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Proclamation 6582 of July 27, 1993

40th Anniversary of the Korean Armistice

By the President of the United States of America

A Proclamation

The friendship between the United States and South Korea is one formed in blood, for our troops fought shoulder to shoulder in defense of freedom. On the 40th anniversary of the signing of the Korean Armistice, it is appropriate that we honor those who fell in defense of freedom and human dignity and that we strive to create a new vision of how we as a community of neighbors can live in peace in the post-Cold War era.

When President Truman sent American troops to Korea's defense 43 years ago, he said he aimed to prove that "Free men under God can build a community of neighbors working together for the good of all." The joint efforts of the United States and South Korea since then have benefited the citizens of our two countries and the peoples of the Asian Pacific region. Our relationship has made that region more secure, more prosperous, and more free.

I join with all Americans in paying tribute to those who served in the Korean War and in remembering those who died in that conflict. We must not forget the lessons we learned—the Korean War must not be the "Forgotten War."

Veterans of Korea served America valiantly during one of the most destructive wars of this century. Their experiences remind all Americans of our great debt to those who have risked—and sometimes lost—their lives in defense of our liberty. As a Nation, we must always remember the sacrifices made by our men and women in uniform and by their families. I salute the distinguished service records of our veterans, as well as the sacrifices that they have made for America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby urge all Americans to observe July 27, 1993—the 40th Anniversary of the Korean Armistice—with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

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

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

**DEPARTMENT OF AGRICULTURE**

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93-905-1 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown In Florida; Finalize Relaxed Grade Requirements for Florida Grapefruit

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes without change an interim final rule which temporarily relaxed the minimum grade requirement for domestic shipments of red seedless grapefruit for the remainder of the 1992-93 season. The relaxation was based on current and prospective crop and market conditions, and on the grade and quality of the remaining supplies of such grapefruit. The relaxation was designed to make increased fresh supplies of such grapefruit available to consumers from this season’s remaining crop.

**EFFECTIVE DATE:** August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: 202-720-5331; or John R. Toth, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12776, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

The Citrus Administrative Committee (committee) met April 27, 1993, and unanimously recommended that the minimum grade requirement for domestic shipments of fresh red seedless grapefruit be relaxed. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on May 27, 1993, with an effective date of May 31, 1993, and published in the Federal Register (58 FR 31465, June 3, 1993). The interim final rule provided a 30-day comment period ending July 6, 1993, and no comments were received.

The interim final rule revised paragraph (a) of § 905.306 by temporarily relaxing the minimum grade requirement for fresh domestic shipments of red seedless grapefruit during the period May 31, 1993, through August 22, 1993. The revision relaxed the minimum grade for such grapefruit from "Improved No. 2 External, U.S. No. 1 Internal" to "Improved No. 2", which in effect reduced the internal grade requirement from "U.S. No. 1" to "U.S. No. 2". The relaxation permitted handlers to ship grapefruit with slightly more dryness, allowing fruit to be
shipped with one-half inch of dryness on the stem end of the fruit, instead of the one-fourth inch previously permitted. The grapefruit crop tends to dry out during the latter part of the harvest season. The relaxation enabled Florida citrus shippers to ship red seedless grapefruit grading at least “Improved No. 2” to the fresh market, rather than diverting such fruit to processing where returns may have been lower than in the fresh market. The relaxation was designed to make increased supplies of fresh fruit available to consumers from this season’s remaining red seedless grapefruit crop grown in Florida.

The minimum grade requirements under the order are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

Under this order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This final rule reflects the committee’s and the Department’s appraisal of the need to finalize the grade relaxation set forth in the interim final rule. The Department’s view is that this action will have a beneficial impact on producers and handlers, since it will allow Florida citrus handlers to continue shipping those grades of fruit consistent with consumers’ needs and crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the Federal Register (58 FR 31465, June 3, 1993), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905
Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 905 continues to read as follows:


§ 905.306 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the Federal Register (58 FR 31465, June 3, 1993), is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Robert C. Keeney,
Director, Fruit and Vegetable Division.

[FR Doc. 93–18158 Filed 7–29–93; 8:45 am]

BILLING CODE 3140–02–P

7 CFR Part 931

[Docket No. FV93–931–1 (FR)]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under M.O. 931 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

DATES: Effective July 1, 1993, through June 30, 1994. Comments received by August 30, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.


SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1993–94 fiscal period beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the
district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1993-94 fiscal period was prepared by the Northwest Fresh Bartlett Pear Marketing Committee (Committee), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 3, 1993, and unanimously recommended a 1993-94 budget of $112,425, which is $3,965 less than the previous year. Decreases in budgeted expenses include those for Committee meetings and the contingency fund. These decreases will be partially offset by increases in salaries, benefits, unemployment, and payroll taxes.

The Committee also unanimously recommended an assessment rate of $0.025 per standard box, or equivalent, the same as last season. This rate, when applied to anticipated pear shipments of 2,673,400 standard boxes, will yield $66,835 in assessment income. Assessment income, combined with $5,100 from other income, and $40,490 from the Committee’s authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $40,490 from the Committee's authorized reserve will result in no reserve remaining at the end of the 1993-94 fiscal year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year began on July 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Bartlett pears handled during the fiscal year;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:


2. A new § 931.228 is added to read as follows:

§ 931.228 Expenses and assessment rate.

Expenses of $112,425 by the Northwest Fresh Bartlett Pear Marketing Committee, are authorized, and an assessment rate of $0.025 per standard box or equivalent of assessable pears is established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.


W. H. Crocker,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–18155 Filed 7–29–93; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 993

[Docket No. FY93–993–1IFR]

Dried Prunes Produced in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $248,805 and establishes an assessment rate of $1.90 per salable ton under Marketing Order No. 993 for the 1993–94 crop year. Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments
received by August 30, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209-487-5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1993-94 crop year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 1,400 producers of California prunes under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California prune producers and handlers may be classified as small entities.

The budget of expenses for the 1993-94 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 22, 1993, and unanimously recommended a 1993-94 budget of $248,805, $36,195 less than the previous year. An increase of $1,750 for operating expenses would be offset by decreases of $29,400 for salaries and wages and $8,545 in the reserve for contingencies.

The Committee also unanimously recommended an assessment rate of $1.90 per salable ton, $0.30 more than the previous year. This rate, when applied to anticipated shipments of 130,950 salable tons, will yield $248,805 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be carried forward, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other
PART 993—DRID PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:


2. A new § 993.344 is added to read as follows:

§ 993.344 Expenses and assessment rate.

(a) Expenses of $248,805 by the Prune Marketing Committee are authorized, and an assessment rate of $1.90 per salable ton of dried prunes is established for the crop year ending July 31, 1994. Unexpended funds may be carried over as a reserve within the limitations specified in § 993.81(c).

(b) The administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

(c) This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

(d) This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

(e) The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

(f) Notice of proposed rulemaking was published in the Federal Register (58 FR 33038) on June 15, 1993, concerning the proposed indefinite suspension of the provisions of the Georgia Federal milk order that limit diversions of producer milk to 25 percent of pool plant receipts. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 22, 1993. One comment was received.

(g) After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.13, paragraph (b)(4), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;"

2. In § 1007.13, paragraph (b)(5), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from such plant during the month from producers who are not members of a cooperative association shall not be producer milk;"

(h) Statement of Consideration

This action suspends indefinitely the provisions of the Georgia Federal milk order that limit diversions of producer milk to 25 percent of pool plant receipts. This suspension is necessary to prevent the uneconomic movement of milk under the order.

This suspension is necessary due to the termination of the Nashville Order, effective midnight July 31, 1993. Plants that are now regulated by the Nashville order will likely become regulated by other Federal orders, namely the Georgia order. This suspension will allow producer milk that has been pooled under the Nashville Order for the supply needs of plants regulated under that order, to continue to be pooled for those plants that become regulated by the Georgia order. The continued pooling of this producer milk, which is now regulated under the Nashville order, is necessary to insure orderly marketing conditions and to prevent uneconomic movements of milk strictly for pooling purposes.

The suspension will not substantially liberalize the market performance of producer milk, since § 1007.13 paragraph (b)(2) requires that not less than 10 days' production of the producer whose milk is diverted be physically received at a pool plant.

The suspension of diversion limitations for an indefinite period of time is needed in recognition that proposals have been made to the Department for consolidation of several
orders in the Southeast, including the Georgia order. In the consolidation proposals, changing market conditions and the need for producer milk diversion provisions that more closely reflect current market needs are addressed. A decision has not been made concerning whether a hearing will be called. In the meantime, an indefinite suspension is needed to assure pooling of producer milk that has been historically regulated under the Nashville order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the plants shifting to this market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting suspension of the diversion limits was received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1007
Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, §1007.13(b)(4) and (5) of the Georgia order are hereby suspended, effective August 1, 1993. This suspension will remain in effect for an indefinite period of time.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

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

§1007.13 [Indefinitely suspended in part].
2. In §1007.13, paragraph (b)(4), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk:" are suspended.

3. In §1007.13, paragraph (b)(5), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk:" are suspended.

Eugene Branstool,
Assistant Secretary, Marketing and Inspection Services.

BILLING CODE 3410-09-P

7 CFR Part 1036
[DA–93–15]
Milk In the Eastern Ohio-Western Pennsylvania Marketing Area; Temporary Revision of Cooperative Association Reserve Processing Plant Shipping Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rule.

SUMMARY: This action relaxes for the months of July 1993 through August 1994 the percentage of a cooperative association's member milk that must be delivered to fluid milk plants to qualify reserve processing plants operated by cooperative associations as pool plants under the Eastern Ohio-Western Pennsylvania Federal milk order (Order 36). The revision reduces from 35 percent to 25 percent the percentage of a cooperative association's member milk that must be delivered to pool distributing plants to qualify the cooperative's reserve processing plant for pooling. This action is necessary to prevent uneconomic movements of milk for the purpose of pooling much of the market's supply.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96546, Washington, DC 20090–6546, (202) 720–7311.

SUPPLEMENTAL INFORMATION: Prior document in this proceeding:

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

This action lessens the regulatory impact of the order on certain milk handlers and tends to assure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of §1036.7(f) of the Eastern Ohio-Western Pennsylvania order.

Notice of proposed rulemaking was published in the Federal Register on June 15, 1993 (58 FR 39039) concerning a proposed reduction of the cooperative reserve processing plant shipping requirements of the order. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by June 22, 1993. Comments filed by three cooperative associations supported the proposed revision. A comment filed by a proprietary supply plant operator favored extending the revision only through August 1993, and
including supply plant shipping standards.

Statement of Consideration

This action eases the pooling requirements for cooperative reserve processing plants by 10 percentage points for the period July 1, 1993, through August 31, 1994. The revision reduces from 35 percent to 25 percent the total minimum quantity of a cooperative association's milk supply that is required to be delivered to distributing plants in order for the cooperative's reserve supply plant to maintain pool status.

In order for a cooperative association plant that does not qualify as a pool distributing or pool supply plant to be a pool plant, the Eastern Ohio-Western Pennsylvania order requires that the cooperative must deliver to pool distributing plants a minimum of 35 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month.

The Eastern Ohio-Western Pennsylvania milk order provides authority for the Director of the Dairy Division to increase or decrease the required shipping percentages for cooperative reserve supply plants by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic movements.

The revision was requested by Milk Marketing, Inc. (MMI), a cooperative association that represents many of the market's producers. Comments supporting the revision were received from MMI and two other cooperative associations with members whose milk is pooled under Order 36, MMI, Eastern Milk Producers Cooperative Association, Inc. (Eastern), and Dairyleas Cooperative, Inc. (Dairyleas), stated that the revision is needed to prevent unnecessary and uneconomic movements of milk because of the current severe milk supply-demand imbalance in the Eastern Ohio-Western Pennsylvania marketing area. Eastern's comments included projections of milk production, Class I needs, and resulting Class III use that indicated that current production increases and reduced Class I use can be expected to continue. Dairyleas noted that extension of the revision to include qualifying shipments required of proprietary supply plants would prevent uneconomic movements of milk and offer some relief to proprietary supply plant operators.

Hans Rothenbuhler and Son, Inc. (Rothenbuhler), objected to MMI's request on the basis that the amendments that may be effective October 1, 1993, that will increase the order's shipping requirements for pool supply plants were proposed and supported by MMI. Rothenbuhler's comments asserted that if qualifying percentages for cooperative reserve processing plants are now to be reduced, the required shipping percentages for pool supply plants also should be revised downward.

Rothenbuhler's comments were the only ones received that dealt with the question of the appropriate duration of the revision. Rothenbuhler suggested that the revision should last no longer than August 1993 because of school reopenings in late August, and the resulting need for greater shipments of milk to distributing plants.

The comments filed by MMI indicate that milk supplies historically pooled under the order currently are losing their markets and having to find new outlets for their production. Apparently, Order 36 pool distributing and pool supply plants are releasing some of their milk suppliers to find their own markets for milk. Such institutional changes in the sources of supply for various plants may result in market instability and disorder.

Milk production in the Eastern Ohio-Western Pennsylvania marketing area appears to be increasing while Class I use is declining. As a result, greater volumes of milk must be diverted to manufacturing uses than in prior years. The last full year before the 1990 proceeding that resulted in the amendments that may take effect October 1, 1993, was 1989. During the short production months (September through November) of 1989, the percentage of Order 36 producer milk needed for Class I use was over 60 percent, with less than 30 percent of the market's milk needed in Class III. For the same period of 1992, the percentage of producer milk used in Class I was just 55 percent, with the Class III percentage increasing to nearly 36 percent.

The increased production and decline in Class I sales, coupled with the market's changing handler-producer relationships, necessitates a reduction in the percentage of milk that must be delivered by a cooperative association to pool distributing plants in order to assure the pool status of the cooperative's member milk. A similar reduction in shipping percentages for proprietary supply plants should not be necessary. Cooperatives typically perform a function of balancing the market that is not customarily performed by proprietary supply plants. In the present situation, it appears that the cooperative association is attempting to deal with market disruptions caused by the actions of other handlers. Therefore, the revision should apply only to cooperative associations' pool qualification.

This revision should be effective for a period long enough to allow the institutional shifts currently in process to work themselves out, and for the cooperative associations to assure themselves of an adequate fluid market for their producer milk. Therefore, the revision should remain in place through the next flush production season, through August 1994.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The revision is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of cooperative reserve processing plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Three comments were filed in support of this action, and one comment was filed opposing the action.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1038

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1038 is amended as follows:

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

The authority citation for 7 CFR part 1036 continues to read as follows:


§ 1036.7 [Amended]

2. In § 1036.7 paragraph (d), introductory text is amended by revising the phrase "35 percent" to "25 percent" and in paragraph (d)(2) by revising the phrase "35 percent" to read "25 percent".
SUMMARY: This action suspends the requirement that dairy farmers who are producers under the Nashville order be paid on the basis of a base and excess payment plan for the months of July 1993. This action is needed to appropriately compensate producers for milk production at a time when milk production is declining.

EFFECTIVE DATES: July 1, 1993 through July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:


The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action also will tend to discourage milk production during the months of July, which is a month of declining milk production.

This final rule has been reviewed by the Department in accordance with Department Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded an opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nashville, Tennessee, marketing area.

Notice of proposed rulemaking was published in the Federal Register on June 24, 1993 (58 FR 34230) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. Four comments were received, two from proprietary handlers and two from individual producers. One handler and one producer opposed the suspension, and one handler and one producer supported it.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month of July 1993 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1098.61(a), the words "for each of the months of August through February":

2. In § 1098.61(a)(5), the words "in the months of August through February:"

3. In § 1098.61, paragraph (b).

Statement of Consideration

The suspension would make inequitable the requirement that producers be paid on the base and excess plan for the month of July 1993. The suspension was requested by Fleming Companies, Inc. (Fleming), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

The suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. The current order provisions provide that producers, for the months of March through July, be paid a base and excess price. The plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been less than needed to have a full supply. In view of this, the base-excess plan does not comport with market conditions during the month of July.

Four comments were filed: One handler and one producer opposed the suspension, and one handler and one producer supported the suspension. The handler opposing the suspension indicated that the adoption of the suspension would not appreciably increase the milk supply for the market, and that it will penalize those producers who structure their production to optimize their financial return available within the base and excess plan. On the other hand, the handler claimed, dairy farmers who have not attempted to maximize their economic returns would receive an unjustified benefit at the expense of the other dairy farmers.

The producer who opposed the suspension indicated that he has worked hard to build base so that only a small amount of his production would be paid for at the excess price. He stated that to grant the suspension request would be unfair to those producers who have based their milk production around the base-excess plan.

The handler who proposed the suspension filed a comment in support of this action. The handler indicated that the recent hot and humid weather pattern in the Nashville production area has reduced milk production significantly to the point where the handler regularly purchases loads of milk from other handlers, some of which are handlers whose milk supply is not pooled on the Nashville order. In the proponent's view, it is inconsistent to pay producers for some of their milk at excess prices when the supply is so short that outside milk is being purchased. Moreover, the handler noted that in 1991 the amount for which producers received the excess price was greater than Class II and Class III use. The producer who supported the
The suspension said he believed there has been a change in the supply-demand ratio and in marketing strategy and procedure since the order was first established. He endorsed the suspension.

After reviewing the comments received, it is concluded that the base and excess payment provisions of the Nashville order should be suspended for the month of July 1993. In reality, milk supplies are short and therefore producers should not be paid a lower price for a portion of their production as excess milk.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions in the marketing area in that milk production should be encouraged rather than discouraged;

(b) This suspension does not require any persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded the opportunity to file written data, views or arguments concerning this suspension. Four comments were filed: two in opposition and two in support of this action.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1098 are suspended as follows:

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR part 1098 continues to read as follows:


§ 1098.61 [Temporarily suspended in part]

2. In § 1098.61(a), the words "for each of the months of August through February" are suspended for July 1993.

3. In § 1098.61(a)(5), the words "in the months of August through February" are suspended for July 1993.

4. In § 1098.61, paragraph (b) is suspended for July 1993.


Eugene Branstool,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18220 Filed 7–29–93; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 1126

[DA–93–12]

Milk In the Texas Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends segments of the pool plant and producer milk definitions of the Texas Federal milk order for a two-year period. This suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling. In addition, this suspension is necessary to prevent the un-economic and inefficient movement of milk under the order.

EFFECTIVE DATE: August 1, 1993 through July 31, 1995.

FOR FURTHER INFORMATION CONTACT:
Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local law, regulation, or policy, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Notice of proposed rulemaking was published in the Federal Register (58 FR 32465) on June 10, 1993, concerning the proposed suspension for August 1, 1993, through July 31, 1995, of segments of the pool plant and producer milk definitions of the Texas Federal milk order. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 25, 1993. Two written comments were received that discussed the nature of the proposed suspension. One comment included full support of the suspension of rule, as published in the Federal Register. The other comment included support for the proposed suspension for one year, but not for the two-year time period.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of any dairy cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b),
In 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator".

Statement of Consideration

This action suspends segments of the pool plant and producer milk definitions for the Texas order. This suspension will be in effect from August 1, 1993, through July 31, 1995. The current suspension of some of these provisions will expire July 31, 1993. This action suspends: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action continues to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This action continues the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action will keep these requirements suspended.

Renewal of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am) and Associated Milk Producers, Inc. (AMPI), cooperative associations that represent a substantial number of the dairy farmers who supply the Texas market. Mid-Am also filed comments supporting the proposed suspension.

A comment also was filed on behalf of Southern Foods Group (SFG). SFG's view is that after being suspended for each of the past five years, these provisions have been suspended in their entirety. In future years, it may be preferable to resolve this issue through the hearing process, not through informal rulemaking, so that the Order may contain appropriate pooling provisions based on current market conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Comments were received from two parties.

Therefore, good cause exists for granting this suspension for a two-year period, the concerns raised by SFG should be considered. Beginning in August of 1988, for over five years, these provisions have been suspended in their entirety. In future years, it may be preferable to resolve this issue through the hearing process, not through informal rulemaking, so that the Order may contain appropriate pooling provisions based on current market conditions.

It is anticipated that Class I sales of milk in the forseeable future will not keep up with expected increases in producer milk receipts on the Texas Order.

This suspension action is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

While granting this suspension for a two-year period, the concerns raised by SFG should be considered. Beginning in August of 1988, for over five years, these provisions have been suspended in their entirety. In future years, it may be preferable to resolve this issue through the hearing process, not through informal rulemaking, so that the Order may contain appropriate pooling provisions based on current market conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Comments were received from two parties.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1126, are amended as follows:
PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

§ 1126.7 [Temporarily suspended in part]
2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.
3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

§ 1126.13 [Temporarily suspended in part]
4. In § 1126.13(a)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.
5. In § 1126.13(a)(2), the paragraph references "(a), (b), (c) and (d)" are suspended.
6. In § 1126.13(a)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator," are suspended.

Eugene Branstool,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18219 Filed 7–29–93; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 1137
[DA–93–13]
Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Eastern Colorado Federal milk order. This suspension is necessary to prevent the uneconomic movement of milk that otherwise would be required in order to maintain the pooling status of milk that has been historically associated with the order.

EFFECTIVE DATES: The suspension to § 1137.7 is effective September 1, 1993 through February 1994; the suspension to § 1137.12 is effective September 1, 1993 through August 1994.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION:


The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition.

The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the Federal Register (58 FR 32467) on June 10, 1993, concerning the proposed suspension of the provisions of the Eastern Colorado Federal milk order that limit the period of automatic pool plant status for a supply plant and suspend the touch-base and diversion limitation requirements. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 25, 1993. One written comment was received that discussed the nature of the proposed suspension. It included full support of the suspension of rule, as published in the Federal Register.

Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material, including the proposal in the notice, the comments, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1993 through February 1994:
   In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August," and
   2. For the months of September 1993 through August 1994:
   In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant;" and in the second sentence "30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months of," and the word "distributing."

Statement of Consideration

This action suspends the provisions of the Eastern Colorado Federal milk order that limit the period of automatic pool plant status for a supply plant and suspends the touch-base and diversion limitation requirements. This suspension is necessary to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

For the months of September 1993 through February 1994, the limit on the period of automatic pool plant status for a supply plant which met pool shipping
standards during the previous September through February period is suspended. The touch-base and diversion limitation requirements during the months of September 1993 through August 1994 are also suspended.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions in the Eastern Colorado order area that existed when the provisions were previously suspended still continue. During 1992, producer milk was 5.6 percent above 1991 while Class I sales were up 1.3 percent. During the period January through May 1993, producer receipts and Class I sales were virtually unchanged from the same period in 1992.

Current projections indicate that there will be ample supplies of locally produced milk to meet the requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant and without restricting the amount of milk that can be diverted to non-pool plants. Without the suspension action, it may be necessary to ship milk from distant areas to Denver area bottling plants. This would displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

The suspension of the touch-base provisions of the order will not allow additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants for the sole purpose of meeting provisions of the Eastern Colorado order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment was received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:


§1137.7 [Suspended in part]

2. In §1137.7(b), for the months of September 1993 through February 1994:

In the second sentence of §1137.7(b), the words "plant which has qualified as a" and the words "of March through August" are suspended; and

§1137.12 [Suspended in part]

3. In §1137.12(a)(1), for the months of September 1993 through August 1994:

In the first sentence of §1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing" are suspended.


Eugene Braastad,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18218 Filed 7–20–93; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 1220
[No. LS–93–005]
RIN 0581–AA94

Soybean Promotion and Research; Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Rules and Regulations which implemented the Soybean Promotion and Research Order (Order). The Order established a national industry-funded soybean promotion and research program. The rule modifies the remittance date for assessments from first purchasers, thus providing a uniform remittance date for assessments which is consistent with other commodity State checkoff programs, and removes the requirement for certification of nonproducer status for certain transactions, thereby reducing the paperwork burden imposed on first purchasers who collect the assessments.

DATES: Effective date: July 30, 1993.

COMMENTS: Comments must be received on or before August 30, 1993.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch 202/720–1115.


Regulatory Impact

This interim final rule was reviewed in accordance with Executive Order No 12291 and Department Regulation No. 1512–1 and has been determined to be a "nonmajor" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for the
purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1874 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a Qualified State Soybean Board or State soybean assessment. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This interim final rule: (1) Amends the remittance date for assessments from first purchasers, and (2) removes the requirement for certification of nonproducer status for certain transactions. These changes are expected to have a positive economic impact on the first purchasers of soybeans. An estimated 10,000 first purchasers of soybeans are required to collect and remit the assessments, and most of them are small businesses under the criteria established by the Small Business Administration (13 CFR 121.2). As explained in more detail below, the amendment to the remittance date in this interim final rule will make the date correspond with the date assessments are due to State assessment programs under some State laws. It will eliminate the current requirement for some first purchasers to examine their records twice each month in order to report and remit commodity assessments. The elimination of the requirement of certification of nonproducer status for certain transactions will reduce the expense associated with this recordkeeping burden. The Administrator of the Agricultural Marketing Service has determined that this action will have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) the reporting and recordkeeping included in 7 CFR part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093.

Background

The Soybean Promotion, Research and Consumer Information Act (Act) (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991. The Soybean Promotion and Research Rules and Regulations, 7 CFR part 1220, published in the Federal Register on July 2, 1992 (57 FR 29436), specify in § 1220.312(d) that assessments shall be remitted not later than the 15th day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed. This interim final rule requires that assessments be remitted not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed.

This interim final rule is designed to provide a uniform remittance date for assessments consistent with certain State checkoff programs for other commodities. Several other checkoff programs require payment of the assessments on the last day of the month following the month in which the product was marketed. The requirement to submit soybean checkoff payments on the 15th day of the month following the month in which the soybeans were marketed creates difficulties for collectors and sometimes results in incorrect submissions. A uniform submission date will greatly alleviate these problems and also reduce the paperwork burden imposed on first purchasers as a result of having different reporting requirements.

The Order's Rules and Regulations also specify in § 1220.315 that a person marketing soybeans, processed soybeans, or soybean products on which an assessment has been collected may claim nonproducer status and shall not be required to pay an assessment if such person certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion. Currently, purchasers are required to either collect the assessment or obtain and maintain a "Statement of Non-Producer Status" form on purchases of soybeans. On the nonproducer status form, the seller certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion. This requirement has caused a paperwork burden for purchasers. This interim final rule reduces the workload for both the purchaser and the Board. It deletes § 1220.315, Certification of nonproducer status for certain transactions, in its entirety. This interim final rule eliminates the current requirement to utilize nonproducer status forms and requires purchasers to utilize their own system to verify collection of assessments on soybeans purchased from producers. Deletion of this provision does not relieve the first purchaser of the requirement to collect an assessment from producers and does not relieve producers of their obligation to pay assessments due. First purchasers may be held liable for failure to collect and remit if they cannot verify nonproducer status for soybeans not assessed.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action includes provisions to reduce the recordkeeping and paperwork burden imposed on industry; (2) a 30-day comment period is provided; (3) this action imposes no additional requirements on the soybean industry; and (4) no time is needed by the industry to prepare for this action.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220, subpart B, is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart B—Rules and Regulations

1. The authority citation for 7 CFR part 1220 continues to read as follows:


2. Section 1220.312 paragraph (d) is revised to read as follows:
§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

(d) Remittances. Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be received subject to collection and payment at par.

§ 1220.313 [Removed]

3. Section 1220.315 is removed.

Eugene Branstool,
Assistant Secretary, Marketing and Inspection Services.

[F.R. Doc. 93-18217 Filed 7-29-93; 8:45 am]
BILLING CODE 4410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-12; Amendment 39-8611; AD 91-08-13]

Airworthiness Directives; Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 91-08-13 that was sent previously to all known U.S. owners and operators of Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R turbofan engines by individual letters. This AD requires the inspection of fan rotor discs within certain schedules. This amendment is prompted by a report of an in-service uncontained failure of the first stage fan rotor disc in which a segment of the disc rim and five fan blades departed the engine. The actions specified by this AD are intended to prevent uncontained failure of the fan rotor disc due to fatigue cracking.

DATES: Effective August 16, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 91-06-13, issued on April 16, 1991, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 28, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-12, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64-3/2102-1M, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2548.

This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joe Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transportation Airports, 3229 East Spring Street, Long Beach, CA 90806-2425; telephone (310) 988-5246, fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: On April 16, 1991, the Federal Aviation Administration (FAA) issued priority letter AD 91-08-13, applicable to Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R turbofan engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments should include a postcard on which the following statement is made: "Comments to Docket Number."

Postcard on which the following statement is made: "Comments to Docket Number."

Comments to Docket Number.

Statements will be filed and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (49 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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


Applicability: Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R series turbofan engines installed in aircraft certificated in any category equipped with fan rotor discs, part number (PN) 3072162-1, -2, -3, and -4 or PN 3073436-1, -2, -3, and -4, installed on but not limited to the following airplane models:

<table>
<thead>
<tr>
<th>Engine model No.</th>
<th>Aircraft manufacturer</th>
<th>Airplane model</th>
</tr>
</thead>
<tbody>
<tr>
<td>TFE731-2-1C</td>
<td>Avions Marcel Dassault-Breguet Aviation, Paris, France</td>
<td>Falcon 10, 100.</td>
</tr>
<tr>
<td>TFE731-2-2B</td>
<td>Learjet Inc., Wichita Kansas</td>
<td>Learjet 35, 35A, 36, 36A.</td>
</tr>
<tr>
<td>TFE731-2-3B</td>
<td>Learjet, Wichita, Kansas</td>
<td>Learjet 31.</td>
</tr>
<tr>
<td>TFE731-3-1C</td>
<td>Avions Marcel Dassault-Breguet Aviation, St. Cloud, France</td>
<td>Falcon 50.</td>
</tr>
<tr>
<td>TFE731-3-1E</td>
<td>AV research Aviation Company, Los Angeles, California</td>
<td>731 Jetstar.</td>
</tr>
<tr>
<td>TFE731-3-1F</td>
<td>Lockheed-Georgia Corp., Marietta, Georgia</td>
<td>1329-25 (Jetstar II).</td>
</tr>
<tr>
<td>TFE731-3-1G</td>
<td>Israel Aircraft Industries Ltd., Israel (USA—Atlantic Aviation, Wilmington, Delaware)</td>
<td>1124, 1124A (Westwind).</td>
</tr>
<tr>
<td>TFE731-3-1H</td>
<td>British Aerospace (BAe) Hatfield-Chester Division, Hatfield, England</td>
<td>BAe HS125 Series.</td>
</tr>
<tr>
<td>TFE731-3-3K</td>
<td>Lockheed-Georgia Corp., Marietta, Georgia (AC modified by STC SA33GOL-D)</td>
<td>1329-25 (Jetstar II).</td>
</tr>
<tr>
<td>TFE731-3R-1D</td>
<td>Sabreliner Corp. (formerly Sabreliner Division, North American Aviation Co. of Rockwell International), Chesterfield, Missouri</td>
<td>NA 265-65 (Sabreliner 65, 65A).</td>
</tr>
<tr>
<td>TFE731-3R-1G</td>
<td>Israel Aircraft Industries USA (Atlantic Aviation, Wilmington, Delaware)</td>
<td>1124, 1124A (Westwind).</td>
</tr>
<tr>
<td>TFE731-3R-1H</td>
<td>British Aerospace (BAe), Hatfield-Chester Division, Hatfield, England</td>
<td>BAe HS125 Series.</td>
</tr>
</tbody>
</table>

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of the fan rotor disc due to fatigue cracking, accomplish the following:

(a) Remove and inspect for cracks by eddy-current or fluorescent penetrant methods, fan rotor discs, PN 3072162-1, -2, -3, and -4 and PN 3073436-1, -2, -3, and -4, and install a serviceable disc in accordance with the Accomplishment Instructions described in Garrett Engine Division, Allied-Signal Aerospace Company, Alert Service Bulletin (ASB) No. TBF731-A72-3432, dated April 11, 1985, as required by the following initial schedule of fan rotor disc cycles since new (CSN) on the effective date of this AD:

<table>
<thead>
<tr>
<th>Fan rotor disc CSN</th>
<th>Initial inspection schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1600</td>
<td>Prior to accumulating 1800 CSN.</td>
</tr>
<tr>
<td>1601 through 2300</td>
<td>Within the next 200 cycles in service (CIS) after the effective date of this AD or prior to 2400 CSN, whichever occurs first.</td>
</tr>
<tr>
<td>Greater than 2800</td>
<td>Within the next CIS after the effective date of this AD.</td>
</tr>
<tr>
<td>2301 through 2800</td>
<td>Within the next 100 CIS after the effective date of this AD or prior to 2850 CSN, whichever occurs first.</td>
</tr>
<tr>
<td></td>
<td>Within the next 50 CIS after the effective date of this AD.</td>
</tr>
</tbody>
</table>

(b) Thereafter, re-inspect the fan rotor discs for cracks in accordance with the Accomplishment Instructions described in Garrett Engine Division, Allied-Signal Aerospace Company ASB No. TBF731-A72-3432, dated April 11, 1991, in accordance with the following repetitive schedule:

<table>
<thead>
<tr>
<th>Last fan rotor disc inspection method</th>
<th>Next inspection due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eddy-Current</td>
<td>At engine Major Periodic Inspection not to exceed 1300 CIS since last inspection.</td>
</tr>
<tr>
<td>Fluorescent</td>
<td>Not to exceed 200 CIS since last Penetrant inspection.</td>
</tr>
</tbody>
</table>
Note: The inspection requirements of paragraphs (a) and (b) of this AD are no longer applicable after installation of a serviceable disc, PN 3073539-1, -2, or PN 3074529-1 or -2, or later serviceable FAA-approved discs.

(c) Remove from service, prior to further flight, fan rotor discs which exhibit crack indications following inspection in accordance with paragraph (a) or (b) of this AD, and replace with a serviceable disc.

(d) Report fan rotor discs found cracked following inspection in accordance with this AD by disc: PN, Serial Number, CSN, and crack location to the Manager, Los Angeles Aircraft Certification Office, Transport Aircraft Directorate, Aircraft Certification Service, FAA, 3329 East Spring Street, Long Beach, CA 90806-2425, within 10 days of the inspection. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 2120-0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with the following Garrett Engine Division, Allied-Signal Aerospace Company, Alert Service Bulletin:

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64-3/2102-IM, P.O. Box 29003, Phoenix, AZ 85096-9003; telephone (602) 365-2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(b) This amendment becomes effective August 16, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 91-09-13, issued April 16, 1991, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on July 15, 1993.

Jack A. Sain, Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-18188 Filed 7-29-93; 8:45 am] BILLING CODE 4101-15-P

14 CFR Part 39

[Docket No. 93-CE-35-AD; Amendment 39-8648; AD 93-15-02]

Airworthiness Directives: Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with certain Simmonds-Precision pitch trim actuators. This action requires repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; immediately replacing any actuator if certain freeplay limitations are not met or rod slippage is evident; and eventually replacing the actuator regardless of the inspection results. Two in-flight incidents where the referenced actuators failed prompted the proposed action. The actions specified by this AD are intended to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.


The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93-CE-35-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; Telephone (512) 824-9421. This information may also be examined at the FAA, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5163; Facsimile (817) 624-5029.

SUPPLEMENTARY INFORMATION: The FAA has received reports of two in-flight incidents where the Simmonds-Precision pitch trim actuators, part number (P/N) DL5040M5, failed. These actuators are installed on Fairchild Aircraft SA226 and SA227 series airplanes. In one case, the horizontal stabilizer went full-nose down, and in the other instance, the horizontal stabilizer jammed. Fortunately, the pilots were able to safely land their airplanes in both of these instances. Upon removal and inspection of the pitch trim actuators, fatigued barrel nuts were found and the actuator usage time was well over 5,000 hours time-in-service (TIS). Based on all available information, the FAA estimates that approximately 50 of the 250 affected airplanes or 20 percent have over 5,000 hours TIS accumulated on the Simmonds-Precision pitch trim actuators, P/N DL5040M5.


After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that: (1) Failure of these barrel nuts could lead to pitch trim actuator rod slippage or improper freeplay; (2) in order to ensure the safety of the Simmonds-Precision pitch trim actuators after 5,000 hours TIS, these actuators should be periodically inspected, and eventually replaced; and
(3) Since these pitch trim actuators are installed on certain Fairchild SA226 and SA227 series airplanes, AD action should be issued in order to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that are equipped with Simmonds-Precision pitch trim actuators, P/N DL5040M5, this AD requires repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; and, if certain freeplay limitations are not met or rod slippage is evident, replacing any actuator with a new actuator of the same part number or of improved design. P/N 27-19008-01 or 27-19008-02. The requirements of the AD will no longer apply when an actuator of improved design is installed. The freeplay measurements and inspections are accomplished in accordance with the instructions in Fairchild SA226 Series SL 226–SL–005, and Fairchild SA227 Series SL 227–SL–011, both Issued: April 8, 1993. Revised: April 28, 1993, as applicable. The pitch trim actuator replacement is accomplished in accordance with the applicable maintenance manual.

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

Comments Invited

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

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

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 93–CE–35–AD.” The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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


Applicability: All SA226 and SA227 series airplanes (all models and serial numbers) that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane, accomplish the following:

(a) Upon accumulating 3,000 hours time-in-service (TIS) on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, or within the next 50 hours TIS accumulated on this type pitch trim actuator after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 300 hours TIS until paragraph (b) is complied with, accomplish the following:

Note 1: If hours TIS accumulated on the pitch trim actuator are not maintained, then hours TIS accumulated on the airplane may be substituted.

(1) Measure the freeplay of the pitch trim actuator and inspect the actuator for rod slippage in accordance with the INSTRUCTIONS section of Fairchild SA226 Series Service Letter (SL) 226–SL–005, and Fairchild SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable.

(2) If certain freeplay limitations specified in the service letters are not met or rod slippage is evident, prior to further flight, accomplish the replacement specified in either paragraph (b)(1) or (b)(2) of this AD.

(b) Within 600 hours TIS after the inspection specified in paragraph (a) of this AD or upon accumulating 6,500 hours time-in-service (TIS) on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, whichever occurs later, accomplish one of the following:

(1) Replace the pitch trim actuator with a new part of the same design and part number in accordance with the applicable maintenance manual, and reinspect and replace as specified in paragraph (a) and (b) of this AD, respectively; or

(2) Replace the pitch trim actuator with a new part of improved design, P/N 27-19008-01 or 27-19008-02, in accordance with the applicable maintenance manual.

(i) This replacement eliminates the repetitive inspection requirement of this AD.
(ii) This replacement may be accomplished at any time to eliminate the inspection requirement of this AD.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Aircraft Certification Office, FAA, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

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

(e) The inspection and modification required by this AD shall be done in accordance with Fairchild SA226 Series Service Letter 226-SL-005, and Fairchild SA227 Series Service Letter 227-SL-011, both issued: April 8, 1993, Revised: April 28, 1993, as applicable.

(f) This amendment (39-8648) becomes effective on August 23, 1993.

Issued in Kansas City, Missouri, on July 20, 1993.

Barry D. Clements, Manager, Small Airplane Directorate, Aircraft Certification Service.

[SFR Doc. 93-18189 Filed 7-29-93; 8:45 am]

14 CFR Part 91

[DOCKET NO. 24456; AMENDMENT NO. 91-233]

AIRSPACE RECLASSIFICATION

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This document corrects the airspace reclassification final rule promulgated on December 17, 1991. The airspace reclassification rule, which will become effective September 16, 1993, inadvertently omitted the authority of Air Traffic Control (ATC) to allow aircraft operators to deviate from any of the operating requirements in Class C airspace areas, as currently contained in Section 91.130 of the Federal Aviation Regulations (FAR).

This action will continue ATC’s authority to allow deviations under §91.130 when Airspace Reclassification becomes effective.

EFFECTIVE DATE: This amendment is effective as of September 16, 1993.


SUPPLEMENTARY INFORMATION: On October 18, 1989, the FAA published a Notice of Proposed Rulemaking on Airspace Reclassification (54 FR 42916) which proposed, among other things, that the nomenclature of Airport Radar Service Areas (ARSA) be changed to Class C airspace. Neither the preamble to the proposed regulation nor the actual proposed rule language indicated any changes to the conditions under which a pilot may deviate from the provisions of §91.130. On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638).

The preamble to the final rule stated that other than the reclassification of ARSA’s as Class C airspace areas, “No other modifications to Class C airspace areas or changes in operating rules were proposed.” However, the rule language in the final rule inadvertently admitted the provisions for pilot deviation from the requirements of §91.130 under the provisions of an ATC authorization. This technical amendment corrects that inadvertent omission.

List of Subjects in 14 CFR Part 91

Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

THE AMENDMENT

Accordingly, 14 CFR part 91 in effect as of September 16, 1993, is amended by making the following correcting amendment:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:


2. Section 91.130 is corrected by revising paragraph (a) to read as follows:

§91.130 Operations in Class C airspace. (a) General. Unless otherwise authorized by ATC, each aircraft operation in Class C airspace must be conducted in compliance with this section and §91.129. For the purpose of this section, the primary airport is the airport for which the Class C airspace area is designated. A satellite airport is any other airport within the Class C airspace area.

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The FTC is amending Rule 4.1(c) of its Rules of Practice so that information identifying the subject of a nonpublic investigation would be redacted from clearance materials placed on the public record. The Commission has determined that disclosing such information adds little to public understanding of clearance determinations, and may harm unjustifiably the subject’s reputation and make it less cooperative, thereby impairing the FTC’s ability to conduct its investigations.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett, Attorney, Office of the General Counsel, FTC, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2453.

SUPPLEMENTARY INFORMATION: Former FTC members and employees are required to submit clearance requests to participate in certain Commission investigations and proceedings.

