

Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Certificate Program and the Housing Voucher program are part of the Section 8 Existing Housing program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

This rule constitutes a major rule as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Analysis of the rule, however, indicates that it does have an annual effect on the economy of $100 million or more. The Director of the Office of Management and Budget, in accordance with section 6(a)(4) of Executive Order 12291, has waived the requirements of section 3 and 4 of the Executive Order.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entitites, because the rule would continue an ongoing program and does not significantly alter current policies and requirements.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal Government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule essentially codifies existing program requirements for the Housing Voucher Program and does not substantially alter the established roles of HUD, the States, and local governments, including PHAs. To the extent that particular revisions have altered responsibilities, these revisions have generally been in response to statutory changes, have increased the discretion of the non-Federal governmental entities, or have done both.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it does not affect the role or institution of the family in society. This rule codifies existing program requirements. The Housing Voucher Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing or their choice.

This rule was listed as Sequence Number 957 in the Department's Semiannual Agenda of Regulations published on April 15, 1988 (52 FR 13857), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502–0123; 2502–0154; 2502–0161; 2502–0185; 2502–0348; 2502–0350; 2577–0067; and 2577–0083.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

SECTION 8 HOUSING VOUCHER PROGRAM OMB APPROVAL NUMBERS

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Application forms HUD-52515 (2502-0123)	1,000	1	1,000	3	3,000	887.55
Claim for security deposit and vacancy loss HUD-52676 (2502-0154)	500	5.50	2,750	1	2,750	887.215
Tenant furnished utilities HUD-52662 (2502-0161)	1,000	1	1,000	3	3,000	887.361
Inspection form HUD-52580 (2502-0185)	1,000	1	150,000	0.5	75,000	887.207 887.257 887.259
Financial forms HUD-52663; 52672; 52673; 52681 (2502-0348)	1,000	1	7,000	1.43	10,000	887.55 887.101
Request for lease approval HUD-52517A (2502-0350)	1,000	1	50,000	.08	4,000	887.207
Balance sheet HUD-52595 (2577-0067)	1,000	1	1,000	1	1,000	887.55 887.101
HUD-50058 (2577-0083)	1,000	1	50,000	1	50,000	887.151
Total burden hours					148,750	

The Catalog of Federal Domestic Assistance program numbers for this rule are: 14.156, 14.230, and 14.580.

List of Subjects

24 CFR Part 511

Rental rehabilitation grants, Grant programs: Housing and community development, Low and moderate income housing.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Low and moderate income housing, Mobile homes.

24 CFR Part 887

Grant programs: Housing and community development, Housing, Rent subsidies, Low and moderate income housing.

24 CFR Part 888

Rent subsidies.

24 CFR Part 960

Public housing.

Accordingly, the Department amends 24 CFR Chapters V, VIII, and IX, as follows:

1. In Chapter VIII, a new Part 887 is added to read as follows:

PART 887—HOUSING VOUCHERS

Subpart A—General Information

Sec.

887.1 Purpose of the Housing Voucher Program.
887.3 Scope and applicability of the part.
887.5 Equal opportunity requirements.
887.7 Definitions.

Subpart B—Funding Allocations and Application Procedures

887.51 Allocations of budget authority to Regional and Field Offices.
887.53 Invitation for applications.
887.55 Submission of applications.
887.57 Evidence of PHA's authority to participate in the Housing Voucher Program.
887.59 Equal opportunity housing plan.
887.61 Administrative plan.
887.63 HUD review of applications.
887.65 HUD determination to administer a local program under this part.

Subpart C—Annual Contributions Contract and PHA Responsibilities

887.101 Annual contributions contract.
887.103 Administrative fees paid to PHA.
887.105 PHA responsibilities.
887.107 PHA public notice to encourage participation by eligible families.
887.109 PHA activities to encourage participation by owners and others.
887.111 Audit requirements.

Subpart D—Selecting Families and Issuing Housing Vouchers

887.151 Eligibility requirements (eligible family).
887.153 Waiting list procedures.
887.155 Selecting families and issuing housing vouchers.
887.157 Federal selection preferences.
887.159 Prohibition against double subsidy.
887.161 Housing voucher packet.
887.163 PHA briefing of families.
887.165 Term of the housing voucher.
887.167 Continued participation when a family wants to move within the PHA's jurisdiction.

Subpart E—Finding and Leasing a Unit and Terminating Tenancy

887.201 "Finders-keepers" policy.
887.203 Eligible and ineligible housing.
887.205 Program information to owners.
887.207 PHA approval of unit and lease.
887.209 Lease between unit owner and family.
887.211 Security deposit.
887.213 Owner termination of tenancy.
887.215 Amounts recoverable under the lease.

Subpart F—Housing Quality Standards, Periodic Unit Inspection, and Maintenance

887.251 Housing quality standards (HQS).
887.253 Occupancy standards.
887.255 Owner responsibility to maintain the unit.
887.257 PHA periodic unit inspection to ensure unit continues to meet HQS.
887.259 Inspection reports.
887.261 PHA recourse if unit does not meet HQS.

Subpart G—Housing Voucher Contract and Owner Responsibilities

887.301 Housing voucher contract between PHA and unit owner.
887.303 Owner responsibilities.
887.305 Contracting out owner functions.

Subpart H—Payment Standard and Housing Assistance Payment

887.351 Determining the payment standard and the payment standard schedule.
887.353 Determining housing assistance payments amounts.
887.355 Regular reexamination of family income and composition.
887.357 Interim reexamination of family income and composition.
887.359 Changes in family size or composition.
887.361 Adjustments of utility allowances.
887.363 Housing assistance payments equal to zero.

Subpart I—Family Obligations; Denial and Termination of Assistance

887.401 Family responsibilities.
887.403 Grounds for PHA denial or termination of assistance.
887.405 Informal review or hearing.

Subpart J—Special Housing Types

887.451 Purpose of this subpart.
887.453 Cooperative or mutual housing: Definition.
887.455 Cooperative or mutual housing: Limitation on the use of housing voucher authority.
887.461 Independent group residences (IGR): Definitions.
887.463 Independent group residences: Selection preference.
887.465 Independent group residences: Additional lease requirements.
887.467 Independent group residences: Housing quality standards.
887.469 Independent group residences: Payment standard.

887.471 Manufactured homes: Definition.
887.473 Manufactured homes: Housing quality standards.
887.481 Single room occupancy (SRO): Definition.
887.483 Single room occupancy: Additional eligibility criteria.
887.485 Single room occupancy: Housing quality standards.
887.487 Single room occupancy: Payment standard.
887.489 Congregate housing: Definition.
887.491 Congregate housing: Housing quality standards.
887.493 Congregate housing: Payment standard.

Subpart K—Shared Housing

887.501 Applicability, scope, and purpose.
887.503 Definitions.
887.505 Types of shared housing and applicable requirements.
887.507 PHA administration of shared housing.
887.509 Housing quality standards for shared housing.
887.511 Occupancy of a shared housing unit.
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Subpart L—Mobility and Portability

887.551 Overview.
887.553 Definitions.
887.555 Mobility: Encouraging continued participation through voluntary arrangements among PHAs when a family wants to move outside the PHA's jurisdiction.
887.557 Portability: Encouraging continued participation when a family wants to move outside the PHA's jurisdiction and there is no voluntary arrangement.
887.559 Portability: Family eligibility.
887.561 Portability: Determination to deny or terminate assistance.
887.563 Portability: Responsibilities of the initial PHA.
887.565 Portability: Responsibilities of the receiving PHA.
887.567 Portability: Subsequent moves.

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (52 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 887.1 Purpose of the Housing Voucher Program.

Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) authorizes the Housing Voucher Program. The purpose of the Housing Voucher Program is to assist eligible families to pay rent for decent, safe, and sanitary housing.

§ 887.3 Scope and applicability of the part.

The provisions of this part apply to the Housing Voucher Program authorized by section 8(o) of the 1937 Act.

§ 887.5 Equal opportunity requirements.

(a) Each participating public housing agency and owner must comply with the following:

(1) Title VI of the Civil Rights Act of 1964;

(2) Title VIII of the Civil Rights Act of 1968;

(3) Executive Order 11063, Equal Opportunity in Housing, 1962;

(4) Section 504 of the Rehabilitation Act of 1973 (In the case of owners, compliance with section 504 consists of adherence to pertinent housing voucher contract provisions);

(5) The Age Discrimination Act of 1975; and

(6) Any related regulations or other requirements.

(b) Failure to comply with these equal opportunity requirements may result in imposition of sanctions.

(c) A PHA must affirmatively act to provide opportunities to participate in the Housing Voucher Program to persons who, because of such factors as race, ethnicity, sex of household head, age, or source of income are less likely to apply for housing vouchers. (Special efforts also must be made with respect to persons expected to live in the PHA's jurisdiction because of present or planned employment, as indicated in the local housing assistance plan developed under Title I of the Housing and Community Development Act of 1974.)

§ 887.7 Definitions.

1937 Act. The United States Housing Act of 1937.

Adjusted income. See § 813.102 of this chapter.

Annual contributions contract (ACC). A written agreement between HUD and a PHA to provide annual contributions to the PHA for housing assistance payments and administrative fees.

Annual income. See § 813.106 of this chapter.

Assisted lease (or lease). A written agreement between an owner and a family for the leasing of a dwelling unit by the owner to the family with assistance payments under a housing voucher contract between the owner and the PHA. In the case of cooperative or mutual housing, "lease" means the occupancy agreement or other written agreement establishing the conditions for occupancy of the unit.

Common space. Defined in § 887.503 for purposes of shared housing.

Congregate housing. Defined in § 887.489.

Cooperative or mutual housing. Defined in § 887.453.

Disabled person. See § 812.2 of this chapter.

Displaced person. See § 812.2 of this chapter.

Elderly person. A person who is at least 62 years of age.

Eligible family (family). See § 887.151(a)

Fair market rent (FMR). The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which would be required to be paid in order to rent privately owned decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities in the market area. Fair Market Rents for existing housing are published in the **Federal Register** by HUD under Part 888 of this chapter. FMRs are used by PHAs in the Housing Voucher Program to develop the payment standard used to determine the appropriate amounts of housing assistance to be paid on behalf of participating families.

Handicapped person. See § 813.102 of this chapter.

HCD Act of 1974. The Housing and Community Development Act of 1974.

Housing assistance payment. The monthly payment by the PHA to an owner on behalf of a family participating in the Housing Voucher Program. The maximum housing assistance payment is determined by subtracting 30 percent of a family's monthly adjusted income from the payment standard that applies to the family. For additional detail see § 887.353.

Housing assistance plan. (a) A housing assistance plan submitted by a local government participating in the Community Development Block Grant Program as part of the block grant application, in accordance with the requirements of the Community Development Block Grant regulations in § 570.303(c) of this title and approved by HUD; or

(b) A housing assistance plan meeting the requirements of § 570.303(c) of this title, submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

Housing voucher. A document issued by a PHA declaring a family to be eligible for participation in the Housing Voucher Program and stating the terms and conditions for the family's participation.

Housing voucher contract. A written contract between a PHA and an owner, in the form prescribed by HUD for the Housing Voucher Program, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible family.

Housing voucher holder. A family that has an unexpired housing voucher.

HUD. The Department of Housing and Urban Development or designee.

Independent group residence (IGR). Defined in § 887.461.

Individual lease shared housing. Defined in § 887.503 for purposes of shared housing.

Initial PHA. Defined in § 887.553 for purposes of portability.

Lease. See assisted lease.

Lower income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family income.

Manufactured home. Defined in § 887.471.

Occupancy standards. Standards that the PHA establishes for determining the appropriate number of bedrooms needed to house families of different sizes or composition.

Owner. Any person or entity having the legal right to lease or sublease decent, safe, and sanitary housing.

Participant. A family becomes a participant in the PHA's Housing Voucher Program when the PHA executes a housing voucher contract with an owner for housing assistance payments on behalf of the family.

Payment standard. An amount, adopted by a PHA for each bedroom size and Fair Market Rent area, that is used to determine the amount of assistance that is to be paid by the PHA on behalf of a family participating in the Housing Voucher Program. For additional detail see §§ 887.351 and 887.353.

Private space. Defined in § 887.503 for purposes of shared housing.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of lower income housing.

PHA jurisdiction. The area in which the PHA is not legally barred from entering into housing voucher contracts.

Receiving PHA. Defined in § 887.553 for purposes of portability.

Rent to owner. The total of the monthly amount paid under the housing voucher contract by the PHA to the owner on behalf of the family and the monthly amount the family must pay to the owner to cover the balance of rent due the owner under the lease.

Resident assistant. Defined in § 887.461 for purposes of IGRs.

Secretary. The Secretary of Housing and Urban Development, or designee.

Service agency. Defined in § 887.461 for purposes of IGRs.

Service agreement. Defined in § 887.461 for purposes of IGRs.

Shared housing. Defined in § 887.503.

Single room occupancy (SRO) housing. Defined in § 887.481.

Utility allowance. An amount that applies when the cost of utilities (except telephone) and other housing services (e.g., garbage collection) for an assisted unit is not included in the rent to owner and is instead the responsibility of the family. The allowance is an amount equal to the estimate made or approved by the PHA (see § 887.353) of the monthly costs of a reasonable consumption of these utilities and other services for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment. In the case of shared housing, the amount of the utility allowance for an assisted family is a pro rate portion of the utility allowance for the entire unit, based on the number of bedrooms in the assisted family's private space. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the utility allowance for the assisted individual is one half the utility allowance for the entire unit.

Very low-income family. A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Subpart B—Funding Allocations and Application Procedures

§ 887.51 Allocations of budget authority to Regional and Field Offices.

The Department allocates housing voucher authority to its Regional or Field Offices in conformance with section 213(d) of the HCD Act of 1974 and regulations implementing section 213(d) in Part 791 of this title.

§ 887.53 Invitation for applications.

The Regional Office or Field Office invites PHAs to submit applications to the appropriate Field Office based upon the amount of housing voucher authority available. In determining which PHAs to invite, the Regional Office or Field Office must consider the need for housing assistance in the community, and may also consider a PHA's performance in administering HUD programs, the extent to which a PHA is utilizing the housing vouchers and certificates previously provided by HUD, and the number of housing vouchers that should be offered to a PHA to facilitate program administration and economies of scale and the purposes for which the allocation was made. The Regional or Field Office may set application submission deadlines in their invitation.

§ 887.55 Submission of applications.

(a) A PHA must submit its application for the Housing Voucher Program to the HUD Field Office.

(b) The application must be in the form, and in accordance with the instructions, prescribed by HUD and must contain the following information and such other information as HUD decides is necessary:

(1) The number of units by bedroom size (*i.e.*, one bedroom units, two bedroom units, and so forth), and the approximate number of units for elderly, handicapped, or disabled families;

(2) Estimates of the average adjusted income for prospective participants for each bedroom size; and

(3) The PHA's schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a PHA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within no more than twelve months after execution of the ACC by HUD.

(c) The PHA may submit the following with an application:

(1) Its equal opportunity housing plan or changes in its existing HUD-approved plan:

(2) Its administrative plan or changes in its existing HUD-approved plan;

(3) Estimates of financial requirements for preliminary costs, administrative costs, and housing assistance payments on HUD-prescribed forms; and

(4) A schedule of utility allowances or any changes in its existing schedule, with a justification of the amounts proposed.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0123, 2502-0348, and 2577-0067.)

§ 887.57 Evidence of PHA's authority to participate in the Housing Voucher Program.

If it has not previously done so, a PHA must submit information that demonstrates that the applicant qualifies as a Public Housing Agency and demonstrates the PHA jurisdiction. This submission must include the relevant enabling legislation and a supporting opinion from the PHA counsel. The PHA must submit additional information whenever there is a change that affects its status as a PHA or otherwise affects its authority to participate in the Housing Voucher Program, including any changes in the PHA jurisdiction.

§ 887.59 Equal opportunity housing plan.

(a) A PHA must have a HUD-approved equal opportunity housing plan that complies with the requirements of this section. If the PHA is participating in the Certificate Program, the PHA must have a combined equal opportunity housing plan that covers the PHA's entire Housing Voucher Program and Certificate Program and complies with the requirements of this section and of § 882.204(b)(1) of this chapter.

(b) The PHA must submit for HUD approval any changes in its HUD-approved equal opportunity housing plan.

(c) The plan must describe the PHA's policies and procedures for—

(1) Outreach to eligible families, and satisfying the requirements of § 887.107;

(2) Achieving participation by owners of units of suitable price and quality located outside areas of low income or minority concentrations (and outside the local jurisdiction in any area where the PHA is not legally barred from entering into contracts) and satisfying the requirements of § 887.109;

(3) Selecting families for participation without discrimination because of age, race, color, religion, sex, handicap, or national origin;

(4) Assisting housing voucher holders who allege that illegal discrimination is preventing them from leasing suitable units.

(d) The plan must include any special rules for use of housing vouchers covered by § 887.155(c), HUD-targeted housing vouchers.

(e) The plan shall also include a signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of Civil Rights Act of 1968; Executive Order 11063; the Age Discrimination Act of 1975 and the rehabilitation Act of 1973; and if the housing assistance may be used within an area of a Housing Assistance Plan, a certification that the applicant will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the housing assistance plan.

§ 887.61 Administrative plan.

(a) A PHA must have a HUD-approved administrative plan that complies with the requirements of this section. If the PHA is participating in the Certificate Program, the PHA must have a combined administrative plan that covers the PHA's entire Housing Voucher Program and Certificate Program and complies with the requirements of this section and of § 882.204(b)(3) of this chapter.

(b) The PHA must submit for HUD approval any changes in its HUD-approved administrative plan.

(c) The plan must include:

(1) A statement of the PHA's overall approach and objectives in administering the Housing Voucher Program;

(2) A description of the policies concerning the functions for which the PHA has discretion to establish local policies for treatment of applicants or participants, including: maintaining, closing, and reopening PHA waiting lists; voluntary interjurisdictional mobility of housing voucher holders issuing, extending, and denying housing vouchers; occupancy standards; preferences; single room occupancy housing; shared housing; collecting amounts owed the PHA; informal reviews and hearings; recertifications; and directing Section 8 program activities in support of local or area-wide housing and community development initiatives. (The administrative plan should not restate HUD-mandated policies and procedures.);

(3) A statement that the housing quality standards to be used in the operation of the program will be as set forth in § 887.251 (and Subparts J or K, if applicable), or as set forth in specified HUD-approved variations in the Acceptability Criteria; and

(4) A statement of the number of employees proposed for the program, by position and functions to be performed.

§ 887.63 HUD review of applications.

(a) *Processing applications.* (1) HUD shall send applications for more than 12 units to the appropriate chief executive officer of the unit of general local government for review and comment, in accordance with 24 CFR Part 791, as required by section 213 of the Housing and Community Development Act of 1974.

(2) HUD shall evaluate each application on the basis of the requirements of this part, and shall consider any comments received from the unit of general local government. HUD shall take into account the PHA's ability to administer the Housing Voucher Program, as evidenced, in part, by its performance in operating the Certificate Programs, where applicable.

(b) *Application preferences.* (1) HUD shall give preference to an application from a PHA that demonstrates locally initiated efforts in support of its Housing Voucher and Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(2) HUD may give preference to applications from PHAs that provide families with the broadest geographical choice of housing, including interjurisdictional and interstate housing choice.

(3) HUD may give preference to applications from PHAs whose needs previously have been underfunded in relation to the needs of other localities within the allocation area.

(4) HUD may give preference to applications from PHAs that do not have sufficient housing vouchers or certificates, including turnover, to assist families being displaced or who would have a rent burden greater than 50 percent of income, as a result of rental rehabilitation activities under Part 511 of this title.

(c) *Approval or disapproval of applications.* (1) HUD shall notify the PHA of its approval or disapproval the PHA's application.

(2) When HUD approves an application, HUD shall notify the PHA of the amount of authority for housing assistance payments and administrative fees and the number of housing vouchers by bedroom size. HUD may negotiate a shorter leasing schedule with the PHA to further the objective of expeditiously leasing units.

(3) When HUD disapproves an application, the notice shall include a statement of the reasons.

§ 887.65 HUD determination to administer a local program under this part.

If the Assistant Secretary for Housing determines that there is no PHA

organized or that there is no PHA able and willing to implement the provisions of this part for an area, HUD (or an entity acting on behalf of HUD) may, under section 8(b)(1) of the 1937 Act, enter into housing voucher contracts with owners and perform the functions otherwise assigned to PHAs under this part with respect to the area.

Subpart C—Annual Contributions Contract and PHA Responsibilities

§ 887.101 Annual contributions contract.

(a) *General.* The ACC is the contract between HUD and the PHA. In the ACC, the PHA agrees to administer the Housing Voucher Program in the PHA jurisdiction and HUD agrees to pay the PHA amounts approved by HUD for administrative fees and housing assistance payments.

(b) *Items submitted with the ACC.* The following items must be submitted when the signed ACC is submitted to HUD or shortly thereafter as required by HUD:

(1) The PHA's equal opportunity housing and administrative plans or changes in the PHA's existing HUD-approved equal opportunity housing and administrative plans, developed in accordance with §§ 887.59 and 887.61, respectively;

(2) The PHA's estimates of financial requirements, on HUD-prescribed forms; and

(3) The PHA's schedule of utility allowances or any changes in its existing schedule.

(c) *HUD review and execution of the ACC.* After HUD approves the items specified in paragraphs (b)(1) and (b)(3) of this section, HUD signs the ACC and returns a completely executed copy to the PHA.

(d) *Term of ACC for the funding increment.* The initial contract term for each funding increment is five years, beginning on the date HUD signs the ACC or other date as determined by HUD. The initial ACC term for the funding increment may be extended by written agreement of the PHA and HUD.

(e) *Amount of annual contributions.* (1) The maximum total payment during the term of the ACC for each funding increment shall not be more than five times the contract authority for the project as specified in the ACC. The contract authority for the project shall be the total of—

(i) The average HUD-estimated annual PHA administrative fee (as determined consistent with § 887.103), plus

(ii) 115 percent of the amount that HUD estimates would be required in the first year of the ACC for housing assistance payments to owners, assuming a full year of occupancy.

(3) The PHA must administer its Housing Voucher Program in a manner that will ensure its operation within the amount contracted for under the ACC. The PHA must take into account the number of families that may be assisted, including consideration of the effect of changes in the applicable payment standard, such as adjustments to ensure continued affordability, changes in family income and composition, and portability of housing vouchers.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0348, and 2577-0067.)

§ 887.103 Administrative fees paid to PHA.

(a) *General.* Three types of fees are paid to the PHA for HUD-approved costs to administer the Housing Voucher Program. The three types of fees are discussed below. The specific amounts of these fees are established by HUD in accordance with section 8(q) of the 1937 Act in such amounts as are provided in appropriations Acts.

(b) *Preliminary fee.* HUD pays a PHA a preliminary fee for actual costs to perform tasks involved in taking families into the program to lease the number of units that can be supported with a new increment of housing voucher funding authority. A PHA must document its actual costs. This fee covers expenses incurred in helping families who inquire about or apply for the program, as well as all of the intake functions associated with using newly authorized funds. For each funding increment, a PHA receives a preliminary fees to cover actual expenses incurred by the PHA before the housing voucher contract is executed. The preliminary fee equals the lesser of actual expenses approved by HUD for each housing voucher that results in an initial lease or housing voucher contract or a maximum amount specified by HUD for each housing voucher in the PHA's HUD-approved application. (For additional requirements for portable housing vouchers, see § 887.563(h).)

(c) *Ongoing administrative fee.* The PHA ongoing fee is based on the number of units under housing voucher contracts on the first day of each month. The ongoing administrative fee is designed to cover the PHA cost of administering assistance on behalf of the program participants. The ongoing administrative fee equals a HUD-specified percentage of the applicable current section 8 Existing Housing Fair Market Rent for two-bedroom units, published in the **Federal Register** in accordance with § 888.115 of this chapter. (For additional requirements for portable housing vouchers, see § 887.563(g).)

(d) *Hard-to-house fee.* A hard-to-house fee is provided to cover the cost of special assistance given to a family with three or more minors to enable the family to find suitable housing. The PHA receives a hard-to-house fee in an amount specified by HUD for special assistance provided to each family with three or more minors that results in a unit coming under lease in the Housing Voucher Program. The PHA qualifies for a hard-to-house fee each time an eligible family moves and a new housing voucher contract is signed for a different unit. (For additional requirements for portable housing vouchers, see § 887.563(h).)

§ 887.105 PHA responsibilities.

(a) The PHA must comply with its ACC, the application, applicable HUD regulations, and its HUD-approved administrative plan and HUD-approved equal opportunity housing plan.

(b) The following is a list of activities the PHA must carry out in administering the Housing Voucher Program:

(1) Publish and disseminate information concerning the availability and nature of housing assistance for lower income families (see § 887.107); invite owners to make units available for leasing in the program and develop working relationships with real estate associations and other appropriate groups (see § 887.109); explain program procedures to owners, including those who have been approached by housing voucher holders; comply with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration;

(2) Receive, review, and approve or disapprove applications for participation; provide a Federal preference in selecting applicants for participation in accordance with § 887.157; determine eligibility for participation and maintain a waiting list; issue a housing voucher to a family; provide the packet described in § 887.161 to each housing voucher holder; provide housing information to assisted families and, upon request, refer assisted families to appropriate social service agencies;

(3) Determine payment standard amounts and adopt and revise the schedule of payment standards (see § 887.351);

(4) Review and act on requests for lease approval (see § 887.207); inspect at least annually to determine that a unit is being maintained in compliance with

HQS and notify the owner and family of the PHA determination (see § 887.257);

(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment (see § 887.355–887.359); adjust the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

(6) Administer and enforce the housing voucher contract with an owner, including taking appropriate action, as determined by the PHA, in the case of noncompliance or default.

§ 887.107 PHA public notice to encourage participation by eligible families.

(a) The PHA must provide notice to the public of the availability of housing assistance. The PHA must provide this notice when it establishes a waiting list, reopens a waiting list that has been closed, and at other times as may be necessary to ensure maximum use of the housing assistance.

(b) The PHA must announce the availability of assistance in the local newspaper of general circulation, as well as through minority media and other suitable means, and must otherwise conform to the PHA's HUD-approved equal opportunity housing plan and with HUD's fair housing requirements to use the equal housing opportunity logotype, statement, and slogan.

(c) The notice must state that:

(1) A family already on the PHA's Section 8 waiting list, even if it was seeking a Section 8 certificate, is also on the waiting list for housing voucher assistance and does not need to reapply; and

(2) That a family on a waiting list for public housing under the 1937 Act will not lose its place on that waiting list by applying for assistance under the Housing Voucher Program.

§ 887.109 PHA activities to encourage participation by owners and others.

The PHA must make a concerted effort to elicit participation in the Housing Voucher Program by owners, real estate agents, and other local membership groups interested in housing for lower income families.

§ 887.111 Audit requirements.

Any PHA receiving financial assistance under this part is subject to the audit requirements in Part 44 of this title.

Subpart D—Selecting Families and Issuing Housing Vouchers

§ 887.151 Eligibility requirements (eligible family).

(a) An applicant is eligible for assistance under the Housing Voucher Program if, at the time it initially receives assistance under the program, it qualifies as a family (see Part 812 of this chapter) and:

(1) Qualifies as a very-low-income family;

(2) Qualifies as a lower income family (other than very low-income) and is physically displaced by rental rehabilitation activity under 24 CFR Part 511; or

(3) Has been continuously assisted under the 1937 Act.

(b) For purposes of determining housing voucher eligibility, a lower income family that lives in a project undergoing rental rehabilitation activities and whose post-rehabilitation rent would not be affordable is not, for this reason alone, considered "displaced", whether or not the family chooses to move.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577–0083.)

§ 887.153 Waiting list procedures.

(a) *Establishing a waiting list.* Each PHA must establish a waiting list of applicants for participation in the PHA's program and must maintain a single waiting list for the Housing Voucher and Certificate Programs.

(b) *Placing a family on the waiting list.* The PHA may place a family on its waiting list if the PHA makes a preliminary determination that the family is eligible for assistance (§ 887.151).

(c) *Suspending additions to the waiting list.* If there is insufficient funding authority to admit all eligible applicants to participation in the PHA's Housing Voucher and Certificate Programs, the PHA at any time may suspend the accepting or processing of new applications or adding new applicants to the waiting list, consistent with the procedures identified in its HUD-approved administrative plan. Even if the PHA is not accepting additional applications for participation because of the length of the waiting list, the PHA must place the applicant on the waiting list if the applicant is otherwise eligible for participation and claims that the family qualifies for a Federal preference as provided in § 887.157(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of housing vouchers to be issued, that there is an adequate pool of applicants who are likely to qualify for a Federal preference and it is unlikely that, on the basis of the PHA's system for applying for the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(d) *Applicant's rights.* Except with respect to a claim for Federal preference in accordance with § 887.157, nothing in this part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a housing voucher, or to participate in the PHA's Housing Voucher Program. The preceding sentence does not affect or prejudice any right, independent of this part, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement.

§ 887.155 Selecting families and issuing housing vouchers.

(a) *General.* (1)(i) The PHA must select eligible families for participation in accordance with HUD regulations and requirements and with policies and procedures stated in its HUD-approved administrative and equal opportunity housing plans. A PHA must select applicants from its waiting list, except as provided in paragraphs (b) and (c) of this section. The PHA must give a preference in selecting applicants for participation (in accordance with § 887.157) to eligible families that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(ii) The owner selects the tenant for occupancy of a unit. The PHA may not establish selection criteria based on the applicant's suitability as a tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the owner concerning either the family's expected behavior as a tenant or its suitability as a tenant.

(iii) An applicant on the PHA's section 8 waiting list may refuse the PHA's initial offer of a housing voucher, if the family wants to wait for a certificate. The family does not lose its place on the waiting list because of its refusal. (The family also may refuse a PHA's initial offer of a certificate if it wants to wait for a housing voucher.) If the family

refuses the second form of assistance, the PHA may remove the family from the waiting list, if the PHA's HUD-approved administrative plan authorizes such action.

(iv) A housing voucher holder may request the PHA to issue the holder a certificate in exchange for the housing voucher. The PHA must exchange the housing voucher for a certificate if it has certificate assistance available at the time of the request.

(2) The PHA may not issue a housing voucher to an applicant unless the applicant is eligible for assistance (§ 887.151).

(3) The PHA must issue the family a housing voucher for the smallest number of bedrooms consistent with the PHA's occupancy standards developed under § 887.253 and consistently for all families of like composition.

(4) The PHA must maintain a system to ensure that the PHA will be able to make housing assistance payments for all participants within the amounts contracted under the ACC. (See § 887.101(e).)

(b) *Families affected by rental rehabilitation activities.* (1) A PHA must issue a housing voucher to any eligible applicant family that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities under Part 511 of this title.

(2) A PHA may provide a selection preference to a family whose rent would be greater than 30 percent of its adjusted income as a result of rental rehabilitation activities under Part 511 of this title. A PHA must exercise this discretionary authority in a manner that is consistent with its obligations with respect to the Federal preferences. If a PHA provides a housing voucher to a family who falls within this category but is not eligible for a Federal preference, the family must be counted as part of the not more than 10 percent of applicants that may be issued housing vouchers before applicants who qualify for a Federal preference.

(3) HUD will publish, by **Federal Register** notice, modifications to the policies in paragraphs (b)(1) and (2) of this section as may be needed to implement any additional requirements imposed through appropriations Acts.

(4) The housing vouchers must be issued so as to give families sufficient time to decide to move (where they are not required to move) and to give them time to locate other units (where they are required to move or choose to move).

(c) *HUD-targeted housing vouchers.* As a general rule, a PHA may not establish a selection preference based on the identity or location of the housing that is occupied by the applicant. HUD, however, may provide a PHA with housing voucher authority to be made available to a class of applicants based upon the identity or location of the property occupied by the applicants, if the Assistant Secretary for Housing determines that it furthers a Federal interest to provide such a housing voucher authority (such as for desegregation purposes to be used by applicants for, and tenants in, public housing). A PHA must initially use this housing voucher authority for the purpose for which it was provided. (The "finders-keepers" policy in § 887.201 applies to families that are assisted with this housing voucher authority.)

(d) *PHA preferences.*—(1) *General.* The PHA may also develop other preferences in the selection of applicants. A PHA, however, may not establish a preference based on the identity or location of the housing that *is proposed to be occupied* by the applicant or, except as provided in paragraphs (b)(2) and (c) of this section, that *is occupied* by the applicant.

(2) *Applicants living within PHA jurisdiction.* The PHA may establish a selection preference for applicants living within the PHA's jurisdiction. This preference, however, may not be based on the length of time the applicant has lived in the PHA's jurisdiction. For purposes of this preference, a person who is working, or who has been notified that he or she has been hired to work, in the jurisdiction must be treated as living within the PHA's jurisdiction.

(e) *Grounds for denying a housing voucher.* The PHA may deny an applicant admission to participate in the program on the grounds specified in § 887.403(b).

(f) *Record keeping and record retention.* (1) The PHA must maintain records on applicants and participants in order to provide HUD with racial, ethnic, gender, and handicap status data.

(2) The PHA must retain for five years a copy of all applications, any notices to an applicant, and the applicant's responses.

§ 887.157 Federal selection preferences.

(a) *General.* (1) In selecting applicants for a housing voucher under § 887.155, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2) The PHA must inform applicants of the availability of the Federal preferences under paragraph (a)(1) of this section, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2), applicants include families on any waiting list for a housing voucher maintained by the PHA.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income" and 'rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section, or they may, in their own discretion and without HUD approval, adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each PHA must include the Federal preferences in its policies and procedures for selecting applicants for participation under § 887.155. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 887.5, the selection and participation provisions of § 887.155 (including limitations on the use of local residency requirements and preferences contained in § 887.155(d)(2)) and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provide that an applicant who qualifies for any of the Federal preferences is to be issued a housing voucher before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a housing voucher.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued housing vouchers before other applicants who are so qualified. Not more than 10 percent of the

applicants who are initially issued a housing voucher or certificate in any one-year period or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of selecting tenants from among those who qualify for a preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preference holders; or provide the applicants whose rents were increased beyond 50 percent of their incomes after completion of rental rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the PHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a housing voucher under this part, to pay more than 50 percent of its income to continue renting the rehabilitation unit.

(2) Applicants may claim qualification for a Federal preference when they apply for a housing voucher (or thereafter until a housing voucher is issued) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before issuing a housing voucher to an applicant that qualifies for one on the basis of a Federal preference, the PHA must require the applicant to provide verification that the family qualifies for preferred status under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's preferred qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the issuance of a housing voucher including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing: that is decent, safe, and sanitary; that is adequate for the family size; and that the family is occupying pursuant to a lease or occupancy agreement. Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937, or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of its refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated its housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of the preceding sentence, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Written notice from an owner or owner's agent that an applicant has to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Written confirmation of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergymen, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant that is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 887.481) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of written confirmation of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as:

(1)(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Housing Voucher Program and the Certificate Program, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing Program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813 provisions.

(2) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement by requiring the family to furnish copies of its most recent rental (or cooperative) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or by contacting the landlord (or cooperative) or its agent directly. The PHA must verify the amount paid to amortize the purchase price of a manufactured home by requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or by contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a housing voucher under this part, to pay more than 50 percent of its income to continue renting the rehabilitated unit.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. The meeting must be conducted by any person or persons designated by the PHA, who may be an officer or employee of the PHA, including the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

§ 887.159 Prohibition against double subsidy.

A family may not receive the benefit of housing voucher assistance while receiving one of the following: other section 8 or section 23 housing assistance; section 101 rent supplements; section 236 rental assistance payments; or other duplicative Federal (e.g., FmHA section 521 program), State, or local housing subsidy, as determined by HUD.

§ 887.161 Housing voucher packet.

When the PHA gives a housing voucher to a family for the first time, it also must give the family a housing voucher packet, which includes the following:

(a) Information on how the PHA computes the family's housing assistance payment (see § 887.353);

(b) A copy of the form of request for lease approval;

(c) Information on required and prohibited lease provisions (see § 887.209);

(d) Fair housing information and housing discrimination forms, as prescribed by HUD;

(e) Information on lead-based paint poisoning hazards, symptoms and prevention, the availability of blood lead level screening (including its advisability for children under seven years of age), and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint;

(f) Information on the rental rehabilitation projects that may be possible sources of housing units;

(g) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstance in which the PHA is required to provide the opportunity for an informal hearing (see § 887.405) and of the procedures for requesting a hearing; and

(h) Information on the circumstances under which a family may request an exception to the PHA's occupancy standards established under § 887.253.