Commission Rule 4.1(b)(1)(2), 16 CFR 4.1(b)(1)(2) and the responses to them are placed on the public record. The Commission has determined that releasing such information adds little to public understanding of clearance determinations, and may harm unjustifiably the subject’s reputation and make it less cooperative, thereby impairing the FTC’s ability to conduct its investigations.

EFFECTIVE DATE: July 30, 1993.
reductions would "impair the public's ability to assess and understand these important rulings." 42 FR 64135 (1977).

In the FTC's experience, however, disclosing identifying information in clearance materials adds little to public understanding of clearance determinations. In addition, the Commission is unaware of any instance in which a member of the public has used clearance materials on the public record as a basis for furnishing information to the Commission about its clearance actions. Moreover, disclosing such identifying information may harm unjustifiably the subject's reputation and may make it less cooperative, thereby impairing the FTC's ability to conduct its investigations. Accordingly, the FTC is amending its current policy to provide for redaction of identifying information before clearance materials are placed on the public record.

Because the amendment relates solely to agency practice, it is not subject to the Sunshine Act, and Privacy Act.

Information identifying the subject of a nonpublic Commission investigation and responses thereto, are part of the public record. Therefore, if an application is filed for a clearance action, the information identifying the subject of a nonpublic Commission investigation will be redacted from all applications and responses before they are placed on the public record.

By direction of the Commission,

Donald S. Clark,
Secretary.

[FR Doc. 93-18210 Filed 7-29-93; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-93-025]

Special Local Regulations: Great Lakes Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its list of annual marine events which occur within the Ninth Coast Guard District. Publication of this list in part 100 of the Code of Federal Regulations establishes permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

The revised list reflects the approximate dates and locations of each annual marine event.

DATES: Effective date: These regulations become effective on July 1, 1993.

Comment dates: Comments must be received by September 13, 1993.

ADDRESSES: To be placed on the mailing list for notices concerning marine events, write to Commander (OAN), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060. Comments should be mailed to Commander (OAN) at the above address.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3990.

SUPPLEMENTAL INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The applications to hold these annual events were not received by the Commander, Ninth Coast Guard District, until June, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Although this regulation is published as a final rule without prior notice, public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under ADDRESSES in this preamble.

Those with comments should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of these regulations are William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, project officer, Aids to Navigation and Waterways Management Branch and James M. Collins, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District, Legal Office.

Discussion of Regulations

This rulemaking updates an existing list of anticipated annual events. Each year various public and private organizations sponsor marine events on the navigable waters of the United States within the Ninth Coast Guard District. These events include slow moving boat parades, sailboat races, high speed hydroplane races, fireworks displays, and other water related events. The listed events are held in approximately the same location during the same general period of time each year. Exact times and dates will be published in the Local Notice to Mariners instead of being published in this final rule. The nature of each event is such that special local regulations are deemed necessary to ensure the safety of life, limb, and property on and adjacent to navigable waters during the events. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for any of the events covered in this rule.

Table 1 gives the approximate dates, times, and locations for the annual events listed. Each year, one or more Local Notice to Mariners will be published giving the exact dates, times, and locations for the annual events. It
should be noted that Table 1 in the
regulation is not a complete list of all
marine events that will occur in the
Ninth Coast Guard District. It does not
include events which the District
Commander has determined do not
require establishment of regulations for
the safety of life, limb, and property on
or adjacent to navigable waters. It also
does not include nonannual events or
events which have not been scheduled
in time for this publication.

These regulations are issued pursuant
33 U.S.C. 1233 as set out in the
authority citation for all of part 100.

Federalism Implications

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

Environment

The Coast Guard has considered the
environmental impact of these
regulations and concluded that, under
section 2.B.2.c of Coast Guard
Commandant Instruction M16475.1B,
they are categorically excluded from
further environmental documentation.

Economic Assessment and Certification

These regulations are considered to be
non-major under Executive Order 12291
on Federal Regulation and
nonsignificant under Department of
Transportation regulatory policies and
procedures (44 FR 11034; February 26,
1979). The impact of these regulations is
expected to be minimal, and the Coast
Guard therefore certifies that, if
adopted, they will not have a significant
economic impact on a substantial
number of small entities under the
Regulatory Flexibility Act, 5 U.S.C. 601
et seq.

Collection of Information

These regulations will impose no
collection information requirements
under the Paperwork Reduction Act, 44
U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation
(water) Security measures, Vessels,
Waterways.

Final Regulations

In consideration of the foregoing, part
100 of title 33, Code of Federal
Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100
continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and
33 CFR 100.35.

2. Section 100.901 is amended by
revising Table 1 to read as follows:

§100.901 Great Lakes annual marine
events. 

* * * * * 

Table 1

Group Buffalo, NY:
East River Classic
Sponsor: WNY Offshore Powerboat
Association
Date: Mid August
Location: Niagara River, from the South
Grand Island Bridge to the south
entrance of the Niagara River Yacht Club,
near Tonawanda, NY
Flagship International Kilo Speed Challenge
Sponsor: Presque Isle Powerboat Racing
Association
Date: Late June
Location: Lake Erie, Presque Isle Bay, near
Erie, Pa
Flagship International Offshore Challenge
Sponsor: Presque Isle Powerboat Racing
Association
Date: Late June
Location: Lake Erie, Presque Isle Bay, near
Erie, Pa
Grand Island Offshore Challenge
Sponsor: Champion Offshore Boat Racing
Association
Date: Early September
Location: Niagara River, Tonawanda
Channel, near Tonawanda, NY
Miller Genuine Draft Offshore Challenge
Sponsor: Thunder Island and Champion
Offshore Boat Racing Association
Date: Mid June
Location: Lake Ontario, between Oswego,
NY and West Nine Mile Point, NY, near
Oswego, NY
New York State Hydroplane Championships
Sponsor: Niagara Inboard Boat Club
Date: Late July
Location: Niagara River, off Two Mile
Creek, near Tonawanda, NY
Sodus Bay 4th of July Fireworks
Sponsor: Sodus Bay Historical Society
Date: Early July
Location: Lake Ontario, Sodus Bay, near
Sodus Point, NY

Group Detroit, MI:
Bay City Fireworks Display
Sponsor: Bay City Fraternal Order of
Police, Lodge 103
Date: Early July
Location: Saginaw River, between Veterans
Memorial Bridge and the River Walk
Pier, near Bay City, MI
Bay Harbor Charity Classic
Sponsor: Harbor Yacht Sales
Date: Late August
Location: Saginaw Bay, mouth of the
Saginaw River, near Saginaw, MI
Budweiser APBA Gold Cup Race
Sponsor: Spirit of Detroit Association
Date: Early June
Location: Detroit River, between Belle Isle
and the U.S. shoreline, near Detroit, MI
Buick Watersports Weekend
Sponsor: Adore Ltd. and APBA

Date: Late July
Location: Saginaw River, between the
Liberty and Veterans Memorial bridges,
near Bay City, MI

Cleveland National Air Show
Sponsor: Cleveland National Air Show
Date: Labor Day Weekend
Location: Lake Erie and Cleveland Harbor,
near Cleveland, OH

Cleveland Superboat Grand Prix
Sponsor: Ohio Superboat Grand Prix Inc.
Date: Mid August
Location: Lake Erie, Cleveland Harbor, near
Cleveland, OH

Detroit Grand Prix
Sponsor: Detroit Renaissance Foundation
Date: Late July
Location: Detroit River, east of Belle Isle, near
Belle Isle, MI

Flatsfest
Sponsor: Flats Riverfest Corporation
Date: Late July
Location: Cuyahoga River, Conrail Railroad
Bridge at Mile 0.8 above the mouth of the
river to the Eagle Avenue Bridge, near
Cleveland, OH

Huron Water Festival
Sponsor: Huron Festivals, Inc.
Date: Mid July
Location: Huron River, Huron Inner Light
and the Huron Inner East Light to the
U.S. Highway 6 bridge, near Huron, OH

International Bay City River Roar
Sponsor: Bay City River Roar, Inc.
Date: Late June
Location: Saginaw River, between the
Liberty and Veterans Memorial bridges,
near Bay City, MI

International Freedom Festival Fireworks
Sponsor: Detroit Renaissance Foundation
Date: Late July
Location: Detroit River, between Hart Plaza
and Cobo Arena, near Detroit, MI

International Freedom Festival Tug Across
the River
Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, Hart Plaza to
Windsor Riverfront, near Detroit, MI

Quake on the Lake
Sponsor: Lake St. Clair Offshore Racing
Association
Date: Early August
Location: Lake St. Clair, between Point
Huron and Masonic Boulevard, near St.
Clair Shores, MI

Sandusky Bay Challenge
Sponsor: Great Lakes Offshore Powerboat
Racing Association
Date: Late May
Location: Lake Erie, Sandusky Bay, near
Sandusky, OH

Thunder on the River Hydroplane Race
Sponsor: Toledo Prop Spinners
Date: Late August
Location: Maumee River, between the
Martin L. King and Anthony Wayne
bridges, near Toledo, OH

Toledo 4th of July Fireworks
Sponsor: City of Toledo
Date: Late July
Location: Maumee River, between the
Cherry and Anthony Wayne bridges,
near Toledo, OH

Toledo International Grand Prix
Sponsor: City of Toledo, Toledo  
International Grand Prix and Greater Toledo Marketing Group  
Date: Late May  
Location: Maumee River, between the Cherry Street Bridge and the Anthony Wayne Bridge, near Toledo, OH

Toledo Labor Day Fireworks  
Sponsor: Reams Broadcasting Corporation  
Date: Early September  
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Duluth Fourth Fest Fireworks  
Sponsor: Duluth Superior Harbor Basin Northern Section, near Duluth, MN  
Date: Early July  
Location: Duluth Harbor Basin Northern Section, near Duluth, MN

Bridgefest Regatta  
Sponsor: Bridgefest Committee  
Date: Mid June  
Location: Keweenaw Waterway, near Houghton, MI

Festival USA Fireworks  
Sponsor: Superior Area Chamber of Commerce  
Date: Early July  
Location: Duluth Superior Harbor, off Barker’s Island, near Superior, WI

July 4th Fireworks  
Sponsor: City of Sault Ste. Marie, MI  
Date: Early July  

National Cherry Festival Blue Angels Air Demonstration  
Sponsor: National Cherry Festival Inc.  
Date: Early July  
Location: Lake Michigan, Western Arm of Grand Traverse Bay, near Traverse City, MI

Tulip Time Fireworks and Water Ski Show  
Sponsor: Holland Tulip Time Festival Inc.  
Date: Early May  
Location: Lake Michigan, Holland Harbor, near Holland, MI

Toledo Labor Day Fireworks  
Sponsor: City of Toledo, Toledo  
International Grand Prix and Greater Toledo Marketing Group  
Date: Late May  
Location: Maumee River, between the Cherry Street Bridge and the Anthony Wayne Bridge, near Toledo, OH

Duluth Fourth Fest Fireworks  
Sponsor: Duluth Superior Harbor Basin Northern Section, near Duluth, MN  
Date: Early July  
Location: Duluth Harbor Basin Northern Section, near Duluth, MN

Bridgefest Regatta  
Sponsor: Bridgefest Committee  
Date: Mid June  
Location: Keweenaw Waterway, near Houghton, MI

Festival USA Fireworks  
Sponsor: Superior Area Chamber of Commerce  
Date: Early July  
Location: Duluth Superior Harbor, off Barker’s Island, near Superior, WI

July 4th Fireworks  
Sponsor: City of Sault Ste. Marie, MI  
Date: Early July  

National Cherry Festival Blue Angels Air Demonstration  
Sponsor: National Cherry Festival Inc.  
Date: Early July  
Location: Lake Michigan, Western Arm of Grand Traverse Bay, near Traverse City, MI

Tulip Time Fireworks and Water Ski Show  
Sponsor: Holland Tulip Time Festival Inc.  
Date: Early May  
Location: Lake Michigan, Holland Harbor, near Holland, MI

Tulip Time Water Ski Show  
Sponsor: Holland Tulip Time Festival Inc.

Date: Mid May  
Location: Lake Michigan, Holland Harbor, near Holland, MI

Group Milwaukee, WI:  
Chicago Air and Water Show  
Sponsor: Chicago Park District  
Date: Mid August  
Location: Lake Michigan, off North Avenue Beach, near Chicago, IL

Milwaukee Summerfest  
Sponsor: Milwaukee World Festival, Inc.  
Date: Late June through early July  
Location: Lake Michigan, Milwaukee Harbor, near Milwaukee, WI

Racine on the Lakefront Airshow  
Sponsor: Rotary Club of Racine  
Date: Mid June  
Location: Lake Michigan, Racine Harbor, near Racine, WI  
Dated: July 1, 1993.

Rudy K. Peschel,  
Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.  
[FR Doc. 93-18247 Filed 7-29-93; 8:45 am]  
BILLING CODE 410-14-M

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33 CFR Part 110

[CGO 09-93-029]

Special Anchorage Area, Lake Ontario, Sodus Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing a special anchor area in Sodus Bay, Lake Ontario, New York. Although the area had been previously disestablished, it has now become apparent that there is still a significant public need for this Special Anchorage Area. The intended effect of this interim rule and the modification of the original area is to reduce risk vessel collisions in Sodus Bay.

DATES: This regulation becomes effective on July 30, 1993. Comments must be received on or before September 13, 1993.

ADDRESSES: Comments and supporting materials should be mailed or delivered to Chief, Aids to Navigation Branch, Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Captain Roderick A. Schultz, U.S. Coast Guard, Chief, Aids to Navigation Branch, Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION: On March 5, 1993, the Coast Guard published a final rule in the Federal Register (58 FR 12539, March 5, 1993) which disestablished the special anchor area previously in effect at Sodus Bay, NY, and under 33 CFR 110.86. Although there had been no comments on the previous notice of proposed rulemaking for that action (57 FR 47431, October 16, 1992), there has been significant adverse public comment since the disestablishment of the anchor area. Therefore, the Coast Guard has decided to reestablish the anchor area, in modified form, by establishing an EASTERN and WESTERN Section with a 160 foot approach to the Sodus Bay Marina Pier. The Coast Guard is taking this action immediately without publication of a notice of proposed rulemaking because it appears to be manifestly in the public interest under 5 U.S.C. 553(b), and is making the final rule effective immediately, under 5 U.S.C. 553(d), because a special anchor area is a regulatory action which merely grants an exemption from other legal requirements (the Inland Navigational Rules). However, because this is a final rule without prior notice, further public comment on this action is desirable, and is invited. Persons wishing to comment may do so by submitting written comments to the office listed under ADDRESSES in this preamble. Commenters should include their names and addresses, identify the docket number of the regulations, and give reasons for their comments. Based on comments received, the Coast Guard may further reconsider this action.

Drafting Information

The drafters of this regulation are Captain Roderick A. Schultz, U.S. Coast Guard, Chief, Ninth Coast Guard District Aids to Navigation Branch, and Lieutenant Karen E. Lloyd, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

A "special anchor area" is an area on the water in which vessels less than 20 meters (approximately 65 feet, 7.4 inches) in length are allowed to anchor without displaying the navigation lights which are otherwise required for
Collection of Information

These regulations will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 110

Anchorage grounds, Navigation (water).

Final Regulations

In consideration of the foregoing, the Coast Guard amends part 110 to of title 33, Code of Federal Regulations, as follows:

PART 110—[Amended]

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

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05—1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In part 110, a new § 110.86 is added to read as follows:

§ 110.86 Sodus Bay, NY.

The water area in Sodus Bay, New York, south of Sand Point, two separate sections, enclosed by:

(a) Eastern Section, beginning at a point on the shoreline at:

Latitude  Longitude
43°15’58.1” N ........... 076°58’34.0” W, to 43°15’51.9” N ........... 076°58’33.5” W, to 43°15’53.5” N ........... 076°58’47.5” W, to 43°16’01.8” N ........... 076°58’43.0” W, thence along the natural shoreline and structures to: 43°15’58.1” N ........... 076°58’34.0” W.

(b) Western Section, beginning at a point on the shoreline at:

Latitude  Longitude
43°16’02.5” N .......... 076°58’45.0” W, to 43°15’54.0” N .......... 076°58’50.0” W, to 43°15’54.8” N .......... 076°59’00.1” W, to 43°16’07.0” N .......... 076°59’47.0” W, thence along the natural shoreline and structures to: 43°16’02.5” N .......... 076°58’45.0” W.


Rudy K. Peschel, Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–18242 Filed 7–29–93; 8:45 am]

BILLING CODE 4610–14–M

33 CFR Part 165

[COPT St. Louis Regulation 93–029]

RIN 2115–AA97

Safety Zone Regulations; Upper Mississippi River Basin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two safety zones on the Mississippi River. These regulations are needed to control vessel traffic in the regulated areas to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: These regulations are effective on July 20, 1993 and will terminate on August 15, 1993.

FOR FURTHER INFORMATION CONTACT: LTJG Paul Barragan, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LTJG Paul Barragan, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Mississippi River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public’s best interest to issue regulations without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for more than 140 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. The recent rainfall over the Midwest
pulled the rivers above the flood stage, setting records for high water. As a result, the waters of the Mississippi River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to wakes from passing vessels.

The present flood conditions also present a hazard to navigation in that the area’s rivers are filled with a mass of trees and other debris which have been washed from the river banks and inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficiency clearances exist for vessels to pass under certain bridges. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

The Mississippi River crested on Sunday, July 18, 1993 at 46.9 feet, establishing a record. The Army Corps of Engineers anticipates that it may take another four to six weeks for the waters to recede to normal levels.

With the addition of these regulations to those which have already been issued by the Captain of the Port, St. Louis and by the Captain of the Port, Pascataqu, the Upper Mississippi River is closed from mile 0.0 UMR to mile 636.0 UMR.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 28, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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


2. A temporary § 165.T02-60 is added, to read as follows:

§ 165.T02-60 Safety zone: Upper Mississippi River Basin.

(a) Location. The Mississippi River between mile 55.3 and 179 and between mile 181.5 and 200.8 are established as safety zones.

(b) Effective Dates. This section becomes effective on July 20, 1993 and will terminate on August 15, 1993.

(c) Regulations. The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 20, 1993,

Scott P. Cooper,
Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.
government which is supporting this event.

Background and Purpose

On July 8, 1993, the sponsor, CAT Sports, Inc., Carlebad, CA requested that a two hour safety zone be established on the Connecticut River at Riverside Park, Hartford, CT. This request is to protect athletes during the swimming portion of the Hartford Triathlon. The Hartford Triathlon is a major athletic event with over 1500 competing athletes from 30 states. It is being held on behalf of Riverfront Reappraise, Inc. The City of Hartford is supporting this event and has taken regulatory action to close recreational boating ramps in the area. This Coast Guard regulatory action supports their efforts to promote the safety of the maritime community and the participating athletes during this event.

The Coast Guard is establishing a safety zone from 7:15 a.m. to 9:30 a.m. on August 8, 1993 for this event. This zone is required to protect the maritime community and the participating athletes from the dangers and potential hazards to navigation associated with approximately 1500 athletes competing in the swimming portion of the Hartford Triathlon. With 1500 athletes swimming competitively in the confined waters of the Connecticut River, any boating traffic not associated with the event, either recreational or commercial, would create a major risk of injury. The zone covers all waters of the Connecticut River between the Bulkeley Memorial US 44 Bridge (river mile 52.0) and the Hartford-E Hartford Connal Bridge (river mile 52.7). There is no commercial traffic north of the Bulkeley Memorial Bridge. The City of Hartford will be closing the small boat launching ramp in Riverside Park during the event. An alternative launching ramp is available at Great River Park in East Hartford.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 120 minutes. The short duration of this event will be a minimal inconvenience for recreational boaters. There are ample alternate areas for recreational boaters to use during this safety zone. The area affected by this event receives no commercial traffic. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are an action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

PART 165—[Amended]

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

Authority: 33 U.S.C. 1221; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–93 is added to read as follows:

§ 165.T01–93 Safety zone; Hartford, CT Triathlon, Connecticut River.

(a) Location. The following area has been declared a safety zone: All waters of the Connecticut River between the Bulkeley Memorial US 44 Bridge (river mile 52.0) and the Hartford-E Hartford Connal Bridge (river mile 52.7).

(b) Effective date. This regulation is effective from 7:15 a.m. through 9:30 a.m. on August 8, 1993 unless terminated sooner by the Captain of the Port.

(c) Regulations. The general regulations covering safety zones contained in § 165.23 of this part apply.

Phillip J. Heyl,
Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 93–18243 Filed 7–29–93; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01 93–085]

Safety Zone; Fireworks Display, Westhampton Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Moneybogue Bay at Westhampton Beach, NY on August 20, 1993. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation is effective from 8:45 p.m. through 9:20 p.m. on August 20, 1993 unless terminated sooner by the Captain of the Port. The rain date for this event is August 28, 1993 at the same times.

FOR FURTHER INFORMATION CONTACT:
Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Steib, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not
published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location and position, which are essential information for the purposes of establishing a safety zone, until July 13, 1993. Publishing a NPRM and delaying the date of the event would be contrary to the public interest since the fireworks display is for the benefit of the public and immediate action is needed to respond to any potential hazards.

Background and Purpose

On June 21, 1993, the sponsor, Ronald Feldstein, Westhampton Beach, NY requested that a 35 minute fireworks display, launched from a floating platform, be permitted in the port of Westhampton Beach, in the vicinity of Moneybogue Bay, Westhampton Beach, NY. This zone is required to protect the maritime community from the dangers associated with this fireworks display. The zone covers all waters of Moneybogue Bay within a 1200 foot radius of the Chesterfield Associates fireworks barge.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 35 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. “Small entities” include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as “small business concerns” under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are an action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-4, 6.04-6 and 160.5; 49 CFR 1.46.

2. A temporary §165.T01–85 is added to read as follows:

§165.T01–85 Safety zone; fireworks display, Westhampton Beach, NY.

(a) Location. The following area has been declared a safety zone: All waters of Moneybogue Bay within a 1200 foot radius of the Chesterfield Associates Barge, the fireworks launching platform, which will be located approximately in the center of Moneybogue Bay in approximate position 40°48'05"N., 072°38'20"W.

(b) Effective dates. This regulation is effective from 8:45 p.m. through 9:20 p.m. on August 20, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is August 28, 1993 at the same time.

(c) Regulations. The general regulations covering safety zones contained in §165.23 of this part apply.

Date: July 21, 1993.

Phillip J. Hoyl,
Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 93–18244 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGDO1–93–063]

Safety Zone; Mount Hope Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in Mount Hope Bay in the vicinity of Fall River, MA, for activities associated with Fall River Celebrates America 1993.

Safety zones will be established for two events during the weekend, for the tall ships parade on Friday, August 13, 1993, and for the fireworks display the evening of August 14, 1993. These safety zones are needed to promote the safe navigation of vessels in Mount Hope Bay in anticipation of an increased volume of traffic due to spectator craft attending the events.

EFFECTIVE DATE: The safety zone for the tall ships parade will be in effect between the hours of 5:30 and 6:30 p.m. on August 13, 1993, or until each parade vessel is safely moored. The safety zone for the fireworks display will be in effect between the hours of 8:30 p.m. and 10 p.m. on August 14, 1993.

FOR FURTHER INFORMATION CONTACT: LT T. Burke of Marine Safety Field Office New Bedford at (508) 999–0072.

SUPPLEMENTARY INFORMATION:

DRAFTING INFORMATION

The drafters of this regulation are Lieutenant Tina Burke, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander Stib, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 533, a NPRM was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying the events would be contrary to the public interest since the tall ships parade and the fireworks display are important events during the Fall River Celebrates America festival.
Fall River Celebrates America is a festival held annually in Fall River, MA, which entails several events through the entire weekend. This year’s celebration will be held August 13–14, 1993. The regulated events include a parade of tall ships through Mount Hope Bay to the Fall River State Pier and a fireworks display in Mount Hope Bay. The celebration is an important event for the town of Fall River as it draws numerous people to the area for the weekend, increasing tourism and economically benefiting the town.

The Coast Guard is establishing temporary safety zone regulations in Mount Hope Bay for the period August 13–14, 1993. These safety zones are necessary to control vessel movements during the various events in order to ensure the safety of event participants, spectator craft, and other vessels transiting the waterway. They are necessary in light of the limited size of the affected waterway and the expected number of spectator craft (more than 200 for each event), which will greatly increase the congestion in the waterway and create a larger potential for marine accidents.

Regulated Events

1. Tall Ships Parade, August 13, 1993

The parade of tall ships provides the kickoff for the Fall River Celebrates America festival. The parade is significant because it allows the public to view the tall ships under sail before they moor in Fall River for the weekend. Approximately nine tall ships are expected to participate in the parade. These ships will muster just north of the Mount Hope Bridge and will transit the Mount Hope Bay Channel, from the Mount Hope Bay Junction Lighted Gong Buoy "MH" (light list number 18790) to the Fall River State Pier. The parade is scheduled to take place between 5:30 p.m. and 6:30 p.m. The Coast Guard is establishing a moving safety zone, from 200 yards ahead of the lead vessel in the parade, to 100 yards astern of the last vessels in the parade, and 200 yards abeam of each parading vessel. This safety zone will be in effect for the duration of the parade until each parade vessel is safely moored. This zone is needed to protect recreational boaters from the hazards which are present when tall ships maneuver in restricted areas.

Implementation of this zone will close the main shipping channel of Mount Hope Bay to navigation by deep draft vessels while the zone is in effect. Entry into the moving safety zone is prohibited unless authorized by the Captain of the Port (COTP) Providence.

2. Fireworks, August 14, 1993

On the evening of August 14, 1993, Fall River Celebrates America will be sponsoring a fireworks display in Mount Hope Bay, in the vicinity of Mount Hope Bay Channel Buoy 17. The fireworks barge will be anchored in approximate position 41°42'42"N, 71°09'52"W. The fireworks are scheduled to take place between 9:15 and 10 p.m. The Coast Guard will establish a safety zone between 8:30 p.m. and 10 p.m., in Mount Hope Bay to encompass the area of water within a three hundred (300) yard radius around the fireworks barge. This safety zone is needed to protect fireworks barges and attending tugs, spectator craft, and other vessels or personnel in the area, from the hazards associated with explosive laden barges and the display itself. Implementation of this zone will close the main shipping channel of the Mount Hope Bay Channel to navigation by deep draft vessels while the zone is in effect.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect only for small segments of a two day period, specifically for one hour on August 13, 1993, and for one hour and a half on August 14, 1993. The fact that the time periods for the safety zones are limited, as well as the advance notice given to pilots, vessel agents, and waterfront facilities in the area, will allow vessel traffic to schedule transits around the planned activities with minimal hardship. The entities most likely to be affected are large commercial ships and barges in or outbound from Fall River terminals, fishing vessels, and recreational vessels. Only a limited number of large commercial vessels, approximately four or five, transit the impacted waters per week. Because of their limited number and the advance notice given, these vessels will not be heavily impacted. Fishing and recreational vessels have shallow drafts such that they are able to transit the waters around the regulated areas. These vessels have alternate routes available outside the main shipping channel and outside the safety zones in which they may transit or conduct operations. Furthermore, in the case of the tall ships parade safety zone, vessels will be able to transit the area as soon as the moving zone passes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this is an action under Coast Guard statutory authority to protect safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:
PART 165—[AMENDED]

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

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

2. A temporary §165.T01–63 is added to read as follows:

§165.T01–63 Safety zone: Mount Hope Bay, RI.

(a) Location.

(1) Tall ship safety zone: While transiting Mount Hope Bay, RI, a moving safety zone around the Fall River Celebrates America tall ships parade, extending a distance of two hundred (200) yards ahead of the lead vessel in the parade to one hundred (100) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel. The zone of enforcement will be initiated at Mount Hope Bay Junction Lighted Gong Buoy MH (LL 18790), the start of the parade, and will end at the State Pier, Fall River, MA, after each parading vessel is safely moored.

(b) Effective date.

(1) Tall ship safety zone: This regulation is effective at 5:30 p.m. on August 13, 1993, and terminates at 6:30 p.m. on August 13, 1992, or when each parade vessel is safely moored.

(c) Regulations. The general regulations governing safety zones contained in 165.T23 apply.

Dated: July 16, 1993.

H. D. Robinson,
Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–18245 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 14

RIN 2900–AG57

Delegations of Authority; Federal Tort Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulation.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to delegate to the VA General Counsel and designees the authority to adjust, determine, compromise, and settle a claim under the Federal Tort Claims Act where the amount of settlement does not exceed $200,000. This authority was granted to the Secretary pursuant to 38 U.S.C. 515, 28 U.S.C. 2672, and 28 CFR appendix to part 14. The previous authority was limited to $25,000 by 28 U.S.C. 2672 and subsequently increased to $100,000 by 28 CFR appendix to part 14. This amendment will facilitate processing of claims under the Federal Tort Claims Act in a more timely manner.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: E. Douglas Bradshaw, Jr., Deputy Assistant General Counsel (021B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 523–3207.

SUPPLEMENTARY INFORMATION: Section 203 of the Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) added section 515 to title 38, United States Code, permitting the Secretary to settle tort claims not exceeding an amount to be delegated by the Attorney General, with the delegation not to exceed the maximum delegated to the United States Attorneys. A similar provision was added to 28 U.S.C. 2672 by the Administrative Dispute Resolution Act, Public Law 101–552. In 1988, the Attorney General delegated $100,000 in settlement authority to the Secretary. The Attorney General has now delegated to the Secretary an increase in settlement authority to an amount not to exceed $200,000.

This amendment to 38 CFR 2.6(e)(1) delegates to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or those authorized to act for them, authority to consider, ascertain, adjust, determine, compromise, and settle a claim arising under the Federal Tort Claims Act; provided that any award, compromise, or settlement does not exceed $200,000; and provided, further, that whenever a settlement is effected in an amount in excess of $50,000, a memorandum fully explaining the basis for the action taken shall be sent to the Assistant General Counsel (Professional Staff Group I).

Conforming amendments are made to 38 CFR 14.602(a), 14.602(a)(4), and 14.602(b)(2).

Under 38 CFR 1.12 and 5 U.S.C. 553(d)(3), prior publication of these delegations of authority for public comment is unnecessary since they concern only internal VA management. Because a prior notice of proposed rulemaking is not required and will not be published, these changes do not come within the term “rule” as defined in and made subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602(2).

In any case, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in that Act. No regulatory or administrative burdens are imposed upon small entities. Also, since these amendments are related solely to internal agency management, they do not come within the term “rule” as defined in section 1(a)(3) of Executive Order 12291, entitled Federal Regulation; consequently, they are not subject to requirements of that order.

There are no Catalog of Federal Domestic Assistance numbers associated with these amendments.

List of Subjects in 38 CFR Parts 2 and 14

Administrative practice and procedure, Claims, Government employees, Lawyers, Legal services, Organization and functions.

Approved: July 22, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 14 are amended as set forth below:
PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:
Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. In § 2.6, paragraph (e)(1) is revised to read as follows:
§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

(e) General Counsel. (1) Under the Federal Tort Claims Act, pursuant to the provisions of 28 U.S.C. 2672; Pub. L. 100-322; 38 U.S.C. 515, and the delegation of authority from the Attorney General in 28 CFR appendix to part 14:
   (i) Authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle any claim accruing on and after January 18, 1967, and asserted under the Federal Tort Claims Act, as amended by Pub. L. 89-506 (80 Stat. 306), and to execute an appropriate voucher and other necessary instruments in connection therewith; provided that any award, compromise, or settlement in excess of $200,000 shall be affected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:
   (Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)
   (ii) Authority is delegated to the District Counsels or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States in accordance with regulations prescribed by the Attorney General (38 CFR 14.1 et seq.); Any award, compromise, or settlement exceeding $200,000 shall be affected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:
   (Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)
   (iii) Authority is delegated to the Department of Justice in its capacity as a party to a suit instituted by the District Counsel or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle a claim which the Department of Justice may assume responsibility for defending if the Department of Justice is equipped to do so.
   (Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)
   (iv) Authority is delegated to the Department of Justice, in its capacity as a party to a suit instituted by the District Counsel or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle a claim which the Department of Justice may assume responsibility for defending if the Department of Justice is equipped to do so.

3. The authority citation for part 14 continues to read as follows:
Authority: 38 U.S.C. 501(a), 5502, 5902-5905, unless otherwise noted.

4. In § 14.602, paragraph (a) introductory text, (a)(4), and (b)(2) are revised to read as follows:
§ 14.602 Scope and authority to consider claims.
(a) The Secretary and those delegated such authority in § 2.6(e) of this chapter are authorized to consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States in accordance with regulations prescribed by the Attorney General (38 CFR 14.1 et seq.). Any award, compromise, or settlement exceeding $200,000 shall be affected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, and 75

Acid Rain Program: Permits, Allowance System, and Continuous Emission Monitoring; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Acid Rain Program was established under Title IV of the Clean Air Act, as amended on November 15, 1990. In order to implement this statutory mandate, EPA codified the Acid Rain Program in five (of seven total) regulations including: Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions Penalties, and Administrative Appeals. This action contains corrections to the Permits, Allowance System, and Continuous Emission Monitoring final regulations (FRL-4666-9) that were published on Monday, January 11, 1993 (58 FR 3590).

DATES: These corrections become effective on July 30, 1993. The revised incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of February 10, 1993.


SUPPLEMENTARY INFORMATION:

I. Background

The final regulations that are the subject of this action correct portions of 40 CFR Parts 72, 73, and 75 effective on July 30, 1993. 40 CFR parts 72, 73, and 75 were added to the CFR pursuant to Title IV of the Clean Air Act, 42 USC 7401, et seq., as amended by Public Law 101–549 (November 15, 1990).

II. Need For Correction

During the process of implementing the Acid Rain Program, many individuals and organizations requested clarification on various aspects of the Acid Rain Core Rules. Representatives from industry, state and local governments, environmental groups, and the general public requested clarification of typographical errors, unclear wording, incorrect citations, and conflicting requirements in different locations of the regulations. Today's action resolves these requests for clarification.

III. Correction of Publication

Accordingly, the publication on January 11, 1993, of the Final Regulations (FRL–4543–5), which were the subject of FR Doc. 93–1, is corrected as follows:

PART 2—[CORRECTED]

§ 72.2 [Corrected]

1. On page 3652, in the third column, § 72.2, paragraph (2) of the definition of
Calibration gas, “A NIST/EPA-approved certified reference material” is corrected to read “A NIST Traceable Reference Material (NTRM)”. § 72.2 [Corrected] 2. On page 3653, in the first column, § 72.2, in the last line of paragraph (2) under the definition of Coal fired, “PRIMFUEL” is corrected to read “PRIMFUEL”. § 72.2 [Corrected] 3. On page 3656, in the first column, § 72.2, in the last line of the definition of Maximum potential NOx emission rate, “part 77” is corrected to read “part 75”. § 72.2 [Corrected] 4. On page 3657, in the third column, § 72.2, the last line of the definition of Protocol 1 gas, “of this chapter”, is corrected to read “of this chapter) or such revised procedure as approved by the Administrator”. § 72.8 [Corrected] 1. On page 3661, in the second column, § 72.8(c)(2)(ii), line 3, the word “proposed” is corrected to read “draft”. § 72.41 [Corrected] 1. On page 3669, in the first column, § 72.41(e)(3)(iii), line 2, the reference “[e](2)(iii)” is corrected to read “[e](3)(ii)”. § 72.41 [Corrected] 2. On page 3669, in the first column, § 72.41(e)(3)(ii), line 6, the reference “[e](2)(ii)(B)” is corrected to read “[e](3)(ii)(B)”. § 72.41 [Corrected] 3. On page 3669, in the second column, § 72.41(e)(3)(iv), line 6, the reference “[e](2)(ii)” is corrected to read “[e](3)(ii)”. § 72.74 [Corrected] 1. On page 3680, in the first column, § 72.74(b)(3)(ii), line 8, the phrase “governs a unit under” is corrected to read “governs a unit under”. § 72.91 [Corrected] 1. On page 3682, in the first column, § 72.91(a) introductory text, line 3, “Adjusted utilization-baseline” is corrected to read “Adjusted utilization = baseline”. § 72.91 [Corrected] 2. On page 3682, in the third column, § 72.91(e)(3)(ii), line 12, “Shift to sulfur-free generator-actual” is corrected to read “Shift to sulfur-free generator = actual”. § 72.92 [Corrected] 1. On page 3685, in the second column, § 72.92(c)(2)(v)(C), line 2, “weighted average rate” is corrected to read “weighted average emissions rate”. PART 73—[CORRECTED] § 73.10 [Corrected] 1. On pages 3687 through 3691, the header for Table 1 of § 73.10(a) is corrected to read “Table 1—Phase I Allowance Allocations”. § 73.101 [Corrected] 2. On page 3688, in Table 1 of § 73.10(e)(3)(ii), line 1, the value in Column A is corrected to read “34564”. § 73.30 [Corrected] 1. On page 3691, in the third column, § 73.30(a), line 6 is corrected by replacing the word “reordered” with the word “recorded”. § 73.31 [Corrected] 1. On page 3691, third column, § 73.31(d)(i) introductory text, in line 8, is corrected by removing the word “General”. § 73.32 [Corrected] 1. On page 3692, second column, § 73.32(a)(1), line 3, the citation “§ 72.24(a)(3)” is corrected to read “§ 72.24(a)(3)”. § 73.72 [Corrected] 1. On page 3695, third column, under “Subpart E—[Amended]”, line 1, correct amenedatory instruction 4 to read as follows: “4. Paragraph (c) of § 73.72 is revised to read as follows: § 73.80 [Corrected] 1. On page 3695, second column, § 73.80(b), line 6, the year is corrected to read “1992”. § 73.81 [Corrected] 1. On page 3695, third column, § 73.81(b)(4), line 1, the language “Loan management” is corrected to read “Load management”. § 73.82 [Corrected] 1. On page 3696, first column, the section heading for § 73.82 is corrected to read “Application for allowances from reserve program.”. PART 75—[CORRECTED] § 75.1 [Corrected] 1. On page 3702, first column, § 75.1(b), the first subparagraph is designated as paragraph (b)(1) and the second subparagraph is designated as paragraph (b)(2). In paragraph (b)(2), last line, the reference “appendix C” is corrected to read “appendix F”. § 75.5 [Corrected] 1. On page 3703, first column, in § 75.5(b), line 5, the reference “Appendices A through G” is corrected to read “Appendices A through I”. § 75.6 [Corrected] 1. On page 3703, second column, § 75.6(a)(4), line 3, is corrected by removing the words “incorporation by reference”. § 75.7 [Corrected] 1. On page 3704, first column, § 75.7, line 4, is corrected by replacing the words “reference monitor variance with the words “reference method variance””. § 75.11 [Corrected] 1. On page 3705, second column, § 75.11(c), introductory text, line 7, is corrected by adding a comma between the words “unit” and “or”, and by adding the word “where” between the words “or” and “installation”. § 75.15 [Corrected] 1. On page 3706, third column, § 75.15(a), introductory text, lines 9 and 10, “SOx-diluent continuous emission monitoring” is corrected to read “SOx-diluent continuous emission monitoring system”. § 75.15 [Corrected] 2. On page 3706, third column, § 75.15(a), introductory text, lines 13 and 14 from the bottom of the paragraph, “December 31, 1991” is corrected to read “December 31, 1999”. § 75.15 [Corrected] 3. On page 3707, first column, § 75.15(a)(2), line 8, is corrected by replacing the reference “appendix F to this part” with the reference “section 5.5.3 of appendix F of this part”. § 75.15 [Corrected] 4. On page 3707, third column, § 75.15(b)(1), in Equations 5 and 7, the references “Appendix G, Section 2.5.4 of this part” is corrected to read “Appendix F, section 5.5.3, of this part”. § 75.16 [Corrected] 1. On page 3709, first column, § 75.16(e), line 6 from the bottom of the paragraph, is corrected by replacing the word “or” with the word “and” between the phrases “SOx mass emissions” and “emissions”. § 75.17 [Corrected] 1. On page 3709, second column, § 75.17, the paragraph designation
(a)(2)(iii)(a) is corrected to read (a)(2)(iii)(A).

§ 75.17 [Corrected]
2. On page 3708, second column, § 75.17(a)(2)(ii)(B), line 9, is corrected by adding the words “the combined” before the phrase “NOx emission rate”.

§ 75.17 [Corrected]
3. On page 3709, second column, § 75.17(b)(2), line 9, is corrected by adding the words “the combined” before the phrase “NOx emission rate”.

§ 75.20 [Corrected]
1. On page 3711, second column, § 75.20(b)(3), line 9, is corrected by adding the words “except that” after the comma which immediately follows the word “section”.

§ 75.20 [Corrected]
2. On page 3711, second column, § 75.20(c), introductory text, lines 9 and 22, are corrected by adding the word “thereof” after the word “components”.

§ 75.20 [Corrected]
3. On page 3711, third column, § 75.20(c)(5), paragraph (c)(5)(iv) is correctly added after paragraph (c)(5)(ii) to read as follows:
• • • • • • • •
(c) • • • ••
(s) • • • •
(iv) A cycle time/response time test.

§ 75.20 [Corrected]
4. On page 3712, first column, § 75.20(c)(9)(i), introductory text, last line, is corrected by replacing the word “including” with the words “such that”.

§ 75.20 [Corrected]
5. On page 3712, first column, § 75.20(c)(9)(i)(B), line 2, is corrected by adding the words “is available” between the word “tests” and the following comma.

§ 75.20 [Corrected]
6. On page 3712, first column, § 75.20(d), lines 10 and 11, the reference to “paragraphs (a) and (c) of this section” is corrected to read “paragraphs (a), (b) and (c) of this section”.

§ 75.31 [Corrected]
1. On page 3714, second and third columns, § 75.31(b)(2), line 6, and § 75.31(c)(3), line 9, are corrected by adding the phrase “of this part” after the reference “Appendix A”.

§ 75.31 [Corrected]
2. On page 3714, second column, § 75.31(c)(2), lines 3 and 4, is corrected by replacing the phrase “owner and operator” with the phrase “owner or operator”.

§ 75.31 [Corrected]
3. On page 3714, third column, § 75.31(c)(3), line 3, is corrected by replacing the words “any load range,” with the words “the corresponding load range, or any higher load range,”.

§ 75.31 [Corrected]
4. On page 3714, third column, § 75.31(c)(3), line 8, the reference to “section 2.1 of” is corrected to read “§ 72.2 of this chapter and section 2.1 of”.

§ 75.32 [Corrected]
1. On page 3714, second and third column, § 75.32(b) is corrected to read:
• • • • • • • •
(b) The monitor data availability need not be recorded during the missing data period. The owner or operator shall record the percent monitor data availability at the end of each missing data period, and thereafter continue to record monitor data availability hourly, pursuant to § 75.50.

§ 75.34 [Corrected]
1. On page 3716, third column, § 75.34(b)(1), lines 1 and 2 are corrected by replacing the phrase “monitoring data availability” with the phrase “monitor data availability”.

§ 75.41 [Corrected]
1. On page 3717, third column, § 75.41(a)(9)(ii), line 5, is corrected by adding the phrase “(or reference method)” after the words “continuous emission monitoring system”.

§ 75.41 [Corrected]
2. On page 3717, in the third column, § 75.41(a)(9)(iii), lines 2 and 3 are corrected by replacing the phrase “continuous emissions monitoring system” with “continuous emission monitoring system (or reference method)”.

§ 75.41 [Corrected]
3. On page 3718, first column, § 75.41(a)(9)(ii), line 6 from the top, and § 75.41(b)(1)(i), lines 3, 4, and 5, are corrected by adding the phrase “(or reference method)” after the phrases “certified continuous emission monitoring system or certified flow monitoring system”.

§ 75.41 [Corrected]
4. On page 3718, in the first column, § 75.41(b)(1)(ii), lines 5 and 17 respectively, are corrected by adding the captions “(Eq. 11)” after “using the following equation:” and “(Eq. 12)” after “lognormalized data values Ip:”.

§ 75.41 [Corrected]
5. On page 3718, second column, § 75.41(b)(2)(ii), line 7, is corrected by moving the word “where,” from directly before Equation 13 to directly after the caption “(Eq. 13)”, and by adding the word “where,” after each caption for Equations 14 through 18.

§ 75.41 [Corrected]
6. On page 3719, first column, § 75.41(b)(2)(iv)(A), lines 4 and 5, and § 75.41(c)(1)(ii), lines 3 and 4, are corrected by adding the phrase “(or reference method)” after the phrases “or certified flow monitoring system” and “or certified flow monitor”.

§ 75.41 [Corrected]
7. On page 3719, second column, § 75.41(b)(2)(iv)(C), line 5, and § 75.41(c)(1)(iii), line 5, are corrected by adding the phrase “(or reference method)” after the phrases “or certified flow monitoring system,” “or certified flow monitoring system,” and “or certified flow monitor”.

§ 75.41 [Corrected]
8. On page 3719, third column, in § 75.41(b)(2)(iv)(A), line 1 of the column, “original variance in the F-test Equation 23 of this section” is corrected to read “original variance, as calculated using Equation 23 of this section, in the F-test Equation 24 of this section.”

§ 75.41 [Corrected]
9. On page 3719, third column, § 75.41(b)(2)(iv)(B), line 4, is corrected by adding the phrase “of this part” after the reference “Appendix A”.

§ 75.41 [Corrected]
10. On page 3719, third column, § 75.41(c)(2)(i), line 11, is corrected by adding the phrase “(or reference method)” after the phrase “continuous emission monitoring system”.

§ 75.48 [Corrected]
1. On page 3720, third column, and on page 3721, in the first column, § 75.48(a)(3), all references to equations from § 75.41(c) are corrected by using the next higher equation number, to read as follows:
   c. In paragraph (a)(3)(ix), “Equation 23” is corrected to read “Equation 24”.
   d. In paragraph (a)(3)(x), “Equation 26” is corrected to read “Equation 27”.

§ 75.48 [Corrected]
2. On page 3720, third column, § 75.48(a)(3)(ii), lines 2 and 3, and
§ 75.48(a)(3)(viii), line 4 and 5, are corrected by replacing the phrase “continuous emissions monitoring system” with the phrase “continuous emission monitoring system (or reference method)”. 

§ 75.50 [Corrected]
1. On page 3721, second column, § 75.50(b), introductory text, lines 8 and 9, and § 75.50(b)(6), line 1, “gas-fired units” is corrected to read “when units combust gas.” 

§ 75.50 [Corrected]
2. On page 3721, second column, § 75.50(c)(1)(ii), line 1, § 75.50(c)(1)(vi), line 1, and § 75.50(c)(1)(vi), line 2, are corrected by replacing the phrase “Average hourly” with the phrase “Hourly average SO2 concentration”. 

§ 75.50 [Corrected]
3. On page 3721, third column, § 75.50(c)(2)(iii), line 1, § 75.50(c)(2)(iv), line 1, § 75.50(c)(2)(v), line 1, § 75.50(c)(2)(vii), line 2, § 75.50(c)(3)(ii), line 1, and § 75.50(c)(3)(iii), line 1 are corrected by replacing the words “Average hourly” with the words “Hourly average”. 

§ 75.50 [Corrected]
4. On page 3721, second and third columns, § 75.50(c)(1)(vi), line 3 and § 75.50(c)(2)(vii), lines 2 and 3 are corrected by replacing the reference “using Codes 1–12 in Table 3” with the reference “using Codes 1–13 in Table 3”. 

§ 75.50 [Corrected]
5. On page 3722, first and second columns, § 75.50(d)(6), line 3 and § 75.50(e)(1)(vii), line 3, are corrected by replacing the reference “using Codes 1–12 in Table 3” with the reference “using Codes 1–13 in Table 3”. 

§ 75.50 [Corrected]
6. On page 3723, third column, § 75.50 Table 3, Code 4, is corrected by adding a line to read “CO2 or O2: Method 3, 3A or 3B” below the last line “NO2: method 7, 7A, 7C, 7D, or 7E”. 

§ 75.50 [Corrected]
7. On page 3722, first column, § 75.50(d), introductory text, line 7, is corrected by replacing the word “option” with the word “optional”. 

§ 75.50 [Corrected]
8. On page 3722, first column, § 75.50(d)(3), line 1, § 75.50(d)(4), line 1, § 75.50(d)(5), line 1, § 75.50(d)(6), line 1, § 75.50(d)(8), line 2, and § 75.50(d)(9), line 3, are corrected by replacing the words “Average hourly” with the words “Hourly average”. 

§ 75.50 [Corrected]
9. On page 3722, second column, § 75.50(e)(1)(i), line 1, § 75.50(e)(1)(iv), line 1, § 75.50(e)(1)(v), line 1, § 75.50(e)(7), line 2, and § 75.50(e)(1)(viii), line 2, are corrected by replacing the words “Average hourly” with the words “Hourly average”. 

§ 75.50 [Corrected]
10. On page 3722, second column, § 75.50(e)(2)(ii), line 1, § 75.50(e)(2)(iv), line 3, and § 75.50(e)(2)(v), line 3 are corrected by removing the word “average”. 

§ 75.51 [Corrected]
1. On page 3722, third column, § 75.51(a)(1)(ii), line 1, § 75.51(a)(1)(iv), line 1, § 75.51(a)(1)(v), line 1, and § 75.51(a)(1)(vi), line 1, are corrected by replacing the words “Average hourly” with the words “Hourly average”. 

§ 75.51 [Corrected]
2. On page 3722, third column, § 75.51(a)(1)(viii), lines 2 and 3 are corrected by replacing the phrase “average hourly SO2 mass emissions” with the phrase “hourly average inlet and outlet SO2 emission rates”. 

§ 75.51 [Corrected]
3. On page 3722, third column, § 75.51(b)(i), lines 2 and 3 are corrected by replacing the phrase “SO2 continuous emission monitoring system” with the phrase “SO2-diluent continuous emission monitoring system”. 

§ 75.51 [Corrected]
4. On page 3723, first column, § 75.51(b)(ii), line 1, is corrected by replacing the words “Average hourly” with the words “Hourly average”. 

§ 75.51 [Corrected]
5. On page 3723, first column, § 75.51(b), introductory text, line 5, is corrected by replacing the words “NOX emission data” with the words “NOX emissions data”. 

§ 75.51 [Corrected]
6. On page 3723, first column, § 75.51(b), introductory text, lines 12 and 13 are corrected by removing the phrase “then the owner or operator”. 

§ 75.51 [Corrected]
7. On page 3723, first column, § 75.51(b), the second paragraph referred to as “vii” is corrected to read “viii”. This paragraph § 75.51(b)(1)(viii) is corrected by adding the words “For a unit with a dry flue gas desulfurization system,” as the first line of the paragraph, directly before the words “The slurry feed rate (gal/min) to the atomizer nozzle; and”. 

§ 75.51 [Corrected]
8. On page 3723, first column, § 75.51(b)(1)(ix), line 3, is corrected by replacing the words “Codes 1–12” with the words “Codes 1–13”.

§ 75.51 [Corrected]
9. On page 3723, second column, § 75.51(c)(1)(ii), line 1 and § 75.51(c)(1)(vi), line 1, are corrected by replacing the words “Average hourly” with the word “Hourly”. 

§ 75.51 [Corrected]
10. On page 3723, third column, § 75.51(d)(i), line 1, is corrected by replacing the word “daily” with “hourly”. 

§ 75.51 [Corrected]
11. On page 3723, third column, § 75.51(d)(i), line 3 is corrected by replacing both occurrences of the word “day” with the word “hour”. 

§ 75.51 [Corrected]
12. On page 3723, third column, § 75.51(d)(i), line 1, is corrected by replacing the word “daily” with “hourly”. 

§ 75.52 [Corrected]
1. On page 3724, second column, § 75.52(a)(5)(iv)(G) and § 75.52(a)(5)(iv)(H) are corrected by redesignating the paragraphs as § 75.52(a)(5)(iv) and § 75.52(a)(5)(vi) respectively. 

§ 75.53 [Corrected]
1. On page 3724, second column, § 75.53(a), introductory text, lines 4 and 5, is corrected by replacing the reference to “paragraphs (c) and (d) of this section” with the reference “paragraph (d) of this section”. 

§ 75.53 [Corrected]
2. On page 3724, third column, § 75.53(c)(2) introductory text is corrected to read as follows: 

(a) * * * 

(2) Unit table. A table identifying ORISPL numbers developed by the Department of Energy and used in the National Allowance Database, for all affected units involved in the monitoring plan, with the following information for each unit: 

* * * 

§ 75.53 [Corrected]
3. On page 3725, first column, § 75.53(c)(4)(vi), line 3, is corrected by replacing the reference “§ 75.10(e)” with the reference “§ 75.10(e)”. 
PART 75, APPENDIX A [CORRECTED]

Appendix A, Section 1.1 [Corrected]

1. On page 3727, second column, Appendix A, Section 1.1, line 16, is corrected by replacing the parenthetical statement “(see section 6)” with the parenthetical statement “(see section 6 of this Appendix)”.

Appendix A, Section 1.2.2 [Corrected]

1. On page 3728, first column, Appendix A, Section 1.2.2, line 5 of the first full paragraph is corrected by changing the word “and” to the word “or”.

Appendix A, Section 2.1.4 [Corrected]

1. On page 3729, at the bottom of the page, Appendix A, Section 1.2.2, the equation is corrected by adding the label "(Eq. A-3a)".

Appendix A, Section 5.1.2 [Corrected]

1. On page 3731, second column, Appendix A, Section 5.1.2, the heading is corrected to read as follows: “NIST Traceable Reference Materials (NTRM)”.

Appendix A, Section 6.2 [Corrected]

1. On page 3731, third column, Appendix A, Section 6.2, lines 5 and 6 are corrected by replacing the phrase “EPA-approved certified” with the word “Traceable”.

Appendix A, Section 6.3.1 [Corrected]

1. On page 3732, first column, Appendix A, Section 6.3.1, third paragraph, the last sentence is corrected to read as follows: “Use only NIST Traceable Reference Material (NTRM), standard reference material, Protocol 1 calibration gases certified by the vendor to be within 2 percent of the label value, or where applicable, zero ambient air material as defined in §72.2 of this part.”

Appendix A, Section 6.3.2 [Corrected]

1. On page 3732, second column, Appendix A, Section 6.3.2, fourth paragraph, line 8–12, is corrected by replacing the parenthetical statement “(i.e., less than or equal to 3 percent error each day and does not require corrective maintenance, repair, replacement, or manual adjustment during the 7-day test period)” with the parenthetical statement: “(i.e., less than or equal to 3 percent error each day and requiring no corrective maintenance, repair, replacement or manual adjustment during the 7-day test period)”.

Appendix A, Section 7.3.1 [Corrected]

1. On page 3734, first column, Appendix A, Section 7.3.1, Equation A–7, the variable definitions for Equation A–7 are corrected by placing “i=1” as a subscript under the sigma (summation sign).

Appendix A, Section 7.3.4 [Corrected]

1. On page 3734, second column, Appendix A, Section 7.3.4, Equation A–10, the definitions for the variables for Equation A–10 are corrected by revising “\[\sigma\]” to read “\[\bar{\sigma}\]” and by revising "RM" to read "RM".

Appendix A, Section 7.6.5 [Corrected]

1. On page 3735, first and second columns, Appendix A, Section 7.6.5, Equation A–12, the definitions for the variables for Equation A–12 are corrected to read as follows: "\[\bar{i}\] = Absolute value of the arithmetic mean of the difference obtained during the failed bias test using Equation A–7" and CEM = means of the date valves provided by the monitor during the failed bias test.

Part 75, Appendix B [Corrected]

Appendix B, Section 2.3.1 [Corrected]

1. On page 3739, second column, Appendix B, “Section 23.1” is corrected by replacing the current label of “section 23.1” and with the label “section 2.3.1”.

Appendix B, Section 2.3.2 [Corrected]

1. On page 3739, third column, Appendix B, Section 2.3.2, first paragraph, lines 15 through 19, is corrected by adding “(or 0.03 lb/mmBtu for SO2-diluent monitors from January 1, 1997 through December 31, 1999)” following the words “exceeds ±15.0 ppm” in statement (5).
corrected by replacing the reference "section 1.2" in the definition of variable E with the reference "section 1.3".

Appendix C, Section 2.2.1 [Corrected]

1. On page 3741, second column, Appendix C, Section 2.2.1, lines 5 through 7, is corrected by replacing the phrase "for the certification of continuous emission monitoring system".

Appendix D, Section 2.1.1 [Corrected]

1. On page 3742, first column, Appendix D, Section 2.1.1, line 9, is corrected by deleting the words "for use".

Appendix D, Section 2.2.6 [Corrected]

1. On page 3742, third column, Appendix D, Section 2.2.6, line 4 is corrected by removing the word "1" before the word "Reapproved".

2. On page 3742, third column, Appendix D, Section 2.2.6, line 7 is corrected by replacing the citation for "ASTM D1382-88" with the citation "ASTM D2382-88".

Appendix D, Section 3.1.1 [Corrected]

1. On page 3743, first column, Appendix D, Section 3.1.1, line 5, is corrected by replacing the caption "(Eq. D-1)" with the caption "(Eq. D-2)".

Appendix D, Section 3.2.3 [Corrected]

1. On page 3743, second column, Appendix D, Section 3.2.3, line 7, is corrected by replacing the caption "(Eq. D-2)" with the caption "(Eq. D-3)".

Part 75, Appendix E [Corrected]

Appendix E, Section 1.3.1 [Corrected]

1. On page 3743, second column, Appendix E, Section 1.3.1, line 3, is corrected by replacing the word "installation" with the word "certification".

Appendix E, Section 2.1.3.1 [Corrected]

1. On page 3744, first column, Appendix E, Section 2.1.3.1, line 16, is corrected by replacing "ASME MFC-7N-1987" with "ASME MFC-7M-1987".

Appendix E, Section 3.4.3 [Corrected]

1. On page 3745, third column, Appendix E, Section 3.4.3, line 1, is corrected by replacing the phrase "quarterly average" with the phrase "annual average".

Part 75, Appendix F [Corrected]

Appendix F, Section 3.3.1 [Corrected]

1. On page 3746, third column, Appendix F, Section 3.3.1 is corrected to read "K=1.194x10^-7 (lb/escf)/ppm NOx".

Appendix F, Section 3.4 [Corrected]

1. On page 3747, second column, Appendix F, Section 3.4, Equations F-9 and F-10, are corrected by replacing both occurrences of "NOx" with "NOx2".

Appendix F, Section 4.3 [Corrected]

1. On page 3747, third column, Appendix F, Section 4.3, Equation F-12, is corrected by substituting "Eco2" with "Eco2" in the definitions for the variables.

Appendix F, Section 4.4.1 [Corrected]

1. On page 3748, first column, Appendix F, Section 4.4.1, line 5 from the top of the page is corrected by removing "Q62".

Part 75, Appendix G [Corrected]

Appendix G, Section 2.1 [Corrected]

1. On page 3749, second column, Appendix G, Section 2.1, Equation G-1, is corrected by replacing "WCA" with "MWO2" in the definitions for the variables.

Appendix G, Section 2.2 [Corrected]

1. On page 3749, second column, Appendix G, Section 2.2, lines 5 and 6, is corrected by replacing section "2.21-2.22" or section 2.24 of the appendix with the phrase "sections 2.2.1 through 2.2.3 or section 2.2.4 of this appendix".

Appendix G, Section 2.3 [Corrected]

1. On page 3749, third column, Appendix G, Section 2.3, Equation G-4, the variable definitions are corrected by replacing "WC02 emitted" with "WC02 = CO2 emitted" and by adding "MWCO2 = Molecular weight of carbon dioxide (44.0)" as the last variable for Equation G-4.

Appendix G, Section 3.1.2 [Corrected]

1. On page 3750, first column, Appendix G, Section 3.1.2, Equation G-6, the definition for the variables are corrected by replacing "SE==" with "SECO2=".

Part 75, Appendix H [Corrected]

Appendix H, Table 7.1 [Corrected]

1. On page 3751, Appendix H, Table 7.1, the heading "Balance" is corrected to read "Balance gas".

Appendix H, Table 7.1 [Corrected]

2. On page 3751, Appendix H, Table 7.1, in the heading in the fourth column, "AI or SS" is corrected to read "Passivated Aluminum".

Appendix H, Table 7.1 [Corrected]

3. On page 3751, Appendix H, Table 7.1, in the row for Carbon monoxide, the third column is corrected by replacing "5" with "9" and in the fourth column replacing "18" with "36".

Appendix H, Table 7.1 [Corrected]

4. On page 3751, Appendix H, Table 7.1, in the row for Nitric oxide, the third column is corrected by replacing "10" with "5" and in the fourth column replacing "18" with "24".

Appendix H, Table 7.1 [Corrected]

5. On page 3751, Appendix H, Table 7.1, in the row for Sulfur dioxide, the second column is corrected by adding the words "or air" following "N2", in the third column, replacing "210" with "50-499" and in the fourth column, replacing "18" with "24".

Appendix H, Table 7.1 [Corrected]

6. On page 3751, Appendix H, Table 7.1, immediately following the row for Sulfur dioxide, add two rows as follows: for the first row, in the first column, add "Sulfur dioxide", in the second column add "N2 or air", in the third column add "2500 ppm", in the fourth column add "36" and in the fifth column, add "6"; for the second row, in the first column, add "Oxides of nitrogen", in the second column add "Air", in the third column add "2100 ppm", in the fourth column add "24" and in the fifth column, add "6".

Appendix H, Table 7.1 [Corrected]

7. On page 3751, Appendix H, Table 7.1, the row for Nitrogen dioxide is corrected in the second column by removing "N2 or" so that the column reads "Air", in the third column, replacing "10" with "1000", and in the fourth column, replacing "6" with "24".

Appendix H, Table 7.1 [Corrected]

8. On page 3751, Appendix H, Table 7.1, the row for Carbon dioxide is corrected in the fourth column by replacing the number "18" with the number "36".
Appendix H, Table 7.1 [Corrected]

9. On page 3751, Appendix H, Table 7.1, is corrected by adding a row immediately following the row for Carbon dioxide as follows: in the first column, add "Carbon dioxide and oxygen, (i.e. blood gas)", in the second column, add "N<sub>2</sub>" in the third column, add "25% CO<sub>2</sub>, 20% O<sub>2</sub>" in the fourth column add "36", and in the fifth column, add "6".

Appendix H, Table 7.1 [Corrected]

10. On page 3751, Appendix H, Table 7.1, is corrected in the row for Oxygen, in the fourth column by replacing the number "18" with the number "36".

Appendix H, Table 7.1 [Corrected]

11. On page 3751, Appendix H, Table 7.1, is corrected in the first column in the row for Sulfur dioxide and carbon dioxide, by revising the column to read "Carbon dioxide and nitrous oxide", in the second column, replacing "N<sub>2</sub>" with "Air", in the third column, replacing "2200 ppm SO<sub>2</sub>, 10 percent CO<sub>2</sub>" with "2300 ppm CO<sub>2</sub>, >300 ppm N<sub>2</sub>O", and in the fourth column replacing "18" with "36".

Appendix H, Table 7.1 [Corrected]

12. On page 3751, Appendix H, Table 7.1, is corrected by removing the entire row beginning in the first column with "Propane".

Appendix H, Table 7.1 [Corrected]

13. On page 3751, Appendix H, Table 7.1, is corrected by adding two rows immediately following "Others not specifically listed", as follows: for the first row, in the first column, adding "Multicomponent mixtures", in the second column, adding "See", in the third column, adding "See", in the fourth column adding "See", and in the fifth column, adding "6"; for the second row, in the first column, adding "Mixtures with lower concentrations", in the second column, adding "See", in the third column, adding "See", in the fourth column adding "See", and in the fifth column, adding "6".

Appendix H, Table 7.1 [Corrected]

14. On page 3751, Appendix H, Table 7.1, is corrected by adding footnotes 1, 2, and 3 as follows:

1 When used as a balance gas, "air" is defined as a mixture of O<sub>2</sub> and N<sub>2</sub> where the minimum concentration of O<sub>2</sub> is 10% and the concentration of N<sub>2</sub> is greater than 60%.

2 This protocol may be used to assay and certify individual components of multicomponent standards, provided that none of the components interfere with the analysis of other components and provided that individual components must not react with each other or with the balance gas. A multicomponent standard can be certified for a period of time equal to that of its most briefly certifiable component. For example, a standard containing 250 ppm sulfur dioxide and 100 ppm carbon monoxide in nitrogen can be certified for 24 months because the shortest certification period is 24 months.

3 This protocol may be used for the certification of standards with concentrations that are greater than those listed in Table 7.1. The initial certification period for such a lower concentration standard is 6 months. After this period, the standards may be recertified. If the recertification demonstrates that the standard is not unstable, the second certification period for this lower concentration standard is the same time period as indicated for the corresponding concentration standard listed in Table 7.1.

Dated: June 18, 1993.

Brian McLean,
Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93-15194 Filed 7-29-93; 8:45 am]
BILLING CODE 6560-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Medicare and State Health Care Programs: Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From the Medicare and Medicaid Patient and Program Protection Act

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This document amends a technical error that appeared in the final rule, which amends the OIG exclusion and CMP authorities, published on January 29, 1992 designed to implement section 2 of the Medicare and Medicaid Patient and Program Protection Act, along with other conforming amendments. The final rule is designed to protect program beneficiaries from unfit health care practitioners, and otherwise improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX, and XX of the Social Security Act. In the final regulations, a new § 1001.1301—Failure to grant immediate access—was codified in 42 CFR part 1001 to permit, among other things, the exclusion of individuals or entities who fail to grant immediate access to the OIG or State Medicaid Fraud Control Units (MFCUs) for the purpose of reviewing documents to determine if a statutory or regulatory violation has occurred.

Technical Amendment to § 1001.1301

Section 1128(b)(12)(D) of the Social Security Act, the statutory authority upon which this regulatory provision is based, specifically allows for the exclusion of any individual or entity from Medicare and State health care program participation if that individual or entity fails to grant immediate access, upon reasonable request, ** to a State Medicaid Fraud Control Unit (as defined in section 1903(q)), for the purpose of conducting activities described in that section.** The regulations at § 1001.1301(a)(3) went on to define the term "reasonable request" to mean ** a written request for documents, signed by the IG or a delegatee, and made by a properly identified agent of the OIG or a State Medicaid Fraud Control Unit during reasonable business hours ** ** (emphasis added). As currently drafted, however, this definition now inadvertently bars the State MFCU from directly carrying out one of its statutorily-allowed functions in the absence of a written request signed by an OIG official.

Since the IG cannot under this provision delegate to State MFCUs its authority to issue "reasonable request," the current definition for "reasonable request" in § 1001.1301(a)(3) unintentionally restricts the State MFCUs' authority to request access to documents by requiring the IG or a delegatee to sign such a request. To correct this definition of "reasonable request," we are modifying § 1001.1301(a)(3) to have it read consistent with the statutory language contained in section 1128(b)(12)(D) of the Act.
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
43 CFR Part 3120
[WO-610-4110-24-03: Circular No. 2649]
RIN 1004-AC08
Federal Onshore Oil and Gas
Competitive Leasing
AGENCY: Bureau of Land Management, Interior.
ACTION: Final rulemaking.
SUMMARY: This administrative final rule will extend the primary term of all new competitive Federal onshore oil and gas leases from 5 years to 10 years. This revision in the lease term is necessary to comply with provisions of the Energy Policy Act of 1992 (Pub. L. 102-486) which require that both competitive and noncompetitive onshore oil and gas leases issued under section 17(e) of the Mineral Leasing Act of 1920, et. seq. (30 U.S.C. 226(e)) be for a primary term of 10 years.
EFFECTIVE DATE: July 30, 1993.
SUPPLEMENTARY INFORMATION: Prior to the enactment of the Energy Policy Act of 1992, all onshore competitive oil and gas leases had a primary term of 5 years. The provision in section 2509 of the Act amended section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)) by extending the primary term for all onshore competitive oil and gas leases to 10 years. This extension applies only to future leasing actions. This provision in no way changes the manner in which the Bureau of Land Management conducts business; it simply extends the duration of competitive onshore oil and gas leases. This rule is being published as a final rule because public comment is unnecessary and contrary to the public interest inasmuch as the change in lease terms is mandated by law and was effective upon signature by the President. For the same reasons, this rule will become effective upon publication in the Federal Register (5 U.S.C. 553(d)(3)).

List of Subjects in 43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 43, chapter II, part 3120 of the Code of Federal Regulations, is amended as follows.
PART 3120—COMPETITIVE LEASES

1. The authority citation for part 3120 continues to read as follows:


2. Section 3120.2-1 is revised to read as follows:

§3120.2-1 Duration of Lease.

Competitive leases shall be issued for a primary term of 10 years.

Dated: July 1, 1993.
Bob Armstrong,
Assistant Secretary of the Interior.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program;
Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Withdrawal of a final rule.

SUMMARY: This rule withdraws the regulation that was published in the Federal Register on March 31, 1993, (58 FR 16777) to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee’s first 8 months in the United States to a refugee’s first 3 months. A document delaying the effective date of June 1, 1993 to August 1, 1993 of the March 31 rule was published in the Federal Register on May 25, 1993 (58 FR 29981). Public Law No. 103-50, which was enacted on July 2, 1993, contains the following provision:

Sec. 501. Funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Pub. L. 102-170 for fiscal year 1992 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal year 1993.

Based on that provision, the Department has determined that sufficient funds are available to continue the RCA/RMA eligibility period at the current 8-month level for the remainder of FY 1993.

Under the Secretary's authority, the final rule amending 45 CFR part 400 that was published in the Federal Register on March 31, 1993, on page 16777 is withdrawn. The RCA and RMA eligibility period remains at the current level of a refugee’s first 8 months in the U.S.


FOR FURTHER INFORMATION CONTACT:
Toyo Biddle (202) 401–9250.

Dated: July 12, 1993.
Laurence J. Love,
Acting Assistant Secretary for Children and Families.

Approved: July 23, 1993.
Donna E. Shalala,
Secretary, Department of Health and Human Services.

BILLING CODE 4140-41-M

[FR Doc. 93–18211 Filed 7–29–93; 8:45 am]
This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Fifteen Percent Capping Provision Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes a revision to the food funds allocation formula for the Special Supplemental Food Program for Women, Infants and Children (WIC) to remove the provision limiting any State agency to a 15 percent increase in food funding. The change will ensure that all funds appropriated for Fiscal Year 1994 and subsequent years are allocated. This proposed rule should be finalized by October 1, 1993 to assure that grant allocations for Fiscal Year 1994 are affected.

DATES: To be assured of consideration, written comments must be received on or before August 30, 1993.

ADDRESSES: Comments may be mailed to Alberta C. Frost, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305-2710. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5 p.m., Monday through Friday) at the above-stated address.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305-2710.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Assistant Secretary for Food and Consumer Services does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, this rule will not 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.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. Some State and local agencies will be most affected because of the additional program administration involved; however, the effect on these entities will be minimal. Additional participants and applicants may be served by the Program, and, accordingly, would also be affected.

Paperwork Reduction Act

This rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "EFFECTIVE DATE" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Fifteen Percent Capping Provision of the Food Funds Allocation Formula

Background. Each fiscal year, once an appropriation is enacted for the WIC Program, funds are allocated to State agencies through funding formulas. Food funds are first allocated for stability grants, which provide State agencies with their prior fiscal year's total food grant adjusted by an inflation factor, and with funds set aside to serve migrant participants. Any funds remaining after the stability food grants are satisfied are classified as residual funds and are allocated equally through targeting and growth components of the funding formula. All States receive targeting funds based on their service to Priority I participants (mainly prenatal women with identified health risks and/or who are at nutritional risk). Growth funds are allocated only to those States which, when compared to other States, receive less than their equitable share of funds based primarily on the size of their income eligible populations. Census data from 1990, used for the first time in the allocation of Fiscal Year 1993 food growth funds, revealed that certain States, termed "growth" States, are significantly underfunded based on the size of their income eligible populations. Through the growth component of the funds allocation formula, these underfunded States were eligible for substantial funding increases in Fiscal Year 1993 and will again be
eligible for large increases in Fiscal Year 1994.

Although the allocation formula provides additional funds for growth States, the formula also limits the increase in residual funding that any State may receive from one fiscal year to the next to 15 percent above the level of the stability grant adjusted for inflation. This 15 percent capping provision was implemented primarily for two reasons. First, it prevented State agencies from receiving funds beyond their growth capacity in one fiscal year. The limitation also assured that residual funds were shared widely among all growth State agencies in need of funds. The ability of State agencies to handle rapid Program growth efficiently and effectively has proven to be variable. Even with the 15 percent cap, some State agencies which do not yet have space and staff readily available to expand participation have had to voluntarily return funds during the fiscal year that they are unable to use, or unable to use in a manner which maintains quality of service to participants. More importantly, the cap prevents some underfunded States from receiving the full share of funds that they would otherwise be allocated through the allocation formula. Many of these States have the ability to efficiently and effectively utilize these additional funds.

In Fiscal Year 1993, an unprecedented complication occurred with the current funds allocation formula as a result of the large number of growth States which declined additional funds, while other growth States which desired additional funds were limited by the 15 percent capping provision. Without an emergency revision to current regulations waiving the 15 percent capping provision from July 1, 1993 to September 30, 1993, FNS would have been unable to allocate all available funds in Fiscal Year 1993.

Accordingly, FNS published a Final Rule on July 13, 1993 (58 FR 37633) which waived the 15 percent cap for the remainder of Fiscal Year 1993. Congress authorized such a waiver in Public Law 103-50, the Supplemental Appropriations Act of 1993, enacted on July 2, 1993.

Justification for the Removal of the 15 Percent Capping Provision

The funds allocation formula was intended to move growth State agencies toward their equitable share of funds; however, the 15 percent cap impedes the capability of the formula to advance this goal. Removal of the 15 percent cap will therefore permit FNS to reduce current inequities among State agencies by allowing growth State agencies to receive larger allocations to use to serve their eligible populations.

Furthermore, it is very possible that the scenario which occurred in Fiscal Year 1993, in which available funds could not be allocated without a waiver to the 15 percent capping provision, will recur in Fiscal Year 1994. If this situation again arises, available funds will not be optimally utilized and participants who could be served within current funding levels will not be served without removal of the 15 percent cap.

Congress was unambiguous about its findings and purpose in creating the WIC Program. As set forth in section 17(a) of the Child Nutrition Act of 1966 (the Act), it found that substantial numbers of pregnant, postpartum and breastfeeding women, and infants and children eligible for assistance with inadequate income and are at special risk with respect to their physical and mental health by reason of inadequate nutrition and health care. Section 17(a) further states that the purpose of the WIC Program is to provide supplemental foods and nutrition education to these individuals, “up to the authorization levels set forth in [this Act].”

Removal of the 15 Percent Capping Provision

This rule proposes to remove the 15 percent capping provision from the funds allocation formula so that State agencies may receive the full share of funds which would otherwise be indicated by the formula, regardless of the percent increase any one State agency might receive from the allocation. As it is imperative that this change occur in time for initial allocation of Fiscal Year 1994 grants, the Department has allowed only a 30 day comment period.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:


2. In Section 246.16, the introductory text of paragraph (c)(2)(ii) is revised to read as follows:

§ 246.16 Distribution of funds.

• • • • •

(c) * * *

(2) * * *

(ii) Allocation of residual funds. Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows:

* * * * *


George A. Braley,
Acting Administrator, Food and Nutrition Service.

[FR Doc. 93-18118 Filed 7-29-93; 8:45 am]
BILLING CODE 4402-30-U

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV-92-035PR]

Tokay Grapes Grown in San Joaquin County, California; Proposed Rule

Revising the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add the U.S. No. 1 Institutional grade to the minimum grade requirements under the handling regulation in effect for fresh market shipments of California Tokay grapes. This action is expected to aid handlers in developing new markets for Tokay grapes.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2253-S, Washington, DC 20090-6456.

Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular
business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 926 (7 CFR part 926), both as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 5 handlers of San Joaquin County, California Tokay grapes subject to regulation under the marketing order, and approximately 20 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $300,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Tokay grape handlers and producers may be classified as small entities.

Tokay Grape Industry Committee (committee), the agency responsible for local administration of the order, met on February 4, 1992, and unanimously recommended revising the minimum grade requirements in the handling regulation to include the U.S. No. 1 Institutional grade as set forth in the United States Standards for Grades of Table Grapes (European and Vitis vinifera Type) (7 CFR 51.880 to 51.913), hereinafter referred to as the Standards. Under current requirements, from August 12 through November 15 each season, Tokay grapes must meet the minimum grade and size requirements specified for U.S. No. 1 Table, as set forth in the Standards, and must meet applicable color requirements.

The committee recommended adding the U.S. No. 1 Institutional grade to the minimum grade requirements in the domestic handling regulation. The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements. Individual bunches of grapes grading U.S. No. 1 Table cannot weigh less than one-fourth pound (4 ounces). Individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces nor more than 5 ounces. Additionally, at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked “Institutional Pack.” No labelling requirements are established under the U.S. No. 1 Table grade.

The committee believes that adding the U.S. No. 1 Institutional grade to the handling regulation will promote domestic sales and exports of institutional grape packs, particularly to Canada. The committee reports an increased demand for institutional grape packs by the food service industry (e.g., school systems, airlines, and restaurants). Due to the requirements of the current handling regulation, Tokay grape handlers are prohibited from making domestic and export shipments of institutional grape packs. The Standards were amended in April 1991 to establish the U.S. No. 1 Institutional grade.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for grapes under a domestic marketing order, imported table grapes must meet the same or comparable requirements. Because this proposed rule would relax the minimum grade requirements to add U.S. No. 1 Institutional to the domestic handling regulation, a corresponding change would be needed in the table grape import regulation. Such changes would be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to comment on this proposed rule. All written comments received within the comment period will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 926

Marketing agreements, Reporting and recordkeeping requirements, Tokay grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

PART 926—TOKAY GRAPE GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:


2. Section 926.324 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 926.324 California Tokay Grape Regulation 23.

(a) * * *

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade or U.S. No. 1 Institutional, and the following additional requirement: Of 25 percent, by count, of the berries of each bunch which are attached to the lowerpart of the main
stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(b) Definitions. "U.S. No. 1 Table grade," "U.S. No. 1 Institutional," and "characteristic color," shall mean the same as in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.912).

Dated: July 22, 1993

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[SFR Doc. 93-18154 Filed 7-29-93; 8:45 am]

BILLING CODE 4110-02-P

7 CFR Part 944

[Docket No. FV-92-036PR]

Tokay Grapes Imported Into the United States; Proposed Rule Revising Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add the U.S. No. 1 Institutional grade to the minimum grade requirements for imported Tokay grapes. Currently, imported Tokay grapes must grade at least U.S. No. 1 Table which includes a requirement that individual bunches weigh at least one-fourth pound (4 ounces). Grapes that grade U.S. No. 1 Institutional must meet all of the requirements of U.S. No. 1 Table except for bunch size, and are subject to additional container marking requirements. This action would permit smaller bunches of Tokay grapes to be imported into the United States, and is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments received by August 30, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they would be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including Tokay grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 606c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary’s ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are no known importers of Tokay grapes at this time.

This action is being initiated by the Department because section 8e of the Act requires imported Tokay grapes to meet the same or comparable requirements as those established under a domestic marketing order. Under this proposed rule, imported Tokay grapes would need to meet the same minimum grade requirements as Tokay grapes that are grown in San Joaquin County, California, and regulated under Marketing Order No. 926 (7 CFR part 926).

Under the terms of the marketing order, from August 12 through November 15 each year, Tokay grapes must meet the minimum grade and size requirements specified for U.S. No. 1 Institutional. As set forth in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.913), there are no known importers of Tokay grapes subject to an additional color requirement. Effective April 18, 1991, a new U.S. No. 1 Institutional grade was established under the Standards.

The Tokay Grape Industry Committee (committee), the agency responsible for local administration of the marketing order, recommended that the minimum grade requirements established for domestically grown Tokay grapes be revised to include the new U.S. No. 1 Institutional grade.

The U.S. No. 1 Institutional grade would: (1) Provide greater tolerance by permitting more weight variance of individual bunches; individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces or more than 5 ounces; and (2) provide that at least 95 percent of the containers in a lot of grapes grading U.S.
No. 1 Institutional grapes are required, under the Standards, to be marked "Institutional Pack." Grapes grading U.S. No. 1 Table consist of bunches of well developed grapes, which are fairly well colored, uniform in appearance, and free from decay, mold and other condition factors. Bunches must weigh at least one-fourth pound (4 ounces).

The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements.

The committee's recommendation to revise domestic handling requirements is being taken under a separate rulemaking action. This proposed rule relaxing the minimum grade requirement for imported Tokay grapes would be necessary to make import requirements consistent with those in effect under the marketing order. This action would permit smaller bunches of grapes to be imported into the United States by adding the U.S. No. 1 Institutional grade to the minimum grade requirements for Tokay grape imports.

A primary purpose of the Standards is to provide uniform trading terms relative to quality criteria commonly recognized by buyers and sellers of grapes. Because the requirements for U.S. No. 1 Table and U.S. No. 1 Institutional grapes are identical except for bunch size, it has been determined that the U.S. No. 1 Institutional grade requirements must include a container marking requirement to avoid buyer confusion in the marketplace. Because this requirement has been determined to be essential in identifying U.S. No. 1 Institutional grapes, imports of U.S. No. 1 Institutional grade Tokay grapes would have to meet all of the requirements of that grade set forth in the Standards, including the requirement that containers of such grapes be marked "Institutional Pack."

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to comment on this proposal. All written comments received within the comment period would be considered prior to issuing any final rule.

In accordance with section 8 of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects in 7 CFR Part 944
Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 944 be amended to read as follows:

PART 944—FRUITS; IMPORT REGULATIONS
1. The authority citation for 7 CFR part 944 continues to read as follows:

2. Section 944.605 is amended by revising paragraph (a) to read as follows:
§ 944.605 Tokay Grape Import Regulation.
(a) Applicability to imports. Pursuant to section 8a of the Act and Part 944—Fruits; Import Regulations, during the period August 12 through November 15 of each year the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the size and container marking requirements of that grade set forth in 7 CFR part 944.

The document was published with some inadvertent errors. This document corrects those errors.


SUPPLEMENTARY INFORMATION: In FR Doc. No. 93–14465, appearing on page 33860, in the Federal Register of Monday, June 21, 1993, the following corrections are made:
1. On page 33860, in the first column, in the third line from the bottom, the word “HFF–335)” is corrected to read “(HFS–216)”.
2. On page 33861, in the third column, in the third line from the bottom, the word "points." is corrected to read "points."
3. On page 33864, in the first column, in the second full paragraph, in line 10, the phrase "(Refs. 28 and 290)’ is corrected to read "(Refs. 28 and 29)’.
4. On page 33866, in the first column, in the first full paragraph, in line 10, the word "form" is corrected to read "from"; and in the second column, third full paragraph, in line 12, the word "converted food" is corrected to read "converted to food."
5. On page 33870, in the third column, in Reference 45, in line 3, the word "Sela" is corrected to read "Seal."