§ 887.163 PHA briefing of families.

When the PHA gives a housing voucher to a family for the first time, it must explain the Housing Voucher Program. At a minimum, the briefing must include information on the following:

(a) Family and owner responsibilities under the lease and housing voucher contract;

(b) The housing quality standards;

(c) An explanation of the payment standards, how the housing assistance payment is computed, the incentive for selecting a unit renting for less than the payment standard, and the minimum rent the family must pay:

(d) An explanation of portability;

(e) An explanation of how the principal features of the Housing Voucher Program differ from the Certificate Program;

(f) An explanation of the effect on the family's position on the waiting list if the family refuses to accept the type of assistance offered;

(g) The general locations and characteristics of the full range of neighborhoods in which the PHA is able to execute housing voucher contracts and in which units of suitable price and quality may be found.

§ 887.165 Term of the housing voucher.

(a) *Initial term.* The initial term of a housing voucher is 60 days.

(b) *Extension of term.* The PHA has the discretion to extend the term of a housing voucher one or more times for a total of not more than 60 additional days (for a total term of not more than 120 days). In deciding whether or not to extend the housing voucher, the PHA must consider the following:

(1) What kind of efforts the family has made to find a suitable dwelling; and

(2) Whether there is a reasonable possibility that the family may, with the

additional advice or assistance, if any, find a suitable unit.

(c) *Interchangeability.* If the housing voucher was issued in exchange for a certificate (see § 887.155(a)(1)(iv)), the initial term and the extended term, if applicable, are measured from the date the certificate was issued.

(d) *Submitting request for lease approval.* The family must submit a request for lease approval to the PHA during the term of the housing voucher.

§ 887.167 Continued participation when a family wants to move within the PHA's jurisdiction.

If a participant in the PHA's Housing Voucher Program notifies the PHA that the family wants another housing voucher so the family can move to another unit within the PHA's jurisdiction, the PHA must:

(a) Issue another housing voucher unless the PHA does not have sufficient funding for continued assistance for the family; or

(b) Refuse to issue another housing voucher in accordance with § 887.403.

Subpart E—Finding and Leasing a Unit and Terminating Tenancy

§ 887.201 "Finders-keepers" policy.

(a) *Family's options.* A family with a housing voucher is responsible for finding a housing unit suitable to the family's needs and desires in the PHA's jurisdiction (including the receiving PHA's jurisdiction when the family is participating under the portability procedures in Subpart L of this part). A family may select the dwelling unit it already occupies if the unit is approvable.

(b) *PHA assistance.* (1) Upon request, the PHA may assist a family in finding a unit, where because of age, handicap, large family size, or other reasons, the family is unable to locate an approvable unit.

(2) The PHA also must provide assistance where the family alleges that illegal discrimination, on grounds of race, color, religion, sex, national origin, age, or handicap is preventing it from finding a suitable unit. In this case, the PHA must provide the family with a copy of the HUD-prescribed form for use in filing a housing discrimination complaint. This assistance must be in compliance with the PHA's administrative and equal opportunity housing plans.

(3) Neither in assisting a family in finding a unit nor by any other action may the PHA directly or indirectly reduce the family's opportunity to choose among the available units in the housing market. (See also the required portability procedures in Subpart L of this part.)

§ 887.203 Eligible and ineligible housing.

(a) *Eligible housing.* Any "existing" dwelling unit determined to be in decent, safe, and sanitary condition is eligible for use in the Housing Voucher Program, except for the types of housing listed in paragraph (b) of this section.

(b) *Ineligible housing.* The following types of housing are not eligible for use in the Housing Voucher Program:

(1) A unit that is receiving other assistance under the 1937 Act, except assistance under section 17 of the Act (the Housing Development Grant and Rental Rehabilitation programs);

(2) A unit that is owned or otherwise substantially controlled by the PHA administering the ACC under this part, including a PHA that is either the initial PHA or receiving PHA under the portability provisions of Subpart L of this part;

(3) 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;

(4) A unit that is occupied by its owner (including the owner of a manufactured home leasing a manufactured home space), except for a cooperative or mutual housing unit or a shared housing unit described in § 887.511(a)(2).

(5) A housing unit used as transitional housing in the Department's Transitional Housing Demonstration Program.

§ 887.205 Program information to owners.

A PHA must respond to inquiries from a unit owner who has been approached by a housing voucher holder. At a minimum, the PHA must be prepared to discuss with the owner the major program procedures, including the required and prohibited lease provisions, the lease approval procedure, the inspection to verify compliance with housing quality standards, the terms of the housing voucher contract, and the payment procedures. The PHA also must provide the owner with all necessary forms.

§ 887.207 PHA approval of unit and lease.

(a) *Request for lease approval.* The lease must be approved by the PHA. If a family has found a unit it wants and the owner is willing to lease, the family must submit to the PHA a request for lease approval signed by the owner of the unit and the family, and a copy of the proposed lease for the unit. The lease must be in accordance with § 887.209 and must be complete except for execution. (The request for lease approval must be submitted during the term of the housing voucher (see § 887.165)).

(b) *Approval of lease.* The PHA may approve the lease and unit only if:

(1) *Lease complete.* The lease complies with the requirements of § 887.209; and

(2) *Unit meets HQS.* The unit meets the applicable housing quality standards.

(c) *PHA inspection of unit.* The PHA must inspect the unit to determine if it meets the housing quality standards.

(d) *Disapproval.* The PHA must notify the family and owner if the unit and lease are not approved.

(e) *Procedure after approval.* (1) If the unit and lease are approved, the PHA must provide the owner two copies of the housing voucher contract for signature by the owner.

(2) The family and the owner sign the lease and the owner provides a copy of the signed lease to the family and the PHA;

(3) The owner signs both copies of the housing voucher contract and provides them to the PHA for execution; and

(4) The PHA executes both copies of the housing voucher contract and returns one to the owner.

(f) *Record retention.* The PHA must keep the following in its files:

(1) Each request for lease approval;

(2) The inspection reports as provided for in § 887.259;

(3) The notice that the lease is approved or disapproved;

(4) A copy of the executed lease; and

(5) The executed housing voucher contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0185, and 2502-0350)

§ 887.209 Lease between unit owner and family.

(a) *General.* A lease to be signed by the owner and family must be approved by the PHA. Before the PHA approves the lease, the PHA must determine that the lease meets the requirements of this section. The lease must include all provisions required by HUD and may not contain any provisions prohibited by HUD.

(b) *Rent provisions.* In general, under the Housing Voucher Program, the rent to owner is a matter of negotiation between the owner and the family. The PHA must provide guidance and advice to the family on whether the rent requested by the owner is reasonable, based on information the PHA has for

comparable rental units. If requested by the family, the PHA must also assist the family in negotiating a reasonable rent with the owner.

(1) *Rent increases.* The rent to owner may not be increased during the first year of the lease. The lease may provide that the owner may increase the rent at any time after the first anniversary of the lease, but the owner must give the tenant and the PHA 60 days written notice of any increase before it takes effect.

(2) *Section 236 and Section 515 projects.* In the case of insured or noninsured section 236 units or FmHA Section 515 units, having only interest reduction subsidy, the rent to owner for a housing voucher participant must be the lesser of the market rent for the unit, as approved by HUD or FmHA, or the payment standard, but not less than basic rent.

(3) *Rent reasonableness.* The PHA may disapprove a lease for a rent that is not reasonable, based on rents charged for comparable rental units. PHAs may exercise this authority in communities where the market is not functioning normally or where some families are not able to negotiate reasonable rents on their own (for example, where there is a concentration of ownership by a small number of landlords, or where rents charged to voucher holders are greater than rents charged to certificate holders living in comparable units). A PHA must document each case in which it disapproves a lease because the rent is not reasonable.

(c) *Term of lease and housing voucher contract.* (1) *Term of housing voucher contract.* The term of the housing voucher contract must begin on the first day of the term of the lease and must end on the last day of the term of the lease.

(2) *Term of lease.* (i) The term of the lease begins on a date stated in the lease and continues until:

(A) A termination of the housing voucher contract by the PHA;

(B) A termination of the lease by the family in accordance with the lease or by mutual agreement during the term of the lease. The lease must permit a termination of the lease by the family without cause, at any time after the first year of the term of the lease, on not more than 60 days written notice by the family to the owner; or

(C) A termination of the lease by the owner. The owner may not terminate tenancy except as provided in § 887.213.

(ii) The term of the lease must begin at least one year before the end of the term of the last funding increment under the ACC.

(iii) The housing voucher contract and the lease shall end if the PHA determines, in accordance with procedures prescribed by HUD, that funding under the ACC is insufficient to support continued assistance.

(iv) During the term of the lease, the amount of the housing assistance payment may change (see § 887.353).

(v) The owner may offer the family a new lease for execution by the family after approval by the PHA for a term beginning at any time after the first year of the lease. The owner must give the tenant written notice of the offer, with a copy of the PHA, at least 60 days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the family.

(d) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the dwelling unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members: without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

§ 887.211 Security deposit.

(a) *Amount authorized.* The owner may collect a security deposit from the family at the time of the initial execution of the lease. The PHA shall adopt a policy for determining the maximum amount of the security deposit that can be collected by an owner. The security deposit may not exceed one month's rent to the owner and may not be unduly high so as to preclude participation by program applicants.

(b) *Use of security deposit.* When a tenant moves out of the unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the unit lease, as reimbursement for any unpaid rent payable by the tenant or for other amounts the tenant owes under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

§ 887.213 Owner termination of tenancy.

(a) The owner may not terminate the tenancy except on the following grounds:

(1) Serious or repeated violation of the terms and conditions of the lease;

(2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(3) Other good cause.

(b)(1) The following are some examples of "other good cause" for termination of tenancy by the owner: Failure by the family to accept the offer of a new lease in accordance with § 887.209(c)(2)(v); a family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by family members involving crimes of physical violence to persons or property; the owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended

as a nonexclusive statement of some situations included in "other good cause", but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

(2) During the first year of the term of a lease, the owner may not terminate the tenancy for "other good cause", unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the term of the lease, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: Failure by the family to accept the offer of a new lease; the owner's desire to utilize the unit for personal or family use or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental).

(c) The owner may evict the tenant from the unit only by instituting a court action. The owner must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the owner gives notice to the tenant under State or local law. The notice to the PHA may be given by furnishing to the PHA a copy of the notice to the tenant.

(d) Any notice under this section may be combined with and run concurrently with any notices required under State or local law.

(e) Part 247 of this title does not apply to a tenancy assisted under the Housing Voucher Program.

§ 887.215 Amounts recoverable under the lease.

(a) If the family moves from the unit, the owner may claim reimbursement from the PHA for any amount the family owes under the lease (up to one month's rent to the owner) minus the maximum security deposit the owner could have collected under § 887.211.

(b) Any reimbursement under this section must be applied, first, toward any unpaid rent due under the lease, and then to any other amounts owed under the lease. An owner may not claim reimbursement for unpaid rent for the period after the family vacates the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0154)

Subpart F—Housing Quality Standards, Periodic Unit Inspection, and Maintenance

§ 887.251 Housing quality standards (HQS).

Housing used in this program must meet the performance requirements in this section. In addition, the housing must meet the acceptability criteria in this section, unless the PHA proposes variations and these variations are approved by HUD. Examples that may justify variations include local climatic or geological conditions or local codes.

(a) *Sanitary facilities*—(1) *Performance requirements.* The dwelling unit must include its own sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water must be present in the dwelling unit, and all must be in proper operating condition. These facilities must use an approvable public or private disposal system.

(b) *Food preparation and refuse disposal*—(1) *Performance requirement.* The dwelling unit must contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* The unit must contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the owner or the family, and a kitchen sink with hot and cold running water. The sink must drain into an approved public or private system. Adequate space for the storage, preparation, and serving of food must be provided.

(c) *Space and security*—(1) *Performance requirement.* The dwelling unit must provide the family adequate space and security.

(2) *Acceptability criteria.* The dwelling unit must contain a living room, kitchen area, and bathroom. The dwelling unit must contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit must be lockable.

(d) *Thermal environment*—(1) *Performance requirement.* The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* The dwelling unit must contain safe heating or cooling facilities that are in proper operating condition and can provide adequate heat or cooling, or both, to each room in the dwelling unit appropriate for the climate to ensure a healthy living environment. Unvented room heaters that burn gas, oil, or kerosene are unacceptable.

(e) *Illumination and electricity*—(1) *Performance requirement.* Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The unit must contain sufficient electrical sources to permit use of essential electrical appliances while ensuring safety from fire.

(2) *Acceptability criteria.* Living and sleeping rooms must include at least one window. A ceiling or wall type light fixture must be present and working in the bathroom and kitchen area. At least two electric outlets, one of which may be an overhead light, must be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and materials*—(1) *Performance requirement.* The dwelling unit must be structurally sound so as not to pose any threat to the health and safety of the occupants and to protect the occupants from the environment.

(2) *Acceptability criteria.* Ceilings, walls, and floors may not have any serious defects, such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts, or other serious damage. The roof structure must be firm and the room must be weathertight. The exterior wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways may not present a danger of tripping or falling. Elevators must be maintained in safe and operating condition.

(g) *Interior air quality*—(1) *Performance requirement.* The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) *Acceptability criteria.* The dwelling unit must be free from

dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation must be adequate throughout the unit. Bathroom areas must have at least one window that can be opened or other adequate exhaust ventilation

(h) *Water supply*—(1) *Performance requirement.* The water supply must be free from contamination.

(2) *Acceptability criteria.* The unit must be served by an approvable public or private sanitary water supply.

(i) *Lead Based Paint*—(1) *Purpose and applicability.* The purpose of this paragraph is to implement the provisions of Section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisioning with respect to existing housing units for which requests for lease approval are made under this part. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of Subpart A of 24 CFR Part 35 apply to all units constructed prior to 1978 covered by a housing voucher contract under this part.

(2) *Definitions.*

Applicable surface. All intact interior and exterior painted surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood level of EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(3) *Defective paint.* In the case of a unit, for a family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 887.207(c), and each periodic inspection under § 887.257, shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 887.207(c) or § 887.257, as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1978, for a family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 887.207(c), or a periodic inspection under § 887.257, shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 887.207(c) or § 887.257, as appropriate, and correction shall be completed within the time limits in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (i)(4) of this section, the PHA may at its discretion, forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out at 24 CFR 35.24(b)(2)(ii).

(6) *Tenant protection.* The owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) *Records.* The PHA shall keep a copy of each inspection report for at least three years. If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment. The records shall indicate which chewable surfaces in units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

(j) *Access*—(1) *Performance requirement.* The dwelling unit must be able to be used and maintained without unauthorized use of other private properties, and the building must provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(2) *Acceptability criteria.* Same as performance requirement.

(k) *Site and Neighborhood*—(1) *Performance requirement.* 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 occupants.

(2) *Acceptability criteria.* The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary condition*—(1) *Performance requirement.* The unit and its equipment must be in sanitary condition.

(2) *Acceptability criteria.* The unit and its equipment must be free of vermin and rodent infestation.

§ 887.253 Occupancy standards.

(a) *General.* The PHA must establish occupancy standards which determine the number of bedrooms required for families of different sizes and compositions. The PHA's standards must provide for the smallest number of bedrooms necessary to house a family while avoiding overcrowding; the standards must be consistent with HUD's housing quality standards concerning space requirements for the particular type of unit.

(b) *Exceptions.* The PHA may grant an exception to its established occupancy standards if it makes a determination that the exception is justified by the age, sex, health, handicap, or relationship of family members or other individual circumstances.

(c) *Renting unit with more bedrooms than stated on housing voucher.* Regardless of the number of bedrooms stated on the housing voucher, the PHA may not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family.

(d) *Renting unit with fewer bedrooms than stated on housing voucher.* The PHA may not prevent a family from renting a unit with fewer bedrooms than stated in the housing voucher, so long as the unit meets the applicable housing quality standards space requirements.

§ 887.255 Owner responsibility to maintain the unit.

The owner must provide all of the services, utilities, and maintenance that the owner agrees to provide in the housing voucher contract, subject to termination of housing assistance payments or other appropriate remedies available to the PHA if the owner fails to meet these obligations.

§ 887.257 PHA periodic unit inspection to ensure unit continues to meet HQS.

(a) The PHA must inspect the unit leased to a family at least annually and at other times as needed to ensure that the owner is meeting the obligation of maintaining the unit in decent, safe and sanitary condition and is providing agreed upon utilities and other services.

(b) In scheduling inspections, the PHA must consider complaints and any other information brought to its attention.

(c) Any family complaint that the owner has not complied with the housing quality standards must be retained by the PHA in its files for three years.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0185)

§ 887.259 Inspection reports.

The PHA must prepare and retain a report of every inspection made under §§ 887.207 and 887.257. Each report must specify:

(a) Any defects or deficiencies that must be corrected for the unit to meet the housing quality standards; and

(b) Any other defects or deficiencies (for use in the event of a later claim by the owner that the defects or deficiencies occurred during the occupancy of the family).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0185)

§ 887.261 PHA recourse if unit does not meet HQS.

(a) If the owner fails to maintain the dwelling unit in compliance with HQS, the PHA may exercise any rights and remedies under the housing voucher contract, including termination of housing assistance payments (even if the family continues to occupy the unit) and termination of the housing voucher contract. The PHA may not make any housing assistance payments for a unit that fails to meet the housing quality standards, unless the owner promptly corrects the defect and the PHA verifies the correction.

(b) If the PHA terminates the housing voucher contract, the family may request a housing voucher to find another dwelling unit. The PHA must issue a housing voucher to the family, unless the PHA can deny issuance in accordance with § 887.403.

Subpart G—Housing Voucher Contract and Owner Responsibilities

§ 887.301 Housing voucher contract between PHA and unit owner.

(a) The housing voucher contract is a contract between the PHA and an owner, in the form prescribed by HUD. In the contract, the owner agrees to lease a unit to a specified eligible family and the PHA agrees to make housing assistance payments under the Housing Voucher Program to the owner on behalf of that eligible family. Each month the PHA must make a housing assistance payment to the owner on behalf of the family. The monthly housing assistance payment by the PHA shall be credited by the owner toward the monthly rent payable by the family to the owner under the lease. The amount of the monthly housing assistance payments to the owner may not exceed the amount of the monthly rent payable by the family to the owner under the lease (and the owner must immediately return any excess payment to the PHA). The PHA has no duty to pay the owner any balance of the monthly rent in excess of the housing assistance payment.

(b) The housing voucher contract may not be executed until the PHA approves the lease and the unit, as provided in § 887.207.

(c) The requirements concerning the term of the housing voucher contract are set out at § 887.209(c).

§ 887.303 Owner responsibilities.

The owner is responsible for performing all of the owner's obligations under the housing voucher contract and the lease. The owner is responsible for—

(a) Performing all management and rental functions for the assisted unit;

(b) Performing all ordinary and extraordinary maintenance;

(c) Complying with equal opportunity requirements;

(d) Preparing and furnishing to the PHA information required under the housing voucher contract;

(e) Collecting family rents; and

(f) Paying for utilities and services (unless paid directly by the family).

§ 887.305 Contracting out owner functions.

(a) *General.* An owner may enter into a management contract with a public or private entity to perform, for a fee, any obligation of the owner under the housing voucher contract and lease. The owner, however, retains the ultimate responsibility for meeting these obligations.

(b) *Management contract with a PHA.* (1) An owner may enter into a contract with a PHA for the PHA to manage an assisted unit only if the PHA applies for and obtains prior HUD field office approval of the management contract.

(2) *Application requirements.* The PHA application to HUD consists of a copy of the proposed management contract and supporting documentation demonstrating that:

(i) PHA performance of the management functions is necessary to provide housing for eligible families;

(ii) The PHA has or will have the capability to perform adequately the management functions for the units as proposed in the application, taking into consideration the relevant characteristics of the housing and the families, e.g., scattered site or mutifamily projects and elderly, handicapped, or families with children; and

(iii) The management contract meets the conditions of paragraphs (b) (3) and (4) of this section.

(3) *Contract term and termination clause.* The proposed management contract term must be limited to one year. The proposed management contract must include a clause that allows either party to terminate, or HUD to require termination of, the contract on 90 days advance written notice. Both of these clauses are designed to enable all interested parties, including HUD, to evaluate the effectiveness of the contract.

(4) *Management fee.* The amount of the management fee must be negotiated between the owner and the PHA and must be approved by HUD. The provisions on the management fee must reflect the following:

(i) The compensation must be a fixed fee to cover all routine management services, including routine legal services and local travel.

(ii) The fee must be specified as dollars per unit.

(iii) The fee must be sufficient to pay the PHA for providing the services, including the pro rata share of overhead and other indirect costs.

(iv) Cost of non-routine items such as taxes, insurance, utilities or non-routine

repairs and replacements must be paid to the PHA in addition to the fixed fee.

(v) The fee must be reasonable as measured against fees paid to private firms in similar management situations, such as management of other section 8 or FHA projects.

(c) *HUD review.* When the owner contracts with the PHA to provide management services, the PHA will be managing units for which it also functions as contract administrator. Thus, the PHA will be supervising and evaluating its own activities. To ensure that both the owner and the PHA comply with the terms and conditions of the housing voucher contract and the ACC, the HUD Field Office will review project operations, including one or more inspections of the unit.

(d) *PHA records.* A PHA that contracts with and owner under the provisions of this section must keep separate accounts and records of its management function activities performed to meet its contractual obligations.

Subpart H—Payment Standard and Housing Assistance Payment

§ 887.351 Determining the payment standard and the payment standard schedule.

(a) *Payment standard amount.* (1) The payment standard is an amount used to calculate the monthly housing assistance payment. (Section 887.353 states how to calculate the monthly amount of the housing assistance.)

(2) Each payment standard amount is based on the published Section 8 Existing Housing fair market rent. The PHA must establish a separate payment standard amount by unit size (single room occupany, zero-bedroom, one-bedroom, etc.) for each fair market rent area within its jurisdiction.

(b) *Payment standard schedule.* (1) The payment standard schedule is a list of the payment standard amounts for each unit size in a fair market rent area in the PHA's jurisdiction. A PHA must adopt and maintain a payment standard schedule for each fair market rent area in the PHA jurisdiction. A PHA may have only one payment standard schedule for each fair market rent area. Each payment standard schedule may have only one payment standard amount for each unit size in the fair market rent area.

(2) Each payment standard amount on the schedule may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the fair market rent of HUD-approved community-wide exception rent (in effect when the payment standard amount is adopted) for the unit size. (Community-wide exception rents are maximum gross rents approved by HUD for the Certificate Program under § 882.106(a)(3) of this chapter for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.)

(c) *Increasing payment standard amounts on the payment standard schedule.* The PHA, in its discretion, may adopt annual increases of payment standard amounts on the payment standard schedule so that families can continue to afford to lease units with assistance under the Housing Voucher Program.

(d) *Decreasing payment standard amounts on the payment standard schedule.* When revised Section 8 Existing Housing fair market rents are published for effect in the **Federal Register** and any fair market rent or HUD-approved community-wide exception rent is lower than the corresponding payment standard amount on the PHA's payment standard schedule, the PHA must adopt a new payment standard amount not more than the revised FMR or the HUD-approved community-wide exception rent.

§ 887.353 Determining housing assistance payments amounts.

(a) *General*—(1) *Using the payment standard.* A PHA uses the payment standard schedule to determine the appropriate payment standard for a particular family, based on the family size and composition and the PHA occupancy standards. Once the PHA determines the appropriate payment standard amount from the schedule, the PHA subtracts 30 percent of the family's monthly adjusted income (as computed under Part 813) to arrive at the monthly housing assistance payments that the PHA will make to the owner on behalf of the family. (For example, if a family qualifies for a four-bedroom housing voucher under the PHA occupancy standards and has monthly adjusted income of $500, and the payment standard amount for a four-bedroom housing voucher is $600, the housing assistance payment for the family is the payment standard amount ($600) minus 30 percent of the family's monthly adjusted income ($150) which is $450.) Before entering into a housing voucher contract with the owner for this amount, the PHA must also complete the "minimum rent" calculation in paragraph (a)(2) of this section.

(2) *Minimum rent.* The housing assistance payment may not be more than the amount by which the rent to owner plus any applicable utility allowance exceeds 10 percent of the family's monthly gross income, determined in accordance with Part 813. (Except for the minimum rent calculation, actual rent to owner for a unit does not affect the amount of the housing assistance payment.)

(3) *Shopper's incentive.* If a unit rents for less than the payment standard, the family benefits by paying less than 30 percent of its monthly adjusted income toward rent, subject to the minimum rent calculation. It a unit rents for more than the payment standard, the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Certificate Program. Instead, the family pays the entire difference between the rent and the housing assistance payment.

(b) *When changes in the payment standard apply to an existing housing assistance payment*—(1) *General.* The payment standard that is applied to a family may be changed only:

(i) At regular reexamination (see paragraph (b)(2) of this section); or

(ii) At the time a family moves to another unit (see paragraph (b)(3) of this section).

(2) *Rules at regular reexamination.* At regular reexamination, the PHA must apply a different payment standard if one of the following circumstances applies:

(i) If the PHA has increased the payment standard applicable to the family, the increased payment standard is used;

(ii) If the PHA has adopted new occupancy standards, the payment standard for the appropriate unit size under the PHA's new occupancy standards is used;

(iii) If the family's size or composition has changed, the payment standard for the appropriate unit size is used.

(3) *Rule when a family moves.* When a family moves to another unit, the PHA must apply a different payment standard if one of the following circumstances applies:

(i) If the PHA has increased or decreased the payment standard applicable to the family, the new payment standard is used;

(ii) If the PHA has adopted new occupancy standards, the payment standard for the appropriate size under the PHA's new occupancy standards is used;

(iii) If the family's size or composition has changed, the payment standard for the appropriate unit size is used.

(4) *Request for interim reexamination.* Redetermination of the housing

assistance payment as a result of an interim reexamination under § 887.357 does not affect the payment standard applicable to the family.

(c) *No housing assistance payments for vacancies.* If a family moves out of the unit, the owner must notify the PHA promptly, and the PHA may not make any additional housing assistance payments to the owner for any month after the month during which the family moves. The owner may retain the housing assistance payment for the month during which the family moves.

(d) *When the housing assistance payment exceeds the rent to owner.* Normally, the entire housing assistance payment, determined under paragraph (a)(1) of this section, is paid by the PHA to the owner. When the family must pay some or all of its utilities directly, however, the housing assistance payment may occasionally exceed the rent to owner. In this case, the PHA must pay the excess (subject to the minimum rent determination in paragraph (a)(3) of this section) to the family or, with the consent of the family and the utility company, either jointly to the family and the utility company or directly to the utility company. For example, if the payment standard is $500, and 30 percent of a family's monthly adjusted income equals $120, the housing assistance payment would be $380. If the rent to owner is $350, and the utility allowance is $150, the PHA pays $350 to the owner and the remaining $30 of the housing assistance payment to the family as a utility reimbursement.

(e) *Assisting more families.* If a PHA determines that some or all of the available annual contributions under its ACC are not needed for participating families, including future adjustments of housing assistance payments and portability moves, it may assist more families.

§ 887.355 Regular reexamination of family income and composition.

(a) The PHA must reexamine family income and family size and composition at least annually, and in accordance with Part 813 of this chapter.

(b) At the regular reexamination, the PHA must adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's monthly income, monthly adjusted income, size, or composition. The PHA must use the appropriate payment standard, as provided in § 887.353.

§ 887.357 Interim reexamination of family income and composition.

A family may request a redetermination of the housing assistance payment, at any time, based on a change in the family's income, adjusted income, size, or composition.

§ 887.359 Changes in family size or composition.

(a) If the PHA determines that a unit does not meet the housing quality standards because of an increase in family size or a change in family composition, the PHA must issue the family a new housing voucher. The PHA must comply with requirements of § 887.261.

(b) A family may not be required to move because of a decrease in family size after initial occupancy of a unit. The family may rent a unit with a greater number of bedrooms than indicated on the housing voucher.

§ 887.361 Adjustment of utility allowances.

(a) *Annual review.* At least annually, the PHA must determine: if there has been a substantial change in utility rates or other charges of general applicability that would require an adjustment in any utility allowance on the PHA's utility allowance schedule; or if there were errors in the original determination of the utility rates or other charges of general applicability that would require an adjustment in any utility allowances on the schedule.

(b) *Required adjustment.* If the PHA determines that an adjustment is necessary under paragraph (a) of this section, it must establish a new schedule of utility allowances, taking into account the size and type of dwelling units and other applicable factors.

(c) *Adjustments in housing assistance payments.* The PHA must determine if adjustments to utility allowances affect the amount of housing assistance paid on behalf of the family by recalculating the minimum rent under § 887.353(a)(2).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0161.)

§ 887.363 Housing assistance payments equal to zero.

(a) Under the formula in § 887.353 for calculating the housing assistance payment on behalf of a family, no housing assistance payment is made whenever either 30 percent of the family's monthly adjusted income equals or exceeds the payment standard or 10 percent of the family's monthly income equals or exceeds the rent to owner plus any applicable utility allowance. Cessation of housing assistance payments does not affect the family's other rights under the lease, nor does it prevent the resumption of payments as the result of later changes in family income, family size or composition, or other relevant circumstances during the term of the housing voucher contract.

(b) When one year has elapsed since the date of the last housing assistance payment made under the housing voucher contract, the contract terminates automatically.

Subpart I—Family Obligations; Denial and Termination of Assistance

§ 887.401 Family responsibilities.

(a) A family must:

(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice;

(3) Notify the PHA before vacating the dwelling unit; and

(4) Use the dwelling unit (or in the case of shared housing, the applicable portion of the unit) solely for residence by the family and as the family's principal place of residence.

(b) A family may not:

(1) Sublease or assign the lease or transfer the unit;

(2) Own or have any interest in the dwelling unit, except for a family assisted in cooperative or mutual housing;

(3) Commit any fraud in connection with the Housing Voucher Program; or

(4) Receive duplicative assistance under the Housing Voucher Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any Federal, State or local housing assistance program (including any Section 8 program).

§ 887.403 Grounds for PHA denial or termination of assistance.

(a) *Action or inaction by family.* This section states the grounds for denial of assistance to an applicant and for denial or termination of assistance to a participant, because of action or inaction by the applicant or participant. The provisions of paragraph of this section do not affect denial or termination of assistance for grounds other than the action or failure to act by the family.

(b) *Denial of assistance.* The PHA may deny an applicant admission to participate in the Housing Voucher

Program or, with respect to a current participant, may refuse to issue another housing voucher for a move to another unit, approve a new lease, or execute a new housing voucher contract, if the applicant or participant:

(1) Has violated any family obligation under the Housing Voucher Program or the Certificate Program.

(2) Has committed any fraud in connection with any federal housing program.

(3) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(4) Has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance payments contract or housing voucher contract for rent or other amounts owned by the family under its lease (see § 887.215 and § 882.112(d) of this chapter), or for a vacated unit (see § 882.105(b)).

(5) Breaches and agreement to pay amounts owned to PHA, or amounts paid to an owner by a PHA. The PHA, at its discretion, may offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.

(c) *Termination of assistance.* (1) The PHA may terminate housing assistance payments that are being made on behalf of a participant under a current housing voucher contract, if the participant:

(i) Has violated any family obligation under the Housing Voucher Program, as stated in § 887.401;

(ii) If the participant has committed any fraud in connection with any federal housing assistance program; or

(iii) Has breached an agreement as described in paragraph (b)(5).

(2) This section does not limit the authority of a PHA to terminate or reduce assistance payments under a housing voucher contract for violations of an owner's obligations under the contract.

§ 887.405 Informal review or hearing.

(a) *Informal review of PHA decision on application for participation in PHA program.* (1) The PHA must give an applicant for participation in the PHA's program prompt written notice of a decision denying assistance to the applicant (including a decision denying listing on the PHA waiting list, issuance of a housing voucher, or participation in the program.) The notice must contain a brief statement of the reasons for the decision. The notice also must indicate that the applicant may request an informal review of the decision, and describe how to obtain the informal review.

(2) The PHA must give the applicant an opportunity for an informal review of the decision, in accordance with review procedures established by the PHA. The informal review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of that person. The applicant must be given an opportunity to present written or oral objections to the PHA decision. The PHA must promptly notify the applicant in writing of the final PHA decision after the informal review, including a brief statement of the reasons for the final decision.

(3) The PHA is not required to provide an opportunity for an informal review in accordance with paragraph (a) of this section to review:

(i) Discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) The PHA's determination of the number of bedrooms entered on the housing voucher under the occupancy standards established by the PHA (see §§ 887.155(a)(3) and 887.253);

(iii) The PHA's determination that a unit located by a housing voucher holder does not comply with the PHA's housing quality standards, or the PHA's determination not to approve the lease for the unit; or

(iv) The PHA's decision not to approve a request by a housing voucher holder for an extension of the term of the housing voucher.

(b) *Informal hearing on PHA decision affecting participant family.* (1) The PHA must give a participant in the PHA's Housing Voucher Program an opportunity for an informal hearing to consider whether the following decisions relating to the individual circumstances of the family are in accordance with the law, HUD regulations and PHA rules:

(i) A determination of the amount of the housing assistance payment (not including determination of the PHA's schedule of utility allowances for families in the PHA's Section 8 Program);

(ii) A decision to deny or terminate assistance on behalf of the participant; and

(iii) In the case of an assisted family that wants to move to another dwelling unit with continued participation in the PHA program (see § 887.167), the PHA's determination of the number of bedrooms entered on the housing voucher under the occupancy standards established by the PHA. (See §§ 887.155(a)(3) and 887.253.)

(2) The PHA is not required to provide an opportunity for an informal hearing in accordance with paragraph (b) of this section to review:

(i) Discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) The PHA's determination that a unit does not comply with the PHA's housing quality standards, that the owner has failed to maintain or operate a contract unit to provide decent, safe, and sanitary housing in accordance with HQS (including all services, maintenance and utilities required under the lease), or that the contract unit is not in accordance with housing quality standards because of an increase in family size or change in family composition;

(iii) The decision by the PHA to excerise any remedy against the owner under an outstanding contract including the termination of housing assistance payments to the owner (see § 887.261); or

(iv) The PHA's decision not to approve a family's request for an extension of the term of the housing voucher issued to an assisted family that wants to move to another dwelling unit with continued participation in the PHA's Housing Voucher Program.

(3)(i) The PHA must give the participant prompt written notice of the decision described in paragraph (b)(1)(ii) of this section. The notice must contain a brief statement of the reasons for the decision. The notice must indicate that, if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and also must state the time by which the request for an informal hearing must be made by the participant.

(ii) When the PHA determines the amount of housing assistance payment or determines the number of bedrooms entered on the housing voucher of a participant that wants to move to another dwelling unit as described in paragraph (b)(1)(iii) of this section, the PHA must notify the participant that the participant may ask for an explanation of the basis of the PHA determination, and that, if the participant does not agree with the determination, the participant may request an informal hearing on the decision.

(4) If the PHA has decided to terminate housing assistance payments on behalf of a participant under an outstanding housing voucher contract (and if the PHA is required to give the participant an informal hearing on the

decision), the participant must be afforded the opportunity for such informal hearing before the termination of housing assistance payments.

(5) In all cases where a hearing is required under paragraph (b) of this section, the PHA must proceed with a hearing in a reasonably expeditious manner upon the request of the participant.

(6) The PHA must adopt written procedures for conducting informal hearings for participants in the PHA's Housing Voucher Program. The PHA's hearing procedures must comply with the following:

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) At its own expense, the participant may be represented by a lawyer or other representative.

(iii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(iv) The PHA and the participant must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(v) The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant must be based on the evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the participant.

(7)(i) The PHA is not bound by a hearing decision:

(A) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under paragraph (b) of this section, or otherwise in excess of the authority of the person conducting the hearing under the PHA hearing procedures, or

(B) Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.

(ii) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the participant of the determination, and of the reasons for the determination.

Subpart J—Special Housing Types

§ 887.451 Purpose of this subpart.

(a) This subpart contains the additional program requirements for the following specialized types of housing: Cooperative or mutual housing; independent group residences; manufactured homes; single room occupancy; and congregate housing. (The requirements that are unique to shared housing, another special housing type, are set out in Subpart K of this part.)

(b) Except as modified by this Subpart J, all of the requirements in the other subparts of this part apply to these special housing types.

§ 887.453 Cooperative or mutual housing: Definition.

"Cooperative or mutual housing" means a type of housing authorized by State law that is owned by a corporation where ownership of a share in the corporation entitles the owner to exclusive occupancy of a unit, and participation in the operation of the project.

§ 887.455 Cooperative or mutual housing: Limitation on the use of housing voucher authority.

A PHA may use its housing voucher authority to provide assistance with respect to cooperative or mutual housing, if the following circumstances exist:

(a) The cooperative or mutual housing occupancy agreement requires that the housing units be owned-occupied, unless authorization is obtained from the board to sublet a unit;

(b) The cooperative or mutual housing occupancy agreement provides that any sale of the occupant's interest in the unit (such as a sale of a certificate in the corporation) is controlled by a formula set out in the corporation's by-laws or occupancy agreement. The formula must be adopted by the corporation's board of directors and must be designed to ensure continued affordability of the cooperative or mutual housing to lower income families (as defined by HUD in Part 813 of this chapter) for a period that extends at least fifteen years; and

(c) The PHA determines that providing assistance under this part will help in maintaining the affordability of this housing to lower income families.

§ 887.461 Independent group residences (IRG): Definitions.

The following additional definitions apply to independent group residences:

Independent group residence (IGR). A dwelling unit for the exclusive residential use of two to twelve elderly, handicapped, or disabled individuals (excluding any live-in resident), who are not capable of living completely independently and who require a planned program of continual supportive services. Residents of an IGR receiving Section 8 assistance must not require continual medical or nursing care, must be ambulatory or not continuously confined to a bed, and must be capable of taking appropriate actions for their own safety in a emergency.

Resident assistant. A person who lives in an independent group residence and provides on a daily basis some or all of the necessary support services to elderly, handicapped, or disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or well being. A resident assistant may not be related by blood, marriage, or operation of law to any of the individuals receiving section 8 housing assistance, and may not contribute any portion of his or her income or resources toward the expenses of these individuals.

Service agency. A public or private nonprofit organization that is recognized by the State as qualified to determine the supportive service needs of individuals who will reside in Independent Group Residences. The service agency may perform outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance, provide all or a portion of the supportive services and may identify and coordinate appropriate local, public or private resources to furnish these services. The service agency may own or sublease an independent group residence.

Service agreement. A written agreement, approved by the State, between the owner (including an entity with the right to sublease) of an independent group residence and the service agency or other entities providing the supportive services to the occupants of independent group residences. The agreement specifies the types and frequency of the supportive services to be furnished.

§ 887.463 Independent group residences: Selection preferences.

In addition to the preferences provided in § 887.155, a PHA may establish a preference for selecting an eligible applicant who has indicated a desire to reside in an independent group residence.

§ 887.465 Independent group residences: Additional lease requirements.

Leases for independent group residences must incorporate by reference the supportive services to be provided in accordance with the written service agreement between the owner and the service agency or other entities providing the necessary supportive services. When the owner provides the necessary supportive service, there is no

service agreement and the provision of these services must be contained in the lease. The service agreement or analogous lease provisions must be approved in writing by the State before the PHA executes the housing voucher contract.

§ 887.467 Independent group residences: Housing quality standards.

The housing quality standards in § 887.251(a) apply to IGRs, except that the standards in this section apply in place of §§ 887.251 (a), (b), (c), (f), and (k).

(a) *Sanitary facilities.* The dwelling unit must contain and have ready access to a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human waste. These facilities must utilize an approvable public or private disposal system, and must be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment must provide access to all sanitary facilities, and must provide, as appropriate to the needs of the occupants, basins and toilets, of the appropriate heights; grab bars to toilets and to showers and/or bathtubs; shower seats; and adequate space for movement.

(b) *The kitchen facilities* of the unit must contain adequate space to store, prepare, and serve foods in a sanitary manner. A cooking stove or range, a refrigerator of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water must be present in proper operating condition. The sink must drain into an approvable private or public system. There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and security.* The dwelling unit must provide the family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space must be within the unit, and the unit must contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit must be lockable. An emergency exit plan must be developed and occupants must be apprised of the details of the plan. All emergency and safety features and procedures must meet applicable State and local standards.

(d) *Structure and material.* The unit must be structurally sound to avoid any threat to the health and safety of the occupants and to protect the occupants from the environment. Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, 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 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 and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment may not contain architectural barriers that impede access or use, and handrails and ramps must be provided as appropriate.

(e) *Site and neighborhood* must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and must not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; 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 and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public and available private transportation to medical and other appropriate commercial and community service facilities.

(f) *Supportive Services.* (1) A planned program of adequate supportive service appropriate to the needs of the occupants must be provided on a continual basis by a qualified resident assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide these services on a continual, planned basis. Supportive services that are provided within the unit may include the following types of services: counseling; social services that promote physical activity, intellectual stimulation, or social motivation; training or assistance with activities of daily living, including housekeeping, dressing, personal hygiene, or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet, and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitiating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit may not include the provision of continual nursing, medical, or psychiatric care.

(2) The provision for and quality of the planned program of supportive services, including the minimal qualifications, quantity, and working hours of the resident assistant(s) living in the unit or other qualified person(s) providing supportive services must be determined initially by the service agency in accordance with the standards established by the State. Compliance with these standards by the service agency must be monitored regularly throughout the term of the housing voucher contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services), or a local authority (other than the service agency providing services) designated by the State to establish, maintain, and enforce these standards.

(3) A written service agreement, approved by the State and in effect between the owner and the service agency or the entities that provide the necessary supportive service, must be submitted to the PHA with the request for lease approval. The lease between the eligible individual and the owner must set forth the owner's obligation for and means of providing these services. If the owner provides the supportive services, a service agreement is not required and the provision of these services must be incorporated into the lease and must be approved by the State. (See § 887.465.)

(g) *State approval.* Independent group residences must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, Social Services, etc.) before the execution of the initial housing voucher contract. This approval must be reexamined periodically based on a schedule established by the State. To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State also approve the written service agreement (or lease, if the provider of services is the lessor) for each independent group residence.

§ 887.469 Independent group residences: Payment standard.

The payment standard for a participant in an IGR is determined by dividing the dollar amount of the payment standard for the entire residence (for example, the 4-bedroom payment standard for a 4-bedroom residence) by the total number of potential occupants (assisted or unassisted), excluding a resident assistant (if any) occupying no more than one bedroom.

§ 887.471 Manufactured homes: Definition.

A "manufactured home" is a structure, with or without a permanent foundation, that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the housing quality standards in § 887.473.

§ 887.473 Manufactured homes: Housing quality standards.

(a) *Performance requirement.* In addition to meeting the housing quality standards in § 887.251, a manufactured home unit must:

(1) Be equipped with at least one smoke detector in working condition; and

(2) Must be placed on the site in a stable manner and 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 transforms the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

§ 887.481 Single room occupancy (SRO): Definition.

"Single room occupancy housing" means a unit that contains no sanitary facilities or food preparation facilities, or contains one but not both types of facilities (as those facilities are defined in 887.251 (a) and (b), that is suitable for occupancy by an eligible individual capable of independent living.

§ 887.483 Single room occupancy: Additional eligibility criteria.

Elderly, handicapped, and disabled persons may use SRO housing only if the following conditions exist:

(a) The property is located in an area in which there is significant demand for SRO units, as determined by the HUD Field Office;

(b) The PHA and the unit of general local government in which the property is located approve the use of SRO units for this purpose; and

(c) The unit of general local government and the local PHA certify to HUD that the property meets applicable local health and safety standards for SRO housing.

§ 887.485 Single room occupancy: Housing quality standards.

The housing quality standards in § 887.251 apply to SROs, except 887.251 (a), (b), and (c). In addition, the following performance requirements apply:

(a) Each SRO unit may be occupied by no more than one person.

(b) Exterior doors and windows accessible from outside the SRO unit must be lockable.

(c) Sanitary facilities, space and security characteristics must meet local code standards for single room occupancy housing. In the absence of applicable local code standards, the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance shall be used.

§ 887.487 Single room occupancy: Payment standard.

(a) The payment standard amount for SRO units is equal to 75 percent of the Section 8 Existing Housing 0-bedroom fair market rent, or, if HUD has approved the use of community-wide exception rents for 0-bedroom units under § 882.106(a)(3) of this chapter, the payment standard amount for SRO units is equal to 75 percent of the HUD-approved community-wide exception rent. (Community-wide exception rents are maximum gross rents approved by HUD for the Certificate Program under § 882.106(a)(3) of this chapter for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.)

(b) HUD may approve a higher SRO payment standard amount, not to exceed 100 percent of the Section 8 Existing Housing fair market rent or HUD-approved community-wide exception rent referred to in paragraph (a) of this section, if the PHA can justify a change based on data reflecting the SRO rent levels that exist within the entire market area.

§ 887.489 Congregate housing: Definition.

"Congregate housing" means housing for elderly, handicapped, or disabled participants, that meets the housing quality standards for congregate housing specified in § 887.489.

§ 887.491 Congregate housing: Housing quality standards.

The housing quality standards in § 887.251 apply to congregate housing, except that § 887.251(b), food preparation and refuse disposal, and the requirement in § 887.251(c) for adequate space for kitchen area, do not apply. In addition, the following standards apply:

(a) The unit must contain a refrigerator of appropriate size; and

(b) The sanitary facilities described in § 887.251 (a) of this section must be contained within the unit.

(c) The central dining facility and central kitchen must be located within the building or housing complex and be accessible to the occupants of the congregate units, and must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner by a food service or persons other than the occupants. The facilities must be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

§ 887.493 Congregate housing: Payment standard.

The payment standard amount for congregate housing units is equal to the Section 8 Existing Housing 0-bedroom fair market rent, or, if HUD has approved the use of community-wide exception rents for 0-bedroom units under § 882.106(a)(3) of this chapter and the exception rent applies throughout the PHA's jurisdiction, the payment standard amount for congregate housing units is equal to the HUD-approved community-wide exception rent.

Subpart K—Shared Housing

§ 887.501 Applicability, scope, and purpose.

In shared housing, an assisted family shares a housing unit (such as a house or an apartment) with the other resident or residents of the unit. The authorization for use of shared housing in the Housing Voucher Program is designed to provide additional choices in living arrangements for assisted families. The PHA has discretion to determine whether to include shared housing in its Housing Voucher Program and to design the shared housing component to meet local needs and circumstances.

§ 887.503 Definitions.

For purposes of shared housing, the following definitions apply:

Common space. Space available for use by the assisted family(ies) and other occupants of the unit.

Individual lease shared housing. The type of shared housing in which the PHA enters into a separate housing

voucher contract for each assisted family residing in a shared housing unit.

Private space. The portion of the dwelling unit that is for the exclusive use of an assisted family.

Shared housing. A housing unit occupied by two or more families, consisting of common space for shared use by the occupants of the units and (except in the case of a shared one-bedroom unit) separate private space for each assisted family.

§ 887.505 Types of shared housing and applicable requirements.

(a) *Shared housing types.* Individual lease shared housing is the only type of shared housing authorized under this Subpart K. Related lease shared housing (see Part 882, Subpart C of this chapter) is not authorized under this Subpart K.

(b) *Applicable requirements.* Except as modified by this Subpart K, all of the requirements in the other subparts of this part apply to shared housing.

§ 887.507 PHA administration of shared housing.

(a) *PHA election.* A PHA is not required to permit use of shared housing in its Housing Voucher Program. At any time, a PHA may change a decision to include shared housing in its program. The PHA, however, must continue to administer, in accordance with applicable requirements, any shared housing housing voucher contracts that it has executed.

(b) *Administrative/equal opportunity housing plan.* (1) If the PHA decides to permit shared housing in its program, or to change or discontinue shared housing, it must submit an amendment to its administrative/equal opportunity housing plan for HUD approval.

(2) The administrative/equal opportunity housing plan must state the PHA's policies for operating shared housing. The plan may not set aside housing vouchers for, or otherwise restrict the use of housing vouchers to, shared housing.

§ 887.509 Housing quality standards for shared housing.

(a) *Applicability of housing quality standards to entire unit.* The entire unit must comply with the performance requirements and acceptability criteria, as provided in §§ 887.251 (a) and (b) and in §§ 887.251 (d) through (k).

(b) *Facilities available for family.* The facilities available for the use of each 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 § 887.251(a), and food preparation and refuse disposal facilities in accordance with § 887.251(b).

(c) *Space and security*—(1) *Inapplicability of § 887.251(c).* Section 887.251(c) does not apply to shared housing.

(2) *Performance requirement.* The entire unit must provide adequate space and security for all its occupants (whether assisted or unassisted). The total number of occupants in the unit may not exceed 12 persons. Each unit must contain private space containing at least one bedroom for each assisted family, plus common space for shared use by the occupants of the unit. The private space for each assisted family must contain at least one bedroom for each two persons in the family. (The two preceding sentences do not apply to the case of two individuals sharing a one-bedroom unit. However, in that situation, no other persons may occupy the unit.) Common space must be appropriate for shared use by the occupants. If any members of the family are physically handicapped (at the time of lease approval), the unit's common space and the family's private space must be accessible and usable by them.

(3) *Acceptability criteria.* The unit must contain a living room, a kitchen, bathroom(s), and bedroom(s). Persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom. Exterior doors and windows accessible from outside the unit must be lockable.

§ 887.511 Occupancy of a shared housing unit.

(a) *Who may share a unit.* (1) Persons who are not assisted under the Housing Voucher Program may reside in a shared housing unit.

(2) Except for a one-bedroom unit, an owner of a shared housing unit may reside in the unit, and a resident owner may enter into a housing voucher contract with the PHA. Housing assistance, however, may not be provided on behalf of owner who is not an owner-shareholder in mutual or cooperative housing. An assisted person may not be related to a resident owner.

(3) One or more assisted families may reside in a shared housing unit. A PHA may not execute a housing voucher contract for individual lease shared housing and a housing assistance payments contract for related lease shared housing under the Certificate Program for the same unit.

(b) *Size of unit and family space.* The number of bedrooms in the private space of an assisted family initially must be the same as the number stated on the family's housing voucher, except in the case of two individuals sharing a one bedroom unit. The PHA may not approve a lease or execute a housing voucher contract for shared housing unless the unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards under § 887.509.

§ 887.513 Determining amount of housing assistance.

For purposes of computing the minimum rent under § 887.353, the PHA must prorate the rent to owner attributable to the family on the basis of a ratio that is equal to the number of bedrooms indicated on the housing voucher divided by the number of bedrooms in the unit.

§ 887.515 Payment standard for shared housing.

The payment standard for a family in a shared housing unit is determined by multiplying the dollar amount of the payment standard for the entire unit (for example, the 4-bedroom payment standard for a 4-bedroom unit) by a ratio that is equal to the number of bedrooms indicated on the family's housing voucher divided by the number of bedrooms in the unit.

Subpart L—Mobility and Portability

§ 887.551 Overview.

PHAs are encouraged to provide families with the broadest geographical choice of units, both within and outside the PHA's jurisdiction. This subpart sets out policies for providing greater choice to housing voucher holders and participants who desire to move outside the PHA's jurisdiction.

§ 887.553 Definitions.

For purposes of this subpart L the following definitions apply:

Initial PHA. A PHA administering a Housing Voucher Program with a housing voucher holder or participant who desires to or has moved to another PHA's jurisdiction.

Receiving PHA. A PHA administering a Housing Voucher or Certificate Program that accepts a housing voucher holder or housing voucher participant from another PHA's jurisdiction under the portability procedures in this subpart L.

§ 887.555 Mobility: Encouraging continued participation through voluntary arrangements among PHAs when a family wants to move outside the PHA's jurisdiction.

A PHA should foster a wide choice of housing opportunities for families through interjurisdictional mobility by:

(a) Developing administrative arrangements with other PHAs to permit

housing voucher and certificate holders to seek housing in the broadest possible area; and

(b) Cooperating, to the extent practicable, with other PHAs by issuing a housing voucher or certificate to a family, already receiving the benefit of housing voucher or certificate assistance, that wants to move from the jurisdiction of one PHA to another.

§ 887.557 Portability: Encouraging continued participation when a family wants to move outside the PHA's jurisdiction and there is no voluntary arrangement.

If a family that is a housing voucher holder or a family that is a participant in the Housing Voucher Program desires to move with continued assistance outside the PHA's jurisdiction, but cannot be given the opportunity for continued housing voucher or certificate assistance under one of the voluntary mobility programs described in § 887.555, then the PHA that has jurisdiction in the location to which the family wishes to move must, if it is administering a Housing Voucher Program, accept the family and provide services to the family as if the family was part of its Housing Voucher Program. The PHA, if it is not administering a Housing Voucher Program, is encouraged to administer the housing voucher assistance on behalf of the family or to issue the family one of its available section 8 certificates.

§ 887.559 Portability: Family eligibility.

A family is eligible for portability if it lives in the initial PHA's jurisdiction and is a housing voucher holder, or if the family is a participant in the initial PHA's Housing Voucher Program.

§ 887.561 Portability: Determination to deny or terminate assistance.

Either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 887.403.

§ 887.563 Portability: Responsibilities of the initial PHA.

(a) The initial PHA must manage its Housing Voucher Program in a manner that will ensure that it has the financial ability to provide continued housing voucher assistance in accordance with these portability procedures.

(b) The initial PHA may deny the request to move if the number of families moving under these portability procedures would be more than 15 percent of units under lease in the initial PHA's Housing Voucher Program.

(c) If a family that is eligible for portability notifies the initial PHA that it wants to move under these procedures and informs the PHA concerning the area to which the family wants to move, the initial PHA must determine whether the PHA in the new area administers a Housing Voucher Program and, if it does not, but operates a Certificate Program, whether the receiving PHA is willing to accept the family under § 887.557.

(d) If the family is going to move under the portability provisions of this section, the initial PHA must notify the receiving PHA to expect the family. The initial PHA must verify to the receiving PHA that the family met the income-eligibility requirement for admission to the program and that the initial PHA issued the family a housing voucher consistent with § 887.155, and must state the date (which is governed by § 887.165) by which the family must submit a request for lease approval in the jurisdiction of the receiving PHA.

(e) When the family moves out of the initial PHA's jurisdiction, the initial PHA retains funding for the housing voucher under its ACC.

(f) The initial PHA must reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA on behalf of the family. The amount of housing assistance is based on the payment standard in effect at the receiving PHA. If the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA is not required to reimburse the receiving PHA.

(g) The initial PHA must reimburse the receiving PHA 80 percent of the initial PHA's on-going administrative fee for each unit month that the family under a housing voucher contract is in the receiving PHA's jurisdiction.

(h) The initial PHA may receive the preliminary fee for any new unit (limited by cost-justified expenses submitted up to the maximum amount allowed for this purpose), if the portable housing voucher qualified for the preliminary fee. The initial PHA may receive a hard-to-house fee, if the family housed with the portable housing voucher qualifies for the hard-to-house fee.

(i) If the portability family leaves the Housing Voucher Program, or if the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA is free to use the funding, previously needed to support payment of subsidy for the portable housing voucher, for other families.

§ 887.565 Portability: Responsibilities of the receiving PHA.

(a) A receiving PHA that administers a Housing Voucher Program must issue a housing voucher to a family moving from the Housing Voucher Program of another PHA. A receiving PHA that administers a Housing Voucher Program may not limit the number of housing vouchers issued to such families. The receiving PHA may either bill the initial PHA for the housing assistance payments on behalf of the family or may provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program.

(b) A receiving PHA that does not administer a Housing Voucher Program, but does administer a Certificate Program may:

(1) Refer the initial PHA to a Statewide or other multijurisdictional PHA that administers a Housing Voucher Program in its jurisdiction;

(2) Administer the housing voucher assistance on behalf of the family and bill the initial PHA for amounts authorized in these procedures; or

(3) Issue a certificate to the family, utilizing funding under the ACC for its own Certificate Program.

(c) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments. The receiving PHA may not deny the family a housing voucher on the ground that the family's income exceeds the income limits for housing voucher eligibility in the receiving PHA's jurisdiction.

(d) The receiving PHA promptly must notify the initial PHA if a family fails to submit a request for lease approval by the date specified by the initial PHA.

(e) The amount of housing assistance payments to be made on behalf of the family must be determined in accordance with § 887.353. A PHA that does not administer a Housing Voucher Program must adopt a payment standard based on the appropriate Fair Market Rent or HUD-approved community-wide exception rent in effect in the receiving PHA's jurisdiction at the time it issues the family a housing voucher, must use all other applicable procedures in § 887.353 in determining assistance payments.

(f) The receiving PHA must perform all of the functions normally associated with providing assistance to a family in a Housing Voucher Program, including lease approval, annual recertification of income, and annual inspection of the unit.

(g) The receiving PHA may bill the initial PHA for an amount equal to 80

percent of the initial PHA's on-going administrative fee, unless it elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program. The receiving PHA also may bill the initial PHA for up to the preliminary fee for housing vouchers for cost-justified expenses.

(h) The receiving PHA is responsible for housing assistance payments it makes on behalf of the family to the owner in its jurisdiction. To accomplish this, in cases in which it does not elect to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the receiving PHA bills the initial PHA for the amount of the housing assistance payments.

(i) The receiving PHA promptly must notify the initial PHA if the family ceases to be a current participant in the initial PHA's Housing Voucher Program.

§ 887.567 Portability: Subsequent moves.

(a) A family may move more than once, using these portability procedures, although the initial PHA may limit family moves to not more than one in any twelve-month period.

(b) When the family wishes to move from an area in which the receiving PHA has been billing the initial PHA, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA. It then has all of the choices and obligations of a receiving PHA as described in these procedures. The first receiving PHA is no longer involved, because the initial PHA retains funding authority for the housing voucher.

(c) When a family wishes to move from an area in which the receiving PHA has elected to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher Program, this receiving PHA becomes the new initial PHA. It has all of the choices and obligations of an initial PHA as described in these procedures. The PHA in the new jurisdiction to which the family moves becomes the receiving PHA and has all of the choices and obligations of a receiving PHA as described in these procedures. In this situation, the initial PHA that originally selected the family is no longer involved.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

2. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 511.1 is revised to read as follows:

§ 511.1 Applicability and purpose.

This part implements the Rental Rehabilitation Program contained in section 17 of the United States Housing Act of 1937. The Program authorizes the Secretary of Housing and Urban Development to make rental rehabilitation grants to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. Grants are made on a formula basis to cities having populations of 50,000 or more, urban counties, States, and qualifying consortia of geographically proximate units of general local government. States may use all or part of their grant to carry out their own rental rehabilitation programs or to distribute them to eligible units of general local government. HUD will administer a State's grant if the State chooses not to do so. The purpose of the program is to help provide affordable, standard housing for lower income families and to increase the availability of housing units for use by housing voucher and certificate holders under section 8 of the United States Housing Act of 1937. Subject to rules for the Certificate Program (24 CFR Part 882, Subparts A and B) and for the Housing Voucher Program (24 CFR Part 887), certificates and housing vouchers must be used to assist eligible families who are displaced by rental rehabilitation activities and, at the PHA's discretion, to assist eligible families whose rent would be greater than 30 percent of their adjusted income as a result of rental rehabilitation activities.

4. In § 511.2, the defined terms "voucher" and "voucher payment" are removed and a new defined term "housing vouchers" is added in appropriate alphabetical order, to read as follows:

§ 511.2 Definitions.

* * * * *

"Housing vouchers" are housing vouchers issued under 24 CFR Part 887.

* * * * *

5. In § 511.20, paragraphs (b) (3), (6), (10), and (13) are revised to read as follows:

§ 511.20 Program description.

* * * * *

(b) * * *

(3) *Lower income benefit.* A description of how the grantee intends to ensure that the applicable percentage of rental rehabilitation grant amounts will be used for the benefit of lower income families, as specified in § 511.10(a). The description will indicate how the grantee plans to achieve the specified level of lower income benefit.

* * * * *

(6) *Selection of proposals.* A statement of the procedures and standards that will govern the selection of proposals by the grantee or, in the case of a State distributing rental rehabilitation grant amounts to State recipients, a statement of the State's guidelines for ensuring that these recipients have procedures and standards governing their selection of proposals. These procedures and standards must take into account:

(i) The extent to which the proposal represents the efficient use of rental rehabilitation grant amounts;

(ii) The extent to which the proposal will minimize displacement of lower income tenants in accordance with the displacement and tenant assistance policy in § 511.10(h); and

(iii) The extent to which the dwelling units involved will be adequately maintained and operated with rents at the levels proposed. This may consist of a description of plans for requiring a sufficient equity interest, risk, or other involvement in selected projects by private investors and lenders to ensure appropriate incentives to maintain and operate units after rehabilitation.

* * * * *

(10) *Need for rental housing assistance.* A statement, if applicable, by the grantee as to what rental housing assistance will be available to meet the needs of lower income tenants.

* * * * *

(13) *PHA participation.* (i) A statement of agreement by the appropriate PHA to participate in the Rental Rehabilitation Program in accordance with a Memorandum of Understanding with the grantee, and with applicable HUD requirements. For a State rental rehabilitation program where the PHA or PHAs which will participate is not known, a description of how such PHA or PHAs will be selected and the date by which such PHA(s) will be selected.

(ii) If known, the name, address, and telephone number of the PHA and contact person.

* * * * *

6. Part 511, Subpart E is revised to read as follows:

Subpart E—Memorandum of Understanding

§ 511.40 Memorandum of understanding.

The grantee and each participating PHA shall execute a memorandum of

understanding setting forth the responsibilities of each party and the procedures to be followed in coordinating the use of housing vouchers and certificates with rental rehabilitation grant amounts in accordance with HUD requirements. The memorandum of understanding shall describe the extent to which the PHA has chosen to use its discretion to provide preferences to families residing in rental rehabilitation projects. Where a State is distributing rental rehabilitation grant amounts to State recipients, the memorandum shall be executed by the recipient and the appropriate PHA.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

7. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 813.101 is revised to read as follows:

§ 813.101 Purpose and applicability.

This part establishes definitions, policies, and procedures related to income limits and the determination of eligibility, income, and rent for applicants under section 8 of the United States Housing Act of 1937 ("the 1937 Act"), including those for which loans are made under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.) However, § 813.107 and the definitions of Gross Rent, Tenant Rent, Total Tenant Payment, Utility Allowance, and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR Part 887).

9. In § 813.102, the definition of "shared housing" is revised to read as follows:

§ 813.102 Definitions.

* * * * *

Shared housing. A housing unit occupied by two or more families, consisting of common space for shared use by the occupants of the unit and (except in the case of a shared one-bedroom unit) separate private space for each assisted Family. Part 882, Subpart C of this chapter contains special requirements for Shared Housing in the Section 8 Certificate program and Part 887, Subpart K of this chapter contains special requirements for Shared Housing in the Housing Voucher Program.

* * * * *

10. In § 813.105, paragraph (d) is removed, paragraphs (e) and (f) are redesignated paragraphs (d) and (e), respectively, redesignated paragraphs (e)(2) through (e)(4) and the parenthetical sentence and the end of the section are revised, to read as follows:

§ 813.105 Admission to units available on or after October 1, 1981.

* * * * *

(e) * * *

(2) The number of dwelling units that are subject to paragraph (c) of this section for which HAP Contracts were first effective under Part 882, Subpart B of this chapter on or after October 1, 1981 (including new HAP Contracts for Families for whom HAP Contracts had been in effect before that date for a different unit);

(3) The number of Families occupying units described in paragraph (e)(1) of this section that were admitted to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted, and

(4) The number of Families occupying units described in paragraph (e)(2) of this section with Certificates issued on or after July 1, 1984 and were not Very Low-Income Families when such Certificates were granted.

* * * * *

(The information collection requirements contained in paragraph (b) and (c)(2) were approved by the Office of Management and Budget under control number 2502-0315; the requirements contained in paragraph (e) were approved under control number 2502-0204.)

11. In § 813.109, paragraph (a) is revised, to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income, and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see *e.g.*, Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective date" of an examination or reexamination refers to

(1) In the case of an examination for admission, the effective date of the initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher Program (Part 887) and the effective date of the redetermined Total Tenant Payment for all programs.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING PROGRAM

12. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In § 882.204, paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 882.204 Submission of applications.

* * * * *

(b) * * *

(1) An equal opportunity housing plan. If the PHA is participating in the Housing Voucher Program, the PHA must have a combined equal opportunity housing plan that covers the PHA's entire Certificate Program and Housing Voucher Program and complies with the requirements of this section and of § 887.59 of this chapter.

* * * * *

(3) An administrative plan. If the PHA is participating in the Housing Voucher Program, the PHA must have a combined administrative plan that covers the PHA's entire Certificate Program and Housing Voucher Program and complies with the requirements of this section and of § 887.61 of this chapter.

(i) The PHA must submit for HUD approval any changes in its HUD-approved administrative plan.

(ii) The plan must include:

(A) A statement of the PHA's overall approach and objectives in administering the Certificates Program;

(B) A description of the policies concerning the functions for which the PHA has discretion to establish local policies and procedures for treatment of applicants or participants, including: maintaining, closing, and reopening PHA waiting lists; voluntary interjurisdictional mobility of Certificate holders; issuing, extending, and denying Certificates; occupancy standards; preferences; single room occupancy

housing; shared housing; collecting amounts owed the PHA; informal reviews and hearings; recertifications; and directing Section 8 program activities in support of local or area-wide housing and community development initiatives. (The administrative plan should not restate HUD-mandated policies and procedures.);

(C) A statement that the housing quality standards to be used in the operation of the program will be as set forth in § 882.209, or that variations in the Acceptability Criteria are proposed (in the latter case, each proposed variation must be specified and justified); and

(D) A statement of the number of employees proposed for the program, by position and functions to be performed.

* * * * *

14. In § 882.207, paragraph (a) is revised to read as follows:

§ 882.207 Public notice to lower income families.

* * * * *

(a) The notice must state:

(1) That a Family that is already on the PHA's Section 8 waiting list, even if it was seeking a Housing Voucher, is also on the waiting list for Certificate assistance and does not need to reapply; and

(2) That a Family that is on a 1937 Act public housing waiting list will not lose its place on that waiting list by applying for assistance under the Certificate Program.

* * * * *

15. In § 882.209, paragraphs (a)(9), (a)(10), and (a)(11) are redesignated as paragraphs (a)(11), (a)(12), and (a)(13), respectively, and new paragraphs (a)(9), (a)(10), (c)(11), and (d)(3), are added, to read as follows:

§ 882.209 Selection and participation.

* * * * *

(a) * * *

(9) An applicant on the PHA's Section 8 waiting list may refuse the PHA's initial offer of a Certificate, if the family wants to wait for a Housing Voucher. The family does not lose its place on the waiting list because of its refusal. (The family also may refuse a PHA's initial offer of a Housing Voucher, if it wants to wait for a Certificate.) If the family refuses the second form of assistance, the PHA may remove the family from the waiting list if the PHA's HUD-approved administrative plan authorizes such action.

(10) A Certificate holder may request the PHA to issue the holder a Housing Voucher in exchange for the Certificate. The PHA must exchange the Certificate for a Housing Voucher if it has Housing Voucher assistance available at the time of the request.

* * * * *

(c) * * *

(11) An explanation of how the principal features of the Certificate Program differ from the Housing Voucher Program.

* * * * *

(d) * * *

(3) If the Certificate was issued in exchange for a Housing Voucher (see § 882.209(a)(10)), the initial term and the extended term, if applicable, are measured from the date the Housing Voucher was issued.

16. In § 882.210, paragraph (b) is revised to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(b) The PHA may deny an applicant admission to participate in the Certificate Program or, with respect to a current participant, may refuse to issue another Certificate for a move to another unit, approve a new lease, or execute a new Contract, if the applicant or participant:

(1) Currently owes rent or other amounts to PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(2) As a previous participant in the Section 8 program or as a participant in the Certificate Program, has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance payments contract or housing voucher contract for rent or other amounts owed by the family under its lease (see § 882.112(d) and § 887.209 of this chapter), or for a vacated unit (see § 882.105(b)).

(3) Has violated any family obligation under § 882.118 or under § 887.401 of this chapter (Housing Voucher Program).

(4) Has committed any fraud in connection with any Federal housing program.

(5) Breaches an agreement provided for in paragraph (c) of this section.

* * * * *

17. In § 882.219, paragraphs (b)(2)(ii) and (b)(4) are revised, to read as follows:

§ 882.219 Federal selection preferences.

* * * * *

(b) * * *

(2) * * *

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued a Certificate of Family Participation before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially issued a Certificate of Family Participation or Housing Voucher in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

* * * * *

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the PHA may implement the system.

* * * * *

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

18. The authority citation for Part 888 continues to read as follows:

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

19. Section 888.111 is revised to read as follows:

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program (Part 882, Subparts A, and B), including space rentals by owners of manufactured homes under the Section 8 Certificate Program (Part 882, Subpart F), the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E), Section 8 existing housing project-based assistance (Part 882, Subpart G), and Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 loan management and property disposition programs). The FMRs are also used as the basis for establishing payment standards under the Housing Voucher Program (Part 887).

PART 960—ADMISSION TO AND OCCUPANCY OF PUBLIC HOUSING

20. The authority citation for Part 960 is revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. In § 960.204, paragraphs (c) (3) and (4) are redesignated as paragraphs (c) (4) and (5), respectively, and a new paragraph (c)(3) is added, to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(c) * * *

(3) Provide that a family that is on the PHA Section 8 waiting list will not lose its place on that waiting list by applying for admission to the PHA's public housing projects.

* * * * *

Date: August 30, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-20078 Filed 9-2-88; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-85-1204; FR-1895]

Community Development Block Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Department is amending substantial portions of its Community Development Block Grants (CDBG) regulation at 24 CFR Part 570. This final rule updates and makes more efficient the CDBG program. In addition, it incorporates legislative changes to Title I of the Housing and Community Development Act of 1974 contained in the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Act of 1987.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, (202) 755-5977. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2506-0077, 2529-0008, and 2506-0066. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

On October 31, 1984, the Department published a proposed rule for the Community Development Block Grant (CDBG) program entitled "Amendments to Community Development Block Grant Regulations" (49 FR 43852). The proposed rule amended substantial portions of 24 CFR Part 570, including provisions contained in Subparts A, C, D, J, K, M and O. [Subpart I, which governs the State CDBG program, will be amended in a separate rulemaking.]

A large number of the amendments to the CDBG regulations reflect legislative amendments to Title I of the Housing and Community Development Act of 1974 (the Act), contained in sections 101 through 110 of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) and legislative amendments in the Housing and Community Development Act of 1987 (the 1987 Act). The changes in the regulations which implement the 1987 Act reflect solely those provisions of the 1987 Act which can be implemented without public comment because they require little or no regulatory elaboration, e.g., the requirement that the grantee certify that at least 51 percent of its CDBG funds will be used for activities which benefit low and moderate income persons has been changed to 60 percent to reflect this amendment in the 1987 Act. Other changes to the regulations needed to implement the 1987 Act will be published in the near future as a proposed rule.

Revisions reflected in this final rule also update and clarify existing HUD policies governing the CDBG program, and make various miscellaneous technical corrections. Some revisions reflect substantive determinations based upon the Department's own policy initiatives.

The Department of Justice (DOJ) has reviewed this regulation. DOJ has the responsibility under Executive Order 12250 to coordinate the implementation and enforcement of various nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and similar statutes such as section 109 of the Act. All issues have been resolved.

As a result of DOJ review, a number of changes were made in HUD's proposed regulation. Clarifying language has been added to the preamble in several cases, even where no change was made in the text of the regulation. As a general matter, these revisions reflect interpretations of the holdings in recent Supreme Court decisions, describe the nature of actions which are discriminatory, and define the extent of permissible affirmative action. In addition, at the request of DOJ, language has been added to the rule to clarify the meaning of fair housing under Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) and the requirements for affirmatively furthering fair housing in the Community Development Block Grant Program. The affected sections of the regulation are: Sections 570.201(k), 570.205, 570.206, 570.506, 570.601, 570.602, and 570.904.

Two hundred and seventy comments were received in response to the proposed rule. The large majority were filed on behalf of entitlement cities and counties. However, a significant number were submitted by private associations and organizations, such as privately operated fair housing centers, that participate in or are affected by CDBG funded activities.

A recurrent theme in the comments from entitlement cities is that the Department should interpret CDBG legislation in a manner that affords grantees the greatest amount of flexibility and discretion in administering their programs. Where uniform standards are necessary, they should be reasonable in scope, unambiguous and readily susceptible to compliance. In fact, the Department's very objective in formulating the final CDBG regulations is to carry out both the letter and spirit of the Act in a manner that results in the most efficient expenditure of Federal funds, and also provides persons involved in the grant program with wide latitude in achieving local goals.