Dated: July 26, 1993.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 93–18147 Filed 7–29–93; 8:45 am]
BILLING CODE 4100–01–F

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[515–1–5161; FRL–4684–9]
Approval and Promulgation of Implementation Plan; Michigan
AGENCY: United States Environmental Protection Agency (USEPA).
ACTION: Proposed rule.
SUMMARY: USEPA is proposing disapproval of revisions to the Michigan State Implementation Plan (SIP) for ozone which were submitted to USEPA by the Michigan Department of Natural Resources (MDNR) on April 28, 1989. The proposed revisions concern R 336.1628 (Rule 628), "Emission of volatile organic compounds from components of existing process.
equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program”, and R 336.1829 (Rule 629), "Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program”, of Michigan’s Administrative Rules.

DATES: Comments on this revision and on the proposed USEPA action must be received by August 30, 1993.

ADDRESSES: Comments may be mailed to: Carlton T. Nash, Chief, Regulation Development Section (AT–18), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA’s analysis are available for inspection at the following location: (It is recommended that you telephone Kathleen D’Agostino at (312) 886–1767 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air Toxics and Radiation Branch, Eighteenth Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.


SUPPLEMENTARY INFORMATION:

Background
Under section 107 of the Clean Air Act, as amended in 1977 (1977 Act), USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Michigan, see 43 FR 8962 (March 3, 1978) and 43 FR 52970 (October 5, 1978). For these areas, section 172(b) of the 1977 Act, required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.1

Sections 172(b) and (c) of the 1977 Act, require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) to sources of volatile organic compound (VOC) emissions. For the purpose of assisting state and local agencies in developing RACT rules, USEPA prepared a series of Control Technique Guideline (CTG) documents which establish the presumptive norm for RACT for a specific source category. In cases where the state adopts rules that are less stringent than in the CTG, the state must justify that those rules are RACT for that source or source category. In partial response to the requirement for RACT VOC rules, the State of Michigan submitted and USEPA approved controls representing the application of RACT for certain stationary sources of VOCs covered by the first two groups of CTGs [RACT I—40 CFR 52.1170(c)(16) (45 FR 29790); 40 CFR 52.1170(c)(39) (46 FR 43222); 40 CFR 52.1170(c)(56) (47 FR 32116) and RACT II—40 CFR 52.1170(c)(56) (47 FR 32116)].

Section 172 of the 1977 Act allowed USEPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the States in revising their air pollution control program. These areas became known as extension areas. Michigan received an extension to December 31, 1987, for achieving the ozone NAAQS in Wayne, Oakland and Macomb Counties. This extension was granted on June 2, 1980, (45 FR 37196) and obligated the State to develop, for those counties, RACT regulations for sources that are addressed by the Group III CTGs (RACT III) and RACT regulations for major sources that are not addressed by a CTG (major non-CTG RACT).2

On May 26, 1986, pursuant to section 110(a)(2)(H) of the 1977 Act, USEPA Region 5 notified Governor James J. Blanchard that the Michigan SIP was substantially inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (USEPA’s SIP Call). Among other deficiencies, USEPA noted that the State had not yet submitted the RACT regulations for sources in Wayne, Oakland and Macomb Counties that were covered by the third set of CTGs.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399 (codified at 42 U.S.C. 7401 et seq.). By operation of law, the Detroit area, including Wayne, Oakland and Macomb Counties, retained its nonattainment designation and was classified as a moderate nonattainment area for ozone. Section 182(a)(2)(A) of the Clean Air Act (CAA), requires each state to submit to USEPA by May 15, 1991, revisions or additions to its SIP to correct the SIP. OSIP includes, in its regulatory fix-up of ozone. Section 182(a)(2)(A) of the Clean Air Act applies to those areas classified as marginal or above and requires states to adopt and correct RACT rules for such areas pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.3 Because the Detroit area (including Wayne, Oakland and Macomb Counties) is classified as moderate, the area is subject to the RACT fix-up requirement and the May 1991 deadline.

Other areas within Michigan also retained a designation of nonattainment and were classified by operation of law upon enactment. These areas are also subject to the RACT fix-up requirement. However, under USEPA’s pre-amendment guidance, interpreting the requirements of section 172(b), these areas were not required to adopt RACT rules for sources covered by the Group III CTGs. Therefore, for purposes of the May 15, 1991 deadline, only three counties were required to have RACT rules for Group III CTG sources.

Areas that are designated nonattainment, that are classified as moderate or above, and that were not previously required to adopt RACT rules for sources covered by the Group III CTGs, are required to adopt such rules under section 182(b)(2) of the amended Act.4 Section 182(b)(2) requires that these areas adopt RACT rules for: (1) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the CAAA and the date of attainment, by a date specified by the Administrator, and (2) all VOC sources in the area covered by any CTG issued before the date of enactment and (3) all other major stationary sources of VOCs that are located in the area, by November 15, 1992 (catch-up requirements). For those areas, RACT rules for the Group III CTGs are due on November 15, 1992. On April 28, 1989, MDNR submitted final regulations to satisfy outstanding

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1 The 1977 Act’s 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 45044 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 57182 (November 33, 1979).


3 Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 Ozone and Carbon Monoxide Policy that concern RACT, 52 FR 45044 (November 24, 1987); “Issues Relating to VOC Regulation Outpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice” (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

4 This requirement would apply to the remainder of the Detroit nonattainment area as well as the Grand Rapids (Kent and Ottawa Counties), and Muskegon (Muskegon County) areas which are all designated as nonattainment and classified as moderate.
commitments in its 1982 ozone SIP for southeast Michigan (Wayne, Oakland and Macomb Counties). Today USEPA is rulemaking on the regulations contained in the submittal which address two RACT III categories, VOC leaks from synthetic organic chemical and polymer manufacturing plants (Rule 628) and natural gas processing plants (Rule 629). At the time MDNR submitted these rules, USEPA only required adoption of RACT III in extension areas. However, MDNR chose to expand the applicability of these rules to all of the counties listed in USEPA’s SIP-Call, which include the Detroit, Grand Rapids, and Muskegon areas. This submittal, therefore, addresses requirements of USEPA’s SIP-Call, section 182(a)(2)(A) of the CAA (for Wayne, Oakland, and Macomb Counties), and section 182(B)(2) of the CAA (for Livingston, Monroe, St. Clair, Washtenaw, Kent, Ottawa, and Muskegon Counties). The following is USEPA’s evaluation and proposed action for Michigan’s RACT III rules.

USEPA’s Evaluation and Proposed Action

In determining the approvability of a VOC rule, USEPA must evaluate the rule for consistency with the requirements of the CAA and USEPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The USEPA interpretation of these requirements, which forms the basis for today’s action, appears in the various USEPA policy guidance documents listed in footnote 3. Among these provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for existing major stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

Under the amended Act, Congress ratified USEPA’s use of CTG documents, as well as other Agency policy, for requiring States to “fix-up” their RACT rules. See section 182(a)(2)(A). The USEPA policy document applicable to Rule 628 is Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, dated March 1984. The USEPA policy document applicable to Rule 629 is Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants, dated December 1993. Further interpretations of USEPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MDNR Rules 628 and 629 are new rules which were adopted to establish a monitoring program for leaking components of manufacturing process equipment at synthetic organic chemical and polymer manufacturing plants and natural gas processing plants, respectively. Both rules include provisions relating to the inspection of components, the repair of leaks, and recordkeeping.

Below is a description of the regulations submitted and USEPA’s evaluation of them.

Definitions

Rules 103, 104, 106, 108, 114, 119 and 121 contain definitions of terms used in Rules 628 and 629. These definitions are generally consistent with the CTGs and are, therefore, approvable.

Applicability

Rule 601 has been revised to define “existing source” as it relates to Rules 628 and 629. An existing source is any process or process equipment subject either to Rule 628 or 629 which has been placed into operation or for which an application for a permit to install was made on or before January 5, 1981 (for Rule 628) or January 20, 1984 (for Rule 629). These revisions are approvable because they are consistent with the applicability dates for the NSPS for these categories. Any sources installed after these dates must meet NSPS requirements.

Rules 629(1) and 629(1) specify that the requirements of Rules 628 and 629 apply to existing sources located in any county listed in Table 64. The counties listed are: Kent, Lapeer, Livingston, Macomb, Monroe, Muskegon, Oakland, Ottawa, St. Clair, Washtenaw and Wayne. At the time of MDNR’s submittal, USEPA required the adoption of RACT III only in extension areas; however, MDNR chose to expand the applicability of these rules to all of the counties listed in USEPA’s SIP-Call. This applicability is consistent with the requirements of section 182(a)(2)(A) and section 182(b)(2) of the amended Act. Pursuant to these sections, MDNR is required to adopt and submit RACT III regulations to USEPA by May 15, 1991, for Oakland, Macomb and Wayne Counties (section 182(a)(2)(A)) and by November 15, 1992, for Kent, Livingston, Monroe, Muskegon, Ottawa, St. Clair and Washtenaw Counties (section 182(b)(2)).

These rules also contain provisions which allow the Michigan Air Pollution Control Commission to approve an "equivalent control method." USEPA previously commented that this type of provision is unacceptable unless accompanied by either a requirement that such methods be approved by USEPA as site-specific SIP revisions or a replicable procedure (which USEPA has determined to be approvable) for establishing an equivalent control method. If the State is not required to submit alternate methods to USEPA, the State would have the ability to alter the SIP, possibly in a way which would interfere with expeditious attainment of the NAAQS, without providing USEPA with the opportunity to rulemake on the SIP revision. MDNR chose not to remove this language because it believes that it is appropriate and consistent with existing VOC rules. MDNR states that it will submit alternative programs as SIP revisions if necessary. USEPA does not consider this to be an adequate response to this issue. USEPA has identified this type of provision as a deficiency in Michigan’s existing VOC rules.

Inspection Requirements

Rules 628(2) and 629(2) and (3) establish inspection programs which are consistent with the CTGs, and are, therefore, approvable. Rules 628(4) and 629(4) provide for annual rather than quarterly inspection of valves in a process unit if the quarterly leak detection program shows that 2 percent or less of the process valves in that unit are leaking for 2 consecutive quarters. These provisions are not consistent with the CTGs, which allow annual monitoring only after the quarterly leak detection program shows that 2 percent or less of the valves are leaking for 5 consecutive quarters. Rules 628(6) and (7) and 629(6) and (7) and (8) contain various exemptions from the inspection requirement which are generally consistent with the CTGs and are approvable, with the exception of Rule 629(8)(a). This rule exempts components which contain or contact a process stream with a VOC concentration of less than 10 percent by weight. The CTG states that “Equipment with process streams containing relatively low percentages of VOC (i.e., between 1.0 and 10 percent) contribute a significant portion of total emissions from natural gas plants and, therefore, are subject to RACT requirements.”

MDNR has provided no justification for this exemption. In addition, with respect to Rules 628(6)(a) and 629(7)(a), MDNR should require initially and at any other time they deem fit, a stack test to demonstrate the efficiency of the control devices.
Repair Requirements

Rules 628(9) and 629(10) require leaking components to be repaired no later than 15 days after detection. These provisions are consistent with the CTGs. Rules 628(11) and 629(12) allow for a delay in the repair of leaking components. With the exception of Rules 628(11)(b) and 629(12)(b), these provisions are acceptable. Rules 628(11)(b) and 629(12)(b) allow for a delay of up to 6 months for repair of leaks that “cannot be repaired within 15 days due to circumstances beyond the control of the person operating” the plant. USEPA believes this provision is too vague; it is not clear what would constitute circumstances beyond the control of the operator. Therefore, USEPA believes that this language affects the enforceability of the requirement to repair leaking components. An acceptable alternative would be for Michigan to include recordkeeping requirements which would allow both the State and USEPA to determine the impact of this exemption.

Recordkeeping and Reporting Requirements

Rules 628(7)(a) and 629(8)(a) should require an analysis demonstrating that relevant components are not in VOC service.

Rules 628(12) and 629(13) require a log to be kept of all leaks. These provisions are consistent with the CTGs.

Rules 629(13) and 629(14) contain acceptable quarterly reporting requirements.

Compliance Date

Rules 628(14) and 629(15) require sources subject to Rules 628 and 629 to submit a written program detailing how the provisions will be implemented and require sources to begin inspections within 6 months after the effective date of the rules. This is an acceptable timeframe for implementing the provisions of these rules.

A detailed discussion of the deficiencies in Rules 628 and 629 can be found in the Technical Support Documents dated July 3, 1989, and July 20, 1989, which are available from the USEPA Region 5 office. Because these rules contain provisions which are not consistent with section 172 of the pre-amended Act as interpreted in the CTGs and the Blue Book, they are not separable pursuant to sections 110(k)(3) and part D. Also, because the submitted rules are not composed of
delegate authority to the Mass Media Bureau to conduct cost studies of individual cable companies in conjunction with this rulemaking. We further propose a productivity offset feature that could be incorporated into our price cap mechanism governing cable service rates, and information collection requirements to implement section 623(g) of the Cable Act of 1992.

II. Background

2. On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 93-177, 58 FR 29736 (May 21, 1993) ("Report and Order"), establishing rules to implement the cable television rate regulation provisions of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). The 1992 Cable Act provides that rates for cable service, other than per channel and pay-per-view services, provided by cable systems not subject to effective competition, as defined in the statute, shall be subject to regulation. The statute provides for regulation of the basic service tier generally by local franchising authorities, and of cable programming services tiers exclusively by the Commission.

3. In the Report and Order, the Commission adopted a benchmark and price cap approach to setting rates for regulated cable services. Under that approach, existing rates for cable service are compared to a benchmark that reflects the rates charged by cable systems subject to effective competition, with a given number of subscribers, channels, and satellite channels. In general, systems with current rates above the benchmark must either lower rates to the benchmark or to the rates in effect on September 30, 1992, reduced by ten percent, whichever reduction is less. The Commission established forms and associated instructions that determine the precise manner of conducting the benchmark comparison and reducing rates. Once initial rates are determined by comparison to the benchmark, rates are governed on a going-forward basis by a price cap mechanism. The price cap permits annual adjustments for inflation and a recovery of increases in external costs, including programming costs, costs of franchise requirements, taxes, and franchise fees.

4. The Commission based its adoption of the benchmarking and price cap approach for regulation of cable service rates on an evaluation of the advantages and disadvantages of that approach and traditional cost-of-service regulation. The Commission determined that a benchmark and price gap approach should serve as the primary method for regulation of cable service rates given the disadvantages associated with cost-of-service regulation, including increased administrative burdens imposed on cable operators and regulators.

5. At the same time, the Commission was concerned that the benchmark and price cap regulatory framework might not in all cases permit cable operators to recover the reasonable costs of providing regulated cable service. Accordingly, the Commission established an opportunity for cable operators to justify rates above benchmark or capped levels based on costs. Although the Commission had previously proposed and sought comment on regulatory requirements to govern cost-of-service showings by cable operators, the Commission determined that the record at that time was not sufficiently developed to permit the careful balancing of subscriber and cable operator interests that should be embodied in cost-of-service requirements. The Commission stated that it would issue the instant Notice to gather the record necessary for adoption of cost-of-service requirements. Pending adoption of rules in this proceeding, local franchising authorities for the basic tier and the Commission for cable programming services, will review cost-of-service showings by cable operators on a case-by-case basis under general cost-of-service principles.

III. A Regulatory Framework to Govern Cost-Based Cable Service Rates

6. In this Notice, we propose to establish a regulatory framework to govern rates for cable service based on costs. This framework will consist of regulatory goals for cost-based regulation of cable service rates and the regulatory requirements that will achieve those goals. We discuss first our tentative goals for cost-based regulation of cable service rates and then the requirements that we could adopt to achieve them.

A. Regulatory Goals

7. As indicated, in the Report and Order, the Commission adopted a benchmark and price cap approach as the primary means of governing rates for regulated cable service. Our benchmark and price cap requirements will continue to serve as the primary mechanism for regulation of cable service rates. We are concurrently with the instant proceeding addressing petitions for reconsideration of the Report and Order. We incorporate by reference petitions for reconsideration of the Report and Order. We may adopt in the instant proceeding proposals made on reconsideration concerning cost-of-service requirements and the role they should play in our overall approach for regulation of cable service rates. We additionally intend to establish an opportunity for cable operators to justify rates based on costs, as we will explore in this proceeding. We believe that our benchmark, price cap, and cost-of-service requirements should constitute a complete regulatory approach for setting cable service rates. Thus, a goal for the cost-of-service requirements that we ultimately adopt in this proceeding will be that they form a "backstop" for the benchmark approach to rate regulation. We solicit comment on what cost-of-service requirements we should adopt that will best form this part of our comprehensive plan for regulation of cable service rates. In particular, we request comment on what rate levels our cost-based requirements should produce in relation to benchmark rates. We also solicit comment on what role generally a cost-based approach to ratemaking should play in our regulation of cable service rates. We believe that the principal purpose of cost-based ratemaking in the overall framework of our regulations should be to permit regulatory authorities to evaluate whether rates that exceed the benchmark for a specific system are nonetheless reasonable in light of that system's permissible costs, as discussed more fully below.

8. Our regulatory framework for cost-based rates for cable service will govern the rates for cable service set pursuant to cost-of-service showings by cable operators seeking to justify rates above benchmark and capped levels. Our framework will determine the price that operators may charge for cable service and the earnings that cable operators may achieve through cost-based rates. We believe that our regulatory requirements determining cost-based rates must reflect a balancing of the interests of cable operators and consumers that is fair and reasonable to both. Our requirements should permit cable operators to recover the reasonable costs of providing cable service and to attract capital, including the opportunity for reasonable earnings, while protecting consumers from paying inappropriate costs and unreasonable charges, which was one of Congress' primary concerns when effective competition for cable is not present.

9. Congress also identified the policy goal of ensuring that cable operators continue, where economically justified, to expand their telecommunications
infrastructure. The Commission agrees that cable operators can, and should, contribute to the continued development of an advanced telecommunications infrastructure. Cable operators have major communications capabilities in place and are rapidly making facilities and services improvements. They are also actively exploring ways to combine existing services with new telecommunications services that could increase competition in the provision of communications services to the public and bring new services to consumers. We also believe that, in the near future, cable operators may experience significant competition in delivery of video programming to consumers. We believe that, consistent with the Act, our requirements should not thwart operators' ability to respond to competitive forces by means of facility and service improvements. For these reasons, we further tentatively conclude that our regulatory requirements for cost-based rates should also be designed to assure that cable operators may fully respond to incentives to provide a modern communications infrastructure and to respond to competitive forces. We believe that such an approach directly serves Congress' intent to encourage "economically justified" expansion of the cable infrastructure.

10. In the Report and Order, the Commission determined that the benchmarking process for setting rates would be based on the goal of achieving rates for cable service that approach rates of competitive systems. The Commission established a regulatory framework with procedures designed to ensure that systems with rates above the competitive benchmark will reduce rates by the competitive differential of ten percent. The Commission explicitly selected such an approach as the preferred method of rate regulation, as opposed to using traditional cost-based regulation as its primary regulatory tool. We solicit comment on whether our regulatory framework for cost-based rates should also be guided by the goal of producing rates that approximate competitive rate levels, i.e., rates that approach the operators' costs. The key distinction between the benchmark/price cap approach and the cost-based approach, however, is that operators making a cost-of-service showing are seeking to justify rates that exceed the benchmarks but that nevertheless are reasonable because they are based on costs, as determined under our requirements. We seek comment on whether this is the correct formulation of the cost-of-service objectives.

11. In the Report and Order, we also concluded that we should adopt a benchmark for regulation of cable service rates that is tier-neutral. We concluded that a regulatory framework that produced a low-priced basic service tier but that also created incentives for cable operators to move programming from the basic to higher tiers did not have any advantages over a regulatory scheme that was tier-neutral. We tentatively conclude, for the same reasons, that we should adopt standards of reasonableness of cable service rates based on costs that are also tier-neutral. We solicit comment on this tentative conclusion.

12. Determination and evaluation of cost-based rates can be a complex and resources-intensive activity. In-depth evaluation of cost-based rates for many cable operators would impose significant administrative burdens on cable operators and regulators. Therefore, we believe that our requirements for cost-based rates must, to the extent possible, be based on a pragmatic approach geared to the feasibility of implementation of cost-based regulation by local regulators and the Commission. We believe that, to the extent possible, our regulations should be designed to reduce administrative burdens on cable operators and regulators.

13. We also believe that our regulations, while protecting consumers from paying unreasonable charges, should nonetheless permit the recovery of costs for providing cable service in high cost areas. Our regulations should not preclude operators facing unusual operating costs to recover such costs in rates for cable service. We will endeavor to fashion requirements that give ratemaking recognition to all legitimate costs while preventing recovery in rates of unreasonable costs.

14. Finally, we believe that the goals we adopt for fashioning regulatory requirements for cost-based cable service rates should carefully consider the potential impact of such goals and requirements on consumers and the cable industry. In order to permit the Commission to fully assess the impact of possible requirements that we could adopt in this proceeding, we seek comment on the present economic and financial performance and practices of the cable industry, including expert opinion and economic models, and on the financial and economic impact of cost-based rates on the cable industry and consumers.

B. Regulatory Requirements

15. In this section, we propose and discuss the regulatory requirements that could be adopted as part of our regulatory framework governing cost-based rates of cable service. These requirements will be designed and selected to achieve our balancing of goals for cost-based regulation of cable service. These possible regulatory requirements consist of the regulatory tools employed by this Commission and other federal and state regulatory bodies to govern the rates of rate regulated industries based on costs. We tentatively conclude that we may employ these requirements for cost-based regulation under the Cable Act of 1992.

16. We have previously recognized the disadvantages of traditional cost-based rate regulation when regulating other telecommunication industries and have sought to develop other alternatives. For the same reasons, we have adopted in this proceeding a benchmark and price cap mechanism to serve as the primary method of regulating cable service rates. Accordingly, while we propose traditional concepts of cost-of-service regulation, we will endeavor to fashion a framework from them that achieves our goals and avoids to the extent possible the disadvantages of traditional cost-based regulation. We intend to adopt requirements tailored to the cable industry. We also seek alternative proposals for governing the rates of cable service based on costs, including modifications to the possible requirements discussed below. We may adopt such proposals offered by commenters even though not specifically proposed in this Notice. At paras. 70-75, infra., we discuss possible alternatives for streamlining cost-of-service showings.

(11) Procedural requirements for cost-of-service showings. 17. As indicated, in the Report and Order, we established an opportunity for cable operators to justify rates for the basic service tier and/or cable programming service tiers above levels permitted under the benchmark and price cap approach based on costs. We propose to establish limits on the frequency with which cable operators may make cost-of-service showings for the basic service tier and cable programming services tier. We propose that once a cost-of-service showing has been evaluated by either the local franchising authority or the Commission, another such showing for the tier may not be made for one year. This approach will eliminate burdens of repetitive filings and should not unduly financially affect operators because we do not anticipate that costs will change markedly within a one-year period. We solicit comment on this proposal.
18. We also solicit comment on whether we should establish procedural limits or bars on cost-of-service showings seeking to justify rates higher than existing rates absent a demonstration of special circumstances or extraordinary costs. Under this approach, absent a special showing, we would not entertain cost-of-service applications to justify initial regulated rates higher than the systems’ existing rates. This approach would be based on the presumption that most operators have set rates in an unregulated environment at a level to be fully compensatory. We solicit comments on this approach and presumption.

19. In order to facilitate review of cost-of-service showings, we propose to require that in any cost-of-service showings, costs and supporting data be presented on an FCC prescribed form and accompanying instructions would embody cost-of-service standards, cost allocation, and cost accounting requirements that we will adopt in this proceeding. The form would require explanations and descriptions of cost information and averaging and allocations used, to the extent not prescribed by the Commission, to permit evaluation of the showing by regulators. This form and worksheets would be used for cost-of-service showings for both the basic service tier and cable programming service tiers. We believe that use of such a form would generally reduce administrative burdens by providing for a uniform presentation of development of cost-based rates for cable service. We solicita comment on this proposal.

(2) Cost-of-service standards. 20. In this section, we propose cost-of-service standards that will determine both the opportunity for, and limits of, recovery from subscribers of costs incurred by cable operators. Under traditional cost-of-service regulation, rates are set at a level to provide the company with a recovery of its costs and a reasonable opportunity to earn a fair return on its invested capital. Under the traditional formulation, the company’s revenue requirement is equal to the expenses of providing service and its return on investment. In other words, the rates an enterprise is permitted to charge must be adequate to pay its expenses and earn a reasonable return on investment. We propose this traditional formulation as the overarching standard to govern cost-based rates for cable service. We solicit comment on this proposal.

21. We address below specific requirements that could govern the expenses and return on investment that cable operators would be permitted to recover in rates for regulated cable service. We tentatively conclude that we should exclude from permitted annual expenses the expenses of providing services unrelated to provision of cable service and certain special expenses. We also tentatively conclude that the Commission should prescribe depreciation rates for cable plant and that those rates should be designed to accurately match the useful life of the plant. In addition, we tentatively conclude that we should use an original cost methodology to value cable operator’s ratebase and that we should exclude excess acquisition costs from ratebase for purposes of developing cost-based rates. Finally, we tentatively conclude that we should establish a rate of return for provision of regulated cable service by all cable operators, and that we should establish a rate of return between approximately 10%-14%, after taxes, for provision of regulated cable service, depending on the balancing of goals that we adopt in this proceeding and prevailing costs of capital. We solicit comment on whether these general requirements should form part of our regulatory framework to govern cost-based rates for cable service.

22. The foregoing or other requirements that we could adopt governing costs may constitute different costing, accounting, and financial practices for purposes of setting rates than current practices in the cable industry. They may also represent different measures of industry performance than currently used by the cable industry and lenders. An important determinant of the standards that we adopt will be the impact on the industry and consumers. We solicit comment on the extent to which we should establish in our regulations explicit transition elements addressing the changes in financial practices and structure required by cable operators as they adapt to a rate regulated environment. For example, as discussed below, we could allow in ratebase a portion of excess acquisition costs when evaluating the reasonableness of current rates. To the extent our cost-of-service standards will encourage most cable operators to elect the benchmarking approach to setting rates, the primary impact of these standards will be that most rates will, in fact, be set by the benchmark approach. We seek comment on the impact of the standards that we could adopt in this proceeding. We also solicit comment on the extent to which cable service rates are already developed on the basis of costs, and the methodologies used by cable operators to do so.

23. We propose that a cost-based showing permit the cable operator to recover operating expenses, depreciation, and taxes as annual expenses of providing cable service. We will prohibit recovery through regulated cable rates of expenses unrelated to provision of regulated cable service. We solicit comment on these tentative conclusions.

1 Operating expenses. 24. Operating expenses incurred by cable operators could be expected to include plant specific costs (e.g., maintenance), plant non-specific costs (e.g., programming expense, power, engineering and testing), customer operations (e.g., marketing, billing and collection), and corporate operations (e.g., legal, planning, accounting and finance). We tentatively conclude that these costs should be included as operating expenses that cable operators are entitled to recover in rates for regulated cable service. We believe that this will permit operators to fully recover the reasonable costs of providing service in high cost areas. We seek comment on this tentative conclusion. We also seek comment on whether other operating expenses should be recoverable. We tentatively conclude that programming expense would be a recoverable operating expense, but would not be a cost element for inclusion in ratebase. We solicit comment on whether we should nonetheless permit a profit or mark-up on programming expense for development of cost-based rates. This could create incentives for cable operators to provide programming but would increase charges to subscribers. We solicit comment on whether cable operators will continue to have sufficient incentives to provide adequate levels of programming service without an allowed profit on programming expense. We also tentatively conclude that we should not permit recovery of certain special expenses. Specifically, we propose to exclude lobbying expenses, contributions for charitable, social or community welfare purposes, membership fees and dues in social, service and recreational or athletic clubs and organizations, and penalties and fines paid on account of violations of statutes and rules. Our rules presumptively exclude these costs from costs-of-service for rates for telephone interstate access service. Our regulations governing operating expenses will also determine the costs that must be expensed and those that must be capitalized. We solicit comment on
what costs should be expensed or capitalized.

(2) Depreciation. 25. Depreciation can affect rates in two ways. First, depreciation expense is a recurring expense that recovers in rates the cost of the depreciated asset over its useful life. Second, accumulated depreciation is the sum of depreciation previously recovered as an expense and is subtracted from gross plant to calculate the ratebase to which the prescribed rate of return is applied.

26. Under a traditional regulatory cost-of-service scheme, allowing rapid depreciation will increase the regulated company's cash flow and provide additional funds that could be used to upgrade infrastructure, although the regulated company is not necessarily obligated to use such funds for infrastructure improvements. On the other hand, rapid depreciation can increase subscriber rates. In the cable context, depreciation may be a significant expense in current development of rates for cable service; thus, limits on depreciation could significantly reduce the annual expenses that could be recovered in rates for cable service. Depreciation practices, therefore, could play a significant role in our balancing of goals for cost-based rates of cable service. At the same time, current depreciation practices may vary widely across the industry. Thus, depreciation requirements could have a significant impact on the industry.

27. We tentatively conclude that we should prescribe depreciation rates for purposes of developing cost-based rates for regulated cable service. This prescription could be an industry-wide depreciation rate or band of reasonable rates, or individual rates for each plant category. We could also require cable operators to use company-wide expense as reported in Securities and Exchange Commission ("SEC") financial statements, link depreciation to the specific circumstances in each franchise, or adopt some other standard. We seek comments on these alternatives. Comments favoring prescription should further address the number of depreciable plant categories and the evidence that should be taken into account in setting rates. We also solicit comment on whether we should prescribe recovery on a straightline remaining life basis, or some other recovery methodology. Under a straightline, remaining life approach, the depreciation rate is calculated under the following formula: Depreciation Rate = 100% Book Value - Accumulated Depreciation - Salvage% / Average Remaining Life. We seek comment on how salvage value should be determined. If we determine that we should prescribe depreciation rates, we tentatively conclude that the ratebase should be valued on the asset as opposed to its economic or fair market value. We solicit comment on this conclusion. The Commission will consider this proceeding, whether to require that the ratebase be valued for ratemaking purposes at original costs. If the original cost ratebase is adopted, comment is sought on the impact of using existing book reserves (which may or may not reflect original cost and which may reflect use of accelerated depreciation methods), as well as the impact of prescribing depreciation rates for the basis of expected remaining service life.

28. We further tentatively conclude that any depreciation rates we prescribe should be designed to accurately reflect, and recover the costs of the asset over its useful life. We believe that this will best balance subscriber and operator interests. We solicit comment on what the impact on cable rates would be if we prescribed for the purpose of a cost of service showing depreciation schedules designed to allow recovery of capitalized costs over the maximum reasonable expected life of the plant. We seek comment on current industry depreciation practices, including the number of classes of depreciable plant, service lives, retirement schedules and depreciation methods (e.g., straightline, accelerated). We solicit comment on the useful life and salvage value of all categories of facilities used by cable operators to provide regulated cable service.

29. As an alternative to prescription of depreciation practices, we solicit comment on whether we should for the time being only monitor operator depreciation practices. This monitoring could be facilitated by requiring cable operators to explain and justify depreciation practices in cost-of-service showings and/or by requiring reporting of depreciation practices under our collection of information requirements. This approach could reduce administrative burdens on the Commission and cable operators, but may involve a heightened risk of higher rates for cable subscribers. We solicit comment on this alternative. (3) Taxes. We propose to allow, in determining a cable operator's annual expenses, taxes incurred in the provision of regulated cable services. Taxes would include only those payable by the business entity. Income taxes payable on income from cable operations by individual owners, partners or Subchapter S Corporation owners would not be recoverable rates for regulated cable service. This would include all state and federal taxes on the provision of cable service and on income taxes attributable to the provision of regulated cable service. We solicit comment on this conclusion.

b. Ratebase. 31. As indicated, we propose to permit cable operators to recover in rates for cable service a return on the investment—i.e., ratebase—used to provide regulated cable service. Our regulatory requirements concerning ratebase are likely to have a significant impact on cost-based rates for cable service. We tentatively conclude that cable operators should be permitted to include in ratebase: (1) Plant in service, (2) plant held for future use within a reasonable period of time, and (3) working capital, for the purpose of developing cost-based rates.

(1) Plant in service. 32. Plant in service is likely to be the largest portion of ratebase. We seek comment generally on what standards we should employ to determine costs that may be included in plant in service. In regulated industries, the costs that the regulated company may include in the ratebase have been determined by applying the used and useful and prudent investment standards to the original construction cost of the assets dedicated to service. We tentatively conclude that we should adopt these standards to govern the costs that may be included in plant in service. We seek comment on this tentative conclusion.

33. Valuation of Plant in Service. We propose to establish standards to determine the value of plant in service that cable operators may include in ratebase. The value of the plant in service will be a major determinant of the level of costs that operators will be entitled to recover in rates. A number of approaches have been, or could be, used to determine the value of plant included in ratebase: market value, original cost, replacement cost, and reproduction cost, or a combination of these approaches. Under a market value approach, plant in service would be valued at the fair market value of assets at the time they are acquired. The original cost approach of valuation of plant for ratebase purposes cannot be defined as the initial construction cost of the property, so that subsequent capital transactions, including depreciation, retirements, and improvements. This could be a relatively simple approach to apply because cable operators and regulators can base determinations on accounting records. The results of this approach are also not affected by economic conditions, making it somewhat easier
to determine. It also facilitates the prescription of depreciation rates by fixing the objective as the recovery of the actual cost of construction of the cable system. However, where adequate accounting records have been kept, this approach may be more difficult to apply. Under a replacement cost approach, plant would be assigned a value of the cost of building a new "state of the art" facility. This approach, with appropriate safeguards and commitments from the operator, could promote infrastructure development. In addition, where new technology and efficiencies have made provision of current levels of service with new technology less expensive than the cost of existing plant, this could result in savings to consumers. Reproduction cost is the present cost to construct the plant that is in service. This approach has been favored by regulators in several instances. Under applicable judicial precedent, regulators have wide discretion to select a methodology for purposes of valuating ratebase, and we will select an approach consistent with that precedent that best implements our balancing of goals for cost-based rates of cable service. We request comments on each approach to including plant used and useful in the provision of regulated cable service. We also solicit comment on how each methodology would affect systems under original ownership, and those that have been refinanced or rebuilt. We also seek comment on whether the Commission should adopt one valuation methodology for determining initial regulated rates determined by a cost-of-service showing and another for assessing proposed increases in rates of regulated cable services under subsequent cost-of-service showings.

34. Our balancing of regulatory goals for cost-based rates for cable service will determine the valuation methodology that we select for plant in service. An original cost methodology might produce the lowest rates for consumers, and would additionally permit cable operators to fully recover the costs incurred to construct the plant used and useful in provision of regulated cable service. On the other hand, a replacement cost methodology might encourage operators to employ new technologies. Our choice of valuation methodology may also affect the amount of "excess" acquisition costs that could be disallowed from ratebase, discussed below, for those operators that purchased a cable system for amounts in excess of the value of the plant in service. Our valuation methodology could thus have a significant impact on the industry which, in turn, will affect subscribers.

35. We tentatively conclude that we should adopt an original cost methodology to determine the value of a cable operator's plant in service for ratebase purposes. As indicated, this may produce lower rates for consumers while permitting cable operators to recover the costs incurred, by the current operator or the previous owner, in constructing assets used to provide cable television service. At the same time, this approach does not necessarily preclude recovery of excess acquisition costs, as discussed below, to the extent we permit excess acquisition costs to be included in ratebase or amortized over a specified number of years. We solicit comment on this tentative conclusion.

36. Excess Acquisition Costs. Cable operators that have purchased cable systems in an unregulated environment may have paid a price for the enterprise as an ongoing business that exceeded the value of the plant in service that would be permitted under the valuation methodology that we select for plant in service, i.e., for such operators there will be an "excess" acquisition cost. Traditionally, excess acquisition costs have been excluded from the ratebase of regulated concerns, at least in part, because they are seen as inappropriate costs for the ratepayer to bear. This is because the premiums from excess acquisition costs directly benefit the seller, not the ratepayer, since they do not contribute to the plant supporting service to consumers. We note that subscribers may benefit indirectly from the sale if the purchaser is able to realize operating efficiencies that are unobtainable by the seller, but this is not likely to be the case where competition does not exist, since premiums may reflect an expectation of monopoly earnings. Generally, where competition does not exist, the presumption is that premiums reflect an expectation of monopoly earnings.

37. The legislative history of the Cable Act of 1992 reveals a congressional concern that excess acquisition costs may reflect the undue market power of cable operators not subject to effective competition, which has enabled the industry to charge rates higher than would be possible in a more competitive environment. We seek comment on whether Congress intended that we disallow excess acquisition costs.

38. Some or all of the acquisition costs in excess of original, replacement, or reproduction cost would ordinarily be considered goodwill for accounting purposes. We solicit comment on the extent to which cable operators may reasonably assign a portion of the purchase price of a cable system in excess of value of the plant in service, as determined under the valuation methodology that we select, to intangible assets such as customer lists or franchise rights. We solicit comment on how such assignments should be determined and whether we should establish limits on cable operators' discretion to do so.

39. We also solicit comment on the appropriate treatment of excess acquisition costs, including any portion thereof that can appropriately be assigned to intangible assets such as goodwill, customer lists, and franchise rights. As indicated, the traditional practice in rate regulation is to disallow excess acquisition costs from ratebase. On the other hand, it may be appropriate in some cases to allow such costs, at least in part. Where company policy has resulted in expense recognition of expenditures that produced value, still retained in the company, such as in development of customer lists, it could be appropriate to recognize that value. There may have been various and substantial expenditures by many operators which, as a matter of company policy or as a result of application of conservative accounting practices, have been expensed even though they have effectively resulted in the creation of assets with future economic value. One such area where this may be true is in the early marketing efforts of operators to develop their customer base, e.g., the subscriber list. Likewise the expenditures to obtain franchise and operating rights, though wholly or substantially written off early on, can be considered to be still beneficial in that companies are still operating under such rights. Similarly, the application of certain depreciation practices may have resulted in a general undervaluation of property, plant and equipment on the books of cable operators as the industry comes under regulation. We note that large financial losses are common across the industry and the write-offs of various organizational and development costs, and accelerated depreciation practices, appear to be at least partly responsible for the accumulation of those losses. It may be reasonable to view such accumulated losses as capital invested with an expectation of recovery over franchise rights. We solicit comment on the appropriate treatment of accumulated losses. Should losses be amortized over some future period and should a return be allowed on such unrecovered amounts until they are fully recovered? Further, should there

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be some provision for recovery of the return foregone in past years on unrecovered expenditures, and should the amount provided reflect a reduction for tax benefits received? Are there specific elements, e.g., the subscriber list, for which such provision should be made, but others for which no special provision should be made? And, if consideration is to be given to previously written-off expenditures for customer lists, franchise rights, and other organizational items, how shall they be valued now? It thus may be appropriate to allow such amounts in ratebase or to recognize their amortization as a recoverable operating expense. We solicit comment on whether we should permit this treatment in ratebase. In addition, an equitable balancing of consumer and cable operators' interests may require an allowance in ratebase of some excess acquisition costs in view of the transition of the industry from a nonregulated to a regulated environment.

40. We tentatively conclude that the best balancing of our goals for cost-based rates will be achieved by exclusion of excess acquisition costs from ratebase, including portions assigned to goodwill, customer lists, franchise rights, and other intangible assets. To the extent cable operators on the record of this proceeding can demonstrate a need to allow such costs in ratebase as a transition mechanism or that such costs represent a value to the subscriber, we may alter this conclusion. We seek comment on this tentative conclusion, and on its potential impact on the cable industry, subscribers, and lenders.

41. To the extent that excess acquisition costs are disallowed from ratebase, we solicit comment on whether we should allow the amortization of such costs over time as an annual expense. In addition, to the extent any intangible assets are permitted in ratebase, we solicit comment on what amortization period should be required for such assets. We also seek comment on the appropriate amortization period. We note that an extended period, e.g., 40 years, would have the effect of producing the lowest subscriber rates. We seek comment on whether cable operators require a more rapid recovery of excess acquisition costs, either permanently or as a transition mechanism.

42. Plant Under Construction. We solicit comment on whether we should impose any limits on inclusion of plant under construction in ratebase. We also solicit comment on what practices the cable industry currently follows in accounting for plant under construction. Moreover, we seek comment on whether the Commission should apply the traditional rule under ratebase/rate-or-return regulation that plant under construction will be withheld from ratebase until it meets the used and useful test, but that interest during construction can be capitalized.

43. Excess Capacity, Cost Overruns and Premature Abandonments. We also seek comment on whether the Commission should require exclusion from ratebase of costs incurred by a cable operator that represent excess capacity, cost overruns and premature abandonment. We solicit comment on whether these areas require regulatory limitations or whether we can monitor industry practices and impose requirements later if necessary. To the extent we permit any of these costs in ratebase, we solicit comment on several options for doing so. There are several ways that the Commission could treat excess capacity, cost overruns and premature abandonments. We solicit comment on whether the Commission should require exclusion from ratebase any costs that represent excess capacity, cost overruns and premature abandonments. This would reduce costs that must be borne by subscribers but could discourage operators from undertaking the risks of making facility improvements. As an alternative, we could permit amortization of the costs of excess capacity, cost overruns and premature abandonments but exclude them from ratebase. This would allow operators to recover such costs over time but would not allow an annual investment return on them. Should we permit amortization of such costs, we solicit comment on the appropriate time period. In any amortization, we also seek comment on whether the return of capital should be defined to include both equity and debt capital or only debt expense. We tentatively conclude that it should include only debt expense.

(2) Working capital. 44. As indicated, we propose to permit cable operators to recover in rates for regulated cable service a reasonable return on investment used and useful in providing regulated cable service. We tentatively conclude that it will not be possible, as a practical matter, to establish a separate rate of return for provision of cable service within each franchise area or for each cable company. While providing for a determination of separate rates of return for each franchise area or company might permit the most accurate balancing of subscribers and operator interests, this advantage is outweighed by the increased burden on local franchise authorities, cable operators, and the Commission of developing myriad rates-of-return. Nor do we believe that the factors on which a rate-of-return is based are likely to be so different that it is necessary to establish separate rates-of-return. Accordingly, in this informal notice and comment rulemaking proceeding we propose to establish a single rate-of-return for provision of regulated cable service by all cable operators for the purpose of setting rates based on a cost-of-service showing. We solicit comment on this analysis and proposal. However, we further solicit comment on the alternative of establishing rates-of-return for groups or types of cable operators.
based on the major considerations that can guide establishment of rates-of-return. This could provide for variations to the industry rate of return based on appropriate factors. We solicit comment on what these factors would be and how this approach could be constructed.

47. The rate-of-return that we establish in this proceeding will be determined primarily by the balancing of the goals that we select, discussed above, for cost-based rates for regulated cable service. As we noted above, Congress declared the policy of the Act to include both the protection of consumers and the economically justified expansion of cable infrastructure. We seek comment on how to balance these goals in fixing the rate of return level. If the primary goal is ensuring the subscribers pay rates that are consistent with a competitive level, for example, we may select a relatively lower rate-of-return within the "zone of reasonableness" in which ratepayer interests are protected. Alternatively, if we want primarily to encourage reinvestment in infrastructure, we may select a relatively higher rate-of-return, within the zone of reasonableness.

48. In addition, we believe that the rate-of-return we select must be based on a careful analysis of the considerations that this agency, other regulators, and courts have employed in setting and reviewing rates-of-return for other industries subject to rate regulation. Accordingly, we proposed that the rate-of-return for regulated cable service shall be established, at least in part, by identifying the rate-of-return of a surrogate industry or activity, or of several industries or activities. We propose that this be accomplished by first choosing a surrogate that has comparable risk to that of the cable industry. We propose that we then determine the surrogate's cost of capital by ascertaining the cost of equity and the cost of debt of the surrogate and then deriving a composite, weighted average cost of capital based on the capital structure (debt/equity ratio) of the surrogate. The resulting figure would be the rate-of-return of the surrogate that would then weigh heavily in our determination of the rate-of-return for regulated cable service.

49. We also proposed that we carefully consider the differences in the financial characteristics and capital structure of the surrogate or surrogates and the cable industry in determining the rate-of-return of regulated cable service. The cable industry differs from mature regulated industries like telephone, gas and electric, each of which is characterized by a steady return on investment. The cable industry is still a relatively new industry, characterized by growth and reinvestment of earnings with the possibility that the expectations of investors in the cable industry differ from other regulated industries. Moreover, the cable industry, unlike industries such as telephone, relies heavily on private and semi-public sources of capital. We seek comment on the capital structure of the cable industry in comparison to traditional regulated industries. We initially have found that current cable industry practice is difficult to evaluate given that much financing is provided by private or closely held companies that do not publish SEC scrutinized statements of position. At least some cable operators have very high leverage (that is, debt contributing all but a small portion of total capital). We seek comment on the impact of the requirements that we could adopt in this proceeding on the current overall financial structure of cable industry. For instance, if we relied upon the traditional capital structure of regulated industries (e.g. 50% debt/50% equity) in determining the cost of capital for the cable industry, what would be the impact on the cable industry? We solicit comment, including detailed economic analysis, on the extent that these differences should affect our development of a rate of return for regulated cable service. We also solicit expert economic analysis on what is a reasonable return on investment for regulated cable service and on what models the Commission should rely in order to achieve a reasonable rate of return. We solicit comment on this general approach to determining the rate-of-return of the cable industry. We also solicit comment on how often the prescription should be revisited and represcribed. If the approach described below is adopted, should the allowed rate of return be automatically updated annually? If a more elaborate methodology is adopted, how often should a proceeding be undertaken?

50. Regulated Cable Service Surrogates. We tentatively conclude that the choice of the surrogate to use in determining the rate-of-return of regulated cable service should be guided primarily by an assessment of risk. Thus, we proposed to choose a surrogate that experiences the same approximate risk of economic loss as the provision of regulated cable service. We solicit comment on other factors that could guide our choice of a surrogate or surrogates. In the Notice of Proposed Rulemaking in MM Docket No 92-266, 58 FR 48 (January 4, 1993), we proposed the Standard & Poors 400 Industrials (S&P 400) as a surrogate and sought comment comparing the average cost of capital for companies in the S&P 400 to regulated cable service. We tentatively conclude that the S&P 400 offers a broad range of investor expectations of the trade-off between risk and return, and that investors S&P 400 experience risks of economic loss that are roughly equivalent to those experienced in the provision of regulated cable service. Accordingly, we tentatively conclude that either the S&P 400 as a whole, or a subgroup of firms within it, can constitute a reasonable surrogate for regulated cable service and that the cost-of-capital of the S&P 400 shall be our primary guide in determining the rate-of-return of regulated cable service. We solicit comment on this analysis and tentative conclusion. Furthermore, we seek comment on the extent that companies in the S&P 400 demonstrate a range of financial strength—as manifested by the range of ratings—that would accurately reflect the range of financial strength for companies in the cable industry. We also solicit comment on whether a different surrogate should be used, such as regulated telephone companies.

51. Cost of Equity. Cost of equity can never be more than estimated because there is no written guarantee that a stockholder will receive any return. Generally, we have relied upon market-based, forward looking methods to evaluate investor expectations for surrogate common stocks. There are two common methods of measuring the cost of equity, the discounted cash flow method ("DCF") and the risk premium analysis method, that could be used to estimate cost of equity. The DCF methodology relies upon the use of current dividends and stock prices combined with analyst estimates of long term earnings growth to estimate the return on equity demanded by investors. According to the DCF formula, the return investors expect to earn on a share of common stock equals the dividend yield they expect from that share plus the long-term growth they expect in earnings. For telephone utilities, the current dividend yield is a significant fraction of the investor expected return. For the S&P 400, current dividend yield is a much lower fraction of the investor expected return. For the cable industry, investors appear to rely predominantly on long term earnings growth, thus, the DCF estimate is wholly dependent on the analyst long term growth estimates. Parties proposing surrogates with no current dividends should pay particular
attention to the stability and range of long term analyst estimates. The risk premium method estimates the cost of equity by developing a risk premium, typically by comparing historic data on equity returns and bond yields, that can be added to a current long term bond rate, such as US Treasury bonds. There is no set formulation of the risk premium method.

One that has achieved some theoretical prominence is the capital asset pricing model (CAPM). A more recent version of the CAPM is the arbitrage pricing model. It should be noted that neither the CAPM nor the arbitrage model has yet been given great weight in regulatory proceedings. Two of the more serious problems have been determining an acceptable risk premium and adjusting the measure of risk to reflect current (rather than historic) investor risk expectations. CAPM uses estimates of the risk of a surrogate stock by looking at how the stock price has fluctuated in relationship to the market as a whole. Its risk estimator, beta, equals the market risk premium divided by the overall stock market. Utility stocks have typically had betas significantly less than one (indicating less risk than the stock market as a whole). CAPM also requires an estimate of the risk premium—generally taken as the historic difference between some measure of stock returns for the stock market taken as a whole, and yields on US Treasury bonds. The beta for the S&P 400, which is itself broadly representative of the market, is one. The CAPM estimate for a surrogate company is calculated by multiplying beta times the risk premium and adding the current yield on bonds. We seek comment on the beta and risk premium appropriate for regulated cable service. We also seek comments comparing the appropriateness of the DCF and CAPM approaches for setting the cost of equity for regulated cable service. We seek comment on which approach or combination of the two approaches we should use.

52. In the Telco Reform Notice we examined the historic (1982–1992 1stQtr) risk premium between the yield on public utility "Aa" rated bonds and companies with estimated costs of equity in the lower half of the S&P 400. The risk premium ranged from 1.5% to 4.3%, with half of the estimates falling between 3% and 4%, another third evenly falling in the ranges 2.5%–3.0% and 4.0%–4.5%, and the remainder falling below 2.5%. We tentatively conclude that the cost of equity for risks comparable to the average S&P 400 company would be no more than 3% above the yield on public utility "Aa" grade bonds. Based on recent bond yield of approximately 7.5%, this would produce a cost of equity of no higher than 13%. If the risk of regulated cable service is judged to be comparable to the risks of the lowest quartile of S&P 400 companies, the cost of equity would be closer to 12%. If regulated cable service was judged to be more comparable to the risks of the highest quartile of S&P 400 companies, the cost of equity would be around 15%. We solicit comment on whether we should use a cost of equity based on the average S&P 400 company or on companies in a particular earnings quartile of the S&P 400, and on the relative risks of cable programming service as compared to the S&P 400 companies. We also request comment on other potential surrogates for the regulated cable services of the cable industry. If we use the S&P 400, or a subgroup of S&P 400 companies, as the primary surrogate for determining an appropriate cost of equity of regulated cable service, we tentatively conclude that the cost of equity will be in the range of 12% to 13%. Depending upon recent bond yield and assuming a debt/equity ratio of 50%, would lead to a rate-of-return for regulated cable service of between approximately 10% to 12.4%. Given market changes in the cost of debt and equity, we tentatively conclude that a rate of return somewhere in the range of 10% to 14%, after taxes, would reflect a reasonable balancing of subscriber and cable operator interests and that we could select a final rate of return within this range to achieve balancing of goals for cost-based rates for cable service. We solicit comment on selection of a maximum rate of return for regulated cable service within this range.

53. Cost of Debt. We solicit comment on what methodology the Commission should adopt for measuring the cost of debt. We tentatively conclude that this will be in large part a factual examination of the cost of debt of the surrogate. We solicit comment on what debt instruments, or weighting of different types of instruments, we should evaluate for this purpose. We also solicit comment on whether we should include preferred stock as debt. Finally, we solicit comment on whether we should accord any weight to existing (embedded) debt of the cable industry in determining an appropriate cost of debt.

54. Measures of Financial Performance. As indicated, we propose to carefully examine the impact on the cable industry of the rate of return— and of the other cost-of-service standards—that we could prescribe in this proceeding. A critical aspect of that assessment will be an appropriate measure of current financial performance of the cable industry and of the provision of cable service. We solicit comment on what methodology we should employ for this purpose. We tentatively reject a cash-flow analysis as the appropriate measure of financial performance because it does not take into account the character of cash revenues and expenditures. Thus, cash expenditures that represent investment or return of capital (loan amortization) may be appropriately characterized as positive earnings for purposes of measuring financial performance. We tentatively conclude that we will evaluate the current performance of provision of cable service subject to regulation under the cost-of-service standards, including the prescribed rate-of-return, that we will adopt in this proceeding. We will measure financial performance based on costs presented in accordance with our cost-of-service requirements. We solicit comments on this tentative conclusion.

55. We also solicit comment on what test year methodology should be employed for measuring the rate-of-return for a cable company making a cost-of-service showing. Traditionally, regulatory authorities use a test year which measures a regulated service's operating experience during a twelve-month period as a basis for determining representative levels of revenues, expenses, ratebase and capital structure. Commenting parties should also address what test year methodology should be adopted: historical test year; future test year; or a combined historical and future test year. Under a historical test year, the cable operator's operating experience is adjusted for known and measurable changes. This provides flexibility in allowing for inflation or attrition changes. Furthermore, the historical test year need not be based on a calendar year. A future test year is a projection of what the level of revenues, expenses, ratebase and capital structure will be in the rate year, with the operating experience adjusted for projected changes. Last, a combined historical and future test year allows some portion of the test year to be based upon recent actual operating experience with the remainder of the test year based on financial projections. We also solicit comment on whether we should use one of these test year methodologies for determination of all costs and revenues in cost-service showings.

56. We also seek comment on whether we should incorporate into our test year methodology an investment cycle approach to measuring the rate-of-return. Under an investment cycle approach, recoverable costs might be
allocated over the life of the investment based on the proportion of total subscriber usage in the test year, with the rate-of-return measured over the projected life of investment. Under this approach negative or low current earnings might not justify an upward adjustment in rates if higher earnings are expected in the following year or later in the investment cycle. We solicit comment on this proposal. We also solicit comment on whether this period should be prospective only or should include some historic data (e.g. centered on current period). We further seek comment on what a reasonable investor time horizon period for measuring performance would be. Should the Commission base this on the average prescribed depreciable life of investment or some other measure? (3). Cost accounting and cost allocation requirements. (a) Cost accounting requirements. 57. In the Report and Order, we required cable operators to maintain their accounts in accordance with Generally Accepted Accounting Principles (GAAP), unless otherwise directed by the Commission. We also required cable operators to maintain accounts in a manner that will enable identification of appropriate costs and application of cost assignment and cost allocation procedures to cost categories necessary for cost-of-service showings. We required that such categories be sufficiently detailed and supported to permit verification and audit against the company's accounting records.

58. Financial accounting practices of cable operators will provide the underlying basis for identification of expenses and revenues involved in the provision of regulated cable television service. We have already required that cable operators comply with GAAP, but have not specified any accounts that must be maintained, or any categories of costs that must be derived from accounts, for purposes of demonstrating costs of providing cable service. We have prepared, and attached as changes to the Commission's rules, possible supplemental financial and cost accounting requirements that we could adopt in this proceeding. These requirements would provide substantial supporting documentation to presentations of costs by cable operators in cost-of-service showings. They could also facilitate allowance or disallowance of costs in cost-of-service showings by providing for identification of types of costs in the specified accounts. On the other hand, they could impose additional burdens on cable operators. We solicit comment on the relative costs and benefits of these possible additional requirements. We will tailor any additional financial or cost accounting requirements that we adopt to an analysis of the costs and benefits. We also solicit comment on whether we should establish a more comprehensive system of accounting for cost-of-service showings similar to the Uniform System of Accounts (USOA) for telecommunications companies set forth in part 32 of the Commission's rules. A uniform system of accounts has the advantage of facilitating both comparison of costs between firms, and an analysis of the costs of individual firms. On the other hand, it can impose significant burdens. In the event that we elect to adopt a uniform system of accounts, we solicit comment on ways that it could be simplified to reduce burdens.

b. Cost allocations requirements. 59. In the Report and Order, we required that cable operators generally aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with the practices of the operator as of April 3, 1993. We also established cost allocation requirements. Costs aggregated at a higher level are to be allocated to the franchise level proportional to the number of subscribers in the franchise area, and costs are to be allocated between tiers proportional to the number of channels on the tier. We established procedures for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues. We solicit comment on whether we should adopt different or supplemental cost allocation requirements for purposes of developing cost-based rates for regulated cable service. We note that, in the near future, telephone services, personal communications services (PCS) transport, and other telecommunications services may be offered by cable operators. We seek comment on whether we should adopt new or supplemental cost allocation requirements to govern allocation of costs between regulated cable service and unrelated activities.

60. We see a continuum between the poles of attempting to uniquely identify all the costs of a franchise, and MSO-wide cost averaging. The former approach requires accounting, allocations, and full ratebase—rate of return investigation at the franchise level. While this approach would provide local franchise authorities with the maximum discretion in determining the costs recoverable in local basic tier rates, it places a very high burden on both the regulatory authority and the cable operator. Currently only a few ratebase—rate of return proceedings are conducted each year by all authorities practicing cost-of-service regulation. Under this approach it is conceivable that thousands of cost-of-service showings may be filed, with any single MSO a party to hundreds of such proceedings. Another potential effect is that the amount of MSO-wide price uniformity would be reduced.

61. At the other end of the averaging continuum, cost-of-service showings would be greatly simplified by using a unitary, industry-wide cost of capital; company-wide (MSO) average per subscriber ratebase, operating expenses and depreciation; and franchise specific levies (taxes and obligations). The revenue requirement would be developed at total company level and the average per subscriber revenue requirement would be allocated to a specific franchise. The Commission would evaluate cable programming service rates subject to complaint, and local franchise authorities would evaluate basic tier rates, based on average per subscriber costs determined in accordance with Commission requirements plus franchise specific levies, divided by the number of channels providing tiered service.

62. Under this approach, with a minimum of franchise-specific data, rates based on cost-of-service showings would be similar across the franchise operations of an MSO. While franchise authorities would not be faced with the full burden of a ratebase—rate of return proceeding, they would have a diminished ability to tailor rates to the specific set of circumstances that apply to a particular franchise. Cost averaging at a high level could also eliminate any reflection in rates of regional cost differences. On the other hand, to the extent that franchise share head-ends and centralized maintenance and customer service facilities, obtain capital from a multi-franchise entity, and benefit from multi-system discounts of programming rates, averaging would reduce duplicative regulatory investigations without loss of accuracy.

63. We seek comment on each of the above approaches. What modifications should be made to the approach that comes closest to achieving the right balance of accuracy and administrative burden? We ask for comment on the ability of operators under each of the above proposed to recover their costs, make improvements in service, and expand channel capacity and program offerings. We seek comment on the impact these proposals might have on the ability of local franchise authorities to ensure that basic tier rates
are reasonable and our ability to ensure, subject to complaint, that cable programming service rates are not "unreasonable".

64. We also seek comment on the level at which general industry practice would allow the major categories of costs to be identified. What costs are generally joint and common and have to be allocated to the franchise level? Is a per subscriber basis the best allocator? What is the impact of a per subscriber allocator on the allocation of costs to systems with low and high penetration rates? How might the number of channels in tiered service be factored into the allocator given that the relationship between cost and channels is not linear?

65. In addition, we request comment on the impact of various amounts of cost averaging on rates. Is franchise-specific cost consistency with our goal of minimizing overall rate disruption? Is cost averaging consistent with our goal that cost-of-service should be a safety net and not an alternative form of regulation? Under company-wide cost averaging, how would a cost-of-service showing in one franchise affect rates based on the benchmark or cost-of-service showings in other, related franchises? Should operators be able to elect, or local franchise authorities select, the level of cost averaging? Should operator election of cost averaging be all or nothing, or could it differ from franchise area to franchise area? Should the current pattern of rate averaging be an option, and, if so, should the operator and/or the local authority be allowed to increase and decrease averaging options?

(4) Design of rates. 66. In foregoing sections, we have addressed regulatory requirements that will determine the costs that can be recovered in rates for cable service. It is also necessary to establish requirements that will govern the way in which those costs will be recovered in rates. As indicated, in the Report and Order we established cost allocation requirements. We required that costs aggregated at higher levels be allocated to the franchise level proportional to the number of subscribers in the franchise area, and costs are to be allocated between tiers proportional to the number of channels on the tier. We established procedures for allocation of common costs, and required that cost categories for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues. We tentatively conclude that these requirements will be sufficient for the design of rates to recover costs permitted under our other regulatory requirements. We solicit comment on this tentative conclusion, and on whether other approaches might result in a more appropriate way of designing rates to recover permitted costs.

(5) Affiliate transactions. 67. In transactions that do not involve affiliates, we intend to allow cable operators to recover the actual cost of a service, or to reflect in rates actual revenue earned for providing a service. However, prices set by affiliates may not accurately reflect market prices. In particular, transactions with affiliates can be priced at a level so that the regulated enterprise is paying an undue portion of the costs of the nonregulated affiliate. Hence, they may be poor indicators of underlying value. Accordingly, we propose to establish affiliate transaction rules concerning transactions between the regulated and nonregulated portions of cable systems. We propose that an entity shall be an entity with a five percent or greater ownership interest in the cable operator including general partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own 5 percent or more of the outstanding stock, whether voting or nonvoting. We also intend to include within the scope of our cable affiliate transaction rules those transactions that occur between regulated and nonregulated portions of the same cable company, e.g. intracompany transfers. We solicit comment on these proposals. We will adopt rules that will prevent cable systems, in cost-of-service showings, from imposing the costs of nonregulated activities on regulated cable subscribers through improper cross-subsidization. We believe that this comports with the legislative intent of the Cable Act of 1992, in that the Commission should ensure that rates for cable service are reasonable. These requirements will generally govern the costs incurred in affiliate transactions that cable operators may seek to recover in rates based on a cost-of-service showing. We tentatively conclude, furthermore, that our affiliate transaction rules should encompass transactions with affiliates concerning programming. In the Report and Order, we generally permitted increases in price capped rates based on increases in programming costs, but limited pass-through of costs incurred with respect to affiliated programmers to no more than inflation. We solicit comment on whether we should, and provide notice that we may, in this proceeding adopt our affiliate transaction requirements instead of, or as an alternative to, our inflation limitation on pass-through of programming costs incurred with respect to affiliated programmers. We seek comment on this proposal to adopt affiliation transaction requirements.

68. We propose to assure that transactions with affiliates do not result in unreasonable charges for regulated cable service based on cost-of-service showings by prescribing the method of valuation of transactions between cable operators and affiliates and that cable operators seek to recover in a cost-of-service showing. We request comment on what that method should be used to value affiliate transactions. In particular, we invite comment on whether we should require cable system operators to record affiliation transactions at prevailing company prices offered in the marketplace to third parties, whenever the supplying affiliate has established such prices. We note that this option would depart from cost-based valuation and, hence, may not be appropriate for use when the operator has elected to make a cost-of-service showing. Additionally, this method may be inappropriate when there are not substantial third party transactions that establish a credible arm's length transaction price.

69. We also invite comment on whether we should require cable systems to record affiliate transactions at their estimated fair market value. Under this option, we could require cable operators to record each affiliate transaction at the higher of net book cost and estimated fair market value when the regulated cable system is the seller and at the lower of net book cost and estimated fair market value when the regulated cable system is the purchaser. We solicit comment on these alternatives.

C. Streamlining Alternatives

(1) General alternatives. 70. The Cable Act of 1992 requires the Commission to consider alternatives that will reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission in fashioning regulations governing the basic service tier. We may also consider reduction of administrative burdens in establishing regulations governing rates for cable programming service. As indicated, we recognize that traditional rate-of-return regulation can impose significant burdens and that a goal of our overall regulatory approach is feasible implementation. Accordingly, we seek alternatives that will streamline the establishment of cost-based rates by cable operators.

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71. We believe that such streamlining could be accomplished by two general approaches. First, we could establish standards of reasonableness, other than the benchmark approach, under which existing rates could be maintained in effect, obviating the need for making cost-of-service showings. We solicited comment on whether we should establish that initial rates for cable service will be considered reasonable if they are no higher than 1986 rates adjusted forward both by a general measure of inflation and a productivity offset. In evaluating this proposal, we solicit comment on whether it is reasonable to assume that past regulated rates were reasonable as cost-based, or reasonable on some other basis, and that, therefore, such rates adjusted forward for inflation and a productivity offset could also be considered cost-based. Under this proposal we would use the productivity offset that we specified below. We also solicit comment on the appropriate treatment of capital improvements since 1986 under this approach.

72. Another potential alternative to cost-of-service proceedings would be to permit cable operators to document key cost factors, financial characteristics, or other combination of factors that could be said to justify existing rates. Operators who could demonstrate the existence of such factors might then be permitted to charge rates equal to the benchmark plus an “add-on” amount attributable to those extraordinary factors. We solicit comment on what factors could be used to show that such “add-ons” are presumptively cost justified, thereby obviating the need for cost-of-service showings.

73. Under the second approach to streamlining, we would establish simplified or reduced showing requirements for those operators electing to make cost-of-service showings. One possibility under this approach would be that cable operators would be required to document costs in accordance with accepted cost-of-service standards in only one or a few areas of costs. For example, if the cost studies that we are initiating in this proceeding reveal that “excess” acquisition costs is the category of costs that most accounts for the competitive and non-competitive differentials, it might be possible to require only that cable operators in cost-of-service showings demonstrate that their proposed cost-based rates exclude all, or a portion of, excess acquisition costs. Or, if we can identify key areas of cost that can account for substantial rate differences, and if the operator has experienced costs in those areas, we could permit rate adjustments based only on showings in those areas. We solicit comment on whether we could limit cost-of-service showings to this or other factors, and on what those factors would be. We also solicit comment on whether we could use ratios of some financial characteristics, such as a ratio of “excess” acquisition costs to other assets, to identify some types of costs by cable operators. Instead, the ratio would show that the operator’s costs in the specified areas are reasonable.

74. Another alternative for simplified cost-of-service showings would be to permit cable operators to justify rates based on average costs of providing cable service based on the costs experienced by all systems, or of similar systems with specified defined characteristics, rather than on the individual costs of the system. Under an average schedule approach, cost-of-service showings would be based on the individual costs of the operator, averaged or otherwise, but on the average costs of providing regulated cable service. As we discuss, permitting cable operators to average their own costs across several franchise areas served by a system, or across several systems, could significantly reduce administrative burdens on operators and regulators because average costs would not require identification of direct costs at lower levels and because a single set of average costs could support cost-of-service showings in many service areas, instead of requiring different showings for many different areas. We solicit comment on the use of cost averaging to reduce administrative burdens on cable operators and regulators. This would be similar to the “average schedule” regulatory scheme for provision of interstate access by some telephone companies. Under that regulatory scheme, some 700 small local exchange carriers file rates based not on their own costs, but on an average cost schedule. This approach could reduce administrative burdens by obviating the need for identification of individual system costs, but would assume the availability of sufficient representative costs data for the determination of average costs. In the Report and Order, we rejected this alternative for use as the primary method of regulating cable service rates because of the lack of sufficient data and because of questions as to the feasibility of updating average industry cost data. We solicit comment, however, on whether this approach could be used for cost-of-service showings. As we explain, see para. 80, infra, our cost studies will explore the feasibility of collecting this average cost data, and we may undertake to collect such data in this rulemaking. We also envision that permitted average costs that could establish cost-based rates would reflect the cost-of-service standards that we will adopt in this proceeding. We solicit comment on whether we should adopt this alternative.

75. We also solicit comment on whether we could establish an abbreviated cost-of-service showing for significant prospective capital expenditures used to improve the quality of service or to provide additional services. Under this abbreviated showing, operators seeking to raise rates to recover the costs of a planned upgrade would submit only the costs of the upgrade instead of all current costs. If otherwise in accordance with our cost-of-service requirements, the costs of the upgrade would then be added to the rate permitted under the benchmark and price cap approach to the extent costs could not be recovered under that approach. The recovery of these costs would also need to comply with our cost allocation requirements, particularly to ensure that only the costs allocated to regulated service are imposed on subscribers. This approach could reduce burdens on cable operators and regulators by eliminating the need for development and examination of all costs to support the desired rate, while permitting operators to make facility and service improvements. We seek comment on this streamlining approach, and, in particular on the extent to which we would adopt this approach for many different areas. We solicit comment on whether we should adopt this approach for small systems. We believe that such streamlining could be accomplished by two general approaches. First, we could establish standards of reasonableness, other than the benchmark approach, under which existing rates could be maintained in effect, obviating the need for making cost-of-service showings. We solicited comment on whether we should establish that initial rates for cable service will be considered reasonable if
77. Several suggestions have also been made in petitions for reconsideration of the Report and Order that could be used to reduce burdens on small systems. It has been suggested that we exempt small systems from rate regulation. We solicit comment on whether we should establish an exemption for small systems for some or all rate regulation requirements in order to reduce administrative burdens on them. We ask whether this would be consistent with congressional intent, and whether this could serve to promote the availability of cable services in rural areas. Another suggestion would establish a presumption that rates are reasonable if the net revenue of the small system is below a specified level. We propose these suggestions as additional possibilities for reducing burdens on small systems and solicit comment on them.

78. We also solicit comment on what definition of small systems we should establish for purposes of cost-of-service requirements. Should small system streamlining provisions apply to systems with fewer than 1,000 subscribers owned or affiliated with multisystem operators (MSOs)? Should we limit the application of small system streamlining provisions to systems owned or affiliated with MSOs of certain size? For example, should such provisions apply only to systems that have fewer than 1,000 subscribers and that are owned or affiliated with MSOs that have fewer than 500,000 subscribers? In the Report and Order we carefully examined the definition of small systems for purposes of application of provisions designed to reduce administrative burdens. This issue will also be examined on reconsideration. We will coordinate our treatment of small system burdens for cost-of-service showings with our examination of this issue on reconsideration.

(3) Equipment. 79. The Cable Act of 1982 requires the Commission to establish standards for setting, on the basis of actual cost, the rate for lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control units, and lease of monthly connections for additional television receivers. In the Report and Order, we established a comprehensive regulatory scheme for development of cost-based rates for equipment used to receive the basic service tier. We solicit comment on whether a feasible method of reducing administrative burdens of rate regulation of equipment charges would be to ascertain average equipment costs, for some or all categories of regulated equipment charges, and permit operators to charge these rates as an alternative to the method of determining charges specified in the Report and Order. Average costs could be the average costs experienced by all systems or of groups of systems based on defined system characteristics. As with average schedules for provision of cable service generally, discussed above, this approach would require the availability of representative equipment costs. We solicit comment on whether the Commission should seek to implement this approach. We seek data on average equipment costs, and whether there are significant regional or other differences in equipment costs experienced by cable operators. The Commission may additionally seek to obtain information on equipment costs as part of the cost studies that will be conducted in conjunction with this proceeding. We also solicit comment on whether this approach would comply with the "actual cost" standard for equipment rates in the Cable Act of 1992.

IV. Cost Studies

80. As indicated, in this proceeding we will carefully consider the impact on the cable industry of the requirements that we could adopt to govern cost-based rates for cable service. We have determined that information concerning costs of cable service and the financial and accounting practices of the cable industry is necessary for achieving a complete record on which to base a decision. Comments will provide such information. However, we have determined that in-depth information from individual companies would be helpful. Accordingly, we are delegating to the Chief, Mass Media Bureau authority to conduct cost studies of individual companies. This will include authority to order individual companies to provide information specified by the Bureau. These studies will examine the financial structure and practices of the cable industry and may seek representative cost information to enable us to explore fully some of our streamlining alternatives. We will additionally assess in these cost studies whether any refinements to the competitive benchmark based on costs should be made. Any information obtained in this manner, or a summary of it, will be placed in the public record of this proceeding.

V. Productivity Offset

81. In the Report and Order, we incorporated an annual inflation adjustment into our price cap mechanism governing rates for cable service. We concluded that the use of an index would help achieve the statutory goal of reducing administrative burdens on cable systems, consumers, and regulators by permitting rate increases when cable operators experience increases in the cost of doing business shared by all sectors of the economy, without requiring cable operators to make, and regulators to consider, cost-of-service showings. As a result, we adopted the Gross National Product Price Index (GNP-PI), which measures inflation in the gross national product, as the annual adjustment index for the cap for basic service tier rates.

82. Under our rules, regulated cable operators are permitted to adjust the capped base per channel rate for the basic service tier annually by the GNP-PI. In addition, there are certain categories of costs that cable operators are permitted to "pass through" to subscribers without a cost-of-service showing, even if resulting rates exceed the applicable price cap. In the Report and Order, we declined to adopt a productivity offset to the GNP-PI for the non-programming costs incurred by cable companies given the paucity of information in the record that would provide a basis for determining productivity in the cable industry. We made it clear, however, that we would seek such information in a future proceeding. As noted in the Order, however, productivity gains in the economy, it does not necessarily reflect the entirety of productivity gains experienced by cable operators. While productivity may be measured in several ways, it is our responsibility in this proceeding to consider whether to apply a productivity offset feature in the price cap mechanism for cable operators.

Such a productivity offset would mandate reductions in rates based on a prescribed productivity rate.

84. We recognize, however, that productivity can be measured in a number of ways. Perhaps the simplest is one factor productivity index, such as the Bureau of Labor Statistics labor productivity index. Another, and one we used in establishing a productivity offset feature in the price cap mechanism for the telephone industry, is the use of industry-specific studies.

85. As noted in the Order, however, there is insufficient information available in the record to adopt a productivity offset in the price cap mechanism for cable operators. Therefore, we solicit comment on whether there is a valid economic basis
for assuming that cable service has been, and will be, experiencing efficiency gains. We invite the submission of industry studies or other expert economic analysis. In undertaking such expert analysis, we invite parties to examine, in particular, the following four options: (1) No productivity offset; (2) a consumer productivity dividend of 0.5 percentage points; (3) a “telecommunications” industry adjustment of between 3.0 (AT&T) and 3.3 (local exchange carriers) percentage points; and (4) a different productivity offset for cable operators.

VI. Cost Allocation Requirements for External Costs

86. In Section III. above, we have proposed possible cost accounting and cost allocation requirements that could be applied to development rates for cable service based on costs. These requirements could also be applied to the development of external costs. Thus, for example, we could permit or require that some categories of external costs be aggregated or averaged at the company level and then allocated to the franchise level and tier in accordance with our cost accounting requirements. We solicit comment on whether we should also apply the cost accounting and cost allocation requirements discussed in Section III. above to development of external costs.

VII. Collection of Information

87. The 1992 Cable Act requires that cable systems file with the Commission or franchising authority, as appropriate, within one year after the date of enactment, and annually thereafter, such financial information as may be needed to administer and enforce regulation of cable rates. The Report and Order concluded that the data provided in response to the Order adopted last December, in which we directed a random sample of cable systems to submit certain rate and other information to aid in designing benchmarks, met the statutory requirement regarding the collection of information. In the Report and Order, we stated that we would examine in the instant proceeding what further requirements should be adopted to implement the information collection requirements of the statute.

88. We solicit comment on two alternatives to implementing the information collection provisions of the statute. First, we solicit comment on whether we should require all systems to submit data annually. For this purpose, we offer for comment the form attached as an Appendix. We also request comment on whether we should require the information that was obtained in our survey of cable systems which formed the basis of our competitive benchmark. We solicit comment on the availability of the information specified in these documents, and the burdens that the collection of this information may impose on operators. To the degree such information is not readily maintained by cable systems, we seek comment on the extent to which we should require systems to develop and maintain it. In particular, we solicit comment on how we should treat small systems in this context, e.g., whether we should exempt small systems for the collection of information requirements altogether, or perhaps require small systems to submit their data on a less frequent basis than annually. We solicit comment on how we may best tailor the information we require to the cost-of-service standards and accounting requirements proposed herein, as well as to the rate regulatory framework adopted in the Report and Order. We also solicit comment on whether we should impose any reporting requirements on systems that change ownership. We solicit comment on whether we should obtain information concerning the purchase price, the purchase price per subscriber, the amount of goodwill, the amount of excess acquisition costs paid, and the actual value of tangible assets. We solicit comment generally on this proposal, and on other information related to the sale of a cable system we should require.

89. Alternatively, instead of requiring reporting from each cable operator, we could rely on an annual survey of cable systems. We tentatively conclude that we should adopt this approach. Relying on a sampling of systems would reduce the total administrative burdens imposed on the industry, while at the same time providing adequate data for purposes of administering rate regulation. We seek comment on the appropriate sampling methodology we could employ, and on how to select the systems that would be surveyed. We further seek comment on how to treat small systems within a survey approach to gathering information on cable rates and services.

90. In the Report and Order, we also stated that we would explore in this proceeding whether we should impose any collection of information requirements regarding leased channel access. We stated our intention to incorporate into our general reporting and monitoring process certain mechanisms particular to gathering information on leased commercial access. We believe information such as the channel capacity designated for leased commercial access, the percentage of such capacity actually used, the percentage used by each category of customers, and the rates charged to leased access users could facilitate our ability to monitor provision of leased commercial access by cable operators. Accordingly, we seek comment on whether we should require reporting of this, and similar information, concerning leased commercial access by means of the two alternatives discussed above.

VIII. Initial Regulatory Flexibility Act Analysis

91. Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a)(1) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981).

92. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rate of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Notice proposes to establish regulations governing the setting of rates for regulated cable service based on costs.

93. Objectives. To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

94. Legal basis. Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.
95. Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 623(j) of the Cable Act of 1992.

96. Reporting, record keeping and other compliance requirements. The proposals under consideration in this Notice include new reporting and record keeping requirements for cable systems. These reporting requirements include the possibility of filings by cable operators of financial and/or leased access data annually at the Commission or participating in an annual survey. Additionally, this Notice proposes the use of a form to submit data that is to be presented to the regulating entity in a cost-of-service showing by a cable operator. Furthermore, the Notice proposes general cost accounting and cost allocation requirements that could be imposed on the cable industry.

97. Federal rules which overlap, duplicate or conflict with this rule. None.

98. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(f) of the Cable Act of 1992.

IX. Paperwork Reduction Act

99. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

X. Procedural Provisions

100. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an ex parte presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written ex parte presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules. 47 CFR 1.1231.

101. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 25, 1993 and reply comments on or before September 14, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

XI. Ordering Clauses

102. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612(c) and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), 532(c), 542(c), and 543, notice is hereby given of proposed amendments to part 76, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues.

103. It is further ordered that, the Secretary shall send a copy of this Notice of Proposed Rulemaking and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

104. It is further ordered that, authority is delegated to the Chief, Mass Media Bureau to conduct cost studies in conjunction with this proceeding, as described in paragraph 80.

List of Subjects in 47 CFR Part 76
Cable television.
Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes
Part 76 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 76—[AMENDED]

1. The authority citation for part 76 continues to read:


2. Part 76 is amended by adding a new subpart P to read as follows:

Subpart P—Accounting and Cost Allocation Requirements

76.1100 General accounting requirements.
76.1101 Recoverable costs.
76.1102 Service cost categories.

§ 76.1100 General accounting requirements.

(a) For the purposes of providing accounting and costing data to the Commission and for making cost showings before this Commission, cable operators shall maintain their accounts in accordance with generally accepted accounting principles except as otherwise directed by the Commission.

(b) Each cable operator shall also maintain accounts in a manner that will enable it to aggregate investments, expenses and revenues into categories and to make other disclosures as specified in the following table:

Income Statement Items

A. Revenues

1. Basic Tier Subscription Fees
2. Regulated Cable Programming Services Revenues
3. Other Cable Programming Services:
   a. Premium Channel Revenues
   b. Pay-per-View Revenues
   c. Other Cable Programming Services Revenues
4. Advertising Revenues
5. Leased Commercial Access Activities:
   a. Leased Access Revenues
   b. Billing and Collection Services Revenues
   c. Other Leased Commercial Access Activities Revenues
6. Customer Premises Activities:
   a. Service Installation Revenues
   b. Equipment Sales Revenues
   c. Equipment Lease Revenues
   d. Equipment Installation, Maintenance, & Repair
7. Other Operating Revenues
B. Operating Expenses

8. Technical (Operation and Maintenance of Cable System) Expenses
   a. Salaries, Wages, and Benefits
   b. Other
9. Programming Expenses
   a. Salaries, Wages, and Benefits
   b. Copyright Fees and Other Cost of Programming
   c. Pay-per-View Fees
d. Other
10. Marketing Expenses
    a. Salaries, Wages, and Benefits
    b. Other
11. General and Administrative Expenses
    a. Salaries, Wages, and Benefits
    b. Franchise Levies (Fees, Taxes, and Other Obligations)
c. Other

C. Depreciation and Amortization

12. Depreciation Expense
13. Amortization Expense
   a. Goodwill All Amortization
   b. Other Amortization

Balance Sheet Information

A. Current Assets
   14. Cash
   15. Accounts Receivable
   16. Inventories (Equipment Held for Sale to Customers)
   17. Other Current Assets

B. Fixed Assets

18. Land and Buildings
   19. Headend
   20. Trunk and Distribution System
   21. Subscriber Devices
   22. Program Origination Equipment
   23. Construction and Maintenance Vehicles and Equipment
   24. Construction Work in Progress
   25. Other Fixed Assets
   26. Accumulated Depreciation

C. Other Assets

27. Investments
28. Deferred System Development and Franchise Costs
29. Goodwill
30. Other Intangibles and Deferred Items
31. Accumulated Amortization

D. Current Liabilities

32. Accounts Payable
33. Loans Payable
34. Customer Deposits
35. Other Current Liabilities

E. Long Term Liabilities

36. Funded Debt
37. Obligations under Capital Leases
38. Other Long Term Liabilities and Deferred Credits

F. Owner's equity

39. Paid-in Capital
40. Retained Earnings (Accumulated Losses)

Supplemental disclosure shall be made of critical accounting policies. Such disclosure shall include a description of depreciation and amortization practices and other such practices as specified by the Commission.

§76.1101 Recoverable costs.
   (a) Costs recoverable for cable services regulated by this Commission shall include operating expenses, and depreciation, amortization, taxes and return on the allowable rate base. The allowable rate base shall include, except as limited by the Commission, the average annual investment indicated in the following table:

Fixed Assets (Net of Accumulated

§76.1102 Service cost categories.
   (a) If a cost of service showing is to be made for any cable service, the cable operator shall establish service cost categories to aggregate costs on the basis of the services they are incurred to provided. The cable operator shall provide sufficient detail to demonstrate compliance with Commission regulations in the assignment of costs to the specified service cost categories and shall establish a sufficient audit trail to allow verification of cost assignments against the company's accounting records. In each operating unit at each organizational level that costs are identified, they shall be directly assigned to the service cost category if possible. Common costs shall be allocated to service cost categories in accordance with the allocation procedures in §76.924(f). Common Costs. Costs accumulated in service cost categories at any organizational level shall be allocated to lower organizational levels on the basis of number of subscribers.
   (b) The following service cost categories shall be established for such a cost of service showing:

(1) Basic Service Tier Activities. A Basic Service Tier Activities Category shall be established and shall include only recoverable amounts as defined in §76.1101. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of the basic service tier to customers (basic cable service). In addition, marketing, and general and administrative overhead costs for basic cable service activities shall be included in this category. Costs associated with advertising on basic service tier channels are also includible in this category. All common costs assignable to the Basic Service Tier Activities Category, including marketing, and general, and administrative overheads, shall be determined by the methodology specified in §76.924(f). Local franchising taxes and obligations may not be aggregated at organizational or operating levels higher than the franchise level. Such costs may be identified at the franchise level and appropriate amounts assigned to this service cost category at the franchise level only.