In the preamble to the proposed rule, the Department independently discussed each of the subparts of Part 570 proposed for revision. The same organizational approach will be used in this preamble to address significant public and DOJ comments and to explain the Department's basis for changing any of the revisions proposed in regulations published in 1984.

II. Subpart A—General Provisions

Section 570.1 Purpose.

Two commenters indicated that the rule was unclear with respect to what subparts of Part 570, (other than Subpart I), pertain to the State-administered CDBG program. Because Subpart I will be revised in a separate rulemaking, no change is made in the applicability of the other subparts to Subpart I in this rulemaking.

Section 570.2 Primary objective.

Specific reference to Subpart M of Part 570, Loan Guarantees, has been added to this section to clarify that the requirements of the Act and Part 570 related to carrying out the primary objective of the Act are applicable to funds received by a grantee as a result of loan guarantees.

Section 570.3 Definitions.

In response to a commenter's request for further clarification of the definition of "identifiable segment of the total group of lower income persons in the community," at § 570.3(n), the Department has elected instead to delete the term. Over recent years, this term (that generally identifies various minority groups as well as female-headed households) has fallen out of use under the CDBG program, in favor of the term "minority." Because of this deletion, the terms defined in this section beginning with § 570.3(o) have been relettered.

Another commenter took issue with how HUD proposed to define the terms "metropolitan area" and "metropolitan city" now found at § 570.3 (u) and (v), because each definition indicates that the involved term is defined in light of related criteria established by the Office of Management and Budget, but fails to spell out the criteria. The Department finds it necessary to use the approach proposed, since OMB, and not HUD, is responsible for establishing and periodically revising the involved criteria (that are rather lengthy and complex). Information about the criteria, which can have a direct effect on CDBG entitlement grantee status, is made available to interested persons by OMB.

The definition of "city" for purposes of the Urban Development Action Grant program has been revised to reflect statutory changes. The definition of "metropolitan city" has also been changed to reflect the revised definition in the 1987 Act.

The Department received a large number of comments on the proposed definitions of "low and moderate income household" and "low and moderate income person" now found at § 570.3 (q) and (r); "low income household" and "low income person" at § 570.3 (s) and (t); and "moderate income household" and "moderate income person" at § 570.3 (w) and (x).

The majority of commenters objected to the reference in these provisions to 24 CFR Part 813 for the Section 8 Housing Assistance Payment program, because they concluded that grantees would be required to calculate income eligibility for the CDBG program in exactly the same manner as for the Section 8 program. Several commenters pointed out that use of the Section 8 methodology would make many low and moderate income homeowners ineligible for rehabilitation activities and for jobs created by economic development projects. This was the case, commenters said, because under Section 8 procedures real property assets are considered in determining income levels.

HUD's proposed definitions were intended to reflect the requirements of section 102(a)(20) of the Act, a new section added by the 1983 Act and modified by a technical amendments act to the 1983 Act. Under the definitions in section 102(a)(20), the term "low and moderate income" under the CDBG program is equivalent to "lower income" under the Section 8 program (i.e., 80% of median income for the area or below); "low income" is equivalent to "very low income" (50% of median area income); and "moderate income" means any income equal to or less than the Section 8 "lower income" limit and greater than the "very low income" limit (i.e., between 50 and 80% of area median). Section 102(a)(20) also specifies that, for purposes of these terms, "the area involved shall be determined in the same manner as such area is determined for purposes of assistance under section 8 of the United States Housing Act of 1937." Therefore, *income limits* established for CDBG purposes must be equivalent to those used in the Section 8 program. However, the statute does *not* require CDBG grantees to use the section 8 program's definition of income to calculate incomes of individual families to be applied against such income limits.

The Department agrees with the commenters that the section 8 definition of income may not be appropriate for use in all cases under the CDBG program. Therefore, these regulations do not require grantees to use any specific definition of income in determining whether program beneficiaries are low and moderate income persons or households. However, the Department does believe that the development of such a definition is important to assure uniform program administration. Since the effects of any definition of income to be used in the programs affected by this final rule would be complex and controversial, the Department intends to develop such a definition and publish it for comment in a separate proposed rule. This rule does, however, contain definitions of the terms "family" and "household" to improve clarity.

Finally, the definition of "urban county" has been changed to reflect the revised definition in the 1987 Act.

III. Subpart C—Eligible Activities

Section 570.200 General policies.

The Department proposed that the word "assisted" which is used in the eligible activities section of the Act, be substituted for "financed" in § 570.200(a), in order to clarify that the activity must meet one of the national objectives where CDBG funds are used for an activity, even where the CDBG funds are not expended for the actual construction, acquisition or other execution costs.

A number of commenters argued that the word "assisted" is too broad a term and could impose an undue burden on entities that receive nonfinancial assistance. Concern was expressed that "assisted" could be interpreted to apply even to other activities that occur as an indirect result of the CDBG financed activity. This is not HUD's intention. An assisted activity for this purpose is the activity for which the CDBG funds are used, but such use may take various forms, including loan guarantees for financing provided for the activity from other sources, whether or not the CDBG funds are disbursed from the letter of credit.

Another commenter was concerned that the language change in this section might require wage rates established under the Davis-Bacon Act to be applied to all CDBG-assisted construction activities. The purpose of this section is to describe the primary objective and eligibility requirements for an activity under this statute. The applicability of other requirements depends on the language of the applicable statute, Executive Order or regulation. The applicability of Davis-Bacon wage rates, for example, is set forth in Subpart K and is limited to certain construction work "financed" with CDBG funds. In order to more clearly limit this section to requirements imposed by this Act, HUD is eliminating paragraph (6), "other requirements," since they are described under other subparts of the regulations, and this paragraph is unnecessary.

Seven comments addressed the requirement at § 570.200(a)(3), that at least 51 percent of funds expended be for the benefit of low and moderate income persons. Four of these commenters asked HUD to establish a higher standard than the 51 percent required by statute. The basis of these comments was the fact that HUD previously had a review standard that set 75 percent as a target, before the Congress enacted legislation that set the minimum statutory percentage of 51 percent. The 1987 Act changes the percent to 60. HUD does not believe that it is appropriate to limit grantees' flexibility beyond the statutory requirement.

Another commenter suggested that a recipient could avoid compliance with the primary objective of the Act by undertaking substantial section 108 activities that are designed for the prevention or elimination of slums or blight. He suggested the repayments of section 108 guaranteed loans made after the effective date of the regulations be included in the calculation for determining compliance with the primary objective. This comment suggests that loan guarantee funds are not included in that determination at the time they are expended. This is not the case. The computation described at § 570.200(a)(3) to determine that at least 60 percent of the funds are expended for the benefit of low and moderate income persons refers to "CDBG funds," which are defined at § 570.3(e) to include guaranteed loan funds. To also include in that computation the repayment of such loans would result in double counting, and no change to the rule is required.

One commenter, while agreeing that it is important to emphasize the primary objective by discussing it prominently in the "General policies" section, contended that the overall benefit calculation instructions would be more useful as part of § 570.208, "Criteria for national objectives." The Department believes that it is appropriate to include an explanation on how overall benefit is calculated under § 570.200(a)(3). However, HUD has put in a note after § 570.208(a) to reference the information on the overall benefit calculation at § 570.200(a)(3). The provision at § 570.200(a)(3) has been revised, however, to reflect a modified approach to limiting the credit a recipient is to receive for CDBG-assisted housing activities. Instead of reducing the credit for every case where not all of the housing units are occupied by low and moderate income households, the reduction will now only apply where the CDBG assistance represents a percentage of the total activity cost that is greater than the percentage of housing units that are occupied by low and moderate income persons.

One commenter believed that the requirement for counting lower income benefit for housing based on occupancy after completion at § 570.200(a)(3) de-emphasizes the importance and effect of neighborhood treatment, and causes problems in relation to recordkeeping and income verification. This method of counting lower income benefit for housing after completion is based on statutory requirements at section 105(c)(3) of the Act, which limit the degree to which funds spent on housing activities can be considered to benefit low and moderate income persons.

The Department received a number of comments concerning the limitations proposed, at § 570.200(c), on when a grant recipient could make a special assessment against property owners to recover costs. One commenter argued that grantees should be allowed to assess property owners who were not low and moderate income households for capital improvements even if the improvements were funded with CDBG funds. The prohibition against recovering capital costs of public improvements funded with CDBG funds has been in the regulations since March 1978. However, in recent years, HUD has received inquiries on this subject from grantees who believe that with resources becoming more scarce, persons that are not of low and moderate income should be required to contribute toward paying for improvements that benefit them directly. The Department has decided that these arguments have merit. Because there is no statutory prohibition against such an assessment, HUD has revised § 570.200(c)(2)(i) to allow the recovery of CDBG funds used to pay for public improvements through special assessments imposed only on properties owned and occupied by persons not of low and moderate income, where allowed under State and local law.

Another commenter questioned whether CDBG funds could be used to pay for "impact fees" charged as a condition of obtaining access to public improvements. The Department construes the Act to permit the use of CDBG funds to pay only those fees which represent the recovery of the capital costs of an eligible public improvement. Conversely, the Department construes the certification on assessments to be applicable only to the recovery of the capital costs of an eligible public improvement. The definition of "special assessments" has been modified to make clear that it only covers the recovery of the capital costs of the public improvement.

One commenter suggested specific references be included in the special assessment section of the regulations, indicating that if CDBG funds were used to pay the special assessment of low income persons, the improvement would have to comply with Federal requirements such as Davis-Bacon. The Department believes the statement made in § 570.200(c)(3)(i) has been modified accordingly.

Another commenter inquired whether the prohibition on the assessments of low and moderate income persons could be waived if the person elects to pay the assessment. Insofar as the special assessment rules reflect provisions mandated by the statute, they cannot be waived. In relation to those provisions prescribed by the Department, but not mandated by statute, the Department believes that a waiver could not be given, as the criteria for a waiver in § 570.5 could not be met. The primary objective of the CDBG program is to benefit low and moderate income persons. HUD believes that if such an election were allowed it would be contrary to the primary objective of the Act.

Finally, in order to provide grantees with maximum flexibility, HUD has revised § 570.200(c)(3). The Department will allow grantees to pay special assessments for non-low and moderate income persons as well as low and moderate income persons out of CDBG funds connected with a public improvement not paid for with CDBG funds, provided that the improvement meets all the CDBG requirements applicable to the activity, including environmental and citizen participation requirements. The improvement must also meet the criterion in either § 570.208(a)(1) for benefit to low and moderate income persons (because such an improvement serves an area generally), or § 570.208(b) for elimination of slum or blight, or § 570.208(c) for urgent needs. (It should be noted that a recent statutory change now authorizes payments to be considered to benefit low and moderate income persons if the payments are limited to low and moderate income persons where the improvement does not meet the requirements currently stated in § 570.208(a)(1). This will be reflected in subsequent rulemaking.) At § 570.200(f)(1)(iii), language added on carrying out an activity through designating one or more public agencies is derived from section 102(c) of the Act.

Similar language was formerly contained in the CDBG regulations at § 570.500.

Two changes have been made in § 570.200(g), the section that describes how the limitation on planning and administrative costs is calculated. One of the changes is closely related to the definition of administrative costs and is, therefore, explained in a later part of this preamble which describes changes in that definition. The second change is the addition of a phrase qualifying the words "program income" in the first sentence of § 570.200(g). Language has been added to clarify that, under the HUD-administered Small Cities program, program income from a grant that has been closed out but which income is received while the community has *another* active small cities grant is *not* to be considered in determining the 20% limitation on the closed out grant. However, such program income must be considered in calculating the 20% limitation on the active HUD-administered Small Cities grant.

One change has been made in § 570.200(h) regarding the description of pre-agreement costs for which reimbursement may be made. The description of relocation and acquisition activities has been revised to clarify that acquisition costs for which reimbursement may be made *are limited.* Reimbursement may be made for costs incurred in complying with the procedural requirements of § 570.606, such as obtaining the required appraisals, but not for the cost of the real property itself.

A large number of comments addressed the new provision at § 570.200(j), related to the constitutional prohibition on the use of CDBG funds for religious structures to be used for religious purposes. As indicated in the preamble to the proposed rule, that addition to the regulations reflected a long-standing Departmental policy which prohibited the use of CDBG funds for activities to assist active churches or other religious structures used for religious purposes or to otherwise promote religious interests.

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional mandate, the United States Supreme Court has adopted certain principles, in the form of three oft stated prongs, to be used when passing on the constitutionality of Federal assistance. First, the statute under which the assistance is to be provided must reflect a clearly secular purpose. Second, the statute must have a primary effect that neither advances nor inhibits religion. Third, the statute and its administration must avoid excessive governmental entanglement with religion. *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971). Working out case applications of these principles has been extraordinarily difficult. Chief Justice Burger noted in the majority opinion in the *Lemon* case that the language in the First Amendment is "at best opaque." 403 U.S. 612.

The first prong, that the statute reflect a clearly secular purpose, is not generally problematic and does not pose a problem here. The primary objective of the CDBG program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. This clearly reflects a secular purpose.

In constructing the reach of the second prong of the *Lemon* test, the Court in *Hunt* v. *McNair,* 413 U.S. 734 (1973), stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.

Id. at 742. Government assistance to a pervasively sectarian organization for any purpose, *secular or religious,* or the funding of a religious activity in secular surroundings, is thus viewed as "advancing religion" in violation of First Amendment principles.

In considering the nature of pervasively sectarian organizations, Justice Blackmun, speaking for the majority in *Roemer v. Maryland Board of Public Works,* 426 U.S. 736 (1976), declared: "To answer the question whether an institution is so 'pervasively sectarian' that it may receive *no* direct State aid of any kind, it is necessary to paint a general picture of the institution." Id. at 758.

Unquestionably, churches are pervasively sectarian. Additionally, there are other fundamentally religious organizations which conform to the profile of a sectarian or substantially religious institution.

Having stated the above, the Department is of the opinion that direct assistance under the CDBG program to churches or other primarily religious organizations to acquire, construct, or rehabilitate buildings would be constitutionally impermissible under the second test of *Lemon,* notwithstanding the secular use to which such buildings would be put.

Finally, even if this were not the case, the administrative oversight which would be necessary to assure avoidance of impermissible religious influences in the use of such buildings would almost certainly involve an "excessive government entanglement" with religion in violation of the third prong of the test. As the Court states in *Walz* v. *Tax Commission,* 397 U.S. 664 (1970), "a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *." 397 U.S. at 675.

In 1983, in order to confirm the Department's understanding with respect to constitutional limitations (particularly with respect to the second and third prongs of the *Lemon* test), the Department requested guidance from the DOJ concerning the effect of Supreme Court Church/State decisions on HUD programs, specifically the section 202 Direct Loan program and the CDBG program.

Under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, loans are made to private nonprofit corporations, limited profit sponsors, consumer cooperatives, public bodies or agencies to develop housing for the elderly or handicapped. To allow religious organizations to participate as sponsors of 202 projects, HUD requirements provide that religious sponsors must establish private, secular nonprofit borrower corporations to obtain the loan and execute the mortgage as legal owner of the project. The question posed to DOJ was whether the HUD requirements in this regard were constitutionally mandated. It is important to note that the section 202 housing program is an entirely secular activity in nature and purpose.

The DOJ ruled that the creation of a separate secular borrowing entity in the section 202 program is constitutionally required. In reaching this result DOJ concluded that if separate secular borrower entities were not established, direct and substantial aid would flow to churches, in violation of the Establishment Clause. The opinion states, "where section 202 loans given directly to churches or other fundamentally religious organizations, the principle 'that no aid at all go to institutions that are so "pervasively sectarian" that secular activities cannot be separate from sectarian ones,[']' *see Roemer* v. *Maryland Public Works, Bd.,* 426 U.S. at 755, would by definition be violated."

Over the course of the CDBG program, questions have been presented as to whether churches or church-owned property could be rehabilitated with CDBG funds. Departmental advice was that such assistance could not be provided. This conclusion is based in part on *Committee for Public Education* v. *Nyquist*, 413 U.S. 756, 777 (1973), which states that "if the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair."

The DOJ opinion concluded that HUD's longstanding policy of prohibiting CDBG funds to rehabilitate, maintain or restore churches reflects constitutional requirements and, further, that "*any* structure used to promote religious interests, regardless whether constructed for educational, charitable or whatever purposes, may not * * * receive federal assistance." A subsequent DOJ opinion also confirmed the HUD position that the prohibition applies notwithstanding the fact that the structure has historic significance.

In accordance with these First Amendment principles, the final rule proscribes the use of CDBG funds for the acquisition of property or the construction or rehabilitation of structures for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (except as noted hereunder) of structures owned by such entities, regardless of the use made of the property or structure. As used in the final rule, the term "primarily religious" is meant to be synonymous with the term "pervasively sectarian" as that term has been used by the Supreme Court in its First Amendment Church/State decisions.

Having stated the above, the Department is aware of and sensitive to the unique and vital role religious organizations play in the delivery of services and other assistance to lower income persons. In view of this, every attempt has been made to explore mechanisms to facilitate that role within the framework of First Amendment Church/State principles.

After a thorough consideration of all the issues involved, the Department is of the opinion that it would be in accord with Church/State principles to permit CDBG funds for the rehabilitation of buildings owned by primarily religious organizations to be used for wholly secular purposes under the following circumstances:

a. The building (or portion thereof) that is to be improved with CDBG funds has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity):

b. The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

c. The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

d. The lease payments do not exceed the fair market rent of the premises as they were before improvements are made;

e. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

f. The lessor enters into a binding agreement, that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements; and

g. The lessee must remit the amount received from the lessor under (f) above to the original recipient from which the CDBG funds were derived.

The lessee may also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose. In such case, the religious entity must agree in the management contract to carry out the secular purpose in accordance with principles prescribed by HUD.

While allowing CDBG assistance to be used to rehabilitate buildings owned by primarily religious organizations, these requirements have been carefully tailored to ensure that constitutionally impermissible assistance to religious entities is avoided. Thus, the religious entity conveys control of the premises to be assisted during the life of the improvements and the provision of assistance is to a secular lessee for a secular purpose. Under such an agreement, in accordance with the constitutional mandate, religious organizations will derive no direct benefit from improvements to the premises made with CDBG assistance.

The final rule also permits CDBG funds to be used for public services otherwise eligible to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient that in connection with the provision of such services:

a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

b. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

c. It will provide no religious instruction or counselling, conduct no religious workshop or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services; and

d. The portion of a facility used to provide the public services shall contain no sectarian or religious symbols or decorations (other than those permanently affixed to or part of the structure).

Where public services provided under the above provisions are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services, where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditures for the public services.

In allowing primarily religious entities to serve as public service providers, the Department considers the provision of assistance as flowing *through* such entities *to* the intended beneficiaries of the particular program.

Numerous comments addressed § 570.200 (k) of the rule, which gives effect to the displacement provisions at section 104(k) of the Act. Several commenters found it confusing to have responsibilities concerning displacement located in several different parts of the rules (separate references to displacement were contained in proposed Subparts C, D, J, and K). The requirements relating to displacement, relocation benefits, including those under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and new requirements for replacement housing added to the Act by the 1987 Act have been consolidated and have been recently published as an interim rule. (53 FR 31234, August 17, 1988) The regulations which are included in the interim rule have been reprinted in this final rule without change except for § 570.900, as explained in the preamble covering Subpart O, below.

The provisions dealing with restrictions on the change of use of real property (§ 570.200 (1) of the proposed rule) have been modified and combined with provisions on disposition of real property. The combined provisions now appear in Subpart J, at § 570.505, "Use of real property."

Section 570.201 Basic eligible activities.

At § 570.201(a), The Department has clarified that only "long-term", i.e., 15 or more year, leases are considered to constitute acquisition for the purpose of CDBG eligibility.

A commenter recommended that activities identified at § 570.201(c), concerning public facilities and improvements, should only be eligible if they occur in conjunction with other CDBG funded activities. The Act does not establish such a limitation, and HUD will not do so because it does not wish to curtail a grantee's flexibility in this area.

A number of commenters had suggestions concerning facilities designed for use in providing shelter for persons having special needs. These types of facilities include, but are not limited to, shelters for the homeless; convalescent homes; hospitals; nursing homes; battered spouse shelters; halfway houses for runaway children, drug offenders or parolees; group homes for mentally retarded persons; and temporary housing for disaster victims. The thrust of the comments was that the structures should be viewed as public facilities and, therefore, not subject to the longstanding regulatory prohibitions at § 570.207 regarding the construction of new permanent residential structures. Some of the types of shelters described above are specifically identified as eligible for CDBG assistance in the regulations. Because, however, statutory changes since 1980 have substantially broadened the eligibility of public facilities, § 570.201(c) has been revised to specify the eligibility of the new construction of various types of temporary shelters. The shelters listed above are included as examples in the final regulation.

Several comments on § 570.201(e), "public services," addressed matters outside any particular rule change proposed. HUD has adopted a commenter's suggestion that since fair housing counseling is eligible as a public service, it should be listed among the examples of eligible services contained in the section.

Another commenter felt that public service activities should only be allowed in conjunction with other eligible CDBG activities, and that the increase in the allowable percentage of funds for public services would detract from housing activities. HUD is committed to allowing grantees to exercise the maximum discretion possible, subject to the limits set out in the statute and rules. The Department is not inclined to place greater restrictions on public service activities than the Act itself imposes.

One commenter suggested that the 15 percent of grant limitation on expenditures for public services should be calculated based on the grant amount plus all program income, rather than the grant amount alone. The Department disagrees, since it is generally agreed that the CDBG program is intended primarily to address physical development needs. The Department does authorize program income to be counted in the base against which the 20 percent limit on planning and program administration is calculated, but there is justification for this policy. Program income increases the size of the local CDBG program which must be administered. Also, basing the 15 percent limit only on the grant amount allows grantees, and HUD, to determine precisely the dollar limit on public services before a program year begins.

While the Department proposed no change to § 570.201(k), one commenter recommended that the removal of architectural barriers related to mobile homes should be eligible regardless of whether a mobile home is classified under State law as real property or personal property. The Department has amended § 570.202 to clarify that CDBG funds may be used to rehabilitate manufactured housing where such housing constitutes part of the community's permanent housing stock. CDBG funds may be used to remove architectural barriers of such housing.

HUD published on June 2, 1988 (53 FR 20215), its final regulation implementing section 504 of the Rehabilitation Act of 1973, as amended, for HUD's Federally-assisted programs. That regulation establishes specific accessibility requirements for new construction and alterations.

Section 570.202 Eligible rehabilitation and preservation activities.

The Department received several comments opposing its proposal to delete, from the kinds of buildings and improvements eligible for rehabilitation and preservation activities under § 570.202, the rehabilitation of privately owned non-residential structures. These commenters contended that only allowing the rehabilitation of commercial or industrial buildings under § 570.203, special economic development activities, would be unreasonable, since it would require grantees to make "necessary or appropriate" determinations even in cases where the rehabilitation was undertaken to improve the appearance of the area or to protect the public from safety hazards. HUD agrees that in such situations, the rehabilitation of commercial or industrial buildings should be permitted under § 570.202. Therefore, paragraph (a) has been revised by adding a subparagraph (3) to include the rehabilitation of publicly or privately owned commercial or industrial buildings, but where the building is owned by a private for-profit business, the rehabilitation is limited to improvements to the exterior of the building and the correction of code violations. Other types of rehabilitation of such buildings could only be eligible under § 570.203(b). (The rehabilitation of public facilities continues to be eligible under § 570.201(c).)

The final rule clarifies that CDBG funds may be used to rehabilitate manufactured housing. Such housing must constitute part of the community's permanent housing stock.

The 1983 Act amended Sections 105(a)(2) and 105(a)(14) of the Act, to make ineligible the use of CDBG funds for buildings for the general conduct of government. Under these amendments, the historic preservation of such buildings is ineligible, and HUD has modified both § 570.202(d) and § 570.207(a)(1) accordingly. However, the removal of architectural barriers (which, unlike historic preservation, is specifically made eligible by the Act) will be unaffected by the amendments.

Section 570.202(b)(7)(iv) was previously amended (52 FR 4870) in conjunction with changes for lead-based paint requirements and is included in this rulemaking without further change.

Section 570.203 Special economic development activities.

Many commenters expressed concern about being required under § 570.203(b) to consider, in every instance, the extent of need of the for-profit business for CDBG assistance, and the amount of the assistance provided in relation to the anticipated public benefit that would result. HUD was asked to define "need" and "benefit" for this purpose. HUD recognizes the difficulty in using terms such as "need" and "benefit" without providing additional guidance. However, it appears infeasible to provide guidance that would be applicable to all situations. Instead, HUD has revised § 570.203(b) to require the grantee, in making its "necessary or appropriate" determination, to conduct an analysis to determine that the extent of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefits expected to be derived from the project. HUD's review

of the recipient's documentation would be aimed at identifying any case where the amount of assistance provided was clearly unreasonable. The final rule also makes clear that such a determination is required to be made even if the assistance is provided to a for-profit business through a subrecipient.

Section 570.204 Special activities by subrecipients.

A commenter suggested that since there is increasingly more competition for scarce resources, grantees should have the option of making loans to subrecipients identified in § 570.204(c), rather than being limited to making grants. The 1987 Act amended the Act to authorize assistance of any kind to such entities, and the final rule reflects this change.

The final rule has been changed to clarify current policy that certain activities carried out by these special subrecipients are subject to the same restrictions as when the recipient carries them out itself. These restrictions are: the dollar limitation and non-substitution requirements on public services; the requirement for a necessary/appropriate determination when CDBG assistance is provided to a for-profit business; and the dollar limitation on planning and program administration activities.

Section 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

Two commenters requested a revision to § 570.205 that would allow charging environmental assessments to general planning costs. Because some grantees may find it burdensome to separate project-specific environmental assessments, § 570.205(a)(4)(iv) has been revised to provide the alternative of including such costs under eligible planning activities. Where grantees choose to consider such costs as planning, however, the costs will then be subject to the 20 percent limitation on planning and program administration costs described in § 570.200(g).

Language has been added to the regulation to make clear that planning activities include identification of actions to implement the plans, but not the implementing actions. Actions to implement the plan must be eligible under §§ 570.201–570.204, or 570.206 to be assisted with CDBG funds.

Several commenters have requested that HUD restore language to § 570.205(a)(4)(iv)—language deleted in 1983 for the purpose of simplification only—that identifies urban environmental design plans as an eligible planning activity. This has been done.

One commenter suggested that since proposed § 570.904(c)(1) would involve recipients' undertaking an analysis of impediments to fair housing choice, the cost of undertaking this analysis should be shown as an eligible planning expense under § 570.205(a). While § 570.904(c)(1) is a review criterion and not a requirement, HUD agrees that it would be useful for this expenditure to be specifically identified as an eligible cost, and a new § 570.205(a)(4)(vii) has been added to so describe this kind of expenditure.

Section 570.205(a)(4)(vii) has been added to clarify that the analysis of impediments to fair housing choice provided for in § 570.904(c)(1) may be considered an eligible planning activity. "Fair housing choice" means the ability of persons regardless of race, color, religion, sex or national origin of similar income levels to have available to them the same housing choices. "Impediments to such housing choices" are any actions, omissions or decisions taken because of race, color, religion, sex or national origin which restrict housing choices or the availability of housing choices.

The 1987 amendments to the Act simplified the provision for energy use strategies. The amendment did not narrow or otherwise change the eligibility of activities necessary for the development of energy use strategies related to a recipient's community development goals. Therefore, no change has been made to the language in § 570.205(a)(3)(v) identifying the development of energy use and conservation strategies as an eligible planning activity.

Section 570.206 Program administration costs.

Under the proposed rule, the definition of administrative costs subject to the 20 percent limitation was proposed to be expanded to include the costs of any staff principally engaged in managing or supervising other staff, irrespective of whether and to what extent they also engaged in activity delivery functions. More than 150 comments were received on this proposal, with virtually all commenters vigorously opposing it. After considering the public comments and a subsequent report that addressed the subject by the Surveys and Investigations Staff, entitled "A Report to the Committee on Appropriations, U.S. House of Representatives on the CDBG Program" (March 1985), the Department has decided not to adopt the proposed change.

Commenters offered many arguments against the proposed change. A frequent comment was that it is unreasonable not to consider the management and supervision of staff engaged in activity delivery functions as an essential element of activity delivery. Another argument frequently offered was that the rule would skew the local activity-selection process away from the types of activities often carried out by subrecipients. Especially affected would be staff intensive activities, such as public services and housing rehabilitation. There was widespread concern that transfer of supervisory costs from activity accounts to the program administration account would result in many grantees exceeding the 20 percent cap and, therefore, would force them to make undesirable changes in locally determined priorities. It was also contended by many commenters that the rule would be administratively burdensome, significantly increasing recordkeeping requirements.

Most commenters recommended maintaining the previous rule, under which the 20 percent cap applies to overall program administration, but not to project administration. However, as confirmed by the Surveys and Investigations Staff report, the distinction between program and project administration remains vague and subject to various local interpretations. Therefore, in this final rule, the Department is clarifying which expenses fall under program administration, without expanding the scope of that category beyond the boundaries currently observed by most communities. Accordingly, the final rule describes the types of assignments involved in overall program administration. The rule also describes two alternatives for charging salaries, wages, and related costs to the program administration category. Under the first alternative, the grantee would identify each person whose *primary* responsibilities with regard to the program involve these types of assignments. The entire salary, wages, and related costs allocable to the program of such persons could then be charged to the program administration category. This approach should simplify recordkeeping. Under the second alternative, the grantee would identify each person whose responsibilities involve *any* of these types of assignments. The percentage of time each person spends on such assignments would then be applied to his or her salary, wages, and related costs to determine the amount to be charged to the program administration

category. This pro rata approach would require more detailed recordkeeping, but might be preferred by smaller communities where the same staffs carrying out program administration assignments also spend substantial time in the execution of activities eligible under § 570.201 through § 570.204.

The final rule also contains a conforming amendment to § 570.200(g), limiting the application of the 20 percent cap to planning activities under § 570.205 and to administrative costs under § 570.206. The proposed specific reference to subrecipients in § 570.200(g) has been deleted because, as a general rule, subrecipients do not carry out overall program management functions. It should be noted, however, that if a grantee delegates overall program management functions, as described in § 570.206(a), to a subrecipient, the costs of carrying out those functions must be charged to the program administration account and are subject to the 20 percent cap.

Many commenters argued that fair housing counseling should be removed from under the 20 percent cap and designated as an eligible activity under § 570.201. Since it would require a legislative change to make such an activity eligible in its own right, the commenters' goal could only be accomplished in these regulations by highlighting that such counseling can be carried out as a public service under § 570.201(e). However, with the exception of planning and program administration, grantees must be able to demonstrate how each activity addresses at least one of the three national objectives. Because this requirement constrains a grantee's ability to take fair housing actions which address all income ranges, and to effectively meet its affirmatively furthering fair housing certification, fair housing activities have been retained as eligible, but subject to the 20 percent cap provision. It should be noted that to the extent fair housing counseling is directed to low and moderate income persons, it would also be eligible as a public service under § 570.201(e) if at least 51% of the persons assisted are of low and moderate income.

Based on comments by DOJ the Department has changed the heading of § 570.206(c) from "Fair housing counseling" to "Fair housing activities" and provided more examples of eligible activities. The purpose of Title VIII enforcement is to eliminate discrimination in housing transactions. It does not include discrimination in housing on the basis of race, color, religion, sex or national origin for the purpose of attaining or maintaining a particular statistical measure. The elimination of discrimination widens housing choices. As one of the eligible fair housing activities which can be funded with CDBG funds, the provision of fair housing counseling, i.e., making persons of all races, colors, religions, sexes, and national origins aware of housing opportunities and related resources such as access to transportation, in all parts of a community, facilitates such widened housing choices.

Because § 570.206 cannot provide an absolute answer in every case where a grantee may need to classify a particular expenditure as either an activity delivery cost or a general administrative cost, the Department encourages any grantee with a particular problem in applying this regulation to a specific circumstance to write to HUD (1) describing the particular expenditure in question, (2) explaining the reasons the grantee believes the expenditure to be an activity delivery cost or a program administration cost, and (3) requesting clarification of the Department's policy as it applies to the situation in question.

Section 570.206(a)(4) has been modified in order to clarify that eligible administrative costs include rental payments (including payment of depreciation or use allowances), but not purchases of office space for the administration of the CDBG program. Such costs would be allowable as rent or through depreciation or use allowances in accordance with OMB Circular A-87. Based upon questions from grantees, HUD wants to make clear that the regulations do not authorize the acquisition by purchase of real property for this purpose, because of the indefinite period of the program's authorization.

Paragraph (d) under § 570.206 has been deleted and the paragraph is reserved. This paragraph made eligible the provision of assistance to facilitate performance and payment bonding. The provision was deleted as unnecessary since such costs would be eligible under the provisions which make eligible the activity upon which the contractor(s) would be performing. The Department believes it is important that the eligibility of assistance for this purpose should not fall under § 570.206 because activities eligible under that provision are not subject to scrutiny for compliance with the national objectives.

Section 570.208 Criteria for national objectives.

The proposed section at § 570.208(a), describing the criteria that would be used to determine whether an activity meets the national objective of benefitting low and moderate income persons, drew a large number of comments. The majority of these comments addressed the use of CDBG funds for economic development and jobs. However, a wide range of issues were raised, and this entire section of the rule has been revised as a result. The major changes are:

(a) Amplification of the point that, notwithstanding that an activity meets one of the stated criteria, substantial evidence that the activity does not benefit low and moderate income persons will rebut the presumption that the activity meets the national objective;

(b) Rule revisions to reflect amendments to the 1983 Act enacted in the Housing and Community Development Technical Amendments Act of 1984, concerning activities that serve an area generally;

(c) Expansion of the groups for which a presumption of low/moderate income benefit will be given;

(d) Combining of the proposed criteria for rehabilitation and acquisition/construction of property for housing into a single criterion;

(e) Substantial revision of the criterion for activities designed to create or retain jobs; and

(f) Deletion of the criterion related to activities that are a prerequisite to or an integral part of another activity.

A more detailed discussion of the comments received and the changes made follows.

In the past, standards used in the program for determining whether an activity meets one of the national objectives have been conditioned, so that such determinations would be rebuttable where there was substantial evidence to the contrary. The applicable regulation, at § 570.901(b)(1), stated that "the following activities, in the absence of substantial evidence to the contrary, will be considered to benefit low and moderate income persons." It further conditioned the standards by stating that "in determining whether an activity will actually benefit low and moderate income persons, the net effect of the completed activity shall be considered." Therefore, the location of an activity, although a significant consideration, would not alone demonstrate its benefit to low and moderate income persons. Under the proposed rule, the references to the "net effect" and "location" of the activity would have been deleted, and the "evidence to the contrary" reference would have been retained without further elaboration.

In considering various criteria that could be employed in the final rule,

HUD has determined that some elaboration would be helpful for making judgments about activities that, in addition to benefitting low and moderate income persons, provide substantial benefits to other persons as well, or actually involve negative effects on low and moderate income persons that tend to offset the benefits to such persons. Accordingly, the final rule contains the qualification that, in determining whether there is substantial evidence to the contrary, the full range of direct effects of the assisted activity will be considered.

Section 570.208(a)(1) of the proposed rule related to area benefit activities. In the proposed rule, HUD indicated that assistance to businesses or commercial establishments could qualify as benefitting low and moderate income persons where the area served by the business(es) is one containing a sufficiently large (generally 51 percent or more) proportion of low and moderate income persons. In defining such service areas, the proposed rule emphasized ensuring that the *entire area served* by an activity be considered. An example was given in the discussion of this proposal of a case where a commercial strip is located on the boundaries of two neighborhoods and serves both of them. The proposal would have required that the income characteristics of both neighborhoods be combined in determining whether there is a sufficient proportion of low and moderate income persons in the service area to qualify under that national objective. Commenters were concerned about the difficulty of determining the service area of an activity involving assistance to businesses. It was noted that, in a commercial strip or district, different stores would very likely serve somewhat different areas. The final rule retains the requirement that the area served by the activity must be the entire area served. This is considered necessary in order to avoid covering cases where there may be one or more relatively small areas that are predominantly lower income included in the total area served by an activity. However, the example of the commercial strip has been dropped in recognition of the difficulty of determining the precise area it would serve. It is recognized that grantees will have to make common sense judgments about the area served by a business strip or district for which public improvements or facade treatment is contemplated—perhaps even making a distinction between primary and secondary service areas. In providing assistance directly to a particular commercial establishment based on the area it serves, a grantee would be expected to conduct surveys or analyses, as appropriate, to determine the area it serves or the income characteristics of its clientele, whenever there is reason to question that the business serves an area other than the neighborhood in which it is located. The proposed rule stated that an activity need not be located in its service area. Upon review, it was determined that this could occur only in very remote circumstances and it would be unnecessarily confusing to provide for it specifically in the rule. It was therefore deleted in the final rule.