(2) Cable Programming Services Activities. A Cable Programming Services Activities Category shall be established and shall include only recoverable amounts as defined in §76.1101. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of cable programming service. This category may not include Equipment Basket costs. Marketing, and general and administrative overhead costs for cable programming services activities shall be included in this category. Costs associated with advertising on the cable programming channels are also includible in this category. All common costs assignable to the Cable Programming Services Activities Category, including marketing, and general and administrative overheads, shall be determined by the methodology specified in §76.924(f). Local franchising taxes and obligations may not be aggregated at organizational or operating levels higher than the franchise level. Such costs may be identified at the franchise level and appropriate amounts assigned to this service cost category at the franchise level only.

(3) Other Cable Programming Services Activities. An Other Cable Programming Services Activities Category shall be established. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of any cable service other than basic cable service and cable programming service, such as, per-channel or per-program premium services. In addition, marketing, and general and administrative overhead costs, as well as local franchising taxes and obligations, for such other cable programming services activities shall be included in this category. Costs
associated with advertising on the other
cable programming channels are also
includible in this category. All common
costs assignable to the Other Cable
Programming Services Activities
Category, including, marketing, and
general and administrative overheads,
shall be determined by the methodology
specified in §76.924(f).

(4) Other Cable Activities. An Other
Cable Activities Category shall be
established. This category shall include
the direct material and labor costs and
the indirect costs associated with any
cable activities not assignable to the
Basic Service Tier Activities, the Cable
Programming Services Activities, the
Other Cable Programming Services
Activities, and the Equipment Basket
categories, such as leased commercial
access services, billing and collection
services provided to leased commercial
access customers, studio and equipment
engineering and rental services, sale of
equipment, and maintenance and repair
of equipment sold to customers. In
addition, marketing, and general and
administrative overhead costs for such
other cable activities, as well as local
franchising taxes and obligations, shall
be included in this category. All
common costs assignable to the Other
Cable Activities Category, including
marketing, and general and
administrative overheads, shall be
determined by the methodology
specified in §76.924(f).

(5) Non-Cable Activities. A Non-cable
Activities Category shall be established.
This category shall include direct
material and labor costs and the indirect
costs associated with non-cable
activities performed by the cable
services entity. In addition, marketing,
and general administrative overhead
costs for such non-cable activities shall
be included in this category. All
common costs assignable to the Non-
cable Activities Category, including
marketing, and general and
administrative overheads, shall be
determined by the methodology
specified in §76.924(f).

Appendix

Note: This appendix will not appear in the
Code of Federal Regulations.

Federal Communications Commission—
Annual Report of Cable Television Systems
Financial Unit Data—FCC Form 326,
Schedule 1

This is Schedule 1 of YOUR FCC FORM
326. It must be completed and/or corrected
and returned to the Commission with
Schedules 2 through 5. If the communities
listed do not reflect your present
consolidation, add or delete as necessary. If
the pay cable fee is a "per program", rather
than "per month" charge, attach a rate
schedule. Include cents with all fee data.
PREVIOUSLY FILED:

SYSTEM COMMUNITIES COMPRISING
THIS FINANCIAL UNIT

IDENT
NAME
TYPE
OPERATIONAL STATUS
INSTALLATION FEE
SUBSCRIBER FEE
MONTHLY PAY CABLE FEE

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<td>Regular Subscriber Revenue</td>
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<td>Per Program or Per Channel Gross Revenue (Pay Television)</td>
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<td>Advertising Revenue</td>
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<td>Salaries, Wages, and Employee Benefits</td>
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<tr>
<td>14</td>
<td>All Other Service Expenses</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>PAYMENTS TO PAY CABLE PROGRAM SUPPLIES</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Salaries, Wages, and Employee Benefits</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>All Other Origination Expenses</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES:</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Salaries, Wages, and Employee Benefits</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Franchise Fees</td>
<td></td>
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<tr>
<td>20</td>
<td>Copyright Fees</td>
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<tr>
<td>21</td>
<td>All Other Selling, General, and Administrative Expenses</td>
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<tr>
<td>22</td>
<td>TOTAL OPERATING EXPENSE</td>
<td></td>
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<tr>
<td>23</td>
<td>TOTAL OPERATING INCOME</td>
<td></td>
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<tr>
<td>24</td>
<td>DEPRECIATION AND AMORTIZATION</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Depreciation</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Amortization</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OTHER INCOME AND EXPENSES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OTHER INCOME</td>
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<tr>
<td>26</td>
<td>Total Other Income</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OTHER EXPENSES:</td>
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</tr>
<tr>
<td>27</td>
<td>Interest</td>
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</tr>
<tr>
<td>28</td>
<td>Miscellaneous</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>TOTAL OTHER INCOME (OR LOSS)</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>EXTRAORDINARY ITEMS</td>
<td></td>
</tr>
</tbody>
</table>
31. TOTAL INCOME (OR LOSS) BEFORE TAXES

32. To be entered only for those systems (fewer than 1,000 subscribers) exempted from filing schedule 3.

<table>
<thead>
<tr>
<th>SCHEDULE 3</th>
<th>BALANCE SHEET INFORMATION</th>
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</thead>
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<tr>
<td>Line</td>
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<tr>
<td>No.</td>
<td>ITEM</td>
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<tr>
<td></td>
<td>ASSETS</td>
</tr>
<tr>
<td></td>
<td>CURRENT ASSETS:</td>
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<tr>
<td>1</td>
<td>Cash</td>
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<td>2</td>
<td>Accounts Receivable</td>
</tr>
<tr>
<td>3</td>
<td>Other Current Assets</td>
</tr>
<tr>
<td>4</td>
<td>Total Current Assets</td>
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<td></td>
<td>FIXED ASSETS:</td>
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<td>5</td>
<td>Land and Buildings</td>
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<tr>
<td>6</td>
<td>Headend</td>
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<td>7</td>
<td>Trunk and Distribution System</td>
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<td>Subscriber Devices</td>
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<td>9</td>
<td>Program Origination Equipment</td>
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<td>10</td>
<td>Construction Work in Progress</td>
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<td>11</td>
<td>Other Fixed Assets</td>
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<tr>
<td>12</td>
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<td>Less: Accumulated Depreciation</td>
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<td>Total Fixed Assets</td>
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<tr>
<td></td>
<td>OTHER ASSETS:</td>
</tr>
<tr>
<td>15</td>
<td>Other Assets</td>
</tr>
<tr>
<td>16</td>
<td>Less: Accumulated Amortization</td>
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<tr>
<td>17</td>
<td>Total Other Assets</td>
</tr>
<tr>
<td>18</td>
<td>TOTAL ASSETS</td>
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<tr>
<td></td>
<td>LIABILITIES</td>
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<td>CURRENT LIABILITIES:</td>
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<td>19</td>
<td>Loans Payable</td>
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<td>Accounts Payable</td>
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<tr>
<td>21</td>
<td>Other Current Liabilities</td>
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<tr>
<td>22</td>
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<td>LONG TERM DEBT:</td>
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<td>Total Long Term Debt</td>
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<td>OWNER'S EQUITY:</td>
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<td>Total Stock Issued</td>
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<td>26</td>
<td>Proprietor's Equity</td>
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<td>27</td>
<td>Retained Earnings</td>
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<td>28</td>
<td>Other Owner's Equity</td>
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<tr>
<td>29</td>
<td>Total Owner's Equity</td>
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<td>30</td>
<td>TOTAL LIABILITY AND OWNER'S EQUITY</td>
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</table>

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CHECK METHOD OF DEPRECIATION USED</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE 4

SUPPLEMENTAL ACCOUNTING INFORMATION

<table>
<thead>
<tr>
<th>PART A</th>
<th>Amortization</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
</table>
<pre><code>                                  | term | method | capitalized | amortized | in year | used (code) | during yr. | during yr. |
</code></pre>
<p>| 1. Deferred System Development Costs | | | | | $ | | | |
| 2. Franchise Costs (recorded as assets) | | | | | $ | | | |
| 3. Goodwill | | | | | $ | | | |</p>

CODES: (1) Straight line (3) Double declining balance (5) Other
        (2) Declining balance (4) Sum-of-the-years digits

<table>
<thead>
<tr>
<th>PART B</th>
<th>Total</th>
<th>Amt. capitalized</th>
<th>Useful Life</th>
</tr>
</thead>
</table>
<pre><code>                                  | Capitalized | During year | years |
</code></pre>
<p>| 4. Capitalized Interest on System Construction | | | | |
| $ | | | $ | | | |</p>

<table>
<thead>
<tr>
<th>PART C</th>
<th>Total Amt.</th>
<th>Amount NOT</th>
<th>Amount Being</th>
</tr>
</thead>
</table>
<pre><code>                                  | of Asset | Being Amortized | Amortized |
</code></pre>
<p>| 5. Deferred Sys. Development Costs | | | |
| $ | | | $ | | | |
| 6. Franchise Costs | | | |</p>

| 1 | (1) Straight line | (2) Declining Balance |
| 3 | (3) Double Declining Balance |
| | (4) Sum-of-the-Year-Digits |
| | (5) Other |
Federna Register / Vol. 58, No. 145 / Friday, July 30, 1993 / Proposed Rules

<table>
<thead>
<tr>
<th>(recorded as assets)</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Goodwill</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

**PART D**

<table>
<thead>
<tr>
<th>[Total Amt. of]</th>
<th>Method Used To Allocate Costs</th>
<th>Allocate Costs To System Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part D</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 8. Overhead Costs Allocated To System | $ | $ | $ | $ | $ | $ | $ | $ |

**PART E**

| 9. Original Cost of Fixed Assets (Seller’s Book Value) | $ | $ | $ | $ | $ | $ | $ | $ |

| 10. Portion of Purchase Price Allocated to Seller’s Book Value | $ | $ | $ | $ | $ | $ | $ | $ |

| 11. Recorded Cost of Fixed Assets by Purchaser | $ | $ | $ | $ | $ | $ | $ | $ |

**PART F**

<table>
<thead>
<tr>
<th>Fixed asset</th>
<th>Useful</th>
<th>Useful</th>
</tr>
</thead>
<tbody>
<tr>
<td>classification</td>
<td>Amount</td>
<td>Life</td>
</tr>
</tbody>
</table>

| 12. Estimated Useful Lives of Fixed Assets | $ | $ | $ | $ | $ | $ | $ | $ |

| 13. Salaries to Owners | $ | $ | $ | $ | $ | $ | $ | $ |

| 14. Other Direct Payment Included in Total | $ | $ | $ | $ | $ | $ | $ | $ |

| 15. Expense Payments to Spouse or Relatives | $ | $ | $ | $ | $ | $ | $ | $ |

---

8
16. Expense Payments to Spouse or Relatives

<table>
<thead>
<tr>
<th>TYPE</th>
<th>(1) Rent</th>
<th>(3) Payment for equipment</th>
<th>(5) Travel &amp; Entertainment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Payments for services</td>
<td>(4) Payments for supplies</td>
<td>(6) Other</td>
<td></td>
</tr>
</tbody>
</table>

**SCHEDULE 5**

Indicate the number of employees for the work week in which the last day of the Fiscal Year fell.

<table>
<thead>
<tr>
<th>NUMBER OF EMPLOYEES</th>
<th>FULL TIME</th>
<th>PART TIME</th>
</tr>
</thead>
</table>

BILLING CODE 6712-01-C
Certification

This report must be certified by the individual owning the reporting cable television system. If individually owned: by a partnership; by an officer of the corporation, if a corporation; or by a representative holding power of attorney in a case of physical disability or an individual owner or his/her absence from the United States.

I certify that I have examined this report, and that all statements of fact contained therein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

SIGNATURE ____________________________

PRINTED NAME OF PERSON SIGNING ____________

DATE ____________

LEGAL NAME OF RESPONDENT ____________

STREET ADDRESS ____________

RESPONDENT ____________

ADDRESS ____________________________

CITY ____________________________

STATE ____________________________

DATE ____________________________

FCC Form 326

[FR Doc. 93–18196 Filed 7–27–93; 3:11 pm]

BILLING CODE 6712–01–M
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget


The Department of Agriculture 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) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin., Bldg., Washington, DC 20250, (202) 690-2118.

Revision (Expeditied Clearance)

- Agricultural Marketing Service
  Almonds Grown in California, Marketing Order No. 981
  Recordkeeping; On occasion; Monthly; Semi-monthly, every 6 years
  Businesses or other for-profit; 6,323 responses; 2,556 hours
  Kathleen Finn (202) 720-1509

Extension

- Agricultural Marketing Service
  Tobacco Reports
  TB-26 & TB-39
  Quarterly

Businesses or other for-profit; Small businesses or organizations; 700 responses; 650 hours
Larry L. Crabtree, (202) 205-0235
- Food and Nutrition Service
  State Issuance and Participation Estimation
  FNS-388
  Recordkeeping; Monthly
  State or local governments; 636 responses; 4,542 hours
  John Bedwell, (703) 305-2386

New Collection

- Food and Nutrition Service
  Recipient Claims Collection: Expansion of Test of Offsetting
  Federal Income Tax Refunds
  On occasion
  Individuals or households; State or local governments; 505,010 responses; 58,555 hours
  John Hitchcock, (703) 305-2385.

Larry K. Roberson, Deputy Department Clearance Officer.

Federal Grain Inspection Service

Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Kankakee (IL) Agency, and the States of California (CA) and Washington (WA)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Kankakee, California, and Washington end on January 31, 1994. The geographic area presently assigned to Kankakee, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Bureau County line; the northern LaSelle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telescopier (FAX) users may send applications to the automatic telescopier machine at 202-720-1015, attention: Homer E. Dunn. If an application is submitted by telescopier, FGIS reserves the right to request an original copy. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT:
Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Kankakee, main office located in Bourbonnais, Illinois, California, main office located in Sacramento, California, and Washington, main office located in Olympia, Washington, to provide official grain inspection services under the Act on February 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Kankakee, California, and Washington end on January 31, 1994. The geographic area presently assigned to Kankakee, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the norther
Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to S.R. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; interstate 74 west to the western Peoria County line; and

Bounded on the West by the western Peoria and Stark County lines; the northern Stark County line east to State Route 86; State Route 86 north to the Bureau County line.

The geographic area presently assigned to California, except those export port locations within the State, and the geographic area assigned to the Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernardino National Forest southern boundary east to State Route 79; Bounded on the East by State Route 79 south to State Route 74; Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Washington, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Washington, except those export port locations within the State.

Interested persons, including Kankakee, California, and Washington are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800. 106(d) of the regulations issued thereunder.

Designation in the specified geographic areas is for the period beginning February 1, 1994, and ending January 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.


Neil E. Porter,
Director, Compliance Division.

[FR Doc. 93–18162 Filed 7–29–93; 8:45 am]
BILLING CODE 3510–EN–F

Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the State of New York (NY)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area currently assigned to the New York State Department of Agriculture and Markets (New York).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 27, 1993.

ADDRESS: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA, I:DA36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to IA36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.


SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 15, 1993, Federal Register (58 FR 33066), FGIS asked persons interested in providing official services in the geographic area assigned to New York to submit an application for designation. Applications were due by July 15, 1993. New York, the only applicant, applied for designation in the entire area currently assigned to it. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning New York. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of New York. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the Federal Register, and FGIS will send the applicant written notification of the decision.


Neil E. Porter,
Director, Compliance Division.

[FR Doc. 93–18163 Filed 7–29–93; 8:45 am]
BILLING CODE 3510–EN–F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Aberdeen (SD) Agency and the State of Missouri (MO)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri Department of Agriculture (Missouri).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by September 1, 1993.

ADDRESS: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA, I:DA36HDUNN], ATTMAIL and FTS2000MAIL users may respond to IA36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:
This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 3, 1993, Federal Register (58 FR 31492), FGIS asked persons interested in providing official services in the geographic areas assigned to Aberdeen and Missouri to submit an application for designation. Applications were due by July 1, 1993. Missouri applied for designation in the entire area currently assigned to it. There were two applicants for the Aberdeen geographic area. Aberdeen applied for designation in the entire area currently assigned to it except for: Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; and Regent Grain Company, and Regent Equity, both in Regent, Hettinger County (located inside Grain Inspection, Inc.'s area). Grain Inspection, Inc. (Jamestown), applied for designation to serve Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; and Regent Grain Company, and Regent Equity, both in Regent, Hettinger County, in addition to the area they are already designated to serve. The Aberdeen and Jamestown agencies are contiguous official agencies. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Aberdeen and Missouri areas. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the Federal Register, and FGIS will send the applicants written notification of the decision.


Neil E. Porter,
Director, Compliance Division.

[FR Doc. 93-18161 Filed 7-29-93; 8:45 am]

Forest Service

Exempt Decision for Shirt Salvage Timber Sale From Appeal, Malheur National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Shirt Salvage Timber Sale, located on the Bear Valley Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4a(11) as published in the Federal Register on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 NE Dayton Street, or Barb Boaz, Timber Management Planner, Bear Valley Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone: (503) 575-1751.

SUPPLEMENTARY INFORMATION: Mountain pine beetle is rapidly building up large populations over the Shirttail sub-watershed in response to the overstocked stand conditions. The outbreak has obtained catastrophic proportions within several timber stands. Infestation will continue to spread, along with associated mortality, to adjacent stands each time the brood develops to maturity and flies in the springtime to new host trees.

Prompt and aggressive action is needed to contain this epidemic. Each time the brood flies, the outbreak will increase in magnitude and geographic area. Survey of the area identified about 1,359 acres that are already infested or which are very susceptible to an infestation.

The Shirttail environmental analysis was started in October 1992. An interdisciplinary team of resource specialists developed four alternatives to analysis including the No-Action Alternative. An environmental assessment document has been prepared to disclose the effects of alternatives developed to meet the objectives of the proposed action and responds to the major issues. The proposed action would treat 2,453 acres to reduce future outbreaks of insects.

To facilitate implementation in a timely manner, a Decision Notice will be prepared to separate the treatment into two salvage sales: (1) Shirt Salvage Timber Sale and (2) Shirttail Salvage Timber Sale.

Shirt Salvage Timber Sale will be exempt from appeal, Shirttail Salvage Timber Sale, which harvest other high priority stands, will not be exempt from appeal.

The preferred alternative of the Shirt Salvage Timber Sale will harvest approximately 4.1 million board feet on 833 acres. No road construction will be required. Only beetle-infested will be harvested from the forest by the spring of 1994 to reduce the population of mature mountain pine beetles.

Biological evaluations have been completed for all plant, wildlife and fish proposed, endangered, threatened, and sensitive species. The biological evaluation indicates that the project could proceed as planned. The Shirt Salvage Timber Sale and accompanying work is designed to accomplish objectives as quickly as possible and minimize any further loss of volume and resource damage. Based upon the environmental analysis for the two salvage timber sales, I have determined that good cause exist to exempt Shirt Salvage Timber Sale decision from administrative appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the Federal Register, the Decision Notice for the Shirt Salvage Timber Sale can be signed by the Forest Supervisor. Therefore, this Shirt Salvage will not be subject to review under 36 CFR part 217.


Nancy Graybeal,
Deputy Regional Forester.

[FR Doc. 93-18260 Filed 7-29-93; 8:45 am]

BILLING CODE 3410-11-M

Rocky Canyon Timber Sale, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Environmental Impact Statement cancellation notice.

SUMMARY: Site-specific environmental analysis has indicated that the Rocky Canyon project area is comprised of extremely harsh, low-productivity sites. Damaging insect populations and disease pathogens are at normal levels and do not pose a threat to present or future management objectives.

The purpose and need for this proposal was to maintain the resilience.
of the forest, to improve and protect old growth habitat, and to provide timber from suited timberlands. Based on new resource information and recent harvest from other areas on the Forest, I do not believe vegetative treatment in the Rocky Canyon area is necessary to meet the proposal's objectives.

Further, other areas of the Boise National Forest, with a much higher productivity, are currently experiencing severe forest health problems or present a high risk to catastrophic insect, disease, or fire impacts. I believe, given more pressing forest health priorities on the Forest, that the need to treat the Rocky Canyon area at this time is very low. Therefore, I have decided not to pursue a timber management proposal in Rocky Canyon at this time.

The Notice of Intent to prepare an Environmental Impact Statement published in the Federal Register of April 6, 1993 is hereby rescinded (Vol. 58, No. 64, pages 17659 and 17660).

FURTHER INFORMATION CONTACT:
Cyd Weiland, Environmental Coordinator; Boise National Forest; Emmett Ranger District; 1805 Highway 16, room 5; Emmett, Idaho 83617; telephone 208-365-7000.


Catherine S. Barbeutles, Deputy Forest Supervisor.
[FR Doc. 93-18183 Filed 7-29-93; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center
Applications: Gary-Hammond-East Chicago, IN, MSA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $169,125 in Federal funds, and a minimum of $29,846 in non-federal (cost-sharing) contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The period of performance will be from January 1, 1994 to December 31, 1994. The MBDC will operate in the Gary-Hammond-East Chicago, Indiana geographic service area. The award number of this MBDC will be 05-10-94001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business. Applications will be evaluated initially by Regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate, after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Award recipients and subrecipients under this program shall be subject to all Federal Department regulations, policies, and procedures applicable to Federal assistance awards.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 28, "Nonprocurement Debarment and Suspension" and the related section of the certification form; Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form; Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applicable/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and
Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, “Disclosure of Lobbying Activities,” as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, “Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying” and disclosure form, SF-LLL, “Disclosure of Lobbying Activities.” Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements: unsatisfactory performance of MBDC work requirements: and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Government to cover pre-award costs.

If an application is selected for funding, the U.S. Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant’s management honesty or financial integrity; and a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

CLOSING DATE: The closing date for applications is September 9, 1993. Applications must be postmarked on or before September 9, 1993.


SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. A pre-bid conference will be held on August 20, 1993, at 10 a.m. at the MBDA Chicago Regional Office. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.


David Vega,
Regional Director, Chicago Regional Office.

[FR Doc. 93–18259 Filed 7–29–93; 8:45 am]

BILLING CODE 3510–31–M

National Institute of Standards and Technology

[Docket No. 930659–3159]

RIN 0693–AB19

A Proposed Federal Information Processing Standard for an Escrowed Encryption Standard (EES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) for an Escrowed Encryption Standard (EES) is being proposed. This proposed standard specifies use of a symmetric-key encryption/decryption algorithm and a key escrowing method which are to be implemented in electronic devices and used for protecting certain unclassified government communications when such protection is required. The algorithm and the key escrowing method are classified and are referenced, but not specified, in the standard.

This proposed standard adopts encryption technology developed by the Federal government to provide strong protection for unclassified information and to enable the keys used in the encryption and decryption processes to be escrowed. This latter feature will assist law enforcement and other government agencies, under the proper legal authority, in the collection and decryption of electronically transmitted information. This proposed standard does not include identification of key escrow agents who will hold the keys for the key escrow microcircuits or the procedures for access to the keys. These issues will be addressed by the Department of Justice.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, and local government users so that their needs can be considered prior to submission of this proposed standard to the Secretary of Commerce for review and approval.

The proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical aspects of the standard. Both sections are provided in this notice.

DATES: Comments on this proposed standard must be received on or before September 28, 1993.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Escrowed Encryption Standard, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Branstad, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2913.

SUPPLEMENTARY INFORMATION: This proposed FIPS implements the initiative
announced by the White House Office of the Press Secretary on April 16, 1993. The President of the U.S. approved a Public Encryption Management directive which among other actions, called for standards to facilitate the procurement and use of encryption devices fitted with key-escrow microcircuits in Federal communication systems that process sensitive, but unclassified information.

Dated: July 26, 1993.

Arati Prabhakar, Director.

Federal Information Processing Standards Publications XX

1993 XXXX

Announcing the Escrowed Encryption Standard (EES)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Name of Standard: Escrowed Encryption Standard (EES).


Explanation: This Standard specifies use of a symmetric-key encryption (and decryption) algorithm and a Law Enforcement Access Field (LEAF) creation method (one part of a key escrow system) which provide for decryption of encrypted telecommunications when interception of the communications is lawfully authorized. Both the algorithm and the LEAF creation method are to be implemented in electronic devices (e.g., very large scale integration chips). The devices may be incorporated in security equipment used to encrypt (and decrypt) sensitive unclassified telecommunications data. Decryption of lawfully intercepted telecommunications may be achieved through the acquisition and use of the LEAF, the decryption algorithm and escrowed key components.

To escrow something (e.g., a document, an encryption key) means that it is “delivered to a third person to be given to the grantee only upon the fulfillment of a condition” (Webster’s Seventh New Collegiate Dictionary). A key escrow system is one that entrusts components of a key used to encrypt telecommunications to third persons, called key component escrow agents. In accordance with the common definition of “escrow”, the key component escrow agents provide the key components to a “grantee” (i.e., a government agency) only upon fulfillment of the condition that the entity demonstrates legal authorization to conduct electronic surveillance of communications which are encrypted using the specific device whose key component is requested. The key components obtained through this process are then used by the grantee to reconstruct the device unique key and obtain the session key (contained in the LEAF) which is used to decrypt the telecommunications that are encrypted with that device. The term, “escrow”, for purposes of this standard, is restricted to the dictionary definition.

The encryption/decryption algorithm has been approved for government applications requiring encryption of sensitive unclassified telecommunications of data as defined herein. The specific operations of the algorithm and the LEAF creation method are classified and hence are referenced, but not specified, in this standard.

Data, for purposes of this standard, includes voice, facsimile and computer information communicated in a telephone system. Telephone system, for purposes of this standard, is limited to systems circuit-switched up to no more than 14.4 kbs or which use basic-rate ISDN, or to a similar grade wireless service.

Data that is considered sensitive by a responsible authority should be encrypted if it is vulnerable to unauthorized disclosure during telecommunications. A risk analysis should be performed under the direction of a responsible authority to determine potential threats and risks. The costs of providing encryption using this standard as well as alternative methods and their respective costs should be projected. A responsible authority should then make a decision, based on the risk and cost analyses, whether or not to use encryption and then whether or not to use this standard.

Approving Authority: Secretary of Commerce.

Maintenance Agency: Department of Commerce, National Institute of Standards and Technology.

Applicability: This standard is applicable to all Federal departments and agencies and their contractors under the conditions specified below. This standard may be used in designing and implementing security products and systems which Federal departments and agencies use or operate which are operated for them under contract. These products may be used when replacing Type II and Type III (DES) encryption devices and products owned by the government and government contractors.

This standard may be used when the following conditions apply:

1. An authorized official or manager responsible for data security or the security of a computer system decides that encryption is required and cost justified as per OMB Circular A–130; and

2. The data is not classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended.

However, Federal departments or agencies which use encryption devices for protecting data that is classified according to either of these acts may use those devices also for protecting unclassified data in lieu of this standard.

In addition, this standard may be adopted and used by non-Federal Government organizations. Such use is encouraged when it provides the desired security.

Applications: Devices conforming to this standard may be used for protecting unclassified communications.

Implementations: The encryption/decryption algorithm and the LEAF creation method shall be implemented in electronic devices (e.g., electronic chip packages) that can be physically protected against unauthorized entry, modification and reverse engineering. Implementations which are tested and validated by NIST will be considered as complying with this standard. An electronic device shall be incorporated into a cryptographic module in accordance with FIPS 140–1. NIST will test for conformance with FIPS 140–1. Cryptographic modules can then be integrated into security equipment for sale and use in an application.

Information about devices that have been validated, procedures for testing equipment for conformance with NIST standards, and information about obtaining approval of security equipment are available from the Computer Systems Laboratory, NIST, Gaithersburg, MD 20899.

Export Control: Implementations of this standard are subject to Federal Government export controls as specified in title 22, Code of Federal Regulations, parts 120 through 131 (International Traffic of Arms Regulations —ITAR). Exporters of encryption devices, equipment and technical data are advised to contact the U.S. Department of State, Office of Defense Trade Controls for more information.
Patents: Implementations of this standard may be covered by U.S. and foreign patents.

Implementation Schedule: This standard becomes effective thirty days following publication of this FIPS PUB.


Cross Index:
- a. FIPS PUB 46-2, Data Encryption Standard.
- b. FIPS PUB 81, Modes of Operation of the DES.
- c. FIPS PUB 140-1, Security Requirements for Cryptographic Modules.

Glossary:
The following terms are used as defined below for purposes of this standard:
- Data—Voice, facsimile and computer information communicated in a telephone system.
- Decryption—Conversion of ciphertext to plaintext through the use of a cryptographic algorithm.
- Device (cryptographic)—An electronic implementation of the encryption/decryption algorithm and the LEAF creation method as specified in this standard.
- Digital data—Data that have been converted to a binary representation.
- Encryption—Conversion of plaintext to ciphertext through the use of a cryptographic algorithm.
- Key components—The values from which a key can be derived (e.g., KU, KU).
- Key escrow—A process involving transferring one or more components of a cryptographic key to one or more trusted key component escrow agents for storage and later use by government agencies to decrypt ciphertext if access to the plaintext is lawfully authorized.
- LEAF Creation Method 1—A part of a key escrow system that is implemented in a cryptographic device and creates a Law Enforcement Access Field.
- Type I cryptography—A cryptographic algorithm or device approved by the National Security Agency for protecting classified information.
- Type II cryptography—A cryptographic algorithm or device approved by the National Security Agency for protecting sensitive unclassified information in systems as specified in section 2315 of Title 10 United States Code, or section 3502(2) of Title 44, United States Code.
- Type III cryptography—A cryptographic algorithm or device approved as a Federal Information Processing Standard.
- Type III(E) cryptography—A Type III algorithm or device that is approved for export from the United States.

Qualifications: The protection provided by a security product or system is dependent on several factors. The protection provided by this standard against key search attacks is greater than that provided by the DES (e.g., the cryptographic key is longer). However, provisions of this standard are intended to ensure that information encrypted through use of devices implementing this standard can be decrypted by a legally authorized entity. Where to Obtain Copies of the Standard: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication XX (FIPS PUB XX), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

Specifications for the Escrowed Encryption Standard

1. Introduction
   This publication specifies Escrowed Encryption Standard (EES) functions and parameters.

2. General
   This standard specifies use of the SKIPJACK cryptographic algorithm and the LEAF Creation Method 1 (LCM-1) to be implemented in an approved electronic device (e.g., a very large scale integration electronic chip). The device is contained in a logical cryptographic module which is then integrated in a security product for encrypting and decrypting telecommunications. Approved implementations may be procured by authorized organizations for integration into security equipment. Devices must be tested and validated by NIST for conformance to this standard. Cryptographic modules must be tested and validated by NIST for conformance to FIPS 140-1.

3. Algorithm Specifications
   The specifications of the encryption/decryption algorithm (SKIPJACK) and the LEAF Creation Method 1 (LCM-1) are classified. The National Security Agency maintains these classified specifications and approves the manufacture of devices which implement the specifications. NIST tests for conformance of the devices implementing this standard in cryptographic modules to FIPS 140-1 and FIPS 81.

4. Functions and Parameters

4.1 Functions
   The following functions, at a minimum, shall be implemented:
   1. Data Encryption: A session key (80 bits) shall be used to encrypt plaintext in one or more of the following modes of operation as specified in FIPS 81: ECB, CBC, OFB (64) CFB (1, 8, 16, 32, 64).
   2. Data Decryption: The session key (80 bits) used to encrypt the data shall be used to decrypt resulting ciphertext to obtain the data.
   3. Key Escrow: The Family Key (KF) shall be used to create the Law Enforcement Access Field (LEAF) in accordance with the LEAF Creation Method 1 (LCM-1). The Session Key shall be encrypted with the Device Unique Key and transmitted as part of the LEAF. The security equipment shall ensure that the LEAF is transmitted in such a manner that the LEAF and ciphertext may be decrypted with legal authorization. No additional encryption or modification of the LEAF is permitted.

4.2 Parameters
   The following parameters shall be used in performing the prescribed functions:
   1. Device Identifier (DID): The identifier unique to a particular device and used by the Key Escrow System.
   2. Device Unique Key (KU): The cryptographic key unique to a particular device and used by the Key Escrow System.
   3. Cryptographic Protocol Field (CPF): The field identifying the registered cryptographic protocol used by a particular application and used by the Key Escrow System (reserved for future specification and use).
   4. Escrow Authenticator (EA): A binary pattern that is inserted in the LEAF to ensure that the LEAF is transmitted and received properly and has not been modified, deleted or replaced in an unauthorized manner.
   5. Initialization Vector (IV): A mode and application dependent vector of bytes used to initialize, synchronize and verify the encryption, decryption and key escrow functions.
   6. Family Key (KF): The cryptographic key stored in all devices designated as a family that is used to create the LEAF.
   7. Session Key (KS): The cryptographic key used by a device to encrypt and decrypt data during a session.
8. Law Enforcement Access Field (LEAF): The field containing the encrypted session key and the device identifier and the escrow authenticator.

5. Implementation

The Cryptographic Algorithm and the LEAF Creation Method shall be implemented in an electronic device (e.g., VLSI chip) which is highly resistant to reverse engineering (destructive or non-destructive) to obtain or modify the cryptographic algorithms, the DID, the KF, the KU, the EA, the CPF, the operational KS, or any other security or Key Escrow System relevant information. The device shall be able to be programmed/personalized (i.e., made unique) after mass production in such a manner that the DID, KU (or its components), KF (or its components) and EA fixed pattern can be entered once (and only once) and maintained without external electrical power.

The LEAF and the IV shall be transmitted with the ciphertext. The specific of the protocols used to create and transmit the LEAF, IV, and encrypted data shall be registered and a CPF assigned. The CPF shall then be transmitted in accordance with the registered specifications.

The specific electric, physical and logical interface will vary with the implementation. Each approved, registered implementation shall have an unclassified electrical, physical and logical interface specification sufficient for an equipment manufacturer to understand the general requirements for using the device. Some of the requirements may be classified and therefore would not be specified in the unclassified interface specification.

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1 Proposed NEW drafts. Copies of proposed drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

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[FR Doc. 93-18309 Filed 7-29-93; 8:45 am]

**BILLING CODE 3510-13-M**

**[Docket No. 93065-3157]**

**National Fire Codes: Request for Comment on NFPA Technical Committee Reports**

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of request for comments.

**SUMMARY:** The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1994 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Forty reports are published in the 1994 Annual Meeting Technical Committee Reports and will be available on July 30, 1993. Comments received on or before October 8, 1993 will be considered by the respective NFPA committees before final action is taken on the proposals.

**ADDRESSES:** The 1993 Annual Technical Committee Reports are available from NFPA, Publications Department, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269-9101. Comments on the reports should be submitted to Arthur E. Cote, P.E. Secretary, Standards Council, NFPA 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269-9101.
FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standard Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standard Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 8, 1993, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 25, 1994, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commenter.

Action on the Technical Committee Reports (adoption or rejection) will be taken by NFPA members at the Annual Meeting, May 16–18, 1994 in San Francisco, California.

Dated: July 26, 1993.

Arati Prabhakar, Director.

1994 Annual Meeting

Technical Committee Reports

(P = PARTIAL REVISION; W = WITHDRAWAL; R = RECONFIRMATION; N = NEW; C = COMPLETE REVISION)

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Program; establishment of principal trade classifications and lumber sizes for yard, structural, factory/shop use; classification, measurement, grading and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading, inspection, measurement and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The Standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

Dated: July 26, 1993.

Arati Prabhakar,
Director.

[FR Doc. 93-18263 Filed 7-29-93; 8:45 am]

BILLING CODE 3510-13-M

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Additions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 30, 1993

**ADDRESSES:** Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On April 30 and May 21, 26, June 4 and 11, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 26125, 29571, 31016, 31694 and 32656) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

**Commodities**

- Parts Kit, Transmission Oil Filter (4330-01-211-6702)
- Fishing Kit, Emergency (4220-01-181-3154)
- Mouse Pad, Computer (7045-01-368-4808, 7045-01-368-4809, 7045-01-368-4810, 7045-01-368-4811)
- Pad, Executive Message Recording (7510-01-357-6830)
- Bag, Polyethylene (8105-LL-S04-8618, 8105-LL-S04-8619, 8105-LL-S04-8620)

**Military Resale Commodity**

- Wrist Pad, Computer (M.R. 021 4220-01-181-3154)

**Services**

- Bursting and Packaging of Stamps, U.S. Department of the Interior, Washington, DC
- Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Third and Sharkey Street, Clarksdale, Mississippi.

This action does not affect contracts awarded prior to the effective date of
under the competitive bidding system, no contractor is guaranteed a Government contract. A contractor assumes a business risk if it invests in tooling and machinery in the belief that it will recoup its investment from the proceeds of future Government contracts. Consequently, the Committee does not consider loss of the opportunity to recoup this investment to constitute severe adverse impact on a contractor.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Filter, Element
4330-01-099-9351

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman, Executive Director.

[FR Doc. 93-18250 Filed 7-29-93; 8:45 am] BILLING CODE 6220-33-P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a flexible disk to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 30, 1993.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On May 21, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 29570) of the proposed addition of this disk to the Procurement List. Comments were received from one of the current contractors for the disk. The commenter questioned whether the proposed addition of the disk to the Procurement List meets the legal tests for an addition and whether the nonprofit agency involved will be able to produce a disk which meets the Government's needs.

The commenter asserted that the proposed addition does not meet a requirement of the Committee's law that 75% of the work needed to produce an item be done by people with severe disabilities. The commenter identified fourteen steps in the production of a disk, from manufacture of iron oxide to packaging of the final product. Because the nonprofit agency will be performing only two of the fourteen steps, the commenter claimed that the proposed addition is improper under the Committee's law.

The commenter has misstated the Committee's law, which requires that 75% of the total direct labor performed by a nonprofit agency, whether for the Committee's program or not, be performed by people with severe disabilities. The percentage requirement applies to the work actually performed by the nonprofit agency, not the total amount of work required to produce an item. This longstanding Committee position has been upheld by a court decision. In this case, the nonprofit agency estimates that all of the direct labor it will perform on the disk will be performed by people with severe disabilities. It should also be noted that the commenter has informed the Committee that it performs very few of the fourteen steps involved in producing the disk.

The commenter also asserted that its quality standards far exceed the industry standards established by ANSI. It claimed that these high production and testing standards are needed because the Government uses the disk...
in ways and environments which place greater demands on the disk than normal commercial use. The nonprofit agency is required to purchase the blank disks it will process from sources approved by the Government agency which buys the disks. The disks, cartridges and media must meet or exceed ANSI and ISO standards and dimensional requirements. Testing and inspection will be performed in accordance with the Government agency’s requirements. The nonprofit agency has been producing another disk for the same Government agency for the past year and has produced over a million disks with no quality deficiencies. Accordingly, the Committee considers the nonprofit agency capable of producing the disk listed in question as well. After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O’Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Disk, Flexible
7045–01–251–7527

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 93–18254 Filed 7–29–93; 8:45 am]
BILLING CODE 8020–35–P

Procurement List; Proposed Additions
AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 30, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 471(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe economic impact on the current contractors for the commodities, military resale commodities and services.
3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O’Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities, military resale commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Standard BUS Equipment
5999–00–NSH–0001
(Requirements for the U.S. Coast Guard)
Bottle, Applicator
8125–00–488–7952
Nonprofit Agency: Kansas City Association for the Blind, Kansas City, Missouri

Military Resale Commodities

Clothespin, Wood
M.R. 571
Scrubber, Pot and Dish
M.R. 582
Refill, Scrubber, Pot and Dish
M.R. 592
Strainer
M.R. 571
Nonprofit Agency: Alabama Institute for Deaf and Blind, Talladega, Alabama
Can Opener
M.R. 519
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio
Peeler, Vegetable
M.R. 525
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio
Pizza Cutter
M.R. 527
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio
Pastry Brush
M.R. 529
Nonprofit Agency: Alabama Institute for Deaf and Blind, Talladega, Alabama
Clip, Bag
M.R. 544
Whisk, Wire Loop

SUMMARY: Pursuant to the provision of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Director of Military Intelligence Staff Advisory Panel has been scheduled as follows:

DEPARTMENT OF DEFENSE
Office of the Secretary
Meetings
AGENCY: Defense Intelligence Agency
Scientific Advisory Board, DoD.
ACTION: Notice of closed meeting.
SUMMARY: Pursuant to the provision of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Director of Military Intelligence Staff Advisory Panel has been scheduled as follows:

ADDRESSES: Tuesday, August 3, 1993, the Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340–1328.
FOR FURTHER INFORMATION CONTACT: Dr. W. S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328, (202) 373–4830.
SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical issues and advise the Director of Military Intelligence.
Dated: July 26, 1993.
L.M. Bynum, Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILING CODE 5000-08-M

Membership of the Office of the Secretary of Defense Performance Review Board
SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Advanced Research Projects Agency, the Defense Investigative Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities, the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).
The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.
EFFECTIVE DATE: July 1, 1993.
FOR FURTHER INFORMATION CONTACT: Janet E. Thompson, Assistant Director for Executive Personnel and Classification, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (202) 697–8304.
SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group.
Executives listed will serve a one-year renewable term, effective July 1, 1993.
of future naval force capabilities. As part of this study, discussions will also involve officer education, platform development, and future roles and functions.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: J. Kevin Mattomen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, suite 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.


Michael P. Rummel,
LCDR, JAGC, USN, Federal Register Liaison Officer.

DEPARTMENT OF EDUCATION
National Science Scholars Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for the submission of fiscal year 1994 nominations under the National Science Scholars Program.

SUMMARY: The Secretary of Education (the Secretary) announces the closing date and procedures for the State nominating committees approved by the Secretary to submit the names of fiscal year 1994 nominees to the President under the National Science Scholars Program (NSSP) authorized by title VI, part A of the Excellence in Mathematics, Science and Engineering Education Act of 1990, as amended, 20 U.S.C. 5381 et seq. (the Act).

The NSSP supports the National Education Goals, particularly Goals 4 and 5. Goal 4 calls for American students to be first in the world in science and mathematics achievement. Goal 5 calls for Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program advances these goals by providing scholarship assistance and other benefits to students selected by the President for undergraduate study of the physical, life, or computer sciences, mathematics, or engineering.

The Secretary will accept the names of nominees on behalf of the President from the nominating committees of States participating in the NSSP, including the 50 States and the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands. Each State nominating committee must submit for consideration the names and pertinent information of at least four nominees from each congressional district in the State. The Act provides that at least one half of the nominees from each congressional district must be female and all of the nominees must be ranked in order of priority within each congressional district. A State with an approved nominating committee that desires to have a nominee considered for selection as a National Science Scholar must provide each nominee's name, permanent address, home telephone number, social security number, if provided by the nominee, sex, congressional district, congressional representative's or delegate's name for that congressional district, priority ranking within the congressional district, and NSSP subject area in which the nominee intends to major, and specific major, if known.

CLOSING DATE AND MEDIA FOR TRANSMITTING NSSP NOMINEE INFORMATION: A State must provide its NSSP nominations for fiscal year 1994 by—

1. Submitting the nominee information in typewritten format;
2. Submitting the nominee information on a data diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States; or
3. Submitting the nominee information through a modem using a software program on a diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States.

To ensure that State nominees are considered for fiscal year 1994 funds, a State must submit nominee information by November 2, 1993.

STATE NSSP NOMINATIONS DELIVERED BY MAIL: NSSP nominations must be sent to the address provided below.

A State must obtain proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary.

If a State's NSSP nominations are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S.
Postal Service. A State should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office. A State is encouraged to use registered or at least first-class mail.

Each State submitting nominations after the closing date will be notified that its nominees cannot be assured of consideration for fiscal year 1994 funding.

**ADDRESSES:** Nominations that are mailed must be sent to the following address: National Science Scholars Program, U.S. Department of Education, Office of Student Financial Assistance, ROB-3, room 4621, 400 Maryland Avenue, SW., Washington, DC 20202-5453.

**STATE NSSP NOMINATIONS DELIVERED BY HAND:** State NSSP nominations that are hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4621, GSA Regional Office Building #3, Washington, DC 20202-5453. Hand-delivered nominations will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

State nominations that are hand delivered after 4:30 p.m. on the closing date cannot be assured consideration.

**STATE NSSP NOMINATIONS TRANSMITTED THROUGH A MODEM:** NSSP nominations transmitted to the U.S. Department of Education through a modem must be transmitted to (301) 587-2187. modem transmissions must be received by the server (computer) no later than November 2, 1993. The transmission will be acknowledged by the server through transmission of a file to the sender that will display on the sender's computer screen, providing proof of the U.S. Department of Education's receipt of the transmission.

**PROGRAM INFORMATION:** Under the NSSP, the Secretary is authorized to award scholarships to outstanding students selected by the President for the study of physical, life, or computer sciences, mathematics, or engineering. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study to graduating high school students as well as continuation awards of up to $5,000 for up to four additional years of undergraduate study.

**APPLICABLE STATUTORY AND REGULATORY PROVISIONS:** The following statute and regulations are applicable to the fiscal year 1994 NSSP

1. The program statute, 20 U.S.C. 5381 et seq.

2. The National Science Scholars Program regulations in 34 CFR part 652.

3. The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subpart C, §§75.200-75.216, 75.218, and 75.220-75.261 of subpart D, and §§75.580-75.592 of subpart E), 77, 79, 81, 82, 85, and 86.

**DEPARTMENT OF ENERGY**

DEPARTMENT OF ENERGY


**AGENCY:** Department of Energy.

**ACTION:** Notice of Department of Energy.

**SUMMARY:** The Department of Energy (DOE), Chicago Field Office, through the Denver Support Office, announces that pursuant to DOE Financial Assistance Rule 10 CFR 600.14(f), that DOE intends to award a grant to Marine Safety Systems, Inc. to develop an automated sonic system for oil tankers that would identify the location and extent of damage to oil-containing tanker sections and safely and rapidly transport oil from a ruptured section or sections to temporary storage tanks, invented by Mr. Booth B. Strange.

**SUPPLEMENTARY INFORMATION:** DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Marine Safety Systems Inc., would be based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist. The patented invention is an on-board pumps-piping system which uses hydrostatic pressure differentials and placement of suction pipes extending from the upper deck into the tank to quickly transfer cargo. The technology should have a significant impact on energy conservation by substantially reducing the magnitude of loss in accidents involving large oil tankers. The proposed project is deemed meritorious based on the general evaluation in accordance with 600.14(d) and represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 24 months. DOE plans to provide funding in the amount of $99,000.00.

**FOR FURTHER INFORMATION CONTACT:** Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dalles, TX 75247.


Maurice A. Broderick, Deputy Director, Operations Management Support Division.

[FR Doc. 93-18256 Filed 7-29-93; 8:45 am]

BILLING CODE 6000-01-M

Noncompetitive Financial Assistance Award To The National Association of Regulatory Utility Commissioners

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), through the Denver Support Office, announces that pursuant to DOE Financial Assistance Rules 600.7(b)(2), it intends to award a grant to the National Association of Regulatory Utility Commissioners (NARUC) for an Integrated Resource Planning Project. The objective of this activity is to assist the National Association of Regulatory Utility Commissioners and its members, (state utility commissions) and individual utility companies to develop
SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary noncompetitive financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(A) and (D) to the U.S.–ASEAN Council (Council) under Grant Number DE–FG01–93FE29328 to enable the DOE and the Council to jointly coordinate the U.S.–ASEAN Energy/Environment Initiative.


SUPPLEMENTARY INFORMATION: The initiative will consist of a broad effort to assist Indonesia and Thailand, and American companies, in the implementation of Coal Technology Projects. The Council, in conjunction with DOE, will organize two missions to the U.S. from Indonesia and Thailand. These missions will focus on specific areas which are of interest to the electric utilities and government agencies of Thailand and Indonesia, and in which American companies have a competitive advantage. The anticipated project period of the proposed grant is 24 months from the effective date of award.

The DOE has concluded that in accordance with 10 CFR 600.7(b)(2)(i)(A) and (D) that the proposed activity is necessary for the continuation of an activity recently funded by DOE to support a clean coal technology trade mission to Thailand and Indonesia. Competition for this support would have a significant adverse effect on the activity. Follow-on activities to capture immediate trade opportunities identified by the past mission would be jeopardized by competition for support. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

The estimated total annual respondent burden is 100,000, the estimated cost of the project is $124,870 of which $100,000 will be paid for by DOE.


U.S.–ASEAN Council; Financial Assistance Award

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-580
3. 1902-0132
4. Oil, Gas and Electric Fees and Annual Charges
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit; Small businesses or organizations
9. 179 respondents
10. 1 response
11. 4 hours per response
12. 716 hours

The FERC requires information in order to assess annual charges and to review requests for public utilities for waiver from annual charges, imposed under authority provided in the Independent Offices Appropriation Act of 1992 and the Omnibus Reconciliation Act of 1986.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96-551), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1))


Yvonne M. Bishop, Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-18172 Filed 7-29-93; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. TQ93-11-83-000 and TM 93-11-83-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 26, 1993

Take notice that on July 22, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

1st Rev Forty-Fourth Revised Sheet No. 8
1st Rev Forty-Fourth Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) to reflect changes in its projected purchased gas costs and projected Account No. 858 costs. The proposed effective date of the tendered tariff sheets is June 1, 1993.

Carnegie states that the proposed rate changes are necessitated by the implementation of restructured services pursuant to Order No. 636 of Texas Eastern Transmission Corporation (TETCO), Carnegie's former upstream pipeline supplier, effective June 1, 1993. Carnegie states that the purpose of its filing is to correct Carnegie's June 1993 sales rates to reflect the TETCO rates in effect as of June 1, 1993. Carnegie further states that rate changes reflected in the above tariff sheets are the same rates proposed by Carnegie as part of Carnegie's compliance filings submitted in Docket Nos. TQ93-8-63-001, et al., which were rejected by the Commission in a Letter Order dated July 12, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell
Secretary.

[FR Doc. 93-18173 Filed 7-29-93; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. TQ93-8-63-004 and TM93-8-63-004]

Carnegie Natural Gas Company; Compliance Filing

July 26, 1993

Take notice that on July 22, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

3rd Sub Forty-Fourth Revised Sheet No. 8
4th Sub Forty-Fourth Revised Sheet No. 9

The proposed effective date of these revised tariff sheets is June 1, 1993. Carnegie states that it is filing the above tariff sheets in compliance with the Letter Order dated May 27, 1993, issued by the Director of the Office Pipeline and Producer Regulation in this proceeding, as interpreted by the Director's subsequent Letter Order dated July 12, 1993. Carnegie states that, as compared to Carnegie's original April 30, 1993 PGA and TCA filing in this proceeding, the enclosed tariff sheets reflect a PGA demand charge decrease of $0.3186 per dth, a DCA decrease of $0.0105 per dth, and a decrease in the maximum interruptible sales rate under
Rate Schedule SEGSS of $0.0105 per dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20436, in accordance with 18 CFR 385.211 of the Commission’s Rules and Regulations. All such protests should be filed on or before August 2, 1993. Copies of this filing are available for public inspection.

Lois D. Cashell, Secretary. [FR Doc. 93-18171 Filed 7-29-93; 8:45 am] BILLING CODE 7171-01-M

(Project No. 2590-000)
Consolidated Water Power Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 26, 1991, Consolidated Water Power Company, licensee for the Wisconsin River Diversification Project No. 2590, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission’s regulations thereunder. Project No. 2590 is located on the Wisconsin River in Portage County, Wisconsin.

The license for Project No. 2590 was issued for a period ending June 30, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise dispositions disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2590 is issued to Consolidated Water Power Company for a period effective from June 30, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Wisconsin River Diversification Project No. 2590 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell, Secretary. [FR Doc. 93-18179 Filed 7-29-93; 8:45 am] BILLING CODE 7171-01-M

(Project No. 2366-000)
Maine Public Service Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 27, 1991, Maine Public Service Company, licensee for the Millinocket Project No. 2366, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission’s regulations thereunder. Project No. 2366 is located on Millinocket Stream in Piscataquis County, Maine.

The license for Project No. 2366 was issued for a period ending June 30, 1992. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b),
to continue project operations until the Commission issues someone else a license for the project or otherwise disposes of the project's prior license. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensees of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise disposes of the project.

If the project is not subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2536 is issued to Niagara of Wisconsin Paper Corporation for a period effective July 1, 1993, through June 30, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. Notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission otherwise orders.

If the project is not subject to section 15 of the FPA, notice is hereby given that Niagara of Wisconsin Paper Corporation is authorized to continue operation of the Little Quinnesec Falls Project No. 2536 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell, Secretary.

[FR Doc. 93-18360 Filed 7-29-93; 8:45 am]
BILLING CODE 6717-01-M

[Northern States Power Co.; Authorization for Continued Project Operation]

July 26, 1993.

On March 27, 1991, Northern States Power Company, licensee for the Trego Project No. 2711, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2711 is located on the Namekagon River in Washburn County, Wisconsin.

The license for Project No. 2711 was issued for a period ending March 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA.

If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 556(c), and as set forth at 18 CFR 16.21(a), if the licensees of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise disposes of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2711 is issued to Northern States Power Company for a period effective April 1, 1993, through March 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission otherwise orders.

If the project is not subject to section 15 of the FPA, notice is hereby given that Northern States Power Company is authorized to continue operation of the Trego Project No. 2711 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell, Secretary.

[FR Doc. 93-18178 Filed 7-29-93; 8:45 am]
BILLING CODE 6717-01-M

[Swift Creek Power Company, Inc.; Authorization for Continued Project Operation]

July 26, 1993.

On November 29, 1990, Swift Creek Power Company, Inc., licensee for the Swift Creek Project No. 1651, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1651...
is located on Swift Creek and the Salt River in Lincoln County, Wyoming.

The license for Project No. 1651 was issued for a period ending November 30, 1992. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project’s prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1651 is issued to Swift Creek Power Company, Inc., for a period effective December 1, 1992, through November 30, 1993, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 1993, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Swift Creek Power Company, Inc. is authorized to continue operation of the Swift Creek Project No. 1651 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell, Secretary.

[FR Doc. 93–18175 Filed 7–29–93; 8:45 am] BILLING CODE 6717–01–M

[Project No. 2394–000]
Wisconsin Electric Power Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 20, 1991, Wisconsin Electric Power Company, licensee for the Chalk Hill Project No. 2394, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission’s regulations thereunder. Project No. 2394 is located on the Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

The license for Project No. 2394 was issued for a period ending June 30, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project’s prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1651 is issued to Swift Creek Power Company, Inc., for a period effective December 1, 1992, through November 30, 1993, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 1993, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Wisconsin Electric Power Company is authorized to continue operation of the Chalk Hill Project No. 2394 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell, Secretary.

[FR Doc. 93–18175 Filed 7–29–93; 8:45 am] BILLING CODE 6717–01–M

[Project No. 710–000 Wisconsin]
Wisconsin Power and Light Co.; Meeting

July 26, 1993.

a. Date and Time of Meeting: August 16, 1993 at 10 a.m.
b. Place: First Floor Auditorium, Wisconsin State Historical Society, 816 State Street, Madison, Wisconsin.
c. FERC Contacts: James T. Griffin (202) 219–2799; Ed Lee (202) 219–2809
d. Purpose of the Meeting: The Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the Wisconsin State Historic Preservation Officer intend to execute a Statewide Programmatic Agreement for the Management of properties listed on or eligible for listing on the National Register of Historic Places that may be affected by issuing new licenses to existing hydroelectric projects in the State of Wisconsin. A draft Programmatic Agreement has been developed by these three parties and provided to other interested parties for their comment. At this meeting, participants will be afforded the opportunity to ask questions and present comments, concerns, and observations about the draft Programmatic Agreement prior to its being finalized for execution.

e. Proposed Agenda: (1) Discussion of the draft Programmatic Agreement.
f. All local, state and Federal agencies, licensees, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. Questions should be directed to Messrs. Griffin and Lee at the numbers listed above.

Lois D. Cashell, Secretary.

[FR Doc. 93–18213 Filed 7–29–93; 8:45 am] BILLING CODE 6717–01–M

[Rate Order No. SEPA–31]
Southeastern Power Administration; Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice.

SUMMARY: On July 22, 1993, the Acting Assistant Secretary, Energy Efficiency and Renewable Energy, confirmed and approved, on an interim basis, thirteen replacement Rate Schedules, GA–1–D, GA–2–D, GA–3–C, GU–1–D, ALA–1–H,
The rates were approved on an interim basis through September 30, 1998, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on October 1, 1993.


Robert I. San Martin, Acting Assistant Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

In the Matter of Southeastern Power Administration—Georgia-Alabama-South Carolina Projects’ Power Rates.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Assistant Secretary Conservation and Renewable Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. The Office of the AS/CE was subsequently redesignated as the Assistant Secretary for Energy Efficiency and Renewable Energy by the Secretary of Energy on March 3, 1993.

Alternative two proposed a two tier rate. The first tier is an extension of current rates for five years. The second, higher tier, would automatically go into effect when the Russell pumping units are declared commercially operable during the 5 year period.

All comments were evaluated by Southeastern. Six substantive comments are address below.

Comment 1

Given the uncertainty surrounding the date that the pumping units will become commercially operable, extend the modified rate in alternative one for five years instead of three.

Response

Most of the comments supported extending the three year rate for a period of five years. Southeastern agrees with our preference customers. We are extending the existing capacity and energy rates for five years.

Comment 2

Support for the proposed rates is conditioned upon the current allocations of SEPA capacity and energy to SEPA’s customers in the Georgia-Alabama-South Carolina System.

Response

The allocation of power is a Power Marketing Policy issue and is not addressed in the rate filing.

Comment 3

How will the rates be modified when the Richard B. Russell pumping units become commercially operable?

Response

Southeastern has contract agreements with each of our customers that allow us to raise rates on October 1st of any year. When the units are declared commercially operable, we will initiate a rate adjustment to be effective the next feasible October 1st to begin recovering the costs. For example, if the units became commercially operable in August, it would not be feasible to prepare a final rate study before October of the following year.

Comment 4

Has Southeastern given any consideration to not collecting the tandem charge from those customers that were providing their own transmission?

Response

Southeastern established the tandem rate on October 1, 1985. The tandem rate was established to recover the cost of wheeling power to customers in Florida and Mississippi. Charging customers in Florida and Mississippi the cost of wheeling power across multiple transmission systems would result in very high transmission charges to these customers. The tandem transmission charge was established as an equitable means of sharing these costs.

Comment 5

Will the tandem wheeling charge decrease from $.20 per KW to $.17 per KW for both Proposals?

Response

Yes. We have a better estimate of the transmission costs associated with completing the AEC West Point transmission line. The costs are lower than estimated in the previous rate filing which allows us to decrease the tandem wheeling rate.

Comment 6

Explain the $.18 per KW wheeling charge included in the second tier of Proposal Two.

Response

The increase accounts for the added capacity of the Richard B. Russell pumping units.

Discussion

System Repayment

An examination of Southeastern’s system power repayment study, prepared in May 1993, for the Georgia-Alabama-South Carolina System of Projects, reveals that over the 5-year rate review period, current revenues are adequate to repay all system power costs within their repayment life. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to consumers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National
Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

**Availability of Information**

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 100 Independence Avenue, SW., Washington, DC 20585.

**Submission to the Federal Energy Regulatory Commission**

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 1993, and ending no later than September 30, 1998.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1993, attached Wholesale Power Rate Schedules GA-1-D, GA-2-D, GA-3-C, GU-1-D, ALA-1-H, ALA-3-D, MISS-1-H, MISS-2-D, SC-3-C, SC-4-B, CAR-3-C, SCE-2-C, and GAMF-3-B. The rate schedules shall remain in effect on an interim basis through September 30, 1998, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

**GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES**

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<tr>
<td>GA-1-D:</td>
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<tr>
<td>Capacity ($/KW/MO)</td>
<td>2.67</td>
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<tr>
<td>Energy (Mills/KWH)</td>
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<tr>
<td>Transmission ($/KW/MO)</td>
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**GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES—Continued**

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<td>GA-3-C:</td>
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<td>Capacity ($/KW/MO)</td>
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<td>Tandem Transmission ($/KW/MO)</td>
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**Submission to the Federal Energy Regulatory Commission**

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**Order**

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**GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES**

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The algorithm for calculating the pumping energy rate is given below.

**Wholesale Power Rate Schedule GAMF-3-B For Pumping Energy**

**Monthly Rate**

The rate for energy sold under this rate schedule for the months specified shall be:

\[ \text{Energy Rate} = \text{C}_{\text{avg}} + F \times (1 - L) \]

[computed to the nearest $.00001 (1/100 mill) per kwh]
Where:

\[ E_T = E_p \times (1 - L_p) + E_s^{t-1} \]

(Total energy for pumping is equal to the energy purchased, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

\[ C_s = C_{wav}^{t-1} \times E_s^{t-1} \]

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

\[ P = \text{Energy conversion factor for pumping at the Carters Project (by contract, } 70 \text{ or } 70 \text{ percent.)} \]

\[ L_e = \text{Weighted average energy loss factor on energy delivered by the facilitator to the customer. (This value will be a constant, currently estimated to be } 0.0520 \text{ or } 5.20 \text{ percent.)} \]

\[ C_p = \text{Dollars cost of energy purchased for pumping during the specified month, including all direct costs to deliver energy to the project. (Wheeling charges are expected to be } \$0.27 \text{ per mwh.)} \]

\[ E_s^{t-1} = \text{Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.)} \]

\[ C_{wav}^{t-1} = \text{Weighted average cost of energy for pumping for the month immediately preceding the specified month.)} \]

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer’s contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator’s system.

**Billing Month**

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

**Conditions of Service:**

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Facilitator on its side of the delivery point.

Issued in Washington, DC, this 22 day of July 1993.

Robert L. San Martin,
Acting Assistant Secretary.

[FR Doc. 93–18122 Filed 7–29–93; 8:45 am]

**Office of Fossil Energy**

[FE Docket No. 93–73–NG]

**AIG Trading Corp.: Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 14, 1993, of an application filed by AIG Trading Corporation, Inc. (AIG) requesting blanket authorization to import up to 200 Bcf of natural gas from Mexico and to export up to 200 Bcf of natural gas to Mexico over a two-year period beginning with the date of the first import or export delivery. AIG states it would use existing pipeline facilities to transport the gas. Also, AIG would advise DOE of the date of first deliveries and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, if applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 30, 1993.


**FOR FURTHER INFORMATION CONTACT:**


**SUPPLEMENTARY INFORMATION:** AIG is a Delaware corporation with its headquarters in Greenwich, Connecticut. AIG, which is a subsidiary of American International Group, Inc., is engaged in the business of dealing and trading in commodities, including natural gas. Under the authority requested, AIG will import and export the gas under spot and short-term purchase arrangements, either on its own behalf or as the agent for others. The specific terms of these arrangements would be negotiated individually, including the price and volumes. The decision on AIG’s request for import authority will be made consistent with DOE’s gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration determining whether it is in the public interest (49 FR 6051, February 22, 1984). In reviewing AIG’s export proposal, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE’s policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. AIG asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing
Acid Rain Program: Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 7 utility plants: Des Moines, George Neal, Milton Kapp and Riverside in Iowa, Quindaro in Kansas, and Ashbury and New Madrid in Missouri.

FOR FURTHER INFORMATION: Jon Knodel at (919) 551–7622, Air and Toxics Division, contact EPA Region 7 (ARTX), 726 Minnesota Ave., Kansas City, Kansas 66101.

Dated: July 26, 1993.

Brian McLean,
Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FRL Doc. 93–18228 Filed 7–29–93; 8:45 am]

BILLING CODE 6560–50–M

Acid Rain Program: Notice of Draft Permits And Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Permit and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Acid Rain permit to 10 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on draft permits must be received no later than August 30, 1993 or the publication date of this notice in local newspapers.

ADDRESS:
Administrative Records

The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "SUPPLEMENTARY INFORMATION."

Comments

Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in Massachusetts and New Hampshire: Linda Murphy, Director, Air, Pesticides, and Toxics Division, EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

For plants in Indiana, Michigan and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter’s name, address, and telephone number, and the commenter’s interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR part 72, and issues not relevant to the permit.

Hearings

To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION: Contact the following persons for more information about the draft permits:

For plants in Massachusetts and New Hampshire, Ian Cohen, (617) 565–3229, Air Permits and Assessment Section, EPA Region 1 (APA), (address above).

For plants in Indiana, Patrick Gimino at (312) 353–8651; for plants in Michigan, Beth Burns at (312) 886–
2703. Air and Radiation Division, EPA Region 5 (A-18]), (address above).

SUPPLEMENTARY INFORMATION

Permits

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996-99.

EPA recently stated, in a July 16, 1993 Federal Register notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370, 38371 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. Id. As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. Id. EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996-1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. Id. Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995-99.

Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995-99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for the following utility plants:

Region 1

Mount Tom in Massachusetts: 11,444 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 1; a conditional substitution plan for 1995 in which Merrimack units 1 and 2 designate unit 1 as a substitution unit; and a conditional reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

Merrimack in New Hampshire: 9,922 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each year 1995–1999 to unit 1; 21,421 Table 1 allowances in each year 1995–1999 to unit 2; two conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designated Mount Tom unit 1 and Newington unit 1 as substitution units; and two reduced utilization plans, one for each unit, that rely on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

Newington in New Hampshire: 20,587 substitution allowances in 1995 to unit 1; a conditional substitution plan in which Merrimack units 1 and 2 designate unit 1 as a substitution unit; and a conditional reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

Region 5

Breed in Indiana: 20,280 Table 1 allowances in each year 1995–1999; and a reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is John M. McManus.

B C Cobb in Michigan: 5,944 substitution allowances in 1995 to unit 4; 6,110 substitution allowances in 1995 to unit 5; two conditional substitution plans for 1995, one for each unit, in which J H Campbell units 1 and 2 designate units 4 and 5 as substitution units; and two conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

Cobb in Michigan: 4,543 substitution allowances in 1995 to unit 1; 4,652 substitution allowances in 1995 to unit 2; 5,949 substitution allowances in 1995 to unit 3; three conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate J H Campbell unit 3, B C Cobb units 4 and 5, and Dan E Karn units 1, 2, 3, and 5. Dan E Karn units 1, 2, and 5, and J C Weedock units 2 and 4, and J R Whiting units 1, 2 and 3 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

J R Whiting in Michigan: 4,543 substitution allowances in 1995 to unit 1; 4,652 substitution allowances in 1995 to unit 2; 5,949 substitution allowances in 1995 to unit 3; three conditional substitution plans for 1995, one for each substitution unit, in which J H Campbell units 1 and 2 designate units 4 and 5 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.
Avon Lake in Ohio: 33,413 Table 1 allowances in each year 1995–1999 to unit 12; 12,771 Table 1 allowances in each year 1995–1999 to unit 11; 9,849 substitution allowances in 1995 to unit 9; 8,648 substitution allowances in 1995 to unit 10; two conditional utilization plans for 1995, one for each substitution unit, in which unit 12 designates units 9 and 10 as substitution units; two conditional reduced utilization plans, for units 9 and 10, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; a reduced utilization plan for unit 12 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation; and a reduced utilization plan for unit 11 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. A final conditional reduced utilization plan in which unit 12 designates units 9, 8,648 substitution allowances in each year 1995–1999 to unit 12; 1995-1999 to unit 11; 9,849 substitution allowances in 1995 to unit 9; 8,648 substitution allowances in 1995 to unit 10; two conditional utilization plans for 1995, one for each substitution unit, in which unit 12 designates units 9 and 10 as substitution units; two conditional reduced utilization plans, for units 9 and 10, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; a reduced utilization plan for unit 12 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation; and a reduced utilization plan for unit 11 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

Addresses
The administrative records for each plant may be viewed during normal operating hours at the following locations:

Region 1
For plants in Massachusetts and New Hampshire: EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

Region 5
For plants in Indiana: EPA Region 5, Ralph H. Metcalfe Federal Bldg., room 1822, 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Michigan and Ohio: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 17th Floor, 77 West Jackson Blvd., Chicago, IL 60604.

Dated: July 26, 1993.

Brian McLean,
Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–18229 Filed 7–29–93; 8:45 am]
BILLING CODE 6650-50-M

[FRL–4665–3]
Request for Suggestions of Candidates for Membership on the National Advisory Council for Environmental Policy and Technology

SUMMARY: The U.S. Environmental Protection Agency (EPA) hereby requests suggestions of candidates for membership on the National Advisory Council for Environmental Policy and Technology (NACEPT), an Advisory Council to EPA’s Administrator established under the Federal Advisory Committee Act (FACA), as amended (Public Law 92–463, 5 U.S.C., App.). The Advisory Council provides advice and counsel to the Administrator on broad, cross-cutting domestic and international environmental policy and technology issues. The membership of the Advisory Council is comprised of senior officials drawn from business and industry; Federal, State and local government organizations; academic, education and training institutions; non-governmental associations, environmental, trade and labor organizations and public interest groups.

DATES: Submit suggestions of candidates no later than August 30, 1993. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, position, organization, address and telephone number. Candidates must submit a resume of their background, experience and other relevant information.


FOR FURTHER INFORMATION CONTACT: Abby J. Pirmie or Gordon Schisler at the above address or call 202–260–7567.

The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Copies of the Advisory Council Charter, current membership list and annual report are available upon request. The Advisory Council provides advice, consultation and makes recommendations on a continuing basis to the Administrator. The Council is focusing on improving domestic and global environmental protection with sustainable development as a primary theme. The Council is also involved in advancing innovative pollution control technology and pollution prevention activities; cooperative, mutually supportive partnerships and increasing communication among all levels of government, the business community, industry and the academic institutions to improve the effectiveness of Federal and non-Federal resources directed at solving environmental problems. NACEPT conducts meetings, analyzes problems, presents findings and makes recommendations and performs other necessary activities at the Administrator’s request. The Advisory Council is constituted into the following standing committees: Policy Integration, Technology Innovation and Economics, Environment, Environmental Protection Agency, Superfund, Trade and Environment, Environmental Information and Assessments. Each member sits on at least one committee. The Advisory Council meets at least annually and standing committees meet as necessary. Members are appointed as representatives of non-federal interests. No honoraria or salaries are provided for members of the Advisory Council. Compensation for travel and per diem expenses while attending meetings may
be provided. Members serve for 2 year terms.

Suggestions for the list of candidates should be submitted no later than August 30, 1993.

Abby J. Pimrie,
Director, Office of Cooperative Environmental Management.

[FR Doc. 93–18231 Filed 7–29–93; 8:45 am]
BILLING CODE 0560–50–M

[ER-FRL–4623–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 12, 1993 through July 16, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs


Summary: EPA expressed environmental concerns for potential impacts to water quality and wetlands. EPA felt that the DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment.

ERP No. D–AFS–J65204–MT Rating EC2, Tolan Creek Timber Sale, Harvest Timber and Road Construction, Tolan Creek, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summary: EPA expressed environmental concerns regarding the adequacy of the monitoring program to measure adverse effects to aquatic habitat. EPA also recommended expanding the wetlands impact analysis and air quality analysis.


Summary: EPA had environmental concerns primarily based on the need for greater funding and possible staff support to implement six of the action alternatives including the preferred alternative. Additional information was needed to describe monitoring plans, the funding process and the contingency plans for each alternative if adequate funding is not available.


Summary: EPA expressed environmental concerns regarding the lack of sufficient information pertaining to the no action alternative, criteria to be used for decisions regarding the component mixes of the proposed action, and the need to assess indirect and cumulative impacts. EPA recommended that the final PEIS include an evaluation of the impacts associated with the proposed action, and that subsequent environmental documentation include sufficient baseline data so that the comparative merits of each alternative can be evaluated.

Final EISs


Summary: EPA supported the development and selection of a new modified preferred alternative but expressed concerns about water quality and fisheries impacts to Beaver, Dry, and Arrasta Creeks.

ERP No. F–FSW–J28018–ND, Lake Ilo Dam and Reservoir Modification Project, Elimination of Existing Dam Safety Deficiencies and Section 404 Permit Issuance, Lake Ilo National Wildlife Refuge, Spring Creek, Dunn County, ND.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

Dated: July 26, 1993.
William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 93–18232 Filed 7–29–93; 8:45 am]
BILLING CODE 0560–50–U

[ER-FRL–4623–1] Environmental Impact Statements; Availability

EIS No. 930248, Final EIS, UAF, TX, Bergstrom Air Force Base (AFB) Disposal and Reuse, Implementation and Possible Permits Issuance, Travis County, TX, Due: August 30, 1993, Contact: Lt. Col. Gary Baumgartel (512) 536-3869.

EIS No. 930249, Final EIS, COE, MS, Abiac Creek Watershed Project, Demonstration Erosion Control Project and Sediment and Flood Control Measures, Implementation, Yazoo Basin, Mathews Brake National Wildlife Refuge, Carroll, Holmes and Leflore Counties, MS, Due: September 13, 1993, Contact: Wendell King (601) 631-5967.

EIS No. 930250, Draft Supplement, AFS, CA, WA, OR, Northern Spotted Owl Management Plan, Updated Information concerning the Use of Additional Chemicals at Wind River Nursery, Gifford Pinchot National Forest and J. Herbert Stone Nursery, Rogue River National Forest, Implementation, several Counties, OR and Skamania County, WA, Due: August 30, 1993, Contact: Robert T. Jacobs (503) 326-7883.

The US Department of Agriculture's, Forest Service and the US Department of the Interior's, Bureau of Land Management are Joint Lead Agencies for this project.

EIS No. 930251, Final Supplement, AFS, WA, OR, Pacific Northwest Region National Forests Nursery Pest Control Management Plan, New Information concerning the Use of Additional Chemicals at Wind River Nursery, Gifford Pinchot National Forest and J. Herbert Stone Nursery, Rogue River National Forest, Implementation, several Counties, OR and Skamania County, WA, Due: August 30, 1993, Contact: Sally Campbell (503) 326-7755.

EIS No. 930252, Final EIS, USN, GU, US Navy Facilities Relocation and Development from the Republic of the Philippines to the Territory of Guam, Implementation and COE Section 404 Permit, GU, Due: August 30, 1993, Contact: Stanley Uehara (808) 471-9338.

Amended Notices


William D. Dickerson, Deputy Director, Office of Federal Activities. [FR Doc. 93-18233 Filed 7-29-93; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4685-8]

Public Water System Supervision Program Revision for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Indiana is revising its Public Water System Supervision (PWSS) primary program. The Indiana Department of Environmental Management (IDEM), has adopted: (1) Drinking water regulations for total coliform that correspond to the NPDWR for total coliform promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27544-27568); and (2) drinking water regulations for the treatment of surface water that correspond to the NPDWR for surface water treatment promulgated by the U.S. EPA on June 29, 1989, (54 FR 27486-27541). The U.S. EPA has completed its review of Indiana's PWSS primary program revision.

The U.S. EPA has determined that the Indiana Surface Water Treatment and Total Coliform rule revisions meet the requirements of the Federal rules. Therefore, the U.S. EPA is proposing to approve these revisions.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before August 30, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Miguel Del Toral (WD-17), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Indiana. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Indiana. The hearing notices will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on August 30, 1993. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Branch, Indiana Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46204-6015.

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Miguel Del Toral, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886-5253.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.
Drinking Water Program Revision for the State of New Jersey

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New Jersey is revising its approved Public Water Supply Supervision Program. The State of New Jersey has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544).

The USEPA has determined that New Jersey’s TCR regulations are no less stringent than the corresponding Federal regulations and New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve New Jersey’s TCR program revision.

Any request for a public hearing shall be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a request or a public hearing is received and the Regional Administrator determines that the request is appropriate, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation. All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation.


Dated: July 6, 1993.

Herbert Barrack,
Acting Regional Administrator, EPA, Region II.

[FR Doc. 93-18235 Filed 7-29-93; 8:45 am]
BILLING CODE 6560-50-M

Public Water System Supervision Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Primacy Program. The State of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Surface Water Treatment Rule (SWTR) promulgated by USEPA on June 29, 1989 (54 FR 27486).

The USEPA has determined that New York’s SWTR regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, the USEPA has determined to approve the State of New York’s requested revision to its Public Water System Supervision Primacy Program for compliance with the NPDWR for the Surface Water Treatment Rule.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation.

For further information, you may contact:

[FR Doc. 93-18234 Filed 7-29-93; 8:45 am]
BILLING CODE 6560-50-P
Drinking Water Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the state of New York is revising its approved Public Water Supply Supervision Program. The state of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544). The USEPA has determined that New York's TCR regulations are no less stringent than the corresponding Federal regulations and New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve New York's TCR program revision.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a request for a public hearing is made within the required thirty-day (30) period, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this Federal Register Notice. Any request for a public hearing shall include the following information:

1. The name, address and telephone number of the individual organization or other entity requesting a hearing;

2. A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

3. The signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.


Drinking Water Program Revision for the Territory of the Virgin Islands

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Territory of the Virgin Islands is revising its approved Public Water Supply Supervision Program. The Territory of the Virgin Islands has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544).

The USEPA has determined that the Virgin Islands' TCR regulations are no less stringent than the corresponding Federal regulations and the Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve the Virgin Islands TCR program revision. All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a request for a public hearing is made within the required thirty-day (30) period, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this Federal Register Notice. Any request for a public hearing shall include the following information:

1. The name, address and telephone number of the individual organization or other entity requesting a hearing;

2. A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

3. The signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.


FOR FURTHER INFORMATION, YOU MAY CONTACT: Walter E. Andrews, Chief,

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDES)

Date: July 6, 1993.

Herbert Barrack,
Acting Regional Administrator, EPA, Region II.

[FR Doc. 93–18237 Filed 7–29–93; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4665–2]

Science Advisory Board Clean Air Scientific Advisory Committee; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting to review the two documents: (1) The Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics, and (2) Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum are available from Mr. John Haines, U.S. EPA, Office of Air Quality Planning and Standards, (MD–12), Research Triangle Park, NC, 27711, telephone (919) 541–5533. Members of the public who wish to provide comments directly to EPA on the Staff Paper Supplement may do so by sending their written comments to Dr. Kotchmar at the above address. Comments must be received by EPA no later than 30 calendar days following the publication date of this notice in the Federal Register.

2. Single copies of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum are available from Mr. John Haines, U.S. EPA, Office of Air Quality Planning and Standards, (MD–12), Research Triangle Park, NC, 27711, telephone (919) 541–5533. Members of the public who wish to provide comments directly to EPA on the Staff Paper Supplement may do so by sending their written comments to Mr. Haines at the above address. Comments must be received by EPA no later than 30 calendar days following the publication date of this notice in the Federal Register.

Opportunity to comment directly to the Clean Air Scientific Advisory Committee on these documents or related issues is discussed below.

For Further Information

For additional information concerning this meeting, please contact Mr. Randall C. Bond, Designated Federal Official, or Ms. Janice Jones, Management Analyst, at (202) 260–8414, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Those individuals requiring a copy of the agenda should contact Ms. Lori Gross at the phone number above.

Opportunity for Providing Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Ms. Janice Jones not later than Thursday, August 12, 1993 in order to be included on the Agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written statements of any length (at least 30 copies) may be provided to the Committee up until the meeting. These written statements may be the same as those provided directly to EPA or may be tailored to the Committee. Please send these comments to Ms. Jones at the address given above. The Science Advisory Board expects that public statements presented at its meeting will not be repetitive of previously submitted oral or written statements.

Dated: July 20, 1993.

Donald G. Barnes,
Staff Director, Science Advisory Board.

[FR Doc. 93–18238 Filed 7–29–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–837]

Comments Invited on Florida Public Safety Plan Amendment


On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On June 28, 1993, Region 9 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 27, 1993 and reply comments on or before September 13, 1993.

Comments should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington DC 20554 and should clearly identify them as submissions to Gen. Docket 90–119 Florida-Public Safety Region 9.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–6112.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 93–18145 Filed 7–29–93; 8:45 am]
BILLING CODE 6712–01–M

[DA 93–938]

Comments Invited on Louisiana Public Safety Plan Amendment


On December 19, 1990, the Commission accepted the Public Safety Plan for Louisiana (Region 18). On July 13, 1993, Region 18 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 18 plan, the Commission is soliciting comments from the public before taking action. (See Report and
Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 27, 1993 and reply comments on or before September 13, 1993. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to Gen. Docket 90-408 Louisiana-Public Safety Region 18.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FRC Doc. 93-18146 Filed 7-29-93; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Iceland Steamship/Samskip Slot Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011424.
Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties:
Iceland Steamship Company, Ltd. ("Iceland")
Samskip hf. ("Samskip")

Synopsis: The proposed Agreement would permit Samskip to charter space on vessels owned or operated by Iceland in the trade between U.S. North Atlantic ports and Reykjavik, Iceland.

Dated: July 26, 1993.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.

[FR Doc. 93-18200 Filed 7-29-93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cognitive Function and Hypoglycemia in Children With IDDM

AGENCY: National Institute of Child Health and Human Development (NICHD), National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The Office for Protection from Research Risks (OPRR) convened a panel of experts pursuant to the requirements of 45 CFR part 46, subpart D, section 407, concerning a proposed protocol entitled "Cognitive Function and Hypoglycemia in Children with IDDM." The grant number is 1R01 HD29487-01A1. Because the participants in this study would be children as research subjects, DHHS regulations regarding the involvement of children as subjects (45 CFR part 46, subpart D, section 407(a) and (b)) apply. OPRR has made an initial determination that these regulatory requirements would be met only after the informed consent and assent documents had been rewritten, submitted to, and approved by OPRR, and recommended that the protocol be approved contingent upon submission of acceptable documents.

Public review and comment are solicited pursuant to the requirements of 45 CFR part 46, subpart D, section 407.

DATES: To be assured of consideration, comments must be received on or before 5 p.m., September 17, 1993.

ADDRESSES: Please send comments or requests for additional information to Diane L. Aiken, Assurance Coordinator, Division of Human Subject Protections, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Building 31, room SB63, Bethesda, Maryland, 20892.

FOR FURTHER INFORMATION CONTACT: Diane L. Aiken, Office for Protection from Research Risks, National Institutes of Health, Telephone (301) 496-7041 (not a toll free number).

SUPPLEMENTARY INFORMATION: DHHS regulations regarding the involvement of children as research subjects specify that research protocols involving risks significantly greater than minimal and offering no prospect of direct benefit to individual subjects may not be supported unless the research has been reviewed by a panel of experts (45 CFR part 46, subpart D, section 407(a) and (b)).

The Office for Protection from Research Risks (OPRR), Office of Extramural Research (OER), National Institutes of Health, received a request from the Institutional Review Board (IRB) of the Children's Hospital of Pittsburgh to convene a panel of experts pursuant to 45 CFR part 46, subpart D, section 407. The request referenced a protocol titled "Cognitive Function and Hypoglycemia in Children with IDDM" (1R01 HD29487-01A1). The IRB determined that the research involved greater than minimal risk and offered no prospect of direct benefit to the individual children who were to be the normal control subjects.

OPRR convened such a panel of experts under authority delegated by the Secretary of HHS. OPRR has made an initial determination, subject to public comment, that the proposed protocol may be supported by DHHS contingent...
upon major modifications in the informed consent documents and the
assent procedure. Recruitment processes
must be clarified. Once this additional
information has been submitted to and
approved by OPRR, the research would
be in conformance with 45 CFR 46.407,
and 45 CFR 46.408.