The proposed rule at § 570.208(a)(2) reflected a 1983 Act amendment to section 105(c)(2) of the Act. This proposed change limited the exception to the general rule that area benefit activities must serve areas of 51 percent or more low and moderate income persons to those grantees having *no* areas containing that high a percentage of such persons. In the rule preamble, however, it was also noted that this statutory provision had been modified by the Technical Amendment Act shortly before publication of the proposed rule, and that the final rule would have to be amended to conform to the new provision. Accordingly, the rule has been modified, at § 570.208(a)(1)(ii), to indicate the following:

(a) The exception is limited to metropolitan cities and urban counties; and

(b) It applies to any such community in which less than one-quarter of all of the areas in the community have concentrations of low and moderate income persons exceeding 51 percent.

As specifically required by the statutory amendment, the Department issued detailed instructions to all entitlement grantees on January 4, 1985, outlining how this exception was to be implemented. HUD elected to use Census Block Groups as the common denominator for determining both whether a community qualifies to use the exception and the minimum level of concentration of low and moderate income persons that would qualify for such a community. In order to provide maximum flexibility, HUD will recognize service areas that are located anywhere in the community's jurisdiction, if it can be demonstrated that the concentration of low and moderate income persons in that area is at least as high as the percentage established using the procedure outlined in the regulations.

A paragraph has been added at § 570.208(a)(1)(iv) to reflect current policy that decennial census data is to be used for determining the income characteristics of service areas for this purpose, and certain exceptions to such usage. Proposed paragraph § 570.208(d) has been repositioned at § 570.208(a)(1)(iii) to improve clarity.

In relation to the criterion for benefit to low and moderate income persons at § 570.208(a)(3) in the proposed rule entitled Limited Clientele, and now at § 570.208(a)(2), HUD proposed to expand the provision to cover not only facilities, but also services, that do not serve an area generally but which, because of their specialized nature, serve a limited clientele that constitutes a particular segment of the low and moderate income population. Facilities or services designed for and used by senior citizens or handicapped persons were presumed to meet this proposed criterion. One commenter asked that the concept be broadened to include the homeless. HUD agrees, and has broadened the presumption to include other segments of the population for which it is reasonable to assume that most will fall within the definition of low and moderate income persons. These additions include abused children, battered spouses, homeless persons, illiterate persons and migrant farm workers. The effect of broadening this presumption is to reduce the need for income information to be collected and maintained to document that a facility or service benefits low and moderate income persons. Concerns that occasionally such a presumption may be incorrect will be addressed through the general provision in § 570.208(a), and where there is substantial evidence that the presumption is incorrect, the grantee would be required to provide the usual documentation supporting a claim of principal benefit to low and moderate income persons.

One commenter suggested that HUD require 100 percent benefit to low and moderate income persons for such specialized facilities and services. However, the effect of imposing such a requirement could be to create severe feasibility problems in providing facilities and services for low and moderate income persons. Finally, the criterion has been re-worded in the final rule to more clearly distinguish it from the other criteria used for this national objective; to clarify that certain kinds of activities may not qualify under this criterion but instead must meet another criterion to qualify as meeting the national objective of benefiting low and moderate income persons; and to

indicate various ways in which the recipient may demonstrate that an activity qualifying under this criterion principally benefits low and moderate income persons.

It is recognized that the distinction between an activity that serves an area generally (and thus is to be judged under the Area Benefit criteria) and one that serves a somewhat limited population in a particular area (to be reviewed under the Limited Clientele criteria) can be problematic. However, it is important to make the distinction for two reasons. An area benefit activity can qualify under the "upper quartile" percentage of lower income beneficiaries whereas a limited clientele activity must always principally benefit such persons. Moreover, the recordkeeping requirements and property use restrictions differ. Where an activity serves an area and benefits all the residents in that area, the grantee need only demonstrate that, at the time the CDBG assistance was provided, the most currently available information (usually census data) indicates that a sufficiently large percentage of those residents were low and moderate income. Since the grantee cannot generally be held accountable for future changes in the demographic makeup of the service area, it has no continuing responsibility to ensure that the assisted activity benefits lower income persons. A facility that serves a limited clientele, however, carries with it the responsibility not only to document that the beneficiaries were primarily lower income following its completion but that it continues to serve such a population.

Most public improvements benefit an area generally. These include streets, sidewalks, curbs, gutters, trees, street lights, waterlines, sewers, drainage improvements, parks and playgrounds. Many public buildings similarly meet this test, including public schools, libraries, and fire stations. Commercial establishments usually serve a particular residential area and could also be considered to benefit an area generally. Other public buildings need to be examined on an individual basis to determine whether they will be used for only a certain segment of the population in an area. Facilities to be used as a center for senior citizens or handicapped persons or for sheltering the homeless would be considered to serve a limited clientele. A multipurpose community center could qualify as either serving an area generally or a limited clientele depending on how the grantee designs and uses the facility.

Under the proposed rule, at § 570.208(a)(6), the standard for assisting the new construction of multifamily, non-elderly housing would have been expanded by including the acquisition of property for housing. This proposal reflected section 105(c)(3) of the Act. One commenter contended that the proposed paragraph was difficult to follow, and requested that it be rewritten for greater clarity. In reviewing the provision for that purpose, HUD concluded that since all activities involving housing are treated the same under section 105(c)(3), the proposed standards for judging acquisition or new construction of housing should be combined with the standard used for rehabilitation of housing. The final rule contains a single criterion for this purpose at § 570.208(a)(3). Under this provision, the previous rule, which required that occupancy of rehabilitated rental units by low and moderate income persons be at *rents affordable to such persons,* is extended to properties acquired or newly constructed for housing considered as benefitting low and moderate income persons. HUD believes that the unit should be affordable to such persons without regard to whether the unit has been newly built or acquired with or without rehabilitation in order to meet this national objective. As under previous rules, grantees will establish and make public their own criteria for determining what is affordable. The final rule also clarifies that where two or more buildings being assisted with CDBG funds are located on the same or contiguous properties and are under common ownership and management, HUD will consider them to comprise a single structure for purposes of this criterion. This is necessary since rental housing is often part of a complex that consists of more than one building. In such circumstances, occupancy of a unit by low and moderate income persons will be credited without regard to the particular building in which the unit is located.

Section 570.208(a)(4), related to activities that create or retain jobs, has been substantially modified in response to the 75 comments received. The preamble to the proposed rule explained the 1983 Act amendment to the Act requiring that an activity, to qualify based on jobs, must "involve employment of persons, the majority of whom are persons of low- and moderate-income." Public comment was invited on a number of specific issues being considered in order to implement the statutory change. Most comments addressed whether HUD should require businesses receiving CDBG assistance to ensure that the majority of jobs be *actually taken* by persons from low and moderate income households. Most commenters urged HUD to retain the regulatory standard that jobs be made *available* to low and moderate income persons. They claimed that requiring businesses to ensure jobs were actually taken by persons from low and moderate income households would make it more difficult, if not impossible, to involve businesses; would require employers to survey job applicants to verify household income, living arrangements, marital status and children; create additional recordkeeping and administrative burdens; and leave the eligibility of CDBG expenditures in doubt until all jobs were filled. A few grantees indicated that they did not feel an "actually taken by" requirement would be a hardship. Several interest groups believed that the language of the law required something more than making jobs "available to" low and moderate income persons.

In light of the comments, the rule has been revised. For created jobs, grantees will have the alternative of documenting either that at least 51 percent of the jobs were actually taken by low and moderate income persons, or were available to such persons. To qualify as being available, however, special skills or education may not be a barrier to obtaining the job, and first consideration for filling the job must be accorded to low and moderate income persons. It is expected that most grantees will elect to fulfill the requirement for first consideration of low and moderate income persons through use of existing referral systems such as the Job Training Partnership Act (JTPA) program. Based upon discussions with the U.S. Department of Labor, HUD has determined that almost all of the participants in JTPA programs meet HUD's definition of low and moderate income persons. Therefore, HUD will presume that any jobs for which first consideration is accorded to JTPA participants will meet this component of the criterion, except for participants in the dislocated workers portion of that program.

For *retained* jobs, the relationship between the CDBG assistance and benefit to low and moderate income persons is more difficult to define. Job retention may not create any new benefit for low and moderate income persons, since it maintains the status quo. For created jobs, HUD requires that the jobs will be available to persons who are members of low and moderate income households at the time they are hired. After being hired, with the

additional income from the job being added to the income of their household, they might no longer meet the definition of a low and moderate income person. Whether they continue to meet that definition or not, the benefit to the low and moderate income person is clear. For retained jobs, the benefit to low and moderate income persons is evident for those employees who, at the time the CDBG assistance is provided, are members of low and moderate income households and whose jobs would clearly be lost were the assistance not provided. A benefit can also be assumed for those jobs that are not occupied by low and moderate income persons at the time the assistance is provided, but which can reasonably be expected to become vacant within a specified period of time as a result of turnover, and which would then meet the "available to" criteria described above, and which clearly would be lost were the assistance not provided. HUD has determined that the statutory objective would be met where the jobs actually held by low and moderate income persons at the time the assistance is provided, or jobs that through turnover are expected to become available to such persons within two years, or any combination of the two categories, constitutes at least 51 percent of the jobs to be retained.

For example, a grantee might consider assisting a business which had publicly announced its intention to close with a resultant loss of 100 jobs. Of the 100 jobs, the grantee determines that 35 are held by low and moderate income persons. Of the other 65 jobs, the grantee determines that 20 jobs require skills, education and experience that eliminates their being considered available to low and moderate income persons. For the 45 remaining jobs, the grantee determines that, based upon previous records of turnover, only 17 could be expected to turnover and be available to low and moderate income persons during the next two years. In this example, a total of 52 of the 100 jobs would be calculated to benefit low and moderate income persons two years after the assistance had been provided. This total would meet the "at least 51 percent" criterion, and thus would qualify under the rules as benefitting low and moderate income persons.

The final rule clarifies policy concerning when jobs created or retained by more than one business may be aggregated in order to demonstrate that the majority of jobs are for low and moderate income persons.

Public comment was requested on whether an upper limit should be imposed on the amount of CDBG assistance per job that could be provided, taking into consideration the distinctions between created and retained jobs, full-time versus part-time jobs, and the type of business being assisted. Most commenters suggested that HUD not establish a limit and not include the distinctions in the regulations, but rather leave those determinations up to the grantee. Most of those commenting on the full-time versus part-time issue indicated that, should HUD decide to address that issue in the regulations, it could easily be accomplished through the use of full-time equivalents. After considering the comments, HUD has decided not to establish a specific limitation on the amount of assistance per job. While there would be no specific upper limit on the amount of assistance per job, a high amount of CDBG assistance per job created or retained could constitute "substantial evidence to the contrary" as that phrase is used at the beginning of § 570.208(a). Such evidence would permit HUD to examine the full range of direct effects of the assisted activity in order to determine whether it is reasonable to characterize the activity as principally benefitting low and moderate income persons. This examination could be made even though the activity conforms with a literal reading of the criteria in § 570.208(a)(4). HUD would examine the extent to which the activity, in addition to benefitting low and moderate income persons, provides benefits to other persons as well.

In order to properly account for part-time positions in determining the number and percentage of jobs available to or held by low and moderate income persons, HUD will require the use of full-time equivalents, e.g., two half-time jobs would be equivalent to one full-time job.

Under proposed § 570.208(a)(8), an activity that would not on its own be considered to benefit low and moderate income persons could be so considered if it were determined to be a prerequisite to or an integral part of another activity that does meet one of the criteria in paragraphs (1)–(8) of § 570.208(a). The proposal required that the total public contribution not be unreasonable in relation to the low and moderate income benefit to be provided. The proposed provisions also would have dropped an example contained in the previous rule's version of this criterion. Several comments objected to having to consider any funding other than CDBG funding in considering whether the cost is reasonable in view of the low-mod benefit. Others sought further clarification, or examples of activities that could qualify under such a criterion, especially concerning public facilities supporting economic development.

In considering this matter in light of the comments and in the context of the other criteria, HUD has decided to drop this criterion as unnecessary. Where an activity constitutes an integral part of another activity, HUD will consider the beneficiaries of both the assisted activity and the other activity of which it is an integral part. (This is consistent with § 570.208(a), where the "full range of direct affects" are to be considered in determining whether an activity actually benefits low and moderate income persons.) It should be noted, however, that where the activity proposed to be assisted with CDBG funds serves the general population of an area (in addition to those persons who would benefit from the other activity intended to be supported), the activity could not qualify for CDBG assistance under this national objective unless the area served met the criteria under § 570.208(a)(1).

The proposed rule contained a separate provision for considering, as benefitting low and moderate income persons, certain projects for the removal of architectural barriers. The final rule contains this same provision, but incorporates it under the criteria for limited clientele activities at § 570.208(a)(2), and clarifies the buildings that may qualify for this purpose.

The final rule contains a provision at § 570.208(d)(3) reflecting the Department's interpretation of section 105(c) of the Act concerning certain activities that must meet two criteria in order to qualify as meeting the national objective of benefitting low and moderate income persons.

Proposed § 570.208(b) set out criteria for determining whether an activity meets the national objective of aiding in the prevention or elimination of slums or blight. Paragraph (b)(1) indicated how an activity would qualify on an "area basis," and included a provision that, throughout the area, there must be a substantial number of deteriorated or deteriorating "buildings." Previously, HUD also considered deteriorated or deteriorating "improvements" under this criterion. HUD proposed to delete the term "improvements" because of confusion among grantees over what it comprised. Several commenters objected to this proposed deletion, claiming that in their communities there are areas in which buildings are

structurally sound, but where public improvements are badly deteriorated. These commenters argued that they should be able to remedy deteriorated improvements without having to wait until the blighting conditions cause the buildings to deteriorate as well. HUD's longstanding concern has been that CDBG funds not be used for the treatment of areas that would be widely regarded as attractive, rather than blighted. HUD recognizes, however, that there may be areas where public improvements are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain the buildings in the area. For this reason, the final rule allows improvements to be considered, provided the improvements are public improvements and that the general state of most public improvements throughout the area is one of clear deterioration.

The proposed criterion at § 570.208(b)(1)(iv) would also have extended the special limitations related to the rehabilitation of residential structures in an area to nonresidential structures. Under these limitations, a structure can only be rehabilitated if it is first determined to be substandard (under local definition), and the rehabilitation is limited to treating the specific conditions that render the structure substandard before any less critical work can be undertaken. Several objections were raised to this proposal, mainly because of perceived difficulties in establishing criteria to be used for determining whether non-residential structures are substandard, given the broad array of non-residential buildings. As a result, the final rule does *not* extend the limitations under the criterion to non-residential buildings.

The final rule at § 570.208(b)(2), related to the treatment of slums and blight on a "spot basis," has been revised to clarify that the rehabilitation authorized under this criterion is limited to buildings. Recent experience indicates that the term may be misread to cover public improvements as well. A broader application of that regulatory provision was not intended, and the rule now makes this clear.

The final rule at § 570.208(b)(3), concerning the treatment of slums or blight in an urban renewal area, has been revised to clarify that this category is intended to permit completion of the redevelopment of areas in which activities were begun with funds received under the Federal Urban Renewal and Neighborhood Development programs and for which areas the urban renewal plan remains in effect. This provision also clarifies that once a property has been developed or redeveloped in accordance with the plan, any future redevelopment of the same property is not considered as necessary to complete the plan.

Finally, the final rule now contains a provision at § 570.208(d)(1) designed to clarify how the acquisition of real property must be viewed in determining if the acquisition addresses a national objective. Similarly, § 570.208(d)(2) has been added to clarify how relocation activities must be viewed in determining if the relocation meets a national objective.

IV. Subpart D—Entitlement Grants

Section 570.301 Presubmission requirements.

This section reflects 1983 Act amendments to the Act, including expanded citizen participation requirements in connection with a grantee's preparation of the final statement submitted to HUD. Two commenters offered suggestions for expanding citizen participation requirements beyond those specifically described in the statute. Since then, the statute was amended by the 1987 Act to again expand citizen participation requirements. A proposed rule reflecting the latest statutory amendment will be published soon for public comment.

Many comments addressed the new requirements, at § 570.301(a)(3) and (4) of the proposed rule, that grantees include in their statements a description and assessment of their past use of CDBG funds. Commenters complained that this requirement adds an unnecessary administrative responsibility and expense, since the grantee performance and evaluation report provides essentially the same information but in greater detail. The requirements at issue reflected the specific provisions of section 104 of the Act, as amended by the 1983 Act. However, these requirements do not appear in this final rule because they were deleted by the 1987 Act amendments to the Act.

HUD invited specific comment on the requirement, at § 570.301(b), that citizen participation procedures (including the furnishing of information and conduct of public hearings) be carried out in a "timely manner" (as specified in the Act), rather than within a "specific minimum time period." Most commenters responding to this issue favored the general approach proposed, as it affords grantees needed flexibility in carrying out the requirements. Accordingly, the proposed rule provisions have been retained.

Six comments were received regarding publication of the proposed statement, although the Department had not proposed a change to this requirement. Five commenters wanted grantees to be able to publish a notice of availability of the proposed statement rather than publishing the actual statement. The primary reason offered was to reduce publication costs. The point was also made that the publication requirement tends to result in grantees providing less comprehensive statements to the public. The Department has not adopted this suggestion because section 104(a)(2)(B) of the Act specifically requires publication of the proposed statement. However, it should be noted that grantees may choose to publish community-wide an amount of information on the items listed in § 570.301(a) that is sufficient to satisfy the regulation, and then provide more detail to interested citizens by other means. Similarly, the final statement submitted to HUD and made available to the public may provide greater detail than the proposed statement that is published community-wide.

Section 570.303 Certifications.

Section 570.303(f) requires a grantee to certify that at least 60 percent of all CDBG funds expended by the grantee over the one, two or three year period selected (under section 104(b)(3) of the Act) will principally benefit low and moderate income persons. Several commenters argued that the rule does not afford a grantee needed flexibility if the grantee wishes to amend the one, two or three year period originally selected. For the reasons described in the preamble to the proposed rule, the Department believes that an amendment provision would have to be lengthy and complex. On the other hand, the apparent flexibility problem can be overcome by the Department's ability to exercise the waiver authority in § 570.5. HUD will consider requests for waivers for this purpose when the grantee can show that hardship would otherwise result, that application of the rule would adversely affect the purposes of the Act, and that necessary actions will be taken to inform citizens and to adjust the period covered by the community development plan.

Section 570.303(d) requires that a recipient certify that it will affirmatively further fair housing. Actions taken for this purpose must further the policies of Title VIII, and include activities to assure nondiscrimination in housing transactions.

The certifications required under § 570.303 (g) and (h) have already been published in separate rulemaking actions. The first of these covers compliance with lead-based paint hazard elimination requirements and the second covers compliance with relocation, displacement and acquisition requirements. These two certifications are included in this final rule without further change.

With regard to the certification required under § 570.303(i) (that the grantee has developed a community development plan), a commenter requested clarification concerning the degree to which the final statement must be consistent with the plan. The Act is silent on the relationship between the final statement and the plan, except with respect to the period each covers. For this reason, and because the plan should be a locally developed document serving local needs, the Department has decided not to elaborate on the plan requirement in the regulations.

Section 570.304 Making of grants.

Section 570.304(d) indicates when and how a conditional grant may be made by the Department. Under this provision, a grantee must execute and return to HUD the conditional grant agreement within 60 days of the date of its transmittal. Two commenters argued that 60 days is insufficient time for a governing body, which meets periodically, to consider any special conditions. However, it is the practice of the Department to impose a special condition only after a grantee has been provided ample notice of, and opportunity to correct, any performance problems that would give rise to a conditional grant. Accordingly, the grantee's governing body should be familiar with the situation long before a grant agreement with special conditions is tendered. Therefore, the Department believes the 60-day limit is adequate and it has been adopted in the final rule. If an exceptional case arises, a grantee could immediately petition the Department for a waiver of the rule, under § 570.5, and an extension of the time period required.

Section 570.305 Amendments.

The 1983 Act added section 104(a)(2)(E) to the Act, requiring a grantee to provide citizens with notice and opportunity to comment on any *substantial changes* it proposes to make to its final statement of activities before amending the final statement. The proposed rule, at § 570.305, described the kinds of changes that would constitute a substantial change under the statute, and many commenters found the standards in this section to be too rigid. Most objections focused on the standard which would have required an amendment whenever the amount to be expended for an activity was proposed to be increased or decreased by more than 25 percent. A number of commenters argued that it is not uncommon for expenditure estimates to be over or under actual costs by more than 25 percent, even though there has been no change in activity scope, location, design or beneficiaries. As a result, the time and expense of the amendment process could be triggered unnecessarily. It was further argued that the 25-percent threshold would have the anomalous result of requiring an amendment for a $1,001 cost overrun in a $4,000 activity, while not requiring an amendment for a $250,000 change in a $1,000,000 activity. Another point made is that the proposed standard failed to indicate whether an amendment would be required when an accumulation of smaller changes to an activity finally exceeded 25 percent.

Commenters also objected to the standard that would have required an amendment whenever the location of an activity was changed. While the commenters agreed that location changes affecting *who* will benefit from the activity should trigger an amendment, they argued that many other location changes are not significant enough to warrant final statement amendments.

HUD has decided to revise the rule in a manner that should eliminate these problems by providing grantees with added discretion in achieving the purpose of section 104(a)(2)(E) of the Act. The final rule requires the grantee to amend its final statement whenever it decides to drop or add an activity, or to change substantially the purpose, scope, location or beneficiaries of an activity. The grantee is also required to develop and make public its criteria for what constitutes a substantial change for this purpose. The Department is relying on each grantee to develop criteria which will ensure that citizens are kept informed of proposed changes in the local CDBG program that may significantly affect them. If experience should show that this objective is not being met, the Department will propose a rule revision to require grantees to observe public participation requirements under specified circumstances.

Comments were also received concerning (1) whether the rule should specify what constitutes *reasonable* notice of a proposed amendment to citizens, and (2) the need for submitting an SF 424 and certifications to HUD each time an amendment to the final statement is made. What constitutes reasonable notice will vary, depending upon the nature and significance of proposed changes. For this reason, it would be inappropriate for the Department to promulgate a uniform rule governing what is reasonable. Rather, it is for local governments to assure that their citizens receive sufficient notice of, and opportunity to comment on, substantial changes to their programs. Under the final rule, HUD will also *not* require grantees to submit an SF 424 and certifications each time an amendment is made. This is because amendments will not alter the total grant amount received from HUD, and certifications submitted with the original final statement apply to all funds covered by the grant agreement. However, a letter transmitting any amendment to HUD must be signed by the grantee's official representative for the CDBG program.

Section 570.306 Housing assistance plan.

HUD proposed two changes to the requirements for housing assistance plans (HAPs). Public comments addressed other aspects of the HAP section as well. Initially, HUD proposed that a grantee must identify, in its description of its housing stock, the number of abandoned housing units. This addition to the rule at § 570.306(e)(1) reflected a 1983 Act amendment to section 104(c)(1)(A) of the Act. Commenters indicated that many communities do not have information on housing units that have been abandoned, and that such data would be very difficult and costly to acquire. However, the statute requires that the HAP contain the number of such units.

While no changes were proposed on the HAP requirements for setting goals, several commenters pointed out difficulties in establishing and meeting goals because of diminishing resources. Particular concern was expressed over the requirement for maintaining goals for various household types proportionate to the needs of each. It was noted that a grantee may find more units are actually proposed to be provided for one household type than it targeted, while insufficient units are available for other household types as a result of the kind of resources made available during the HAP period. Under previous rules, HUD would not approve a proposal for housing assistance that would result in exceeding the grantee's three-year goal for a household type by more than 20 percent, unless the HAP

was duly amended. The final rule, however, contains a provision (§ 570.306(e)(3)(vi)) that allows certain HAP amendments to be approved where goals are not proportionate to needs. This authority applies only to the second or third years of a three-year HAP, and then only where (1) the amendment is needed to accommodate an otherwise acceptable proposal for housing assistance from HUD; (2) resources are not available to support commensurate increases in the goals of the other household types; and (3) HUD determines that the grantee has taken all reasonable steps to meet its three-year goals for the other household types, and has taken no actions designed to block the provision of housing assistance.

Other commenters questioned the wisdom of requiring grantees to establish three-year goals at all, given that the future availability of particular resources is so uncertain. It is largely because of the uncertainty related to resource availability that long-term planning is so necessary if grantees are to maximize the benefit of housing assistance.

HUD proposed no change to § 570.306(e)(2)(ii), the narrative statement accompanying the housing assistance needs assessment which identifies total minority households and the special housing needs and/or conditions of individual minority groups. While assistance must be delivered in a nondiscriminatory manner, the section does not imply that grantees must establish goals and provide assistance that is proportional to the percentage of minority households or groups with identified needs. HUD intends no such implication. No grantee is required by this section to attain or maintain any particular level of participation in its HAP activities by groups or households based on race, ethnicity or gender.

HUD proposed, under § 570.306(e)(5)(iii), to require grantees that identify general locations for new construction or substantial rehabilitation to also identify at least one specific site that meets the applicable site and neighborhood standards within each general location. Commenters argued that this would be an unreasonable burden, since the continued availability of a particular site cannot be guaranteed, and since grantees do not know which property a developer might propose using. HUD agrees with this assessment, and the final rule does not contain the specific site identification requirement.

Finally, commenters objected to the requirement, at § 570.306(e)(3)(iv), that in order for the rehabilitation of dwelling units to assist lower income households, the units, if rental units, must be at *affordable rents*. Commenters alleged that this requirement has imposed an undue monitoring burden on grantees, given the amount of resources available for program administration. Section 104(c)(1)(B) of the Act requires the HAP to contain provisions adequate to assure that a preponderance of persons assisted by subsidized rehabilitation should be of low and moderate income. The statute does not impose the affordable rent requirement. For most entitlement grantees, the majority of rehabilitation assistance goes to homeowners. Also, programs most often used for assisting rehabilitation of rental units (Rental Rehab, CDBG, and Section 8 Moderate Rehab) each contain requirements related to rent levels charged to low and moderate income persons. For all of these reasons, HUD has decided that the affordable rent requirement need not be separately imposed for HAP purposes, and the final rule reflects this decision.

The final rule regarding the HAP also reflects several changes from the 1987 Act amendments to the Act. All references to "lower income" persons and households have been replaced by the terms "low and moderate income persons" and "low and moderate income households." This change was made to achieve consistency of terminology throughout the CDBG rules and has no substantive effect. Additionally, the final rule at § 570.306(e)(3)(v) and § 570.306(e)(4)(ii) incorporates the new statutory requirement that the HAP specify those actions that will be undertaken to minimize displacement of low income persons and of moderate income persons, specified separately; and those actions that will be undertaken to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately.

Section 570.307 Displacement.

The proposed rule described requirements for a statement of local policy on displacement. All requirements related to displacement have been consolidated in § 570.606 which was recently published as an interim rule (53 FR 31234) and includes 1987 Act requirements. (The provisions on urban counties and joint requests, set out in the proposed rule at §§ 570.308 and 570.309, have been redesignated §§ 570.307 and 570.308.)

Section 570.307 Urban counties.

One comment was received on the proposed provision at § 570.308(b)(2) (now redesignated 570.307(b)(2)) which would allow the Department, under delineated circumstances, to refuse to accept the cooperation agreement between a unit of general local government and an urban county. Because of the potentially serious effect that such an action may have, the commenter suggested the inclusion of safeguards to ensure that the urban county will be provided opportunities to challenge HUD's intended action before it is taken. The Department agrees, and safeguards have been added equivalent to those set out under § 570.911 that apply in the case of a proposed grant reduction, withdrawal or adjustment. In essence, the county and unit of local government will be given advance notice and opportunity to contest HUD's finding. The commenter also suggested including a cross-reference to § 570.307 in § 570.906 "Review of urban counties," which describes an urban county's accountability for the actions or omissions of any of the units of general local government participating in the urban county. Such a cross-reference has been added at § 570.906.

Additionally, § 570.307 has been modified to reflect the changes to section 102 of the Act made by section 503 of the 1987 Act.

Subpart J—Grant Administration

Subpart J was published as a final rule on March 11, 1988 (53 FR 8034) as part of the changes to the CDBG program regulations to implement the government-wide regulations on the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the "common rule"). Therefore, Subpart J is not being amended by this rulemaking except for § 570.506 covering records and § 570.507 covering reports.

Section 570.506 Records to be maintained.

This section was reserved in the common rule because the records which the Department intended to specify included civil rights records. Pending resolution of the issues raised by DOJ, the recordkeeping requirements were not changed and remained in Subpart O. This final rule now specifies recordkeeping requirements, including those for civil rights requirements.

The proposed rule indicated that the recipient must maintain sufficient records to enable the Secretary to determine whether the recipient has met program requirements. Comment was

specifically solicited on whether the regulations should contain a more detailed treatment of records to be maintained. Three-quarters of those who commented on this issue favored greater detail. More specificity, they said, would help avoid conflicts between HUD and recipients over whether sufficient records have been maintained. Commenters also pointed out that more detail would help avoid findings arising out of HUD reviews and audits. Based on these comments, and recognizing the critical need for maintenance of adequate records in the entitlement program because reliance is placed almost exclusively on post-approval monitoring, the Department has revised § 570.506 to provide a more detailed treatment of recordkeeping requirements.

The description of these records is somewhat different than the description that appeared in the preamble to the proposed rule. These changes are due almost entirely to changes in the basic rules on the subject matter about which records are maintained—especially the rules on meeting the national objectives of the program. However, one change results from a commenter's suggestion. The commenter recommended that where information on family size and income is required, HUD should recognize, as an acceptable substitute, evidence that the person assisted qualifies under another program having income qualification criteria at least as stringent as under the CDBG program. In addition to including this concept in the final rule, the Department has provided another acceptable substitute. The recipient may also substitute a copy of a certification from the assisted person that his or her family income does not exceed the applicable income limit. The form used for this purpose must, however, indicate that the certification is subject to verification by the grantee and HUD.

Section 570.506 (g)(2) and (g)(4) have been modified to indicate that the information provided shall be used only as a basis for further inquiry as to compliance with nondiscrimination requirements, and that no recipient is required to attain or maintain any particular statistical level of participation based on race, ethnicity or gender.

Section 570.506(g)(6) has been modified so that recordkeeping documents the recipient's affirmative steps to assure that minority and women's business enterprises have an equal opportunity to obtain or compete for contracts. Examples of affirmative steps are included; they may not include a preference to a business in contract awards based on race or gender.

Section 570.507 Reports.

When this section was published as part of the common rule, the section did not consolidate the reports that were then required under Subpart O. All report requirements are now found in § 570.507.

Several commenters were concerned that the proposed deadline for submission of the performance and evaluation report by entitlement recipients was too tight, given the statutory change made by the 1983 Act requiring recipients to make the report available to citizens for comment before submitting it to HUD. The proposed rule would have required the report to be submitted 75 days after the completion of the most recent program year. Based on the comment record, and in order to be consistent with the reporting deadline established for annual reports in 24 CFR 85.40, § 570.507(a)(2)(i) of the final rule establishes the deadline as 90 days after completion of the most recent program year.

With respect to the timing of the performance and evaluation reports required from recipients of HUD-administered small cities grants, one minor change has been made. A provision has been added to § 570.507(a)(2)(ii)(B) stating that if HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

Subpart K—Other Program Requirements

Section 570.601 Pub. L. 88–352 and Pub. L. 90–284; affirmatively furthering fair housing; Executive Order 11063.

This section describes generally the contents of Title VI, Title VIII, Executive Order 11063, and the section 104(b)(2) requirement that the grantee will affirmatively further fair housing here, and whenever the term "affirmatively further[ing] fair housing" is used in this regulation.

Clarifying word changes in § 570.601(b) have been adopted to more accurately reflect the conduct made unlawful under Title VIII and to indicate that the actions taken to affirmatively further fair housing required in the administration of programs must further the policies of Title VIII. In this respect these actions include activities to assure nondiscrimination in housing transactions. Activities involving educational programs to make persons involved in the housing market, such as real estate brokers and apartment managers aware of their responsibilities under Title VIII would be appropriate. However, activities undertaken to attain or maintain particular statistical measures of participation for persons on the basis of race, color, religion, sex or national origin would not be permissible.

The fair housing requirements of Title VIII are expectd to be amended by the Fair Housing Amendments Act of 1988 which has been passed by Congress and is expected to be signed by the President in early September. The amendments would be effective in March 1989. Implementing regulations would be published in 1989. Thereafter, the CDBG regulations will be amended to reflect the statutory changes that affect CDBG recipients.

Section 570.602 Section 109 of the Act.

No changes had been proposed by HUD to this section which deals with the nondiscrimination requirements contained in section 109. As a result of DOJ review, a number of changes were made. The changes that are substantive reflect existing law.

In § 570.602(b)(4)(i), the phrase "or if there is sufficient evidence to conclude that such discrimination existed" has been added, and the word "remedial" has been added before "affirmative action." This emphasizes that measures taken to address discriminatory practices (past or present) should be tailored to the particular practices involved. (See *Wygant v. Jackson Board of Education*, 476 U.S. 267, (1986).)

The word "nondiscriminatory" has been added before "affirmative action" in § 570.602(b)(4)(ii) and the second paragraph has been eliminated. This underscores limitations on affirmative action measures in the absence of a finding of discrimination or a situation where there is evidence to conclude that discrimination has occured (which are addressed in (b)(4)(i) and (b)(4)(iii)). Several word changes have been made in § 570.602(b)(4)(iii) for clarification.

The Department has made no change in Part 570 with respect to the definitions of "program or activity" or "funded in whole or in part with community development funds," which define the coverage of section 109. It appears that the present coverage is not inconsistent with the definition of "program or activity" contained in the Civil Rights Restoration Act of 1987. Inasmuch as the Restoration Act is applicable to Title VI, but not to section 109, this issue can be revisited if DOJ revises the government-wide Title VI regulation (28 CFR 42.401 et seq.) or

issues other guidance to implement changes required by that Act.

No change has been made to § 570.602(b)(2), which prohibits the use of criteria or methods of administration that have the effect of discriminating against individuals of a particular race, color, national origin, or sex. It should be noted that not all instances of disparate impact constitute illegal discrimination. If a neutral policy that causes a disparate impact is manifestly related to the accomplishment of a program objective, the neutral policy does not violate this provision.

Section 504 of the Rehabilitation Act of 1973, as amended, is applicable to CDBG activities both by its own terms and through incorporation in section 109 of the Act. The Department's final section 504 regulation, published on June 2, 1988 (53 FR 20215) spells out in more detail the application of section 504 to the CDBG program.

The Department plans, in the future, to publish a separate section 109 compliance regulation. That regulation will contain specific provisions with respect to complaint processing and compliance reviews. In the interim the Department will follow the compliance procedures as they are set forth in the section 504 regulation, §§ 8.56–8.71 (53 FR 20243–50).

Section 570.603 Labor standards.

This regulation has been amended to reflect the change to section 110 of the Act made by section 523 of the 1987 Act. The requirements of section 110 now apply to the rehabilitation of residential property that "contains not less than 8 units," rather than to property "designed for residential use of eight or more families."

One commenter suggested that the project threshold for payment of prevailing wages under the Davis-Bacon Act at § 570.603 be increased to $25,000. The $2,000 threshold, however, is a statutory requirement (Davis-Bacon Act, 40 U.S.C. 276a(a)).

Another commenter felt that the word "structure" should be substituted for "property" in the third sentence of § 570.603. Since section 110 of the Act uses the word "property," the suggested change has not been made.

Section 570.606 Relocation, displacement and acquisition.

This section was published as an interim regulation on August 17, 1988 (53 FR 31234). The interim regulation sets forth the displacement, relocation, replacement housing, and real property acquisition requirements, including new requirements added to the Act by section 509 of the 1987 Act. The section is included in this final rule without additional change.

Section 570.607 Employment and contracting opportunities.

One commenter asked whether the provision at § 570.607(b) allows grantees to select either the area of its unit of local government, or the metropolitan area, in carrying out its responsibilities under section 3 to provide employment and contracting opportunities to low income residents of the project area. The commenter also asked whether grantees could make this selection on a project-by-project basis.

Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) states that areas for section 3 compliance are "determined by the Secretary." A grantee may not select the area or areas in which it will carry out section 3 responsibilities for its overall program. A grantee may recommend to HUD the area it believes should apply, along with the reasons for the choice, in order to receive HUD's determination.

Section 570.608 Lead-based paint.

The final regulation implementing the requirements concerning lead-based paint was published February 17, 1987 (52 FR 4870) with additional changes published June 6, 1988 (53 FR 20790). This section is included in this final rule without additional change.

Section 570.610 Uniform Administrative Requirements and Cost Principles and § 570.611(a) (1) and (2) Conflict of Interest.

These sections were included in the final rulemaking of March 11, 1988 (53 FR 8034) which implemented uniform requirements for grants and cooperative agreements. These sections are included in this rulemaking without additional change.

Section 570.612 Executive Order 12372.

This provision, proposed as § 570.613 but now redesignated § 570.612, identifies circumstances under which Executive Order 12372 on Intergovernmental Review of Federal Programs applies. It applies to the CDBG Entitlement program only where an Entitlement grantee proposes to use funds for the planning or construction of water or sewer facilities. However, under the UDAG program, it applies to *all* activities proposed to be assisted. The rule has been revised to more clearly reflect this point.

One commenter questioned whether the "construction" of water and sewer facilities should include "reconstruction, rehabilitation, or installation," as stated in paragraph (b). The commenter objected in particular to the applicability of the Executive Order to minor rehabilitation work on water and sewer facilities. Consistent with the notice identifying programs subject to 24 CFR Part 52 (52 FR 4755, February 13, 1987), the Department has deleted the word "rehabilitation" from this provision.

The same commenter also recommended that the Department limit the applicability of E.O. 12372 to projects over a certain dollar amount. In order not to limit the flexibility of the State process, the Department has not established threshold levels for activities subject to review.

VII. Subpart M—Loan Guarantees

Section 570.700 Eligible applicants.

A commenter recommended that HUD set forth some examples of loan guarantees in the regulation, to clarify who may receive such assistance. Examples are unnecessary for this purpose. The only kind of loan guarantee available under this subpart is the Department's guarantee of notes or other obligations issued by metropolitan cities and urban counties or their public agency designees. (Loan guarantee assistance provided by the Department to recipients under Subpart M should not be confused with loan guarantee assistance provided by a recipient to another party, e.g., to a private property owner under § 570.202.)

The same commenter asked whether § 570.700 also applies to subrecipients involved in revolving loan funds. Section 570.700 only applies to units of general local government and their designated public agencies which are borrowers of loans guaranteed by HUD under Subpart M.

Section 570.701 Eligible Activities.

A provision has been added to the introductory language in § 570.701 to specify that guaranteed loan funds may not be used to reimburse a program account or letter of credit, for costs incurred by the recipient or its designated public agency and paid with other CDBG funds. This amendment will preclude any interim financing of guaranteed loan activities with interest free grant funds, a practice that would result in the inappropriate shifting of interest expense to the Federal government.

Additional eligible activities have been added to § 570.701 which implement the changes to section 108 of the Act made by section 514 of the 1987 Act. Section 108 now permits the

guaranteed loan funds to be used for "housing rehabilitation" and "economic development activities permitted under paragraphs (14), (15), and (17) of section 105(a) [of the Act]." Accordingly, § 570.701(h) makes eligible housing rehabilitation eligible under § 570.202, subsection (i) makes eligible activities eligible under § 570.203, subsection (j) makes eligible community economic development projects eligible under § 570.204, and subsection (k) makes eligible other economic development activities permitted under section 105(a)(14) of the Act which are not covered under § 570.203. Subsection (g) was added to the regulations on March 2, 1987 (52 FR 6140) and is included in this rulemaking without further change.

In addition, subparagraphs (1) and (2) under subsection (a) are being deleted as unnecessary. These examples of acquisition were intended to facilitate the use of guaranteed loan funds for economic development. Guaranteed loan funds may now be used directly for economic development activities.

One commenter asked the Department to clarify whether leasebacks allowed under § 570.701(a) are also allowed under § 570.701(b), which authorizes the use of guaranteed loan funds to rehabilitate real property owned or acquired by the recipient or its public agency designee. The use of guaranteed loan funds for rehabilitation under § 570.701(b) does not affect the authority currently possessed by a recipient or public agency designee to dispose of real property it owns or acquires by lease. However, it should be noted that the Use of Real Property standards specified in § 570.505 would apply to publicly owned real property rehabilitated under § 570.701(b).

A commenter suggested that § 570.701(b) should be amended to specify the kinds of funding that could be used by a recipient or its designee to acquire real property to be rehabilitated, and to clarify whether such funding is limited to guaranteed loan funds. Because rehabilitation can be carried out in relation to real property acquired with public funds from numerous other sources, including donation, the suggested change would result in less clarity and is not being adopted.

One commenter recommended that § 570.701 be revised to indicate that when the loan guarantee assistance is for economic development purposes, the guaranteed loan may have a term of 20 years, and the applicant will not be required to establish a loan loss reserve. An unrestricted authorization of a 20-year term for economic development would be inconsistent with the program design that requires repayment within six years except where an extended period is necessary to achieve the purposes of the Act. With respect to the recommendation that a loss reserve not be required, the Department believes that it would be prudent to retain the option to impose such additional security requirements. Accordingly, neither recommendation has been accepted.

Section 570.702 Application requirements.

Section 570.702(d)(3)(vi) provides that HUD may disapprove an application if activities to be undertaken with the guaranteed loan funds do not meet criteria at § 570.208 for compliance with one of the national objectives of the Act. A commenter suggested that HUD should either make this determination after the funds have been expended, or revise the rule to allow for disapproval of an application if it appears that proposed activities would not meet any § 570.208 criteria. It is necessary for the Department to make the determination at issue in advance of approving an application. Moreover, the Department has sufficient information before it when reviewing an application to make the decision. It also should be noted that HUD will monitor activities to ensure that national objectives are actually met, after an application has been approved.

A provision on amendments has been added to this section. Paragraph (d)(5) provides that amendments to the loan guarantee application must comply with the requirements of § 570.305. If the applicant wishes to carry out an activity not previously described in its final statement, or to change substantially the purpose, scope, location or beneficiaries of an activity, HUD approval must be obtained.

Section 570.702(f) was published as an interim rule on August 17, 1988 (53 FR 31234) as part of the rulemaking implementing the requirements for acquisition, displacement and relocation. This subsection is included in this final rule without additional change.

Section 570.703 Loan requirements.

A commenter described the maximum loan amount authorized by § 570.703(a), equal to three times the applicant's entitlement grant, as a burden on entitlement funds and recommended that it be reduced. The Department believes that the permissible amount—the maximum allowable under section 108(b) of the Act—provides communities with needed flexibility in carrying out large projects, particularly when the guaranteed loan is to be repaid from sources other than CDBG funds. Consequently, this provision has not been revised.

One commenter suggested that either Subpart J or Subpart M should contain a policy statement on the investment of guaranteed loans funds on a short-term basis. Guaranteed loan funds may be invested pending disbursement for authorized purposes, and the investment income constitutes program income. However, to provide the Department with sufficient flexibility to protect the Federal Government's security interest with respect to each loan guarantee, the Department believes investment policy should be governed by the contract required under § 570.703(b)(1). Accordingly, the contract for loan guarantee assistance has been modified to provide guidance on this issue, but the regulations are not being revised.

Section 570.703 (d) and (h) were published as final rules (52 FR 6140) since publication of the proposed changes for this final rule. These subsections implemented section 3002 of the Consolidate Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, approved April 7, 1986) which prohibited the purchase of the guaranteed loans by the Federal Financing Bank and which required HUD to take actions to provide private sector financing of the guaranteed loans. Subsections (d) and (h) are included in this final rulemaking without additional change except that (h) has been redesignated as (g).

Section 570.703(g) was also published as a final rule (50 FR 5750). This subsection imposed a loan guarantee fee to defray costs incurred by HUD to process applications and service the guaranteed loans. Section 514 of the 1987 Act amended section 108 of the Act and prohibits such fees. Therefore, this subsection has been removed.

Section 570.706 Sanctions.

This section has been added to clarify that the performance review procedure described in Subpart O for entitlement recipients applies to loan guarantee assistance. Performance deficiencies in the use of guaranteed loan funds may result in the imposition of a sanction against the pledged entitlement grants.

VIII. Subpart O—Performance Reviews

Before discussing sections in Subpart O on an individual basis, an issue of general applicability warrants discussion. A number of commenters expressed concern that the criteria described throughout Subpart O would constitute performance requirements and that failure to meet any of them

would likely result in sanctions being imposed upon grantees. HUD has established the criteria so that grantees will know what HUD considers to be satisfactory performance and will be able to manage their programs with greater assurance that they will be judged by HUD to be performing satisfactorily. The criteria also enable HUD to identify grantees that may be experiencing difficulties in performing adequately. A grantee that has been found by HUD not to have met the civil rights review criteria will be provided an opportunity to demonstrate that it has nonetheless met the civil rights requirements. A grantee whose performance is found not to meet the performance criteria (other than civil rights criteria) will be given ample opportunity to present information that contests the validity of the finding. If a grantee is unsuccessful in contesting that finding, HUD may require the grantee to undertake appropriate corrective or remedial action. HUD could then impose a sanction affecting the grantee's funding only after the grantee has failed to undertake corrective or remedial action that satisfactorily resolves the deficiency and has been given an opportunity for informal consultation regarding the sanction. HUD believes that this approach will lead to a fair and more uniform performance review, and thus will constitute a significant improvement in this aspect of the program's administration.

Section 570.900 General.

On August 17, 1988, HUD published an interim rule to implement requirements for acquisition, displacement and relocation. (53 FR 31234). That rule included the revision of § 570.900(a). That subsection of the interim regulation is now being superseded by this final rule.

Two commenters requested that HUD give advance public notice of when it will review an entitlement grantee's performance under § 570.900, so that citizens can comment on or participate in the reviews. However, HUD's review of the performance of entitlement grantees is a continual process involving evaluation of Grantee Performance Reports, on-site monitoring, and in-house reviews throughout the year. Citizens may comment to HUD at any time concerning any perceived failures by a grantee to meet program requirements. Moreover, section 508 of the 1987 Act amends section 104(a) of the Act to add the requirement for a citizen participation plan with specific elements. HUD plans to publish in the near future a proposed rule to implement the new citizen participation requirements.

Commenters also requested that HUD describe all of the documentation that grantees are required to keep to fulfill the needs of the Department in conducting the performance reviews described in Subpart O. Because of the wide variety of activities carried out by CDBG entitlement recipients and the differing circumstances affecting how those activities are implemented, it is not possible to produce a description of all required documentation. Recordkeeping requirements are identified in some detail at § 570.506. Grantees may contact their local HUD Field Office if they need further guidance regarding specific records to be kept on particular activities.

Section 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

Some commenters stated that the review threshold at § 570.902(a)(1)(i) for identifying grantees that are making too-slow progress in implementing their programs should be greater than 1.25 years of unexpended funds in the letter of credit (*i.e.*, there should be a more lenient criterion). Other commenters recommended that HUD use a lesser threshold (*i.e.*, a stricter criterion). In considering these comments, HUD updated its evaluation of the effect of a 1.25 year standard on grantees by analyzing more current drawdown patterns of entitlement grantees. The results indicated that using the 1.25 standard would produce untimely performance findings for approximately one-third of the entitlement grantees. Since the Department's intent in establishing this review criterion is to identify grant recipients experiencing substantial difficulties in timely implementation of their CDBG activities, an appropriate criterion should be more selective. Therefore, for this criterion, the Department has decided to employ a 1.5 year standard.

Several commenters expressed concern that HUD would impose sanctions on grantees that did not meet the performance standard. While this could happen, the Department wishes to make clear that a grantee will only be subject to a grant reduction for untimely program progress after it has been (1) provided an opportunity to contest the finding, (2) given an opportunity to improve its performance, and substantially failed to do so, (3) notified of the proposed grant reduction, and (4) given an opportunity for an informal consultation.

Several commenters recommended that HUD should find a grantee to be carrying out its activities in a timely manner if the grantee met either, as opposed to both, of the criteria set out at § 570.902(a)(1)(i) and § 570.902(a)(1)(ii). Under the latter provision, the grantee (of at least two consecutive CDBG grants) is considered to be performing in a timely manner if the amount of funds disbursed to it during the previous 12-month period is equal to or greater than one-half of the CDBG funds made available for the grantee's current program year. Under this approach, however, grant recipients having large amounts in their letters of credit could meet the second test and still be accumulating increasingly larger amounts (and percentages) of undisbursed funds. The purpose of the review criterion at § 570.902(a)(1)(ii) is to provide a means of quickly identifying recipients that may be developing a program progress problem. In any such instance, the Department will work with the grantee to avoid the need for any funding sanction.

Several commenters recommended that HUD review amounts obligated by grantees instead of actual disbursements from the letters of credit. This is not feasible, however, since definitions of "obligations" and "encumbrances" at the local level vary, and because of the relative inaccessibility of such data to HUD. Moreover, requiring grantees to submit data on "obligations" at the time that a subsequent grant award is being considered would significantly increase grantee reporting requirements—a result that is neither desirable or warranted. However, if HUD identifies a progress problem under the performance criteria at § 570.902, it will consider the amount of funds obligated but not yet drawn down as part of its further review of the grantee's performance.

Several commenters recommended that the Department include a statement in the regulations indicating that factors such as the accumulation of large and unanticipated amounts of program income, lawsuits, strikes, and short construction seasons will be considered by HUD in conducting progress reviews. Where unpredictable events are the cause of slow performance, they will be considered by HUD in determining whether there is any need for corrective actions. HUD would caution grantees, however, that predictable events should be handled as a normal responsibility of a grantee in managing its activities, and will not justify continual slow program progress.

One commenter objected to the review being conducted 60 days before the end of the program year Although

tests of program progress may also be conducted at other times during the program year, a review must be conducted sufficiently in advance of the end of the program year to provide HUD with adequate time further to investigate apparent performance problems in sufficient detail before funding decisions are made on the next annual grant. HUD will not base its funding actions solely on the drawdown rates of grantees.

There is evidence that a growing number of grantees are using CDBG funds as an interim financing tool. In such cases, large sums are drawn down from the letter of credit, used for a relatively short period, and then repaid to the grantees. Such funds are then held as program income by the grantees, and could escape consideration under the timeliness criteria in the proposed rule. HUD believes that grantees that have large amounts of program income on hand should not be given an automatic presumption of carrying out their CDBG activities in a timely way, based only on the amount of funds currently in their letter of credit or the amounts recently drawn down from it. Therefore, a provision has been added to the review criterion at § 570.902(a)(2) that will enable HUD to consider program income amounts and, where appropriate, to override the determination of timeliness that would result under the criteria at § 570.902(a)(1).

Section 570.903 Review to determine if the Housing Assistance Plan (HAP) is being carried out in a timely manner.

Three commenters addressed § 570.903. Two city officials supported limiting reviews of HAP performance to Federal housing assistance made available. One public interest group recommended that CDBG funds be specifically identified as available resources for housing rehabilitation, both in HAP development and in HAP performance reviews.

HAP performance reviews are designed to measure the recipients' progress in providing all types of assistance proposed in the approved HAPs. Since grantees are required to base goals on State, local, and Federal resources expected to be made available, it follows logically that performance reviews should cover the same resources.

The Department recognizes CDBG funds as available assistance for HAP goals and performance when the grantee elects to use some of its funds for that purpose. However, HUD will not require the use of CDBG funds for meeting housing assistance needs when they are not described in a grantee's HAP. No revision to § 570.903 is required.

Section 570.904 Equal opportunity and fair housing review criteria.

Comments received in relation to § 570.904 generally fell within two basic categories: those that favored more stringent review criteria and those that favored more lenient criteria. Before addressing specific issues raised by commenters, it would be helpful to outline again the general framework within which the review criteria will be employed.

The criteria used for review in this section of Subpart O do not constitute *performance requirements*. Instead, these criteria are designed to provide grantees with the criteria HUD will use to monitor their performance, so that they can manage their programs with greater assurance that HUD will judge them to be performing satisfactorily. This is so because HUD will use these review criteria to identify those grantees where it cannot be presumed that the performance is adequate. Barring evidence to the contrary received from outside sources or resulting from HUD performance reviews, a grantee will be presumed to be in compliance with civil rights certifications and requirements of the Act if these review criteria are met. Where the criteria are not met, HUD will examine the policies, procedures and practices of the grantee to determine whether they comply with civil rights requirements of the Act.

It is appropriate to design the review criteria in this fashion as a result of program size, complexity and flexibility. Because of the size and complexity of the CDBG program, and the flexibility afforded grantees in carrying out eligible activities, the Department cannot monitor every policy, practice and procedure of every grantee each year to determine the effect each is having on the provision of services, benefits participation and employment to each racial and ethnic group in a grantee's population. Therefore, the review process provides a method by which the Department can separate out potential problem situations from those that do not appear to present a problem. The Department can then focus its limited monitoring and enforcement resources on the former situations. Although the initial problem is the failure to meet a review criterion, the emphasis immediately shifts to the task of determining the *reasons* for why the situation exists.

Finally, because the CDBG program provides great flexibility to grantees in the selection and administration of funded activities, the Department believes grantees should know the parameters within which they may operate and assume that HUD will find their performance acceptable. Without this guidance, grantees may not know, until it is too late, that a problem is occurring. HUD believes that this approach will lead to a fair and more uniform performance review, and thus constitute a significant improvement in this aspect of the program's administration.

Section 570.904(b) sets out criteria governing HUD's review for "equal opportunity." Paragraph (b)(1) of this section specifically addresses *equal employment opportunity*. Included in the comments that addressed this provision were suggestions that (1) labor force should be defined more narrowly; (2) the entire workforce should be "tested" and not just new hires; (3) compliance reviews in connection with minority and female employment should be based on characteristics of the grantee's jurisdiction, rather than of the labor market area; (4) HUD should define "operating unit"; and (5) HUD should require grantee affirmative action even in the absence of any formal finding of discrimination by the grantee.

This subsection has been substantially rewritten as a result of comments by DOJ. Use of proportional representation as a "safe harbor" was objectionable. In fact, a lack of proportional representation by race does not, itself, constitute a violation of section 109, and the existence of proportional representation by race does not insulate a recipient from a charge of actual discrimination. Nor is proportional employment, or beneficiary participation, the touchstone of section 109's nondiscrimination requirements; nondiscrimination, i.e., the treatment of persons without regard to race, ethnicity, or gender, is. Therefore, the focus has been changed to a "totality of circumstances" test. Unless the totality of circumstances indicates that persons protected by section 109 are deprived of employment, promotion and training activities because of race, ethnicity, or gender in those administrative units funded in whole or in part with CDBG funds, then the recipient will have met this review criterion.

The Department does not believe that section 109 requires affirmative action unless there is an earlier formal finding of discrimination by HUD or a court of law or the existence of factors from which the recipient has a firm basis for concluding that discrimination has occurred. Absent these circumstances, the requirement is that grantees avoid discrimination, not that they must take affirmative action to provide equal opportunity in services, benefits and

participation. The review criterion does not change the Department's ability under the compliance regulations to require grantees to take affirmative action to overcome the effects of past discrimination. Otherwise, the Department cannot dictate that local governments expend money for a specific activity. Grantees may, however, *voluntarily* take nondiscriminatory affirmative action measures and § 570.602 encourages them to do so.

Section 570.904(b)(2) addresses *equal opportunity in services, benefits and participation.* Among the comments received in response to this proposed provision were suggestions that: (1) the standard should obligate local governments to affirmatively use Community Development Block Grant funds to overcome the effects of past discrimination; (2) the three-year time span leaves open the possibility of poor performance during the most recent one or two-year period; (3) the "percentage standard" used overstates minority need; and (4) documentation of proportions of benefit to minority groups in each activity will "create horrendous paperwork requirements."

Where discrimination has occurred, the obligation of a recipient is described in § 570.602(b)(4)(i).

Regarding the three-year time span and the "percentage standard," both of these concepts are absent from the final regulation. As in § 570.904(b)(1), the regulation has been substantially revised in light of DOJ comments, and now embodies a "totality of circumstances" test as does the employment review criterion. Unless the totality of circumstance indicates that persons protected by section 109 have been deprived of full access to any CDBG funded program or activity because of their race, creed, or ethnicity, then the recipient will have met this review criterion.

Concerning the paperwork burden, it should be noted that the Grantee Performance Reports submitted by Entitlement CDBG recipients over the past 10 years have required data on benefits going to minorities from each direct benefit activity. The review approach HUD will use will not require any significant change with respect to the report of minority benefit. Moreover, it is also noteworthy that section 562 of the 1987 Act requires HUD to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development and housing assistance program administered by HUD. Nothing in this regulation requires a recipient to attain or maintain any particular statistical level of participation based on race, ethnicity, or gender.

Section 570.904(c) addresses review criteria for the *furtherance of fair housing* by a grantee. Essentially, a grantee would be considered to be in compliance with its certification to further fair housing if it (1) conducted an analysis of fair housing impediments in accordance with § 570.904(c) (1), and (2) took action designed to address the conditions identified as limiting fair housing choice, such as those delineated in § 570.904(c)(2).

A commenter objected to requiring fair housing analysis as part of the review standard, believing it would place an administrative, staff-intensive, and costly responsibility on local governments, thereby restricting administrative discretion and reducing both total and administrative funds. Further, it is alleged that such an analysis cannot be easily or quickly done, nor are data generally available. The Department disagrees. Only a reasonable amount of analysis should be necessary for this purpose, and administrative funds should be adequate for this function. Affirmatively furthering fair housing was a part of the regulations even before the 1983 Act amended the Act to specifically require grantees to certify that they will affirmatively further fair housing. Therefore, grantees should already have a data base. It is important to note that the analysis should describe in broad terms actions already taken, as well as those planned, in order to be flexible in addressing a variety of impediments to fair housing choice within a recipient's community.

Another commenter stated that the Department should establish standards for "testing" for housing discrimination and for what constitutes a local fair housing center. However, the Department believes that the CDBG regulation is not an appropriate place to establish a definition for testing. Also, the Department believes that each locality should have its own definition of a local fair housing center because the organization should serve the unique needs of the locality. Interested communities may contact their local HUD office for information on such centers operating in nearby communities.

One commenter stated that the Department should leave the selection of fair housing centers and testing methods to the local jurisdiction. The Department agrees, and would note only that the approaches used by localities must conform to applicable laws.

The Department also agrees with the comment that the conduct of a fair housing analysis cannot be used as justification for delaying actions affirmatively to further fair housing. Carrying out an analysis would not be considered to constitute a fair housing action in and of itself; actions must be undertaken to address the impediments to fair housing choice identified in the analysis.

Several commenters stated that grantees that support fair housing initiatives carried out by recognized fair housing centers should be judged by HUD to be meeting their responsibilities to further fair housing under both Title VIII and the Act. The Department agrees that grantees may take actions affirmatively to further fair housing through contracting with such agencies, and has specifically included such contracting as a method of addressing conditions limiting fair housing choice under § 570.904(c)(2)(iii). Grantees should note, however, that HUD's review of grantees' performance in fulfilling their fair housing certifications will focus on action undertaken—whether taken by the grantee itself or by agencies with which the grantee contracts.

Section 570.904(d) addresses a grantee's performance specifically related to *actions to use minority and women's business enterprises (MBE/WBE).*

The Department received a number of comments on this section:

One commenter alleged that the rule fails to recognize State laws that require competitive bidding on contracts involving amounts above a specified, threshold figure, and that it is wrong to assume that special treatment (such as set-asides) can be used to achieve a grantee's goal.

A number of respondents recommended that the threshold level, at § 570.904(d)(1)(i), for considering funds awarded through individual contracts and subcontracts should be reduced from $10,000, if not eliminated.

Two commenters asserted that the performance criterion at Section570.904(d) that contemplates a continuing rise in MBE/WBE participation is unrealistic. The logical extension, as one commenter stated, would be that 100 percent of all contracts are eventually expected to be awarded to MBE/WBEs.

A frequently expressed concern of commenters related to the use of the metropolitan area as the basis for calculating the grantee performance standards. Some were concerned about the availability of data at the

metropolitan area level. Others recommended that the review criteria be determined from data at the jurisdictional, or even the target area level, on the grounds that use of metropolitan area data would dilute the need for performance, especially in entitlement cities.

Several commenters object to the use of data that would derive a measure from all MBE/WBE's instead of just those engaged in businesses related to housing and community development.

One commenter contended that a cutback in CDBG program funds would make an increase in MBE/WBE participation, under the proposed requirement, impossible.

One commenter expressed concern about fluctuation in MBE/WBE data and questioned its reliability for purposes of this requirement.

A commenter expressed hope that the Department would require that community-wide goals be set, not just for Federally-assisted community development programs, because many communities use a centralized procurement system over which the community development office has no direct control.

A number of commenters recommended that a fixed percentage of MBE/WBE participation should be employed in lieu of the proposed ratio.

Finally, one commenter expressed concern that "overachievers" (grantees which, in one program year, achieve MBE/WBE results much higher than would be required by the proposed review standard) would be penalized if they could not do well in subsequent program years because of fluctuations in the level of contracting activity from year to year.

Based on these comments, and comments from DOJ, this section has been substantially revised. Basically, the Department will determine whether the recipient has taken actions required by 24 CFR 85.36(e), and the effectiveness of those actions in accomplishing the objectives of § 85.35(e) and the relevant Excutive Orders. Nothing in this regulation requires a recipient to attain or maintain any particular statistical level of participation or any particular proportionality in contract awards based on race, ethnicity, or gender of their contractors.

IX. Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has certified that this rule does not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administrative and procedural requirements to comport with recently enacted legislation.

This rule was listed as item number 996 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) at pages 13884–85 under Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program numbers in the Catalog of Federal Domestic Assistance are as follows:

14.218, Community Development Grant Block Entitlement
14.219, Community Development Grant Block Small Cities
14.221, Urban Development Action Grant
14.225, Secretary's Discretionary Fund/ Territories Program
14.227, Secretary's Discretionary Fund/ Community Development Technical Assistance Grants

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 570.301, 570.302, 570.306, 570.506, and 570.507 of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, OMB APPROVAL NUMBERS

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference (section)
Final statement (2506-0077)	825	1	825	39	32,175	570.301-570.305
Housing Assistance Plan, HUD-7091.1, HUD-7091.2 (2506-0077).	825	1	825	42	34,650	570.306
Grantee Performance Report, HUD-4949.1, thru 4949.7 (2506-0077).	825	1	825	200	165,000	570.507
Relocation, displacement acquisition	825	1	825	5	4,125	570.606
Equal Employment Opportunity, HUD/EEO-4 (2529-0008)	825	1	825	1.25	1,031	570.507
Minority business enterprise (2506-0066)	825	1	825	3.4	2,800	570.507
General record keeping	825	0	0	120	99,000	570.506
Total burden hours					338,781	

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart A of Part 570 is revised to read as follows:

Subpart A—General Provisions.

Sec.
570.1 Purpose.
570.2 Primary objective.
570.3 Definitions.
570.4 Allocation of funds.
570.5 Waivers.

Subpart A—General Provisions

§ 570.1 Purpose.

(a) This part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (Subpart D);

(2) Small Cities program: HUD administered CDBG nonentitlement funds (Subpart F);

(3) State program: State-administered CDBG nonentitlement funds (Subpart I);

(4) Secretary's Fund program (Subpart E);

(5) Urban Development Action Grant program (Subpart G); and

(6) Loan Guarantees (Subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to the Secretary's Fund program or the Urban Development Action Grant program, the reference to funds in the form of grants in the term "CDBG funds," as defined in § 570.3(e), shall mean the grant funds under those programs. The subparts do not apply to the State program (Subpart I) except to the extent expressly referred to.

§ 570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the community development program of each grantee under the Title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 60 percent of CDBG funds received by the grantee under Subparts D, F, and M shall be used in accordance with the applicable requirements of those subparts for activities that benefit persons of low and moderate income.

§ 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 *et seq.*).

(b) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time available from the latest decennial census.

(c) "Applicant" means a State, unit of general local government, or an Indian tribe which makes application pursuant to the provisions of Subpart E, F, G or M.

(d) "Buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(e) "CDBG funds" means Community Development Block Grant funds, including funds received in the form of grants under Subpart D or F, loans guaranteed under Subpart M, urban renewal surplus grant funds under Subpart N, and program income defined in § 570.500(a).

(f) "Chief Executive Officer" of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

(g)(1) "City" means, for purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government which is classified as a municipality by the United States Bureau of the Census or

(ii) any other unit of general local government which is a town or township and which, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, "city" means Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

(h) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.

(i) "Entitlement amount" means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

(j) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate between 1970 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.

(k) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on

data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time.

(l) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(m) "Family" means all persons living in the same household who are related by birth, marriage or adoption.

(n) "Household" means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

(o) "HUD" means the Department of Housing and Urban Development.

(p) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(q) "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

(r) "Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

(s) "Low income household" means a household having an income equal to or less than the Section 8 very low income limit established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

(t) "Low income person" means a member of a family having an income equal to or less than the Section 8 very low income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(u) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget.

(v) "Metropolitan city" means:

(1) A city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or

(2) Any other city, within a metropolitan area, which has a population of fifty thousand or more.

(3)(i) Each city losing its classification as a metropolitan city by reason of a decrease in population or revisions in the designation of metropolitan areas or central cities, or any city classified as or deemed by law to be a metropolitan city for purposes of assistance under any section of the act for fiscal year 1983 or any subsequent fiscal year shall retain such qualification for purposes of receiving such assistance through September 30, 1989.

(ii) Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.

(iii) Notwithstanding paragraph (v)(3)(i) of this definition, a city may elect not to retain its classification as a metropolitan city for fiscal year 1988 or 1989.

(iv) Any city classified as a metropolitan city pursuant to paragraph (v) (1), (2) or (3)(i) of this definition, and that no longer qualifies as a metropolitan city under paragraph (v) (1), (2) or (3)(i) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such city shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

(w) "Moderate income household" means a household having an income equal to or less than the Section 8 lower income limit and greater than the section 8 very low income limit, established by HUD. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(x) "Moderate income person" means a member of a family having an income equal to or less than the Section 8 lower income limit and greater than the section 8 very low income limit, established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(y) "Nonentitlement amount" means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.

(z) "Nonentitlement area" means an area which is not a metropolitan city and not included as part of an urban county.

(aa) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(bb) "Secretary" means the Secretary of Housing and Urban Development.

(cc) "State" means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(dd) "Unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the

Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(ee)(1)The term "urban county" means any county within a metropolitan area which—

(i) Is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government; and

(ii) Has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county excluding metropolitan cities therein) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded, or with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(2) The term "urban county" also includes any other county eligible under section 102(a)(6) of the Act.

(3) Any county classified as an urban county pursuant to paragraph (ee) (1) or (2) of this definition, and that no longer qualifies as an urban county under paragraph (ee) (1) or (2) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

(4) In determining whether a county's combined population contains the required percentage of low and moderate income persons, the Department will identify the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

(ff) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart G of this part.

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in section 106 and 107 of the Act.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any Federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal Fiscal Year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeout procedures, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

§ 570.5 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

a. Subpart C of Part 570 is revised to read as follows:

Subpart C—Eligible Activities

Sec.

570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible rehabilitation and preservation activities.
570.203 Special economic development activities.
570.204 Special activities by subrecipien s.
570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

Sec.
570.206 Program administrative costs.
570.207 Ineligible activities.
570.208 Criteria for national objectives.

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low and moderate income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.208.

(3) *Compliance with the primary objective.* The Act establishes as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, Entitlement and HUD-administered Small Cities recipients must ensure that, over a period of time specified in their certification not to exceed three years, not less than 60 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) for benefiting low and moderate income persons. In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to § 570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of Subpart M shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.

(v) Funds expended for any other activities qualifying under § 570.208(a) shall be counted for this purpose in their entirety.

(4) *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR Part 58 must be completed for each activity (or project as defined in 24 CFR Part 58), as applicable.

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," A-122, "Cost Principles for Non-profit Organizations," or A-21, "Cost Principles for Educational Institutions," [1] as applicable. All items of cost listed in Attachment B of these Circulars which require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart. However, pre-agreement costs are limited to those costs described in § 570.200(h).

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(1) *Definition of special assessment.* The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(2) *Special assessments to recover capital costs.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if

[1] These circulars are available from the Entitlement Cities Division of HUD, 451 Seventh Street, Washington, DC. 20410.

the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(3) *Public improvements not initially assisted with CDBG funds.* The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in § 570.208(a)(1), (b), or (c); and

(iii) The requirements of § 570.200(c)(2)(ii) are met.

(d) *Consultant activities.* Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the maximum daily rate of compensation for a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the GS–18 limitation.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.202(b)(3), 570.203(b), 570.204, and 570.206(f). A written determination is also required for certain relocation costs under § 570.201(i).

(f) *Means of carrying out eligible activities.*

(1) Activities eligible under this subpart, other than those authorized under § 570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through agreements with subrecipients, as defined at § 570.500(c); or

(iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under § 570.204(a) may only be undertaken by subrecipients specified in that section.

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant plus program income received during the program year (or the grant period for grants under Subpart F) shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 570.206 respectively. Recipients of entitlement grants under Subpart D will be considered to be in conformance with this limitation if expenditures for planning and administration during the most recently completed program year did not exceed 20 percent of the sum of the entitlement grant made for that program year and the program income received during that program year.

(h) *Reimbursement for pre-agreement costs.* Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205(b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and other resources to residents pursuant to § 570.206(b), for relocation activities carried out pursuant to § 570.606, and for costs of complying with procedural requirements for acquisition under § 570.606 but not for the cost of the real property itself. After the effective date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this part and 24 CFR Part 58.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of Subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) *Constitutional prohibition.* In accordance with First Amendment Church/State Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG funds.

(1) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation and under paragraph (j)(4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a non-religious use.

(2) CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(i) The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(ii) The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount received from the lessor under paragraph (2)(vi) of this section to the recipient or subrecipient from which the CDBG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (j)(3)x of this section.

(3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(iv) The portion of a facility used to provide the public services shall contain no religious symbols or decorations, other than those permanently affixed to or part of the structure.

(4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where th ; cost constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

§ 570.201 Basic eligible activities.

CDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b).

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(1) A public service must be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(2) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant except as provided in paragraph (e)(3) of this section. For entitlement grants under Subpart D, compliance is based on the amount of CDBG funds obligated for public service activities in each program year compared to 15 percent of the entitlement grant made for that program year.

(3) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding any assistance received pursuant to Pub. L. 98–8), may obligate more CDBG funds than 15 percent of its grant for public services so long as the amount obligated in any program year does not exceed the percentage or amount obligated in Federal fiscal year 1982 or 1983, whichever method of calculation yields the higher amount.

(f) *Interim assistance.*

(1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the

deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities, and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where assistance is:

(1) Required under the provisions of § 570.606 (a), (b) or (c); or

(2) Determined by the recipient to be appropriate under the provisions of § 570.606(d).

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to § 570.203(b)); and

(4) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines of local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.

(iv) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to § 570.608.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937; and

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic

properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State of local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the recipient shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The recipient shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the recipient or through a subrecipient.

§ 570.204 Special activities by certain subrecipients.

(a) *Eligible activities.* The recipient may provide CDBG funds (e.g., grant or loan) to any of the three types of subrecipients specified in paragraph (c) of this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include activities listed as eligible under this subpart, and activities not otherwise listed as eligible under this subpart, except those described as ineligible in § 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives. Notwithstanding that such recipients may carry out activities as part of such project that are not otherwise eligible under this subpart, this provision does not authorize:

(1) Provision of public services that do not meet the requirements of § 570.201(e) (1) and (2);

(2) Provision of assistance to a for-profit business that does not comply with the requirements of § 570.203(b); or

(3) Carrying out activities that would otherwise be eligible under §§ 570.205 or 570.206 but that would result in the recipient exceeding the limitation in § 570.200(g).

(b) *Recipient responsibilities.* Recipients are responsible for ensuring that CDBG funds are used by the subrecipients in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Recipients are also responsible for carrying out the environmental review and clearance responsibilities.

(c) *Eligible subrecipients.* The following are subrecipients authorized to receive assistance under this section.

(1) *Neighborhood-based nonprofit organizations.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation;

(ii) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

(iii) A neighborhood, village, or similar geographical designation in a New Community as defined in § 570.403(a)(1).

(2) *Section 301(d) Small Business Investment Companies.* A Section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(3) *Local development corporations.* A local development corporation is:

(i) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 *et seq.*);

(ii) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(iii) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to those specified in paragraph (c)(3) (i) or (ii) of this section ; or

(iv) A State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) Housing, including the development of a housing assistance plan;

(ii) Land use and urban environmental design;

(iii) Economic development;

(iv) Open space and recreation;

(v) Energy use and conservation;

(vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;

(vii) Transportation;

(viii) Utilities; and

(ix) Historic preservation.

(4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201–570.204);

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies. However, costs necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201–570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);

(v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(vii) Analysis of impediments to fair housing choice.

(6) Policy—planning—management—capacity building activities which will enable the recipient to:

(1) Determine its needs;

(2) Set long-term goals and short-term objectives, including those related to urban environmental design;

(3) Devise programs and activities to meet these goals and objectives;

(4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

§ 570.206 Program administration costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204, since those costs are eligible as part of such activities.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under Subpart F). Program administration includes the following types of assignments:

(i) Providing local officials and citizens with information about the program;

(ii) Preparing program budgets and schedules, and amendments thereto;

(iii) Developing systems for assuring compliance with program requirements;

(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to HUD;

(vii) Coordinating the resolution of audit and monitoring findings;

(viii) Evaluating program results against stated objectives; and

(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1) (i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with CDBG funds.

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 by making persons of all races, colors, religions, sexes, and national origins aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proposition of lower-income persons.

(d) [Reserved]

(e) *Indirect Costs.* Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circulars A–21, A–87, or A–122 as applicable.

(f) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs, except as limited under Subpart F at § 570.433(a)(3). In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(g) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by lower income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by lower income persons. Examples of eligible actions are as follows:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as

structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments program pursuant to 24 CFR Parts 880–883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for lower income persons.

(h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201–570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with CDBG funds:

(1) *Buildings or portions thereof, used for the general conduct of government* as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under § 570.201(k) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in § 570.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public work and facilities.

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42;

(ii) As authorized under § 570.201(m); or

(iii) When carried out by a subrecipient pursuant to § 570.204(a);

(4) *Income payments.* The general rule is that CDBG funds shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include: payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

§ 570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) *Activities benefiting low and moderate income persons.* Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under § 570.208(a)(1)(i) except that the area served contains less than 51 percent low and moderate income residents will also be considered to meet the objective of benefiting low and moderate income persons where the proportion of low and moderate income persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(iv) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraph (a)(1) (i) or (ii) of this section, the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under this paragraph: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.) To qualify under this paragraph, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons and migrant farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned non-residential buildings, facilities and improvements and the common areas of residential structures containing more than one dwelling unit.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable

rents" for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly housing project;

(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b) (9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR Part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate persons. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds. Additionally, where CDBG funds are used to pay for the staff and overhead costs of a § 570.204 subrecipient making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(i) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(ii) The recipient and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

Note: Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the recipient's overall program benefits such persons. The calculation shall be made following the rules described at § 570.200(a)(3).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;

(iii) Documentation is maintained by the recipient on the boundaries of the area and the condition which qualified the area at the time of its designation; and

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

(2) *Activities to address slums or blight on a spot basis.* Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) *Activities to address slums or blight in an urban renewal area.* An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including *initial* land redevelopment permitted by the plan.

Note: Despite the restrictions in (b) (1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18

months preceding the certification by the recipient.

(d) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under $570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

4. Subpart D of Part 570 is revised to read as follows:

Subpart D—Entitlement Grants

Sec.
570.300 General.
570.301 Presubmission requirements.
570.302 Submission requirements.
570.303 Certifications.
570.304 Making of grants.
570.305 Amendments.
570.306 Housing assistance plan.
570.307 Urban counties.
570.308 Joint requests.

Subpart D—Entitlement Grants

§ 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities. The policies and procedures set forth in Subparts A, C, J, K, and O of this part also apply to entitlement grantees.

§ 570.301 Presubmission requirements.

Prior to the submission to HUD for its annual grant, the grantee must:

(a) Develop a proposed statement of community development objectives and projected use of funds, including the following items:

(1) The community development objectives the grantee proposes to pursue.

(2) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (b)(1)(i) of this section, to address its identified community development objectives. Each such activity must:

(i) Meet the applicable requirements of 24 CFR 570 Subpart C; and

(ii) Be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected.

(b) In a manner which provides for the timely citizen examination, appraisal, and comment on its statements, meet the following citizen participation requirements:

(1) Furnish citizens with information concerning:

(i) The amount of CDBG funds expected to be available (including the annual grant, program income expected to be recieved during the program year together with program income received during the preceding program year and that has not yet been programmed for use), and surplus from urban renewal settlement for community development and housing activities;

(ii) The range of activities that may be undertaken with those funds pursuant to the criteria in 24 CFR 570 Subpart C;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the grantee's plans (consistent with the grantee's Housing Assistance Plan and policies developed pursuant to § 570.606(b)) for minimizing such displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the grantee will make available (or to require others to make available) to persons displaced by CDBG funded activities, even if the grantee expects no such displacement to occur.

(2) Hold at least one public hearing to obtain the views of citizens on the grantee's housing and community development needs (grantees may elect to hold additional hearings and to cover other subjects through such public hearings, such as obtaining views on specific community development or housing activities).

(3) Publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.

(c) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the citizen participation requirements in paragraph (b) of this section, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

(d) Submit and receive approval of its housing assistance plan in accordance with § 570.306.

(Approved by Office of Management and Budget under Control No. 2506-0077)

§ 570.302 Submission requirements.

(a) *Content.* In order to receive its annual CDBG entitlement grant, a grantee must submit the following:

(1) Standard Form 424;

(2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in § 570.301(a); and

(3) Certifications satisfactory to the Secretary covering all of the items listed in § 570.303.

(b) *Timing of submissions.* (1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than the first working day in September

of the Federal fiscal year for which the grant funds are appropriated.

(2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened, or HUD receives notice of a shortened program year at least two months prior to the end of the shortened program year.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

§ 570.303 Certifications.

The grantee shall submit certifications that:

(a) It possesses legal authority to make a grant submission and to execute a community development and housing program;

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grantee to act in connection with the submission of the final statement and to provide such additional information as may be required.

(c) Prior to submission of its final statement to HUD, the grantee has:

(1) Met the citizen participation requirements of section 104(a)(3) of the Act; and

(2) Prepared its final statement of community development objectives and projected use of funds in accordance with § 570.301(c) and made the final statement available to the public.

(d) The grantee will affirmatively further fair housing, and the grant will be conducted and administered in compliance with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000d *et seq.*); and

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284, 42 U.S.C. 3601 *et seq.*).

(e) It has developed its final statement of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. [The final statement of projected use of funds may also include activities which the grantee certifies pursuant to § 570.301(c) are designed to meet other community development needs having a particular urgency.]

(f) In the aggregate, at least 60 percent of all CDBG funds, as defined at § 570.3(e), to be expended during the one, two or three consecutive program years specified by the grantee will be for activities which benefit low and moderate income persons, as described in criteria at 24 CFR 570.208(a).

(g) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with § 570.608.

(h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(1)(11) of the Act.

(i) It has developed a community development plan, which at a minimum, covers the same one, two or three program years pursuant to paragraph (f) of this section. At a minimum the community development plan must:

(1) Identify the grantee's community development needs and housing needs; and

(2) Specify both short-term and long-term community development objectives, consistent with the grantee's final statement, that have been developed in accordance with the primary objective of the Act and the requirements of this part.

(j) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with CDBG funds.

(k) (Where applicable, the grantee may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the non-CDBG funded portion of the capital cost without paying such assessments in their behalf from CDBG funds.

(l) It is following a current housing assistance plan which has been approved by HUD pursuant to § 570.306.

(m) It will comply with the other provisions of the Act and with other applicable laws.

§ 570.304 Making of grants.

(a) *Acceptance of final statement and certifications.* The final statement and certifications will be accepted by the responsible HUD field office unless it is determined that one or more of the following requirements have not been met.

(1) *Completeness.* The submission shall include all of the components required in § 570.302(a).

(2) *Timeliness.* The submission must be received within the time period established in § 570.302(b)(1).

(3) *Certifications.* The certifications made by the grantee will be satisfactory to the Secretary if made in conformance with § 570.303, unless the Secretary has determined pursuant to Subpart O that the grantee has not complied with the requirements of this part or has failed to carry out its housing assistance plan in a timely manner, or determined that there is evidence, not directly involving the grantee's past performance under this program, which tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full entitlement amount, generally within the last 30 days of the grantee's current program year, unless:

(1) The final statement or certifications are not received by the first working day in September or are not acceptable under paragraphs (a) (1) and (3) of this section in which case the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the performance requirements or criteria prescribed in Subpart O and the grant amount is reduced.

(d) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to

meet the performance requirements or criteria described in Subpart O. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the entitlement amount pursuant to § 570.911.

§ 570.305 Amendments.

(a) The grantee shall amend its final statement whenever it decides not to carry out an activity described in the final statement, to carry out an activity not previously described, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Within 120 days of the effective date of this rule or, for a new grantee, prior to submission of its final statement, the grantee shall develop and make public its criteria for what constitutes a substantial change for this purpose.

(b) Prior to amending its final statement, the grantee shall provide citizens with reasonable notice of, and opportunity to comment on, such proposed changes in its use of funds. The grantee shall consider any such comments and, if the grantee deems appropriate, modify the changes. The grantee shall make available to the public, and shall submit to HUD, a description of any changes adopted. A letter transmitting such description to HUD shall be signed by the official representative of the grantee.

§ 570.306 Housing assistance plan.

(a) *Purpose.* In its housing assistance plan (HAP), each metropolitan city and urban county surveys its housing conditions, assesses the housing assistance needs of its low and moderate income households, specifies goals for the number of dwelling units and low and moderate income households to be assisted, and indicates the general locations of proposed assisted housing for low and moderate income persons.

(b) *Use.* A grantee's HAP is a basis upon which HUD approves or disapproves assisted housing in the grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing.

(c) *Grantee's responsibility.* Each grantee is responsible for implementing its HAP expeditiously. This includes the timely achievement of goals for assisted housing. Each grantee is expected to use all available resources and, when needed, to take all actions within its control to implement the approved HAP. Performance under the HAP is one of the factors considered in grantee performance reviews conducted as provided in Subpart O of this part. Subpart O also provides further requirements relating to the responsibility of the grantee in implementing its HAP.

(d) *General.* (1) The HAP consists of the five components described in paragraph (e) of this section. The HAP shall be submitted to HUD by an authorized representative of the grantee.

(2) Each city or county which expects to receive an entitlement grant shall submit a HAP between September 1 and October 31 prior to its submission of the final statement required by § 570.302. The HAP will be considered in effect from October 1 through September 30 for purposes of crediting performance against the goals established regardless of the specific date that HUD approves the HAP. A grantee which has a three year goal which will be in effect for the fiscal year in which the final statement is to be submitted need only submit an annual goal and may reference (to the extent that there have been no significant changes) the other required portions of the HAP.

(3) Any newly entitled community which was not made aware of its entitlement status by August 31 shall be considered unable to comply with the October 31 deadline and may submit an interim HAP in accordance with the requirements of paragraph (e)(6) of this section in lieu of the requirements of paragraphs (e)(1) through (e)(5) of this section.

(e) *Housing conditions, needs, goals, and locations*—(1) *Conditions.* The grantee shall describe the condition of the current housing stock in the community by providing a statistical profile (including an identification of data sources and data time frames) by tenure type (renter and owner), which describes housing conditions by the number of occupied, vacant and abandoned dwelling units in standard and substandard condition. The grantee shall develop its own definition of substandard housing which, at a minimum, shall include units which do not meet the housing quality standards of the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR 882.109) and shall include such definition in its submission. In addition, the grantee shall identify the number of its occupied, vacant and abandoned substandard housing units which it considers to be suitable for rehabilitation, and include its definition of suitable for rehabilitation in the HAP submission.

(2) *Needs.* (i) The grantee shall assess the housing assistance needs of low and moderate income households currently residing in the community by tenure and, for households requiring rental subsidies, by household type (elderly, small family and non-elderly individuals, and large family), including households expected to be involuntarily displaced by public and private action over the three year period of the HAP. The grantee shall also assess the housing assistance needs of low and moderate income households that could reasonably be expected to reside in the community. Such households are those that could be expected to reside in the community as a result of existing and projected employment opportunities, and the estimate shall consider changes in population known to have occurred since the last Census. For elderly households, the estimate of those that are expected to reside in the community must be based on the number known to be seeking assisted housing in the community or using the community's health services. In no case shall the estimate of all households expected to reside be less than zero.

(ii) A narrative statement accompanying the needs shall indicate the composition of the needs of low and moderate income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. This narrative statement shall also include the source and date of the data used in developing the needs assessment. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of low and moderate income households in the community. Such description shall include but need not be limited to, discussion of the special housing needs and/or conditions of individual minority groups, impact of conversion of rental housing to condominium or cooperative ownership, handicapped persons, and single heads of household. All handicapped single person households (elderly and nonelderly) as well as two

person households which include one elderly person and one handicapped person, must be included in the elderly category, but separately identified in the narrative. All other nonelderly handicapped persons must be included with small or large family households, according to the size of their households.

(3) *Three year goal.* (i) The grantee shall specify a realistic three year goal by tenure type for goals which are designed to improve the condition of the housing stock, and also by household type for the number of households to be assisted with rental subsidies. The three year goal must include all assisted housing resources which can be expected to be available to the grantee. In addition, the grantee shall identify the maximum number of HUD assisted rental units it will accept during that three year period of each housing type (i.e., new, rehabilitation, existing) in an amount at least equal to the total number of HUD assisted rental goals by household type.

(ii) Goals relating to improving the condition of the housing stock should be based on an evaluation of the data presented in the housing conditions portion of the HAP as well as other current data available to the grantee.

(iii) The goals relating to households to be assisted with rental subsidies must be proportional to need by household type, except that HUD may approve or require a different proportion in cases of:

(A) Disproportionate provision of assisted housing under a previous HAP;

(B) Significant displacement of a particular household type;

(C) Adjustments for projects of feasible size;

(D) Natural disasters;

(E) Meeting the requirements of sections 105 (f) and (h) of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*) or of § 570.606(b)(1);

(F) As provided under paragraph (e)(3)(vi) of this section.

(iv) The majority of goals for the rehabilitation of dwelling units must assist low and moderate income households. For this purpose, publicly assisted rehabilitation of a dwelling unit shall be deemed to assist a low and moderate income household when the dwelling unit, after rehabilitation, is occupied by a low and moderate income household.

(v) Each grantee shall include a narrative describing those specific actions which the grantee will take to address any special housing conditions or needs identified in § 570.306(e)(2)(ii) above, as well as any actions determined necessary to ensure the timely achievement of its three year goals (including a discussion of any expected or known impediments and planned remedies); those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit organizations of vacant properties that become available under *in rem* proceedings.

(vi) Amendments to three-year goals occurring in the second or third year of such goals may contain goals which are not proportional to need by household type under the following circumstances:

(A) The amendment is for the sole purpose of accommodating an otherwise acceptable proposal for housing assistance from HUD;

(B) The likely level of resources available for the other household types precludes the commensurate increase of the goals for those categories; and

(C) HUD determines that, with respect to meeting the three year goals for the other household types, the grantee has taken all reasonable actions necessary to make use of available resources and has taken no actions designed to block the provision of housing assistance.

(4) *Annual goal.* (i) The grantee shall specify an annual goal which must include all assisted housing resources which can be expected to be available to the grantee; be established considering feasible project size; and constitute reasonable progress towards meeting the three year goal. In addition, the grantee shall indicate its preference for the distribution of HUD's assisted rental housing by housing type (i.e., new, rehabilitation, existing).

(ii) In its annual goal, the grantee shall also describe the specific actions (including any new problems encountered and planned remedies) it will take during the year to meet its annual goal and, as appropriate, its three year goal; those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit organizations of vacant properties that become available under *in rem* proceedings. The grantee must also include a description of the provisions that it will make to assure that a majority of dwelling units to receive rehabilitation subsidy will assist low and moderate income households.

(5) *General locations.* (i) A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, promoting housing opportunity, enabling persons that are to be involuntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of low and moderate income persons, and assuring the availability of public facilities and services.

(ii) The grantee may, at its option, designate any of the general locations identified pursuant to paragraph (e)(5)(i) of this section as High Priority areas. (Under provisions of HUD's assisted housing ranking procedures, a higher rating can be obtained under the ranking criteria with respect to responsiveness of proposed projects to preferences and priorities of applicable HAPs.)

(iii) Each general location identified under paragraph (e)(5)(i) of this section must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood standards established for the appropriate HUD assisted housing program.

(iv) Identification of the general locations must be accomplished by attaching a map to the HAP except that the HUD field office may accept a listing where it determines that the development of a map would present a hardship for the grantee.

(6) *Interim HAP.* A newly entitled grantee which has not been notified by HUD in sufficient time to meet the October 31 HAP submittal deadline (see § 570.306(d)(3)) shall submit an interim HAP at least 45 days prior to the submission of its final statement. Such submission shall include a narrative description of the condition of the housing stock; a narrative assessment of the housing assistance needs of low and moderate income households; a realistic annual goal indicating the number of dwelling units by housing type, and low and moderate income households by household type, to be assisted during the balance of the fiscal year; and a listing of general locations of proposed new construction and substantially rehabilitated housing for low and moderate income persons; and any other

element specifically required under section 104(c) of the Act. This HAP submission will be effective through September 30 of the year in which it is submitted.

(f) *Amendments to the HAP.* The grantee shall amend its HAP whenever there is a substantial change in its housing needs or the public resources available to address those needs and shall notify HUD within 45 days of any changes it makes to its HAP.

(g) *HUD review of HAPs, interim HAPs, and amendments.* HUD will review these HAP submissions to assure that the requirements of this section have been met, and will approve them unless the grantee's stated conditions and needs are plainly inconsistent with significant facts or data generally available; the grantee's proposed goals and activities are plainly inappropriate to meeting those conditions or needs; or the HAP fails to comply with other provisions of this section. Within 30 days of the date that the submission is received, HUD will notify the grantee in writing that the submission has been approved, disapproved, or that a final decision is still pending (in which case HUD may take no more than 30 additional days to decide whether to approve or disapprove the submission). In the event that HUD has not notified the grantee in writing within 30 days of receipt, the submission shall be considered fully approved.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

§ 570.307 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* (1) A county will qualify as an urban county if such county meets the definition at § 570.3(ee). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in Subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

(c) *Essential activities.* For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section and except as provided under § 570.3(ee)(3) where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under Subpart D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under Subpart F, or to be a recipient of assistance under Subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b), (c), and (d) of the Act, without regard to adjustments which may be made to this grant amount under section 104(e) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election,

shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

§ 570.308 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking a three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in § 570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.

(d) *Submission requirements.* In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of this subpart and covers all members of the joint recipient.

Subpart J—Grant Administration

5. Section 570.506 of Subpart J is revised to read as follows:

§ 570.506 Records to be maintained.

Each recipient shall establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

(a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in Subpart C under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definition of "low and moderate income person" at § 570.3; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with § 570.3; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

(1) For each activity determined to benefit low and moderate income persons, the income limits applied and the point in time when the benefit was determined.

(2) For each activity determined to benefit low and moderate income persons based on the area served by the activity:

(i) The boundaries of the service area;

(ii) The income characteristics of households in the service area; and

(iii) If the percent of low and moderate income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at § 570.208(a)(1)(ii);

(3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

(i) Documentation establishing that the facility or service is designed for and used by senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers, for which the regulations provide presumptive benefit to low and moderate income persons; or

(ii) Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

(iii) Data showing the size and annual income of the family of each person receiving the benefit.

(4) For each activity carried out for the purpose of providing or improving housing which is determined to benefit low and moderate income persons:

(i) A copy of a written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multifamily structure assisted and the number of those units which will be occupied by low and moderate income households after assistance;

(ii) The total cost of the activity, including both CDBG and non-CDBG funds.

(iii) For each unit occupied by a low and moderate income household, the size and income of the household;

(iv) For rental housing only:

(A) The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and

(B) Such information as necessary to show the affordability of units occupied (or to be occupied) by low and moderate income households pursuant to criteria established and made public by the recipient;

(v) For each property acquired on which there are no structures, evidence of commitments ensuring that the criteria in § 570.208(a)(3) will be met when the structures are built; and

(vi) Where applicable, records demonstrating that the activity qualifies under the special conditions at § 570.208(a)(3)(i).

(5) For each activity determined to benefit low and moderate income persons based on the creation of jobs, the recipient shall provide the documentation described in either paragraph (b)(5) (i) or (ii) of this section.

(i) Where the recipient chooses to document that at least 51 percent of the jobs will be available to low and moderate income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(*1*) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons and will provide training for any of those jobs requiring special skills or education;

(*2*) A listing by job title of the permanent jobs to be created indicating which jobs will be available to low and moderate income persons, which jobs require special skills or education, and which jobs are part-time, if any; and

(*3*) A description of actions to be taken by the recipient and business to ensure that low and moderate income persons receive first consideration for those jobs; and

(B) A listing by job title of the permanent jobs filled, and which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used; which low and moderate income persons were interviewed for a particular job; and which low and moderate income persons were hired.

(ii) Where the recipient chooses to document that at least 51 percent of the jobs will be held by low and moderate income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(*1*) A commitment by the business that at least 51 percent of the jobs, on a full-time equivalent basis, will be held by low and moderate income persons; and

(*2*) A listing by job title of the permanent jobs to be created, identifying which are part-time, if any;

(B) A listing by job title of the permanent jobs filled and which jobs were initially held by low and moderate income persons; and

(C) For each such low and moderate income person hired, the size and annual income of the person's family prior to the person being hired for the job.

(6) For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that in the absence of CDBG assistance jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained, indicating which of those jobs are part-time and (where it is known) which are held by low and moderate income persons at the time the CDBG assistance is provided. Where applicable, identification of any of the retained jobs (other than those known to be held by low and moderate income persons) which are projected to become available to low and moderate income persons through job turnover within two years of the time CDBG assistance is provided. Information upon which the job turnover projections were based shall also be included in the record;

(iii) For each retained job claimed to be held by a low and moderate income person, information on the size and annual income of the person's family;

(iv) For jobs claimed to be available to low and moderate income persons based on job turnover, a description covering the items required for "available to" jobs in paragraph (b)(5) of this section; and

(v) Where jobs were claimed to be available to low and moderate income persons through turnover, a listing of each job which has turned over to date, indicating which of those jobs were either taken by, or available to, low and moderate income persons. For jobs made available, a description of how first consideration was given to such persons for those jobs shall also be included in the record.

(7) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria in § 570.208(b)(1).

(8) For each residential rehabilitation activity determined to aid in the prevention or elimination of slums or blight in a slum or blighted area:

(i) The local definition of "substandard";

(ii) A pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and

(iii) Details and scope of CDBG assisted rehabilitation, by structure.

(9) For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:

(i) A description of the specific condition of blight or physical decay treated; and

(ii) For rehabilitation carried out under this category, a description of the specific conditions detrimental to public health and safety which were identified and the details and scope of the CDBG assisted rehabilitation by structure.

(10) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing slums or blight in an urban renewal area, a copy of the Urban Renewal Plan, as in effect at the time the activity is carried out, including maps and supporting documentation.

(11) For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition requiring assistance;

(ii) Evidence that the recipient certified that the CDBG activity was designed to address the urgent need;

(iii) Information on the timing of the development of the serious condition; and

(iv) Evidence confirming that other financial resources to alleviate the need were not available.

(c) Records which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i), 570.202(b)(3), 570.203(b), 570.204(a), and 570.206(f).

(d) Records which demonstrate compliance with § 570.505 regarding any change of use of real property acquired or improved with CDBG assistance.

(e) Records which demonstrate compliance with the citizen participation requirements prescribed in section 104(a)(3) of the Act, and in §§ 570.301(b) and 570.305 for entitlement recipients or § 570.431 for HUD-administered small cities recipients.

(f) Records which demonstrate compliance with the requirements in § 570.606 regarding acquisition, displacement, relocation, and replacement housing.

(g) Fair housing and equal opportunity records containing:

(1) Documentation of the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any conditions limiting fair housing choice in the recipient's community, and documentation of any other official actions the recipient has taken which demonstrate its support for fair housing, such as development of a

fair housing analysis described in § 570.904(c).

(2) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

(3) Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

(4) Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

(5) Documentation of actions undertaken to meet the requirements of § 570.607(b) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of lower income residents and the use of local businesses.

(6) Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of recipient's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

(7) Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

(h) Financial records, in accordance with the applicable requirements listed in § 570.502.

(i) Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in § 570.513; and

(j) Records required to be maintained in accordance with other applicable laws and regulations set forth in Subpart K of this part.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

6. Section 570.507 is revised to read as follows:

§ 570.507 Reports.

(a) *Performance and evaluation report*—(1) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary, including a summary of the citizen comments received on the report, as prescribed in (a)(3) of this section.

(2) *Timing*—(i) *Entitlement grants.* Each entitlement grant recipient shall submit a performance and evaluation report:

(A) No later than 90 days after the completion of the most recent program year showing the status of all activities as of the end of the program year;

(B) No later than October 31 each year showing housing assistance performance as of the end of the Federal fiscal year; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met.

(ii) *HUD-administered small cities grants.* Each small cities recipient shall submit a performance and evaluation report on each grant:

(A) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(B) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met. If HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

(3) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report prior to its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

(b) *Equal employment opportunity reports.* Recipients of entitlement grants or HUD-administered small cities grants shall submit to HUD each year a report (HUD/EEO-4) on recipient employment containing data as of June 30.

(c) *Minority business enterprise reports.* Recipients of entitlement grants, HUD-administered small cities grants or Urban Development Action Grants shall submit to HUD, by April 30, a report on contracts and subcontract activity during the first half of the fiscal year and by October 31 a report on such activity during the second half of the year.

(d) *Other reports.* Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

(Approved by the Office of Management and Budget under Control Nos. 2506-0077 for paragraph (a) and 2529-0008 for paragraph (b) and 2506-0066 for paragraph (c))

7. Subpart K of Part 570 is revised to read as follows:

Subpart K—Other Program Requirements

Sec.

570.600 General.
570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; and Executive Order 11063.
570.602 Section 109 of the Act.
570.603 Labor standards.
570.604 Environmental standards.
570.605 National Flood Insurance Program.
570.606 Relocation, displacement and acquisition.
570.607 Employment and contracting opportunities.
570.608 Lead-based paint.
570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.
570.610 Uniform administrative requirements and cost principles.
570.611 Conflict of interest.
570.612 Executive Order 12372.

Subpart K—Other Program Requirements

§ 570.600 General.

(a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(e)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws * * *." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.496.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F, respectively), the requirements of this Subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (Subparts E and G, respectively), and to loans guaranteed pursuant to Subpart M.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284 and the grantee will affirmatively further fair housing." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances that the grantee's program will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284.

(a) "Pub. L. 88–352" refers to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations. or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR Part 1.

(b) "Pub. L. 90–284" refers to title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of Title VIII; furthermore, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

§ 570.602 Section 109 of the Act.

(a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. In subsection (b) of this section, "recipient" means recipient as defined in 24 CFR 1.2(f).

(b) Specific discriminatory actions prohibited and corrective actions.

(1) A recipient may not, under any program or activity to which the regulations of this part may apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

(ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity.

(iii) Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

(iv) Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an individual an opportunity to participate in a program or activity as an employee.

(2) A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, or sex.

(3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4)(i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously" does not exclude current discriminatory practices.

(ii) In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with funds made available under this part, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, national origin or sex.

(iii) After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited by this section from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR Part 146 and the regulations implementing section 504 are contained in 24 CFR Part 8.

§ 570.603 Labor standards.

Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

§ 570.604 Environmental standards.

Section 104(g) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) * * * [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Act and contained in 24 CFR Part 58. Section 104(g) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an

area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302), funds provided under this part shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

§ 570.606 Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii)(A) The requirements of paragraph (b)(1) of this section do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location

and access to places of employment and to other facilities.

(C) The grantee must submit a request for a determination under paragraph (b)(1)(iii) of this section directly to the HUD Field Office.

(2) *Relocation assistance.* (i) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C) of this section, in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(1) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(*i*) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United State Housing Act of 1937; or

(*ii*) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of: the monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(*2*) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitilized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under paragraph (b)(2) of this section if:

(*1*) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(*2*) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) this is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(*1*) The household is evicted for cause;

(*2*) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(*3*) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) *Definitions.* For the purposes of paragraph (b) of this section:

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c) (1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the household would receive. Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C) (*1*)(*i*) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation." If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. If the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(4) *Effective date.* For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of paragraph (b) of this section are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at § 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

(1) Reasonable moving expenses;

(2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraphs (a), (b) or (c) of this section. The grantee may also provide relocation assistance to persons covered under paragraphs (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)) and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this part.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and includes a residential tenant who moves from the real property if:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of the initial submission of a final statement under § 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under § 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

§ 570.607 Employment and contracting opportunities.

(a) Grantees shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors

and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in conneciton with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary, in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not applicable to activities assisted under this part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

§ 570.608 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

(2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance provided under this part shall be notified:

(i) That the property may contain lead-based paint;

(ii) Of the hazards of lead-based paint;

(iii) Of the symptoms and treatment of lead-based poisoning;

(iv) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);

(v) Of the advisability and availability of blood lead level screening for children under seven years of age; and

(vi) That in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. These requirements shall be implemented not later than September 21, 1987.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block Grant program are not covered by this paragraph:

(i) Emergency repairs (not including lead-based paint-related emergency repairs);

(ii) Weatherization;

(iii) Water or sewer hook-ups;

(iv) Installation of security devices;

(v) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;

(vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and

(vii) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed $3,000 per unit.

(2) *Definitions.*

"Applicable surface." All intact and nonintact interior and exterior painted surfaces of a residential structure.

"Chewable surface." All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

"Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

"Elevated blood lead level or EBL." Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 μ/dl (micrograms of lead per deciliter of whole blood) or greater.

"Lead-based paint surface." A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(3) *Inspection and Testing*—(i) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(4) *Abatement Actions.* (i) For inspections performed under § 570.608(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 570.608(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(6) *Funding for inspection, testing and abatement.* Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection.* The owner/developer shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws.*

(i) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(iv) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See e.g., 40 CFR Parts 260 through 271.)

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the service of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

§ 570.610 Uniform administrative requirements.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110, A-122, and A-128 [2] (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Part 85 and OMB Circular A-110 are set forth at § 570.502.

[2] See footnote 1 for § 570.200(a)(5).

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

(b) *Conflicts prohibited.* Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

(d) *Exceptions: threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective

and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

§ 570.612 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR Part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

8. Subpart M of Part 570 is revised to read as follows:

Subpart M—Loan Guarantees

Sec.
570.700 Eligible applicants.
570.701 Eligible activities.
570.702 Application requirements.
570.703 Loan requirements.
570.704 Federal guarantee.
570.705 Applicability of rules and regulations.
570.706 Sanctions.

Subpart M—Loan Guarantees

§ 570.700 Eligible applicants.

(a) Units of general local government entitled to receive a grant under section 106(b) of the Act (metropolitan cities and urban counties) may apply for loan guarantee assistance under this subpart.

(b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under the Act as security for the notes or other obligations issued by the public agency.

§ 570.701 Eligible activities.

Loan guarantee assistance under this subpart may be used for the following activities undertaken by the unit of general local government or its designated public agency provided such activities meet the requirements of § 570.200. However, guaranteed loan funds may not be used to reimburse the program account or letter of credit for costs incurred by the unit of general local government or designated public agency and paid with other CDBG funds.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the unit of general local government or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(g) Payment of issuance, underwriting, servicing, and other costs associated with private sector financing of notes or other obligations guaranteed under this subpart.

(h) Housing rehabilitation eligible under § 570.202.

(i) Activities eligible under § 570.203.

(j) Community economic development projects eligible under § 570.204.

(k) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), site improvements, and utilities, for an economic development purpose.

§ 570.702 Application requirements.

(a) *Presubmission requirements.* (1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in § 570.301 with respect to the activities proposed for loan guarantee assistance.

(2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may use the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

(b) *Submission requirements.* An application for loan guarantee assistance shall be submitted to the appropriate HUD field office and shall consist of the following:

(1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.

(2) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in § 570.208.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(4) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under § 570.703(b)(2).

(5) A certification providing assurance that the applicant has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the applicant will maintain documentation of such efforts for the term of the loan guarantee, and the applicant cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(6) Certifications required pursuant to § 570.303. For the purposes of this requirement, the terms "grant" and "CDBG" in such certifications shall also mean guaranteed loan.

(c) *Economic feasibility and financial risk.* The Secretary will make no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that pledged grant funds should be sufficient to retire the debt.

(d) *HUD review and approval of applications.* (1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

(2) The field office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) The Secretary determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The applicant's status as a metropolitan city or urban county during the proposed repayment period; and

(D) The applicant's ability to furnish adequate security pursuant to § 570.703(b).

(ii) The guarantee requested exceeds the maximum loan amount specified under § 570.703(a).

(iii) Funds are not available in the amount requested.

(iv) The applicant's performance does not meet the standards prescribed in Subpart O.

(v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under § 570.701 (a) through (k).

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e) of this section.

(5) Amendments to the loan guarantee shall comply with the requirements of § 570.305. If the applicant wishes to carry out an activity not previously described in its final statement or to substantially change the purpose, scope, location or beneficiaries of an activity, the amendment must be approved by the Secretary.

(e) *Environmental review.* The applicant shall comply with HUD environmental review procedures (24 CFR Part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of applicants.

(f) The applicant (or the designated public agency) shall comply with relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Act; the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

§ 570.703 Loan requirements.

(a) *Maximum loan amount.* No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guaranteed under this subpart on behalf of the applicant and each public agency duly designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to § 570.304 to the applicant.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge all grants made or for which the applicant may become eligible under this part; and

(3) Furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this part or disposition proceeds from the sale of land or rehabilitated property.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Entitlement grants (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the

Secretary) on the notes or other obligations guaranteed pursuant to this subpart.

(2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed under this subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations may be issued and sold only under such terms and conditions as may be prescribed by the Secretary.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act. All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* As a general rule, the repayment period for a loan guaranteed under this subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this part.

(g) *Issuance, underwriting, servicing, and other costs.* Each applicant or its designated public agency issuing guaranteed obligations must pay the issuance, underwriting, servicing, and other costs associated with the private sector financing of the guaranteed obligations. Such costs are payable out of the proceeds from the sale of the guaranteed obligations.

§ 570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O applicable to Entitlement grants shall apply to loan funds guaranteed under this subpart, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.706 Sanctions.

The performance review procedures described in Subpart O for entitlement recipients apply to this subpart. Performance deficiencies in the use of loans guaranteed under this subpart or violations of the contract entered into pursuant to § 570.703(b)(1) may result in the imposition of a sanction authorized pursuant to § 570.900(b)(7) against the pledged entitlement grants. In addition, upon a finding by the Secretary that the recipient has failed to comply substantially with any provision of the Act with respect to either the pledged entitlement grants or the guaranteed loan funds, the Secretary may take action against the pledged grants as provided in § 570.913 and/or may take action as provided in the contract.

9. Subpart O of Part 570 is revised to read as follows:

Subpart O—Performance Reviews

Sec.
570.900 General.
570.901 Review for compliance with the primary and national objectives and other program requirements.
570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.
570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.
570.904 Equal Opportunity and Fair Housing review criteria.
570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.
570.906 Review of urban counties.
570.907–570.909 Reserved.
570.910 Corrective and remedial actions.
570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.
570.912 Nondiscrimination compliance.
570.913 Other remedies for noncompliance.

Subpart O—Performance Reviews

§ 570.900 General.

(a) *Performance review authorities—* (1) *Entitlement and HUD-administered Small Cities performance reviews.* Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

(2) *Urban Development Action Grant (UDAG) performance reviews.* Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

(b) *Performance review procedures.* This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(e) and 119(g) of the Act:

(1) The Department will determine the performance of each entitlement and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in § 570.901 and by applying the performance criteria described in §§570.902 and 570.903 relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in § 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from on-site monitoring, audit reports, and the status of the letter of credit. Where applicable, the Department may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments and other information provided by the recipient. A recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

(4) If HUD determines that a recipient has not met a civil rights review criterion in § 570.904, the recipient will be provided an opportunity to

demonstrate that it has nonetheless met the applicable civil rights requirement.

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in § 570.902 or § 570.903, the recipient will be provided an opportunity to contest the finding.

(6) If the recipient is unsuccessful in contesting the validity of a finding of noncompliance or a finding that the recipient has failed to carry out its activities or its housing assistance plan in a timely manner, HUD may require the recipient to undertake appropriate corrective or remedial actions as specified in § 570.910. HUD will undertake the continuing capacity review required by § 570.905 prior to selecting the corrective or remedial actions.

(7) If the recipient fails to undertake appropriate corrective or remedial actions which resolve the deficiency to the satisfaction of the Secretary, the Secretary may impose a sanction pursuant to §§ 570.911, 570,912, or 570.913, as applicable.

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

(a) The requirement described at § 570.200(a)(3) that, consistent with the primary objective of the Act, not less than 60 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low and moderate income persons;

(b) The requirement described at § 570.200(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at § 570.208;

(c) All other activity eligibility requirements defined in Subpart C of this part;

(d) For entitlement grants only, the presubmission requirements at § 570.301, the amendment requirements at § 570.305 and the displacement policy requirements at § 570.606;

(e) For HUD-administered small cities grants only, the citizen participation requirements at § 570.431, the amendment requirements at § 570.434 and the displacement policy requirements of § 570.606;

(f) The grant administration requirements described in Subpart J;

(g) Other applicable laws and program requirements described in Subpart K; and

(h) Where applicable, the requirements pertaining to loan guarantees (Subpart M) and urban renewal completions (Subpart N).

§ 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement and HUD-administered small cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

(a) *Entitlement recipients.* (1) Before the funding of the next annual grant and absent substantial evidence to the contrary, the Department will consider an entitlement recipient to be carrying out its CDBG activities in a timely manner if, 60 days prior to the end of its current program year:

(i) The amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is less than 1.5 times the entitlement grant amount for its current program year; and,

(ii) In cases where the recipient has received at least two consecutive entitlement grants, the amount of entitlement grant funds disbursed by the U.S. Treasury to the recipient during the previous twelve month period is equal to or greater than one-half of the entitlement grant amount for its current program year.

(2) Where it is known that a recipient has an unusually large amount of program income funds on hand (relative to the grant amount), HUD may determine that the amount of such funds is sufficient to override the conclusion that would otherwise be made based solely on the criteria in paragraph (a)(1) of this section.

(3) HUD may also review an entitlement recipient's progress at other times during the year to determine whether the recipient's rate of fund expenditure is likely to fall outside of the criteria in paragraph (a)(1)(i) of this section, in which case the Department will notify the recipient of a potential problem with the lack of timeliness in carrying out its activities.

(b) *HUD-administered Small Cities program.* The Department will, absent substantial evidence to the contrary, consider that a HUD-administered small cities recipient is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

§ 570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.

(a) HUD will review an entitlement grant recipient's HAP performance prior to HUD's approval of each succeeding year's HAP and prior to acceptance of a grant recipient's HAP certification in order to determine whether the recipient is achieving its specific HAP goals in a timely manner.

(b) Absent substantial evidence to the contrary, HUD will consider that an entitlement recipient is carrying out its approved HAP in a timely manner if at the end of each of the first two years governed by the HAP, the recipient has substantially met each annual goal for that year, and if at the end of the third year of the period governed by the HAP, a recipient has substantially met its three year goals. For the three year period, this standard also requires that the provision of rental subsidies has been made in reasonable proportion to the goal for each household type as identified in the HAP.

(c) For a recipient whose HAP performance does not fall within the criteria in paragraph (b) of this section, a review shall be conducted which considers the extent to which the recipient made use of housing assistance resources that were available to meet the applicable HAP goals. Where such consideration of the use of available resources results in a determination that the recipient has taken all reasonable actions to use available resources and has not impeded the provision of housing assistance which would have been consistent with the HAP goals, HUD may also consider, under such circumstances, that a recipient has carried out its HAP in a timely manner.

(d) In measuring progress in achieving one-year goals, HUD will consider the extent to which the recipient has made or received firm financial commitments which have not subsequently been canceled for specific projects, households or units identified in the HAP by household and tenure type within a two year period. Progress in achieving the three-year goal will consider the movement of firm financial commitments to start of rehabilitation or construction, or in the case of the Section 8 Housing Assistance Payment Program—Existing Housing (24 CFR Part 882) certificates or vouchers under section 8(o) of the United States Housing Act of 1937 to occupancy, within a reasonable period of time. Such reasonable period of time may be within the three-year period covered by the applicable three-year goals, or, for firm financial commitments received late in

the three-year period, it may be a year or more into the next three-year cycle.

(e) If HUD determines that an entitlement grant recipient has not met the criteria outlined in paragraph (b) or (c) of this section, the recipient will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the recipient has carried out its HAP in a timely manner considering all relevant circumstances and the recipient's actions and lack of actions affecting the provision of housing assistance within its jurisdiction. Failure to so demonstrate will be cause for HUD to find that the recipient has failed to carry out its HAP in a timely manner. The response by the recipient should describe:

(1) The factors which prevented it from meeting those HAP goals it failed to meet; and

(2) The actions which were taken to facilitate achieving its HAP goals, including the following where applicable:

(i) The removal of impediments under local ordinances and land use requirements to the development of assisted housing;

(ii) The formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the recipient, when necessary to carry out the HAP;

(iii) The provision of sites, improvements to sites, and/or extensions of utilities to sites for assisted housing new construction, provided that such sites meet the applicable HUD site and neighborhood standards;

(iv) Establishment of a housing rehabilitation program or increased use of an existing one where substantial need for rehabilitation is evident; and

(v) Cooperation with a local housing authority or other proper administrative body to facilitate operation of the Section 8 Housing Assistance Payment Program—Existing Housing (or a comparable rental assistance program) through such means as landlord information programs and identification of available rental unit inventories.

§ 570.904 Equal Opportunity and Fair Housing Review Criteria.

(a) *General.* (1) Where the criteria in this section are met, the Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:

(i) There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by considerations of race, color, religion where applicable, sex, national origin, age or handicap, has treated some persons less favorably than others, or

(ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin, or

(iii) Where the Secretary required a further assurance pursuant to § 570.304 in order to accept the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.

(2) In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under title VI of the Civil Rights Act of 1964 or section 109 of the Act.

(b) *Review for equal opportunity.* Section 570.601(a) sets forth the general requirements for title VI of the Civil Rights Act of 1964 and § 570.602 sets forth the general requirements for section 109 of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

(1) *Review for equal employment opportunity.* The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment, promotion, or training opportunities by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background are represented in the workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(2) *Review of equal opportunity in services, benefits and participation.* The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(c) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for Title VIII of the Civil Rights Act of 1968 and the grantee's certification that it will affirmatively further fair housing. In reviewing a recipient's actions in carrying out its housing and community development activities in a manner to affirmatively further fair housing in the private and public housing sectors, absent independent evidence to the contrary, the Department will consider that a recipient has taken such actions in accordance with its certification if the recipient meets the following review criteria:

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons, regardless of race, color, religion, sex, or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:

(i) The sale or rental of dwellings;

(ii) The provision of housing brokerage services;

(iii) The provision of financing assistance for dwellings;

(iv) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing;

(v) The administrative policies concerning community development and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing

displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration; and

(vi) Where there is a determination of unlawful segregation or other housing discrimination by a court or a finding of noncompliance by HUD regarding assisted housing within a recipient's jurisdiction, an analysis of the actions which could be taken by the recipient to help remedy the discriminatory condition, including actions involving the expenditure of funds made available under this part.

(2) Based upon the conclusions of the analysis in (1) above, the recipient has taken lawful steps, consistent with this part, relating to housing and community development to overcome the effects of conditions that limit fair housing choice within the recipient's jurisdiction. Such actions may include:

(i) Enactment and enforcement of an ordinance providing for fair housing consistent with the federal fair housing law;

(ii) Support of the administration and enforement of state fair housing laws providing for fair housing consistent with the federal fair housing law;

(iii) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan);

(iv) Contracting with private organizations, including private fair housing organizations, where such support will bring about actions consistent with titles VI and VIII, to address the impediments identified in the analysis described in paragraph (C)(1) of this section;

(v) Activities which assist in remedying findings or determinations of unlawful segregation or other discrimination involving assisted housing within the recipient's jurisdiction.

(vi) Other actions consistent with law determined to be appropriate based upon the conclusions of the analysis:

(d) *Actions to use minority and women's business firms.* The Department will review a recipient's performance to determine if it has administered its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises described in Executive Orders 11625, 12432 and 12138, and 24 CFR 85.36(e). In making this review, the Department will determine if the grantee has taken actions required under § 85.36(e) of this chapter, and will review the effectiveness of those actions in accomplishing the objectives of § 85.36(e) of this chapter and the Executive Orders. No recipient is required by this part to attain or maintain any particular statistical level of participation in its contracting activities by race, ethnicity, or gender of the contractor's owners or managers.

§ 570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.

If HUD determines that the recipient has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in §§ 570.901 or 570.902, HUD will undertake a further review to determine whether or not the recipient has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken and the success or likely success of such actions.

§ 570.906 Review of urban counties.

In reviewing the performance of an urban county, HUD will hold the county accountable for the actions or failures to act of any of the units of general local government participating in the urban county. Where the Department finds that a participating unit of government has failed to cooperate with the county to undertake or assist in undertaking an essential community development or assisted housing activity and that such failure results, or is likely to result, in a failure of the urban county to meet any requirement of the program or other applicable laws, the Department may prohibit the county's use of funds made available under this part for that unit of government. HUD will also consider any such failure to cooperate in its review of a future cooperation agreement between the county and such included unit of government described at § 570.307(b)(2).

§§ 570.907-570.909 [Reserved.]

§ 570.910 Corrective and remedial actions.

(a) *General.* Consistent with the procedures described in § 570.900(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency.

(b) *Actions authorized.* The following lists the actions that HUD may take in response to a deficiency identified during the review of a recipient's performance:

(1) Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:

(i) Preparing and following a schedule of actions for carrying out the affected CDBG activities, consisting of schedules, timetables and milestones necessary to implement the affected CDBG activities;

(ii) Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;

(iii) For entitlement recipients, canceling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in Subpart D); or

(iv) Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;

(3) Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;

(4) Advise the recipient to suspend disbursement of funds for the deficient activity;

(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to Subpart B of 24 CFR Part 17; and

(8) In the case of an entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to § 570.304(d). The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to § 570.911, of the entitlement recipient's annual grant by up to the amount conditionally granted.

§ 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

(a) *Opportunity for an informal consultation.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) *Entitlement grants.* Consistent with the procedures described in § 570.900(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) *HUD-administered small cities grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) *Urban Development Action Grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

§ 570.912 Nondiscrimination compliance.

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with § 570.602, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exerise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(3) Exercise the powers and functions provided for in § 570.913; or

(4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of § 570.602, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.913 Other remedies for noncompliance.

(a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of this Part, the Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

(1) Terminate payments to the recipient;

(2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or

(3) Limit the availability of payments to programs or activities not affected by such failure to comply.

Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this Part;

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with it, or for mandatory or injunctive relief;

(c) Proceedings. When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:

(1) *Notice of opportunity for hearing:* The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this part;

(ii) State that the hearing procedures are governed by these rules;

(iii) State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed:

(iv) Specify the action which the Secretary proposes to take and that the authority for this action is section 111(a) of the Act;

(v) State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

(vi) Be sent to the respondent by certified mail, return receipt requested.

(2) *Initiation of hearing.* The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery prior to the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearing shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The orginal transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

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Part IV

Office of Management and Budget

Guidelines for Nonprocurement Debarment and Suspension; Notice

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Nonprocurement Debarment and Suspension

August 31, 1988.

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about the final OMB guidelines and 27-agency final common rule, published May 26, 1988, promulgated pursuant to Sections 6 and 3, respectively, of Executive Order 12549, "Debarment and Suspension."

DATE: The effective date for the 27-agency final common rule is October 1, 1988.

ADDRESS: Barbara F. Kahlow, Financial Management Division, Office of Management and Budget, Room 10225 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Financial Management Division, Office of Management and Budget, Room 10225 New Executive Office Building, Washington, DC 20503. Telephone (202) 395-3053.

SUPPLEMENTARY INFORMATION: Executive Order 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986 (51 FR 6370-1). Section 6 of the Order states that "The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this order, prescribe governmentwide criteria and governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines." Section 3 of the Order states that "Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6." In accordance with Section 3 of the Order, 27 agencies published a final common rule on May 26, 1988 (53 FR 19161-211). The Office of Management and Budget (OMB), by Notice published the same day, adopted the final common rule as its final guidelines (53 FR 19160).

The preamble to the 27-agency final common rule stated that "The next step towards a comprehensive debarment and suspension system covering both procurement and nonprocurement activities will require technical revisions to be made to both this final common rule and to 48 CFR Subpart 9.4, which governs procurement debarment and suspension actions. The public will have a further opportunity to comment at that time. In addition, before the October 1, 1988 effective date of this final common rule, the public has the opportunity to address general questions and concerns to OMB or specific program questions to the affected agency."

The 27 agencies which participated in the final common rule and the parts of the Code of Federal Regulations affected are listed below:

Department of Commerce
15 CFR Part 26
Department of Defense
32 CFR Part 280
Department of Education
34 CFR Parts 85 and 668
Department of Energy
10 CFR Part 1036
Department of Health and Human Services
45 CFR Part 76
Department of Housing and Urban Development
24 CFR Part 24
Department of the Interior
43 CFR Part 12
Department of Justice
28 CFR Part 67
Department of Labor
29 CFR Part 98
Department of State
22 CFR Part 137
Department of Transportation
49 CFR Part 29
Department of the Treasury
26 CFR Part 601
ACTION
45 CFR Part 1229
Agency for International Development
22 CFR Part 208
Environmental Protection Agency
40 CFR Part 32
Federal Emergency Management Agency
44 CFR Part 17
Federal Mediation and Conciliation Service
29 CFR Part 1471
General Services Administration
41 CFR Part 101-50
Institute of Museum Services
45 CFR Part 1185
National Aeronautics and Space Administration
14 CFR Part 1265
National Archives and Records Administration
36 CFR Part 1209
National Endowment for the Arts
45 CFR Part 1154
National Endowment for the Humanities
45 CFR Part 1169
National Science Foundation
45 CFR Part 620
Small Business Administration
13 CFR Part 145
United States Information Agency
22 CFR Part 513
Veterans Administration
38 CFR Part 44

This Notice serves two purposes: To inform the public about the status of the interim final language in the nonprocurement suspension and debarment guidelines and common rule on coverage of international transactions, and to inform the public about the public comment on general questions addressed to the Office of Management and Budget (OMB) since the May 26, 1988 publication.

With respect to the former, the public comment period ended on July 25, 1988. There were no public comments received on the interim final language on coverage of international transactions. As a consequence, OMB will not be amending its guidelines and the interim language can be considered adopted as part of OMB's final guidelines. The interim final portions of the common rule will remain in effect indefinitely, and will be made final by the 27 agencies simultaneously with the next rulemaking, as discussed above, which will address technical revisions both to the nonprocurement common rule and the procurement rules governing suspensions and debarments.

With respect to general questions addressed to OMB, to date OMB has received three letters based on the May 26, 1988 publication. The three letters are reproduced herein as well as OMB's reply to the first two. The letters were submitted by: the Chairman and two members of the Committee on Agriculture of the U.S. House of Representatives; Senator Carl Levin, Chairman of the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs of the U.S. Senate; and, the University of California at Berkeley.

The first letter largely related to the potential impact of the nonprocurement common rule on farmers. The second letter raised questions about the "flow-down" requirements in the common rule, including when certifications would be required. The third letter complimented the changes made in response to public comments, including the University's comments, and expressed concern about two agency-specific deviations to the common rule.

Parts of this Notice will be incorporated in the preamble, rule, or an appendix of the next rulemaking, which will address technical revisions both to the nonprocurement and procurement rules on suspensions and debarments. In the interim, each agency's implementing rule will contain a cross reference to this Notice.

In response to concerns expressed in the third letter, the Departments of Commerce and Interior are expected to adopt the same scope as the common rule, i.e., without the language about

"intermediaries" and "direct and indirect costs." These departments had not completed their analysis of their nonprocurement programs and activities beyond those originally identified as covered (e.g., grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements, and subawards and subcontracts). Some of their other nonprocurement programs and activities are expected to fall under the exceptions listed in the common rule in § ___.110 (a) (2), such as incidental benefits; others will be covered and will be so identified.

The University of California at Berkeley also expressed concern about the intention of the Environmental Protection Agency (EPA) to elaborate upon the common certification language. In response to this letter and a recommendation from one of the 27 agencies in the common rule, OMB is awaiting replies from a survey of the 27 agencies about the desirability and practicality of changing the certifications into a standard form. Thus, a decision on changing EPA's approach awaits completion of this analysis.

Further information regarding implementation of the Order may be obtained from the Financial Management Division at 395-3053.

Joseph R. Wright, Jr.,

Deputy Director.

Herein follows the text of the first letter and OMB's reply:

U.S. House of Representatives

Committee on Agriculture

June 22, 1988.

The Honorable James C. Miller, III,
Office of Management and Budget,
Executive Office Building,
Washington, DC 20503.

Dear Mr. Miller:The **Federal Register** of Thursday, May 26, 1988, contained the final common rule and the interim final rule establishing a system of non-procurement debarments and suspensions between federal executive agencies. It is our understanding that this system will place on record those who, as inferred from the preamble to the final common rule, commit "fraud, waste, and abuse" through their non-procurement contracts.

As you know, in recent years many in the agricultural community have been severely hit by the unique hardships brought on by the farm crisis. The clear majority have been doing all they can to meet their contractual obligations. They should not be considered in the same category as those who have intentionally set out to commit "waste, fraud, and abuse" against the American people.

While we certainly support efforts to halt abusive and illegal practices regarding government non-procurement contracting, we remain concerned over the effects of suspensions and debarments on agricultural loans to individuals. Although OMB has made reassurances that the intention is not to include farmers who may be delinquent on individual loans on the suspension and debarment list, the language in the preamble does not seem to exclude this possibility.

Specifically, in addressing the questions of commentors regarding Section ———.305 of the common rule, OMB writes: "concern that . . . this provision could be used to exclude persons with a single or nominal debt" is "unwarranted". However, OMB goes on to state that a person may be included on the suspension and debarment list if they "defaulted on a single, substantial obligation." The text does not elaborate on what comprises a "nominal debt" as opposed to a "substantial obligation".

While understanding that it is not practical to set or define arbitrary limits for "nominal" or "substantial" obligations, we do, however, request that OMB clarify and specify its intent not to include individual agricultural loans to farmers in non-procurement suspensions and debarments.

Perhaps more importantly, concerns have been raised that farmers who are not delinquent on any debt to the U.S. Government could be denied Farmers Home Administration or commodity loans simply as a result of having business dealings with a person who is found to have committed "fraud, waste, and abuse," under the rule. The prospect of farmers who have met all of their obligations being barred from further government benefits through no fault of their own concerns us a great deal. Accordingly, we would appreciate your assurances that this is not the intent of the new rule and your explanation as to exactly how the new rule will operate with regard to farmers.

We thank you for your prompt attention to this matter.

Sincerely,

E (Kika) de la Garza

Charles W. Stenholm

Larry Combest

Executive Office of the President

Office of Management and Budget

July 14, 1988.

Honorable E de la Garza,
Chairman, Committee on Agriculture, U.S.
House of Representatives
Washington, DC 20515.

Dear Mr. Chairman: Thank you for your recent letter regarding nonprocurement suspension and debarment and the potential impact of the May 26, 1988 common rule on farmers. As part of his anti-fraud and abuse initiative, in 1986, the President signed Executive Order 12549 which established governmentwide effect for agency suspension and debarment actions in the nonprocurement (grants, loans, etc.) sector. This action parallels the governmentwide effect already in place for procurement.

In March 1981, the Senate Subcommittee on Oversight of Government Management issued a Report on Reform of Governmentwide Debarment and Suspension Procedures. In response, in 1982, the Office of Federal Procurement Policy (OFPP) issued a policy letter which established governmentwide procedures for debarment and suspension in Federal procurement programs. These included grounds for debarment, "due process" procedures, and a requirement that debarment by one agency meant a debarment for all Executive branch agencies. In addition, OFPP directed the General Services Administration to establish a governmentwide list of those debarred and suspended so that agencies could recognize each other's actions without having to take a second proceeding. The OFPP action has been a major tool in combatting fraud waste and abuse and in protecting the integrity of the Federal procurement process

In addition, in the Defense Authorization Act of FY 1982, Congress required the Department of Defense to recognize debarments by other Federal agencies

Executive Order 12549 and OMB's procedural guidelines for nonprocurement suspension and debarment were issued to provide parallel protection for nonprocurement programs. The Executive Order called for guidelines prescribing governmentwide grounds for debarment and governmentwide due process procedures OMB's nonprocurement guidelines were generally based on the Federal Acquisition Regulation (FAR), and careful analysis of the experience gained with the FAR provisions over the last several years. The Order called for a governmentwide list of those debarred and suspended under Nonprocurement programs.

Under the governmentwide system currently in effect for procurement, a list of those debarred and suspended has been publicly available. The nonprocurement list, therefore, merely continues this existing practice.

Your letter asked for an "explanation as to how the new rule will operate with regard to farmers" and "clarify and specify its intent not to include individual agricultural loans to farmers."

This initiative is not a vehicle for debt collection, i.e., it is neither intended to include individual agricultural loans to farmers nor individual loans to students Rather, debarment and suspension are serious actions to be used only in the public interest and for the Federal Government's protection. Agencies have responsibly taken nonprocurement debarment and suspension actions for years; what is new is only that agencies will be able to recognize each other's debarment and suspension actions without having to take a second such action against a known irresponsible party.

Also, farmers will not be denied various benefits to which they are entitled as a matter of law. Executive Order 12549 specifically exempts all benefits to an individual as a personal entitlement.

In addition, your letter raised concern about imputation. The guidelines are very specific as to when conduct may be imputed to another. The provisions in the guidelines are virtually identical to the equivalent provisions in the FAR. In brief, they provide that conduct may be imputed only when the conduct took place for or on behalf of the

other party or with the other party's knowledge, approval, or acquiescence. If an affiliate is proposed to be debarred, the affiliate must be given notice and the opportunity to respond. Unless conduct can be imputed for debarment purposes, for example, from an individual to his employer, criminal conviction of an individual would not prevent the government from doing business with his employer. Similarly, unless affiliates can be debarred, the owners of a debarred organization can simply establish a new organization to continue the bad acts of the predecessor.

We are trying to simply parallel the success we had in implementing the suspension and debarment procedures for procurement.

Please let me know whenever we may be of assistance.

Sincerely yours,

Joseph R. Wright, Jr.,

Deputy Director.

Herein follows the text of the second letter and OMB's reply:

United States Senate

Committee on Governmental Affairs, Subcommittee on Oversight of Government Management

June 27, 1988.

The Honorable James C. Miller III, Director, Office of Management and Budget, Executive Office Building, Washington, DC 20503.

Dear Mr. Miller: On May 26, 1988, the Office of Management of Budget, in conjunction with 27 federal agencies, issued a final common rule establishing a uniform system of non-procurement suspension and debarment. My subcommittee staff has been involved in the development of this regulation to a certain extent, and I appreciate the attention your office has given to our views. I think your staff has made a good faith effort to respond to our concerns, and I think the proposed regulations have been significantly improved over the earlier drafts.

I remain extremely concerned, however, about one provision in the final rule—the requirement that entities below the immediate grant or loan recipient also be bound by the terms of the regulations, the so-called "flow-down" provision.

The purpose of flow-down is obvious: to prohibit those who are barred from doing business directly with the government from doing so indirectly. For example, we would not want the recipient of a federal grant to award a substantial subgrant to an individual who had been barred from doing business with the government as a result of past misconduct.

While I support the concept of flow-down (in fact I have urged the Department of Defense to include a provision in the procurement debarment and suspension regulations; see the copy of my letter to Deputy Secretary Robert Costello), I am deeply troubled by the potential scope of the OMB rule as presently drafted. In particular, the OMB rule requires any participant in a non-procurement transaction with the government to obtain a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" in connection with all "lower tier covered transactions." "Lower tier covered transactions" are defined to include *any procurement contract over $25,000 in value and any non-procurement transaction regardless of type and regardless of value.* Moreover, this requirement must be flowed down by all participants in lower tier transactions to all of the people with whom they do business in connection with a covered transaction.

The definition of "non-procurement transaction" in the OMB rule is so vague that it is difficult to determine precisely what is covered. However, the provision appears to go far beyond the core purpose of barring recipients of federal grants from awarding subgrants to those who have been suspended or debarred. For example, it would appear that:

—A certification is required for any lower-tier transaction that "grows out of" a covered transaction. Thus, it would appear that a farmer who receives a federal loan and uses part of the money to purchase a tractor (for more than $25,000) might be required to obtain a certification that his local tractor dealer has not been suspended or debarred. Because the provision is flowed-down without limitation, the tractor dealer might be required to obtain a certification that the tractor manufacturer had not been suspended or debarred. Taking the rule to the most absurd extreme, the tractor manufacturer might have to obtain similar certifications from all of its subcontractors.

—The all-encompassing definition of "non-procurement transactions" appears to cover routine transactions like bank deposits and the purchase of insurance. If this is the case, a farmer who receives a loan from the federal government and deposits the money in a local bank might be required to obtain a certification from the bank that it had not been suspended or debarred. Similarly, a recipient of a federal grant who purchases insurance for his facilities might be required to obtain a certification from his insurance company.

—There is no "de mininus" threshold for non-procurement transactions—certifications must be obtained no matter how small the transaction. Thus, if a non-profit organization receives a federal grant for a drug program which includes the payment of small stipends for the performance of activities or work, it would appear that the non-profit organization would be required to obtain a certification from each of the participating individuals that he or she had not been suspended or debarred by the federal government.

The Preamble to the rule is not particularly helpful in explaining what types of transactions are covered, or why OMB decided to adopt such broad language. The Preamble states that:

—[Lower tier covered transactions include] transactions other than procurement contracts for goods or services growing out of a covered transaction. These include, for example, subgrants under grants. All such transactions are included because they *generally* [emphasis added] involve the submission of applications or other documentation before the transaction is entered into. Because of this, the enforcement procedures contained in the final rule may be applied without creating onerous paperwork or administrative burdens.

Although the period for public comment on this rule is no longer open, I am afraid that the flow-down provision may be seriously flawed. For this reason, I would appreciate if you would have your staff analyze the scope of this provision and make a determination whether it would in fact cover the cases outlined above and similar cases. If these cases are covered, I strongly believe that the rule should be revised to narrow its scope. Even if your staff concludes that these cases are not covered, some action may be necessary to clarify the scope of the rule.

Please provide me with a copy of the analysis produced by your staff. If you have any questions about this letter, please have your staff contact Linda Gustitus or Peter Levine of my Subcommittee staff at 224-3682.

Thank you for your attention to this important matter.

Sincerely,

Carl Levin,

Chairman.

Enclosure.

United States Senate,

Committee on Governmental Affairs, Subcommittee on Oversight of Government Management.

June 17, 1988.

The Honorable Robert B. Costello,
Under Secretary of Defense for Acquisition, Department of Defense, Room 3E933, The Pentagon, Washington, D.C. 20301-1155

Dear Bob: At a Senate Governmental Affairs Committee hearing on October 15, 1987, I asked the Deputy Inspector General of the Department of Defense, Derek J. Vander Schaaf, how many of the top 100 defense contractors receive the list of suspended or debarred bidders, which is compiled monthly by the General Services Administration. Mr. Vander Schaaf recently informed me that only 34 of the top 100 contractors subscribe to this list.

The failure of major defense contractors to inquire as to whether their subcontractors have been suspended or debarred by the government indicates a troublesome indifference to an important issue. I can see little difference between purchasing a system directly from a suspended or debarred contractor and purchasing the same system from the same contractor through an intermediary.

This problem was identified as a significant loophole in the Federal Acquisition Regulation (FAR) by a General Accounting Office report (GAO/NSIAD-87-37BR) more than a year ago. I understand that Secretary Weinberger promised last year that the Department of Defense would take steps to incorporate a provision closing this loophole in the FAR.

The Office of Management and Budget recently published a final rule on nonprocurement suspension and debarment (53 FR 19161) which addresses the so-called "flow-down" issue, that is the extent to which a grant or loan recipient is required to avoid sub-grants or procurements with debarred or suspended entities. While I have concerns that the requirements being imposed in that rule go too far, I think a procurement rule that does not address "flow-down" would be seriously deficient.

Recently, however, I learned that you have decided that it is not necessary to close this loophole on the ground that the government is adequately protected by the subcontracting practices of its prime contractors. I think this is a mistake. In particular, the argument that prime contractors are protecting the government's interest seems unfounded in light of the fact that 66 of the top 100 defense contractors do not even attempt to determine whether their subcontractors have been suspended or debarred.

I believe that a prohibition on subcontracts (in excess of a threshold dollar value which should be the same as that for the nonprocurement rule) with companies that have been suspended or debarred is an appropriate response to this problem, and I urge you to reconsider your position and include such a provision in the FAR.

I would be happy to have my Subcommittee staff work with your office on this issue and to join with OMB in achieving a comparable provision in the nonprocurement rule—one that is reasonable in its implementation. If you would like to have your staff discuss this matter with the Subcommittee staff, please have them contact Peter Levine at 224-3682. Thank you for your attention to this matter.

Sincerely,

Carl Levin,

Chairman.

Attachment.

Inspector General

Department of Defense

April 6, 1988.

Honorable Carl Levin,

Chairman, Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, United States Senate, Washington, D.C. 20510

Dear Mr. Chairman: At a hearing before the Permanent Subcommittee on Investigations on October 15, 1987, at which I testified on the subject of product substitution investigations, you raised the issue of Defense prime contractors awarding subcontracts to companies which may have been suspended or debarred by the Government.

Specifically, you inquired as to how many of our top 100 contractors subscribe to the list of suspended or debarred-bidders, which is compiled monthly by the General Services Administration. Though requested last November, I have only now received the subscriber list from the Government Printing Office. A review of that list indicates that 34 of the top 100 Defense contractors receive the list in at least one of their subdivision buying offices. In addition to the top 100 contractors, the subscriber list indicates that the information is sent to 103 additional corporate addresses. Thus a relatively small number of the total prime contractors who conduct business with the Department of Defense receive the list of suspended and debarred bidders.

I hope this information is helpful to you.

Sincerely,

Derek J. Vander Schaaf,

Deputy Inspector General.

cc: Honorable Sam Nunn, Chairman, Permanent Subcommittee on Investigations

Honorable William V. Roth, Jr., Ranking Minority Member, Permanent Subcommittee on Investigations

Executive Office of the President

Office of Management and Budget

July 21, 1988.

Honorable Carl Levin,

Chairman, Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, United States Senate, Washington, DC 20510-6250

Dear Mr. Chairman: Thank you for your recent letter regarding nonprocurement suspension and debarment. Your letter expressed concern about the "potential scope" of the "flow-down" requirements in the common rule and posed different cases for our analysis.

This letter lays out our analysis of the regulatory requirements under each case and commits to further preamble discussion about circumstances under which certifications are required. In summary, *most* lower tier transactions involve procurement of goods or services for which the common rule established a threshold for required certifications. The threshold was set to be equivalent to the Federal procurement small purchase threshold, currently $25,000. We believe the threshold is workable and appropriate.

In the first case, the farmer using Federal loan funds to purchase, via a procurement sales contract, a tractor would be required to obtain a certification from the local tractor dealer, that the dealer and its principals are not debarred or suspended, if the tractor costs over $25,000. In turn, the common rule requires the tractor dealer to obtain certifications from its suppliers (subcontractors), including the tractor manufacturer, that the supplier and its principals are not debarred or suspended, but only where the contract between the dealer and its suppliers has a value greater than $25,000. Subcontracts valued less than $25,000 are not considered covered transactions under the common rule and thus are exempt from the certification requirement.

In the second case involving bank deposits and insurance, the participant would be required to obtain certifications from the bank or insurance company only where the charge for the transaction to the participant exceeded $25,000. Because these transactions are contractual (the participant obtains a service, i.e., safekeeping of money or indemnity, respectively), certifications are required only where the transaction exceeds $25,000. As a practical matter, it is highly *unlikely* that deposits of Federal loan funds in local banks by farmers would be covered since service charges for demand deposit accounts generally are substantially under $25,000.

With respect to insurance policies, *very few* of such policies would trigger the certification requirement. For example, some surety bond policies carry premiums exceeding $25,000. To the extent that premiums exceed $25,000, the certification requirement would be triggered. In these instances, however, in view of the significance of the transaction to the protection of the Federal interest, i.e., performance bonds, we believe that coverage is justified and appropriate.

The third case concerned whether volunteers (proxy employees) who receive a stipend "for the performance of activities or work" from a nonprofit organization under a Federal grant would be required to provide a certification to the grantee. Under the common rule, such persons would stand in the same position vis-a-vis the nonprofit participant as general employees of any other participant. Participants are required to certify only as to their principals, not as to their general staff employees. Therefore, nonprofit participants, such as described in your letter, would not be required to certify that their volunteer employees, who are not principals, are not debarred or suspended. We note that the common rule does not require submission of certifications by principals under any circumstances. Participants can decide how to determine whether their principals are not debarred or suspended. Thus, even were these volunteers considered principals, they would not be required to supply a certification.

This analysis revealed that the language in the preamble to the common rule could have been more helpful. We will elaborate upon the circumstances under which certifications are required when we finalize the interim final language in the nonprocurement suspension and debarment common rule on coverage of international transactions. The comment period for this language closes July 25, 1988. We expect to finalize this language before the October 1, 1988 effective date of the common rule.

If you have further concerns after reading this letter, I would be delighted to meet with you to discuss them. Alternatively, our staffs could continue to work together to arrive at preamble language which helps clarify this important provision.

Sincerely yours,

Joseph R. Wright, Jr.,

Deputy Director.

Herein follows the text of the third letter:

University of California

Office of the President, Berkeley, California 94720

July 7, 1988.

Ms. Barbara F. Kahlow,

Grants Management, Financial Management Division, Office of Management and Budget, Room 10215, New Executive Office Building, Washington, DC 20503.

Dear Ms. Kahlow: OMB's efforts to transform an unmanageable and potentially disastrous proposed rule on nonprocurement debarment into an effective and efficient instrument of public policy has been largely successful. We thank you and your colleagues for your hard work. Thanks must also go to the many departments and agencies which joined OMB to make the changes.

Beginning October 1, 1988, we can expect federal grant-making offices to revise their application instructions and forms to include the appropriate certification. We can also expect our A-110 auditors to check to see that we have a system for obtaining similar certifications from lower-tier contractors on purchase agreements over $25,000. We do not have lower-tier agreements in the first category (e.g. subgrants) nor in the third category (e.g. bid and proposal preparation) under federal grants.

You will have noticed that the Departments of Commerce and Interior have deviated from the scope of the common rule and have temporarily inserted old language in Section ——.110(a) with references to "intermediaries" and direct and indirect costs. Both departments say they will issue a proposed rule on this subject with request for comment. Isn't there something OMB can do to bring these two departments into line before they go through the trouble of publishing proposed rules and we go through the trouble of commenting on them? Wouldn't such a process simply duplicate the one we have already gone through? There must be some failure of communication here because the section-by-section analysis rightly states, at 53 FR 19164, that "the final rule contains several changes which have the effect of significantly limiting and clarifying its scope" and yet both departments cite the "expanded scope of transactions covered under the final common rule" as the reason for their deviation. Surely, if the scope has been narrowed, then the reason given for the deviations is invalid and OMB should be able to nullify the deviations.

There is one other troubling deviation. EPA wants to add language to the subrecipient certification. Our objection is not so much to the substance of the added language as to the fact that the deviation would mean added paperwork with very little benefit. Instead of simply attaching the certification and flowdown language to every grant-related purchase order over $25,000, we would have to check to see if the prime sponsor is EPA, and if so use a different certification. This difference would ripple through all lower-tier subcontractors, causing a great deal of confusion. We urgently need OMB's help in getting this deviation rescinded, or at least in working out certification language that *all* agencies can agree on.

Regards,

David F. Mears,

University Contracts and Grants Coordinator.

[FR Doc. 88-20142 Filed 9-2-88; 8:45 am]

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
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1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
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0-26	15.00	Jan. 1, 1988
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53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
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1950-1999	18.00	Jan. 1, 1988
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8	11.00	Jan. 1, 1988
9 Parts:		
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10 Parts:		
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220-299	14.00	Jan. 1, 1988
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13	20.00	Jan. 1, 1988
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200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.