The Office for Protection from
Research Risks, National Institutes of
Health makes this initial determination
on behalf of the Secretary of HHS.
Public review and comment are
solicited pursuant to the requirements
of 45 CFR part 46, subpart D, section
407.

Ruth L. Kirschstein,
Acting Director, National Institutes of Health.[FR Doc. 93-18240 Filed 7-29-93; 8:45 am]
BILLING CODE 4140-01-M

National Center for Research
Resources; Notice of Meeting

Notice is hereby given that the
National Center for Research Resources
(NCRR), National Institutes of Health,
will hold a meeting to draft a strategic
plan. The 3-day meeting is scheduled
for the Hyatt Dulles, 2300 Dulles Corner
Blvd., Herndon, Virginia on:
September 28, 1993 5 p.m.—9 p.m.
September 29, 1993 8:30 a.m.—5 p.m.
September 30, 1993 8:30 a.m.—4 p.m.

Individuals who are interested in
obtaining more information about the
meeting should contact Caroline
Holloway, Ph.D., Director, Office of
Science Policy, NCRR/NIH, 9000
Rockville Pike, Bldg. 12A, rm. 4047,
Bethesda, MD 20892—1012, 301—496—
2992.

Ruth Kirschstein,
Acting Director, NIH.[FR Doc. 93-18143 Filed 7-29-93; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office
of Management and Budget for
Clearance

Each Friday the Public Health Service
(PHS) publishes a list of information
collection requests it has submitted to
the Office of Management and Budget
(OMB) for clearance in compliance with
the Paperwork Reduction Act (44 U.S.C.
chapter 35). The following requests have
been submitted to OMB since the list
was last published on Friday, July 16,
1993.

Copies of the information collection
requests may be obtained by calling the
PHS Reports Clearance Officer on (202)
709—7100.

1. Medical Device Recall Cost
Survey—New—To assess industry
benefits from the Food and Drug
Administration (FDA) regulations
associated with the Safe Medical
Devices Act, the cost of medical device
product recalls is needed. A random
survey of device manufacturers that
have recently conducted product recalls
will provide quantitative information on
these costs and allow FDA to calculate
these benefits pursuant to E.O. 12291.
Respondents: Businesses or other for-
profit, Small businesses or
organizations. Number of Respondents:
264; Number of Responses Per
Respondent: 1; Average Burden Per
Response: .6731 hr.; Estimated Annual
Burden: 178 hours.

2. Standardized Reporting System and
Associated Epidemiologic Investigations
of Occupationally-Related Infection
with Human Immunodeficiency Virus
in Health Care and Public Safety
Meetings—0920—2082—The data
collection instrument is designed to
gather information on documented or
presumed occupational exposure to HIV
and to establish whether seroconversion
or an illness consistent with an acute
retroviral illness has occurred.
Respondents: Individuals or
households: Number of Respondents:
100; Number of Responses Per
Respondent: 1; Average Burden Per
Response: 1 hr.; Estimated Annual
Burden: 100 hours.

3. NIH Consultant Information File
System—0925—0358—This information
is collected from scientists and other
experts to identify potential consultants
and to appoint members to serve on
committees that review and offer
recommendations to the National
Institutes of Health on grants,
cooperative agreements, or contract
proposals. Respondents: Individuals or
households; Businesses or other for-
profit; Federal agencies or employees;
Small businesses or organizations.

<table>
<thead>
<tr>
<th>Title</th>
<th>Number of Respondents</th>
<th>Number of Responses per Respondent</th>
<th>Average Burden per Response (hours)</th>
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<td>Initial Consultant Information</td>
<td>3,075</td>
<td>1</td>
<td>.50</td>
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<tr>
<td>Consultant Information Update</td>
<td>6,833</td>
<td>1</td>
<td>.25</td>
</tr>
</tbody>
</table>

Estimated Total Annual Burden..............3,246

4. Maternal and Child Health Block
Grant Program: Application and Annual
Report—New—This is a request for
approval of the collection of information
from the 59 States and jurisdictions in
applications and annual reports, to
qualify for allotments of funds
authorized by section 502 of the Social
Security Act, for services and the
development of service systems for
pregnant women, mothers, infants,
children, and adolescents and children
with special health care needs.
Respondents: State or local
governments.

<table>
<thead>
<tr>
<th>Title</th>
<th>Number of Respondents</th>
<th>Number of Responses per Respondent</th>
<th>Average Burden per Response (hours)</th>
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<tr>
<td>Application Annual Report</td>
<td>59</td>
<td>1</td>
<td>847</td>
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<tr>
<td></td>
<td>59</td>
<td>1</td>
<td>163.5</td>
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</tbody>
</table>

Estimated Total Annual Burden.............59,625

5. Childhood Lead Poisoning Program
Quarterly Report—0920—0282—The
Centers for Disease Control (CDC)
arounds grants to State and community
health agencies as the principal delivery
points for childhood lead screening
and related medical and environmental
management activities. In order to
properly manage recipient activities,
CDC requests quarterly reports from the
recipients. Respondents: State or local
governments; Number of Respondents:
35; Number of Responses Per
Respondent: 4; Average Burden Per
Response: 2 hours; Estimated Annual
Burden: 280 hours.

6. A School-Based Intervention to
Reduce Behaviors that Result in HIV/
STD Infection (TX, CA)—
Implementation Evaluation—New—The
purpose of this data collection is to
evaluate the implementation process of
a school-based HIV/STD prevention
program. Selected schools in Texas and
California receiving a multiple
component intervention will be
compared to schools receiving a
knowledge-based curriculum.
Respondents: Individuals or
households; Number of Respondents:
8,290; Number of Responses Per
Respondent: 1.98; Average Burden Per
Response: 0.141 hour; Estimated Annual
Burden: 2,191 hours.

7. A School-Based Intervention to
Reduce Behaviors that Result in HIV/
STD Infection (NY, NJ)—
Implementation Evaluation—New—The
purpose of this study is to evaluate the
implementation of a school-based HIV/
STD prevention program. Selected
schools in New York and New Jersey
receiving a multiple component intervention will be compared to schools receiving a knowledge-based curriculum. Respondents: Individuals or households; Number of Respondents: 5,450; Number of Responses Per Respondent: 4.97; Average Burden Per hour; Estimated Annual Burden: 2,754 hours.

8. State Estimates for the National Health Interview Survey (NHIS) Using Dual Frames—New—The efficiency of supplementing the National Health Interview Survey with telephone interviews to produce State estimates will be determined. To assess the magnitude of the sampling and nonsampling errors, telephone surveys will be conducted in States. Respondents: Individuals or households; Number of Respondents: 5,565; Number of Responses Per Respondent: 2.268; Average Burden Per Response: .168 hour; Estimated Annual Burden: 2,126 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

James Scanlon,
Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-18033 Filed 7-29-93; 8:45 am]
BILLING CODE 4160-17-M

SOCIAL SECURITY ADMINISTRATION

Finding Regarding Foreign Social Insurance or Pension System—Latvia

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding Foreign Social Insurance or Pension System—Latvia.

FINDING: Section 202(l)(1) of the Social Security Act (42 U.S.C. 402(l)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(l)(2) through 202(l)(5) of the Social Security Act (42 U.S.C. 402(l)(2) through 402(l)(5)) affects his or her case. Section 202(l)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(l)(1), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

There is hereby determined that Latvia, beginning October 1, 1992, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Latvia to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Latvia.

Accordingly, it is hereby determined and found that Latvia has in effect, beginning October 1, 1992, a social insurance system which meets the requirements of section 202(l)(2) of the Social Security Act (42 U.S.C. 402(l)(2)).

This is our first finding under section 202(l) of the Social Security Act for Latvia. Latvia declared independence from the Union of Soviet Socialist Republics (USSR) on August 21, 1991. Prior to that date, the USSR occupied Latvia and enforced its laws there. Thus, for purposes of administering the United States Social Security program, Latvia was considered to be part of the USSR. The USSR’s social insurance or pension system was found to meet the requirements of section 202(l)(2) (A) but not of (B). This finding was published on September 3, 1970 (35 FR 14021).

Under that finding, United States Social Security benefits have not been paid based on citizenship in Latvia (nor have they been paid based on citizenship in the USSR).

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 855-3568.


DATED: July 26, 1993.

James A. Kiakko,
Director, Office of International Policy.

[FR Doc. 93-18203 Filed 7-29-93; 8:45 am]
BILLING CODE 4160-30-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-327-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in National Coalition for the Homeless v. Veterans Administration, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following
landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E871, Pentagon, Washington, DC 20310-2600; (703) 693-4583; Corps of Engineers: Bob Swiecienek, Headquarters, Army Corps of Engineers, Attn: CERE-MC, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314-1000; (202) 272-1753; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208-0619; (These are not toll-free numbers).

Jacquie M. Lawing,
Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program
Federal Register Report for 7/30/93

Suitable/Available Properties

Buildings (by State)

Arizona
Bldg. S-120
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365-9104
Landholding Agency: Army
Property Number: 219320202
Status: Underutilized
Comment: 6845 sq. ft., 1 story, wood frame, presence of asbestos, most recent use - bowling center, scheduled to be vacated 11/15/93

California
Bldg. 50, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320022
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use - storage.
Bldg. 25, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320023
Status: Underutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use - child care center, secured area w/alternate access

Colorado
Bldg. T-3449

Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320205
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use - storage.
Bldg. T-65010

Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320206
Status: Unutilized
Comment: 2830 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use - storage.
Bldg. T-65034

Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320208
Status: Unutilized
Comment: 1328 sq. ft., 1 story concrete frame, needs rehab, off-site removal only, most recent use - offices.

Georgia
Bldg. 14502

Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - residential.
Bldg. 481

Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.
Bldg. 10417

Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320212
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.
Bldg. 10502

Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320213
Status: Unutilized
Comment: 1580 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.

Bldg. 10503

Fort Gordon

Published in the Federal Register, the
Property Number: 219320222
Status: Unutilized
Comment: 3271 sq. ft., 1-story wood frame, presence of asbestos, off-site use only, most recent use - offices.
Bldg. 25304
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1-story wood frame, presence of asbestos, off-site use only, most recent use - office/storage.
Bldg. 25307
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320224
Status: Unutilized
Comment: 1556 sq. ft., 1-story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - offices.
Bldg. 25308
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1-story wood frame, possible asbestos, need repairs, off-site use only, most recent use - storage.
Bldg. 25603
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320226
Status: Unutilized
Comment: 2458 sq. ft., 1-story wood frame, presence of asbestos, off-site use only, most recent use - offices.
Bldg. 33406
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320227
Status: Unutilized
Comment: 3456 sq. ft., 1-story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - offices.
Bldg. 33436
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.
Bldg. 33438
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320229
Status: Unutilized
Comment: 3148 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use - storage.
Bldg. 39052
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1-story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.
Bldg. 45308
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1-story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - community center.
Bldg. 14301
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320232
Status: Unutilized
Comment: 2788 sq. ft., 1-story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - storage.
Bldg. 25301
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320233
Status: Unutilized
Comment: 1196 sq. ft., 1-story wood frame, possible asbestos, need repairs, off-site use only, most recent use - storage.
Bldg. 26301
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320234
Status: Unutilized
Comment: 2788 sq. ft., 1-story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - storage.
Bldg. 27301
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320235
Status: Unutilized
Comment: 2788 sq. ft., 1-story wood frame, presence of asbestos, off-site use only, most recent use - storage.
Bldg. 29301
Fort Gordon
Pt. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use - sentry station, off-site use only.
Bldg. 302
Fort Shafter
Honolulu Co: Honolulu HI 96818-
Landholding Agency: Army
Property Number: 219320237
Status: Unutilized
Comment: 3148 sq. ft., 1-story wood frame, presence of asbestos, most recent use - storage.
Bldg. T-2343, Fort Riley
Pt. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219320238
Status: Unutilized
Comment: 3148 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use - storage.
Bldg. 0001
Fort Campbell
Vet Camp Bldg, Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320238
Status: Unutilized
Comment: 3535 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.
Bldg. 00003
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320239
Status: Unutilized
Comment: 3500 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.
Bldg. 00004
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320240
Status: Unutilized
Comment: 7800 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.
Bldg. 00005
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320241
Status: Unutilized
Comment: 3500 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.
Bldg. 00009
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320242
Status: Unutilized
Comment: 900 sq. ft., 2 story, secured area w/alternate access, most recent use - administration/CPO.
Bldg. 00017
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320243
Status: Unutilized
Comment: 46285 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.
Bldg. 00018
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320244
Status: Unutilized
Comment: 2664 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.
Bldg. 00019
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320245
Status: Unutilized
Comment: 5310 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.
Bldg. 00023
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320246
Status: Unutilized
Comment: 3143 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.
Bldg. 102
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320247
Status: Unutilized
Comment: 8971 sq. ft., 2 story, secured area w/alternate access, most recent use - billets.
Bldg. 108
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320248
Status: Unutilized
Comment: 12580 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.
Bldg. 128
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320249
Status: Unutilized
Comment: 18864 sq. ft., 2 story, secured area w/alternate access, most recent use - billets.
Bldg. 130
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320250
Status: Unutilized
Comment: 17894 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.
Bldg. 132
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320251
Status: Unutilized
Comment: 18864 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.
Bldg. 134
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320252
Status: Unutilized
Comment: 16546 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.
Bldg. 135
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320253
Status: Unutilized
Comment: 11389 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.
Bldg. 136
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320254
Status: Unutilized
Comment: 18864 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.
Bldg. 258
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320255
Status: Unutilized
Comment: 8042 sq. ft., 2 story, secured area w/alternate access, most recent use - enlisted quarters.
Bldg. 284
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320256
Status: Unutilized
Comment: 2732 sq. ft., 1 story, secured area w/alternate access, most recent use - vehicle maintenance shop.
Bldg. 6122
Fort Campbell
Old Hospital Area
Pt. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320257
Status: Unutilized
Comment: 4020 sq. ft., 1 story, secured area w/alternate access, most recent use - vehicle maintenance shop.
Utility Bldg, Nolin River Lake
Moutardier Recreation Site
Edmonson KY
La. 71459-7100
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only
Louisiana
Bldg. 7214, Fort Polk
Pt. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320260
Status: Unutilized
Comment: 19301 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7410, Fort Polk
Pt. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320261
Status: Unutilized
barracks/classrooms, fair to good condition, off-site use only

Bldg. 309
Co: Fort George G. Meade
Property Number: 219320302
Status: Unutilized
Comment: 1201 sq. ft., 1-story, needs rehab, most recent use - gym, presence of asbestos

Missouri
Bldg. T1238
Fort Leonard Wood
Property Number: 219320303
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1245
Fort Leonard Wood
Property Number: 219320304
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1256
Fort Leonard Wood
Property Number: 219320305
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1257
Fort Leonard Wood
Property Number: 219320306
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

New York
Bldg. T1270
Fort Leonard Wood
Property Number: 219320307
Status: Unutilized
Comment: 1296 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

North Carolina
Bldg. A-4625, Fort Bragg
Property Number: 219320308
Status: Unutilized
Comment: 2794 sq. ft., 1-story, most recent use - mess, needs repair, off-site use only

Bldg. A-4626, Fort Bragg
Property Number: 219320309
Status: Unutilized
Comment: 2794 sq. ft., 1-story, most recent use - recreation bldg., off-site use only

Bldg. C-4731, Fort Bragg
Property Number: 219320310
Status: Unutilized
Comment: 780 sq. ft., concrete block press box, off-site use only

Ohio
Bldg. P-3
Doan U.S. Army Reserve Center
Property Number: 219320311
Status: Unutilized
Comment: 10752 sq. ft., 1-story brick, most recent use - office, possible asbestos

Bldg. P-4
Doan U.S. Army Reserve Center
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1-story brick, most recent use - vehicle maint. shop

Bldg. P-2
Hayes U.S. Army Reserve Center
Property Number: 219320313
Status: Unutilized
Comment: 3956 sq. ft., 1-story brick, most recent use - office, possible asbestos

Bldg. P-3
Hayes U.S. Army Reserve Center
Property Number: 219320314
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Bldg. P-4
Hayes U.S. Army Reserve Center
Property Number: 219320315
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Bldg. P-5
Hayes U.S. Army Reserve Center
Property Number: 219320316
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Bldg. P-6
Hayes U.S. Army Reserve Center
Property Number: 219320317
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Bldg. P-7
Hayes U.S. Army Reserve Center
Property Number: 219320318
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Bldg. P-8
Hayes U.S. Army Reserve Center
Property Number: 219320319
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos
<table>
<thead>
<tr>
<th>Property Number</th>
<th>Landholding Agency</th>
<th>Lawton Co: Comanche OK 73501-5100</th>
<th>Bldg.</th>
<th>Comment</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>219320328</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3630</td>
<td>4525 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin., off-site use only</td>
<td>Unutilized</td>
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<tr>
<td>219320325</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3639</td>
<td>2974 sq. ft., 1-story wood frame, possible asbestos, most recent use - classroom, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320322</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3640</td>
<td>13500 sq. ft., 2-story wood frame, possible asbestos, most recent use - storage, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320321</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3641</td>
<td>1102 sq. ft., 1-story brick frame, possible asbestos, most recent use - offices, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320320</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3642</td>
<td>2000 sq. ft., 1-story wood frame, possible asbestos, most recent use - R&amp;U shop, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320315</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3643</td>
<td>1255 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, needs rehab, off-site use only</td>
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<tr>
<td>219320314</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3644</td>
<td>2000 sq. ft., 2-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320313</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3645</td>
<td>1255 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, needs rehab, off-site use only</td>
<td>Unutilized</td>
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<tr>
<td>219320312</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3650</td>
<td>1500 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320311</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3651</td>
<td>1311 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320310</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3652</td>
<td>2850 sq. ft., 1-story wood frame, possible asbestos, most recent use - band training facility, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320309</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3653</td>
<td>4524 sq. ft., 2-story wood frame, possible asbestos, most recent use - barracks, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320308</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3654</td>
<td>4252 sq. ft., 2-story wood frame, possible asbestos, most recent use - barracks, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320307</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3655</td>
<td>2850 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, needs rehab, off-site use only</td>
<td>Unutilized</td>
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<tr>
<td>219320306</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3656</td>
<td>13000 sq. ft., 2-story wood frame, possible asbestos, most recent use - off-site use only</td>
<td>Unutilized</td>
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<tr>
<td>219320305</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3657</td>
<td>848 sq. ft., 1-story metal frame, possible asbestos, most recent use - construction bldg., off-site use only</td>
<td>Unutilized</td>
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<tr>
<td>219320304</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3658</td>
<td>1257 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320303</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3659</td>
<td>352 sq. ft., 1-story wood frame, possible asbestos, most recent use - range house, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320302</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3660</td>
<td>1102 sq. ft., 1-story brick frame, possible asbestos, most recent use - FE maintenance shop, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320301</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3661</td>
<td>1102 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
<tr>
<td>219320300</td>
<td>Army</td>
<td>73501-5100</td>
<td>T-3662</td>
<td>1257 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only</td>
<td>Unutilized</td>
</tr>
</tbody>
</table>

**South Carolina**

- **Bldg. T-3647**, Fort Sill
  - Property Number: 219320329
  - Landholding Agency: Army
  - Comment: 1257 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, off-site use only
  - Status: Unutilized

- **Bldg. T-3648**, Fort Sill
  - Property Number: 219320330
  - Landholding Agency: Army
  - Comment: 1311 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only
  - Status: Unutilized

- **Bldg. T-3655**, Fort Sill
  - Property Number: 219320331
  - Landholding Agency: Army
  - Comment: 2850 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, needs rehab, off-site use only
  - Status: Unutilized

- **Bldg. T-3667**, Fort Sill
  - Property Number: 219320332
  - Landholding Agency: Army
  - Comment: 13500 sq. ft., 2-story wood frame, possible asbestos, most recent use - band training facility, off-site use only
  - Status: Unutilized

**Texas**

- **Bldg. T-5122**, Fort Sill
  - Property Number: 219320334
  - Landholding Agency: Army
  - Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, needs rehab, off-site use only
  - Status: Unutilized

- **Bldg. P-6220**, Fort Sill
  - Property Number: 219320335
  - Landholding Agency: Army
  - Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use - construction bldg., off-site use only
  - Status: Unutilized

- **Bldg. S-6228**, Fort Sill
  - Property Number: 219320336
  - Landholding Agency: Army
  - Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use - range house, off-site use only
  - Status: Unutilized

**Federal Register / Vol. 58, No. 145 / Friday, July 30, 1993 / Notices 40827**
Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use - vehicle wash platform, needs rehab, off-site use only
Bldg. 56172, Fort Hood
Pt. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320351
Status: Unutilized

Comment: 1350 sq. ft., 1-story wood frame, most recent use - classroom/storage, needs rehab, off-site use only
Bldg. 636, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320362
Status: Unutilized
Comment: 2740 sq. ft., 1-story wood, needs rehab, most recent use - admin., off-site use only
Bldg. 636, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320363
Status: Unutilized
Comment: 1600 sq. ft., 1-story wood, needs rehab, most recent use - communications, off-site use only
Bldg. 636, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320364
Status: Unutilized
Comment: 2592 sq. ft., 1-story wood, needs rehab, most recent use - office, off-site use only
Bldg. 637, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320365
Status: Unutilized
Comment: 2415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose
Bldg. 456, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320370
Status: Unutilized

Comment: 1250 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose
Bldg. 554, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320371
Status: Underutilized

Comment: 3663 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose
Bldg. 4800, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized

Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose
Bldg. 7261, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized

Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose
Bldg. 7174, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320375
Status: Underutilized

Comment: 3709 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage
Bldg. 1361, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320376
Status: Underutilized

Comment: 4416 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage
Bldg. 1469, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320377
Status: Underutilized
Comment: 4416 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage.
Bldg. 1471, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320378
Status: Underutilized
Comment: 4416 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage.
Bldg. 449, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320379
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - confinement facility.
Bldg. 457, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320380
Status: Underutilized
Comment: 573 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - Officer's quarters.
Bldg. 900, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320381
Status: Underutilized
Comment: 1347 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - theater with dressing room.
Bldg. 1365, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320382
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use maintenance shop.
Bldg. 2214, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320383
Status: Underutilized
Comment: 1360 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - storage shed.
Bldg. 7236, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320384
Status: Underutilized
Comment: 2898 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - riding stable.
Bldg. 355, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320385
Status: Underutilized
Comment: 3748 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - unit chapel.
Bldg. 556, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - unit chapel.
Bldg. 354, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320387
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 434, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320388
Status: Underutilized
Comment: 2682 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 448, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320389
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 551, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 555, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320391
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 573, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320392
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 1734, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320393
Status: Underutilized
Comment: 13620 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply.
Bldg. 351, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320394
Status: Underutilized
Comment: 2255 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - clinic w/o beds.
Bldg. 552, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320395
Status: Underutilized
Comment: 2255 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - clinic w/o beds.
Bldg. 450, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320396
Status: Underutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - dining.
Bldg. 352, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320397
Status: Underutilized
Comment: 7428 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - exchange branch.
Bldg. 553, Fort McCoy
Pt. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320398
Status: Underutilized
Comment: 7200 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - exchange branch.

Land (by State)
California
Dixon Relay Station
7514 Radio Road
Dixon Co: Solano CA 95680-9653
Landholding Agency: GSA
Property Number: 546320002
Status: Excess
Comment: 787.53 acres with 7 bldgs., most recent use - transmitter site.
GSA Number: 9-2-CA-116B
Indiana
Portion of Tract No. 116
Huntington Lake
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319320001
Status: Excess
Comment: 3.41 acres with road easement.
Kentucky
Portion of Lock & Dam No. 1
Kentucky River
Carrollton Co: Carroll KY 41008-0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.
Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Fort Smith AR 72901-4675
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.
Ohio
5 acres
Doan U.S. Army Reserve Center
Portsmouth Co: Scioto OH 45662-
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420-
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Texas
Parcel No. 201
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use - low density recreation, upland timber wildlife habitat
GSA Number: 7-D-OK-0507-H
Parcel No. 203
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320008
Status: Excess
Comment: 62.36 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H
Parcel No. 205
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H
Parcel No. 209
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320010
Status: Excess
Comment: 12.67 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Washington
Portion of Tract 905
Lower Monumental Lock & Dam
1/2 mi SE of Lyons Ferry Marina
Co: Whitman WA
Landholding Agency: DOE
Property Number: 319320005
Status: Excess
Comment: 3.788 acres with encroaching private well

Suitable/Unavailable Properties

Buildings (by State)

Colorado
Bldg. T-1445
Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320204
Status: Unutilized
Comment: 2255 sq. ft. 1 story wood frame, needs rehab, off-site removal only, most recent use - administration.

Guam
Parcels 1 & 2
Former U.S. Naval Facility
Ritidian Point Co: Mun. of Machana GU
Landholding Agency: GSA
Property Number: 549330001
Status: Excess
Comment: 10 bldgs. with approx. 360 acres, access restrictions, contains historic archaeological sites and endangered species, potential contamination
GSA Number: 9-N-GU-0437

Maryland
Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Pt. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft. steel plate, gravel base ammunition storage area, fair condition
Virginia
Bldg. 178, Fort Monroe
Pt. Monroe VA 23651-
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: Extensive deterioration

Unsuitable Properties

Buildings (by State)

Guam
Bldg. 6118
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540-1400
Landholding Agency: Navy
Property Number: 779330001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Oklahoma
Bldg. TM6230, Fort Sill
Lawn Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320337
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Texas
Bldg. 91055, Fort Hood
Pt. Hood Co: Bell TX 78544-
Landholding Agency: Army
Property Number: 219320354
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Office of Assistant Secretary for Public and Indian Housing
[Docket No. N-83-3633; FR-3442-C-02]

Funding Availability for FY 1993 for Public Housing Development; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1993 for public housing development; correction.

SUMMARY: On June 28, 1993, the Department published a NOFA to announce the availability of FY 1993 funding for public housing development. This document changes Sections I.B (Fund Availability), I.C. (Fund Assignments) and III.E (Ineligible Applications) of the June 28, 1993 NOFA to: (1) Reflect the transfer of $60 million from the FY 1993 public housing development appropriation for major reconstruction of obsolete public housing projects (MROP) activities in accordance with Congressional directive; (2) advise that some of the $11,155,481 which was to be made available from recaptures has been realized—thus increasing the amounts available for various categories of applications under the June 28, 1993 NOFA; and (3) notify the public of the Department's intention to publish a separate NOFA for MROP activities.

DATES: The due date for submission of applications by PHAs in response to the June 28, 1993 NOFA is set forth in the NOFA at 58 FR 34670. This document does not change the due date.

FOR FURTHER INFORMATION CONTACT:
Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708-1800 (voice) or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department's FY 1993 NOFA for Public Housing Development was published in the Federal Register on June 28, 1993 (58 FR 34670). The Supplemental Appropriations Act for FY 1993 was signed into law on July 2, 1993 (Pub. L. 103-50). The Conference Report and Joint Explanatory Statement of the Committee of Conference on the Supplemental Appropriations Act directs the Department to "transfer $60,000,000 of the fiscal year 1993 housing development appropriation for MROP activities, consistent with section 111 of the Housing and Community Development Act of 1992," but does not change the due date.

Applications under the June 28, 1993 NOFA were originally set to be due on September 28, 1993. This document notifies the public that the due date for submission of applications for funding is extended to October 28, 1993.
Recapture of prior year obligations, the HOPE-1A(h) reducing the amount available for amount will half. Replacement units reduced the need for Section under the June 28, available $400 million of budget occurred, thus increasing the recaptures of prior year obligations have activities; (2) advise that some of the availability of separate Applications (see Section I.B. Icorrected) (1) Public Development Act of 1993 No. (1993) #18 of the June 28, 1993 to FR Doc 34670, in the second column, paragraph 1 of Section I.C. is corrected to read as follows:

C. Fund Assignments

1. A minimum of $130 million will be
fair shared for Regional Administrators to approve “other” applications. Threshold-applicable applications relating to litigation settlements involving a lack of assisted housing or minority housing opportunities shall be assigned Headquarters Reserve funding before the allocations are determined. Up to $120 million will be available for applications for replacement housing subject to section 18 of the USHA. Remaining funds will be made available for approvable applications for replacement units for HOPE 1 or section 5(h) homeownership transfers or sales. Any remaining funds not reserved for HOPE 1 or section 5(h) applications will be added to the $120 million to be fair shared for “other” approvable applications.

Section III.E. [corrected]

1. On page 58 FR 34673, in the first column, Section III.E. is corrected to read as follows:

E. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA. Applications for housing designated for disabled families and for MROP activities will be the subject of separate NOFAs and may not be applied for under this NOFA.


Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

[FR Doc. 93-18241 Filed 7-29-93; 8:45 am]

BILLING CODE 4180-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-6700-10; Closure Notice No. NV-030-93-03]

Temporary Closure of Public Lands; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1993 Reno National Championship Air Races.

EFFECTIVE DATES: September 13 through September 19, 1993.

FOR FURTHER INFORMATION CONTACT:

James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 865-6100.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E., Sec. 8, NVNEW4, SE4NEV4 and E4SEV4. Sec. 16, N4W4 and SW4.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.
Dated this 22nd day of July, 1993.

Karl L. Kipping,

Acting District Manager.

[FR Doc. 93-18182 Filed 7-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[S-040-03-4320-01-ADV]

Safford District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATES: Friday August 20, 1993; 8 a.m.

ADDRESSES: BLM Office, 711 14th Ave., Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Jack Rietz, Range Conservationist, Safford District, 711 14th Ave., Safford AZ 85546, Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. Election of Chairperson.
2. Discussion of the Empire/Cienega Ranch plan.
4. Update on the Gila Box Riparian National Conservation Area.
7. Business from the floor.
8. BLM management update.

The meeting will be open to the public. Board members will meet at the BLM Office, 711 14th Ave., Safford, Arizona at 8 a.m. From there they will depart via BLM provided vehicles for the Empire/Cienega Ranch headquarters located about 10 miles North of Sonita, Arizona. Members of the public may attend the meeting, but must provide their own transportation to the ranch headquarters. It is expected the Board members will return to Safford by 5 p.m.

Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 711 14th Ave., Safford, Arizona 85546, by 4:15 p.m., Thursday, August 19, 1993.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.


William T. Civish,

District Manager.

[FR Doc. 93-18184 Filed 7-29-93; 8:45 am]

BILLING CODE 4310-39-M

[ID-010-03-4350-08]

Revision of Proposed Land Use Plan Amendment

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: The Boise District, Bureau of Land Management (BLM), has revised a proposed land use plan amendment to the Cascade Resource Management Plan (RMP). The revision is available for a 30-day public protest period.

DATES: The 30-day protest period for this revised proposed plan amendment will begin on August 2, 1993, and end on September 2, 1993. Protests must be postmarked no later than the closing date.

ADDRESSES: Protests must be sent to the BLM Director at the following address: Director (760), Bureau of Land Management, Department of the Interior, 18th and C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705, Telephone (208) 384-3370.

SUPPLEMENTARY INFORMATION: On September 28, 1992, the Boise District began a 30-day protest period on a proposed plan amendment to the Cascade RMP. The Notice of Availability was published in the Federal Register on October 1, 1992. The proposed plan amendment addressed the designation of six sites as Areas of Critical Environmental Concern (ACECs), and transfer of four parcels of public land from federal ownership. The ACECs were proposed to protect habitat for Allium aaseae (Aase's onion), a plant being considered by the U.S. Fish and Wildlife Service for listing as threatened or endangered.

Subsequently, new information was received regarding three of the proposed ACECs, and the proposed amendment had been reviewed and revised. The revised proposal would exclude a 40-acre parcel previously included as part of a proposed ACEC, and would add a 100-acre parcel that was previously omitted. Also, two proposed ACEC management actions would be modified slightly. The remainder of the proposed amendment remains the same as it was.

In addition to publishing this Notice of Availability, the Boise District has mailed the proposed changes to all parties on the mailing list for the original proposed amendment. Copies of the changes and the original proposal are available at the above address or may be obtained by calling the above BLM contact person. Any protests must meet the requirements of 43 CFR 1610.5-2.


J. David Brunner,

District Manager.

[FR Doc. 93-18126 Filed 7-29-93; 8:45 am]

BILLING CODE 4310-GG-M

[ES-962-4550-10-4041; ES-046155, Group 90, Arkansas]

Filing of Plat of the Dependent Resurvey and Subdivision of Sections

The plat of the dependent resurvey of a portion of the south boundary (Standard Parallel North); portion of the west boundary; portion of the subdivisional lines, and the survey of the subdivision of certain sections in Township 17 North, Range 21 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m. on August 26, 1993.

The survey was made upon request submitted by the National Park Service. All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 26, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 1, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93-18208 Filed 7-29-93; 8:45 am]

BILLING CODE 4310-GJ-M

Competitive Sale of Public Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under
the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation (Reclamation) will accept bids on the following land, and will reject any bids, written or oral, for less than $160,000, the appraised fair market value.

DATES: Comments must be submitted on or before September 13, 1993.

The sale will be held on September 26, 1993 (Tuesday—Friday).

ADDITIONAL INFORMATION CONTACT: Ms. Nancy Seale, Realty Specialist, Reclamation’s Arizona Projects Office, P.O. Box 61470, Boulder City, Nevada 89006-1470.

Resource clearances can be viewed at Reclamation’s Arizona Projects Office, 23636 North 7th Street, Phoenix, Arizona 85068.

The sale will be held at Reclamation’s Arizona Projects Office, P.O. Box 9980, 23636 North 7th Street, Phoenix, Arizona 85068.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Seale, Realty Specialist, Reclamation’s Arizona Projects Office, P.O. Box 61470, Boulder City, Nevada 89006-1470.

ADDRESSES: All comments concerning this notice should be addressed to Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470.

Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become final determination of the Department of the Interior. In compliance with the Federal Property Management Regulations, 1145–47.304–8, and Interior Property Management Regulations 114.47.304–51, the successful bidder will be required to sign a certificate to the effect that “the bid was arrived at by the bidder or offeror independently and was tendered without collusion with any other bidder or offeror.”

DATED: July 26, 1993.

Donald R. Glaser,
Deputy Commissioner.

SUPPLEMENTARY INFORMATION:

Land identified for disposal as follows:

Tract No. APO–HR–12–28A–9—Two parcels of land, to be sold as one, in Section 26, Township 3 North, Range 5 East, Gila and Salt River Meridian, Maricopa County, Arizona, containing a combined area of 4.55 acres, more or less. A more complete legal description may be obtained from the local Reclamation office referenced above.

The land will be offered for sale through the competition bidding process. The sale will be held at Reclamation’s Arizona Projects Office. Registration of qualified bidders will begin at 9 a.m. Bid opening will be at 10 a.m. at which time sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the Arizona Projects Office until 4 p.m., the day before the sale. Reclamation may accept or reject any or all offers; or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911, (36 Stat. 895, 43 U.S.C. 374), or other applicable laws.

The sale of the land is consistent with the Reclamation land use planning and it is determined that the public interest will be best served by offering these lands for sale; the parcel listed and platted is offered for sale “as is” and “where is.”

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision To Reverse Portions of an Initial Determination


ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to reverse portions of the presiding administrative law judge’s (ALJ’s) initial determination (ID) in the above-captioned investigation. The Commission has determined to reverse the ID’s findings on the issues of enabling under 35 U.S.C. 112, first paragraph, anticipation under 35 U.S.C. 102(b), obviousness under 35 U.S.C. 103, and enforceability. The Commission has affirmed the ID’s determination on indefiniteness under 35 U.S.C. 112, second paragraph. The Commission has also determined that there has been importation of the accused condensers, a finding not made in the ID. The Commission’s earlier determination to adopt the ID’s dispositive findings on the issues of claim interpretation and infringement resulted in adoption of the ID’s determination of no violation of section 337 of the Tariff Act of 1930 on June 25, 1993. 58 FR 36701–2 (July 8, 1993). Although the investigation has been terminated, the Commission has retained jurisdiction over the administrative protective order while it considers issues of post-termination document retention.


The final ID finding no violation of section 337 was filed on April 26, 1993. Complainant Modine and the Commission investigative attorney (IA) filed petitions for review of the ID on May 6, 1993. The IA filed a response to Modine’s petition on May 13, 1993. Respondents filed a joint response to both petitions for review on May 18, 1993.

On June 25, 1993, the Commission determined to review the issues of validity, enforceability, and importation. 58 FR 36701–2 (July 8, 1993). Since the Commission did not review the dispositive issues of claim interpretation and patent infringement, the ID’s finding of no violation of section 337 was adopted by the Commission.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are
advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

By order of the Commission.
Donna R. Koehnke, Secretary.

[FR Doc. 93-18149 Filed 7-29-93; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"


ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by three months, i.e., from March 31, 1994, to July 1, 1994.


SUPPLEMENTARY INFORMATION: On June 17, 1993, respondent Abic, Ltd. filed a motion to designate the investigation "more complicated." The other respondents, complainants, and the Commission investigative attorney supported the motion. On June 28, 1993, the ALJ issued an ID (Order No. 14) granting the motion to designate the investigation more complicated because of the involved nature of the investigation due to complications in discovery resulting from having nine respondents located in Israel, Italy, Finland, and the United States. The ALJ also noted that the process of the patent-in suit is alleged to be practiced by a complainant in Japan. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 C.F.R. 210.53.

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927-5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.

Bureau/Office: Office of Economics.
Title of Form: Monthly Report of Number of Employees of Class I Railroads.
OMB Form Number: 133.
Agency Form Number: Monthly Wage Report of Employees.
Frequency: Monthly.
No. of Respondents: 13.
Total Burden Hours: 2184.

Sidney L. Strickland, Jr., Secretary.

[FR Doc. 93-18149 Filed 7-29-93; 8:45 am]
BILLING CODE 7020-02-M

[Agency Information Collection Under OMB Review]

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927-5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.

Bureau/Office: Office of Economics.
Title of Form: Quarterly Wage A and B OMB Form Number: 3120-0074
Agency Form Number: Quarterly Wage A and B
Frequency: Quarterly
No. of Respondents: 113
Total Burden Hours: 6240

Sidney L. Strickland, Jr., Secretary.

[FR Doc. 93-18222 Filed 7-29-93; 8:45 am]
BILLING CODE 7020-01-M

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of
Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: B&B Holding Co., Inc., P.O. Box 108, McLean, TX 79057. A Texas Corp.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

B&B Turbine Engine Services, Inc., P.O. Box 108, McLean, TX 79057. A Texas Corp.

2. Wholly owned subsidiary which will participate in the operations, and State of incorporation: Coastal Transportation Leasing, Inc., 1221 Hickory Street, Altus, OK 73521. A Texas Corp.

B.1. Parent corporation and address of principal office: Deggeller Attractions, Inc., 3550 SW. Deggeller Ct., Palm City, FL 34990.

2. Wholly owned subsidiary which will participate in the operations, and State of incorporation: Coastal Transportation Leasing, Inc., Florida.

Sidney L. Strickland, Jr., Secretary.

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 108 of other Federal Acts, "shall be the minimum paid by contractors and subcontractors to laborers and mechanics. Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York
NY930031 (Jul. 30, 1993)
NY930032 (Jul. 30, 1993)
NY930033 (Jul. 30, 1993)
NY930034 (Jul. 30, 1993)
NY930035 (Jul. 30, 1993)

Pennsylvania
PA930032 (Jul. 30, 1993)
PA930033 (Jul. 30, 1993)

Tennessee
TN930045 (Jul. 30, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Georgia
GA930003 (Feb. 19, 1993)
GA930004 (Feb. 19, 1993)
GA930022 (Feb. 19, 1993)
GA930023 (Feb. 19, 1993)
GA930031 (Feb. 19, 1993)
GA930032 (Feb. 19, 1993)
GA930033 (Feb. 19, 1993)
GA930040 (Feb. 19, 1993)
GA930044 (Jun. 04, 1993)
GA930050 (Jun. 04, 1993)
GA930053 (Jun. 04, 1993)
GA930058 (Jun. 04, 1993)
GA930065 (Jun. 04, 1993)
GA930086 (Jun. 04, 1993)
GA930073 (Jun. 04, 1993)

Maryland
MD930002 (Feb. 19, 1993)
MD930015 (Feb. 19, 1993)
MD930017 (Feb. 19, 1993)
MD930023 (Feb. 19, 1993)
MD930031 (Feb. 19, 1993)

New York
NY930002 (Feb. 19, 1993)
NY930003 (Feb. 19, 1993)
NY930007 (Feb. 19, 1993)
NY930009 (Feb. 19, 1993)
NY930010 (Feb. 19, 1993)

Tennessee
TN930003 (Feb. 19, 1993)
TN930005 (Feb. 19, 1993)
TN930042 (Jul. 16, 1993)
TN930043 (Jul. 16, 1993)
Employment and Training Administration

Job Training Partnership Act; Native American Employment and Training Council; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill seventeen (17) vacancies on the Native American Employment and Training Council.

The membership of the Council and categories represented are as follows:

Representing JTPA Section 401 Grantees

Mr. Terry Polchies*, Executive Director, Central Maine Indian Association, Inc., Bangor, Maine.
Ms. Joan Coifield*, JTPA Director, Powhatan-Renape Nation, Nanseocas, New Jersey.
Ms. G. Anne Richardson**, Executive Director, Mattaponi-Pamunkey-Monacan, Inc., King William, Virginia.
Mr. Elton Richardson**, JTPA Director, North Carolina Commission on Indian Affairs, Raleigh, North Carolina.
Mr. Frank Siew**, JTPA Director, Pueblo of Laguna, Laguna, New Mexico.
Ms. Alice Rosch**, JTPA Director, Lincoln Indian Center, Lincoln, Nebraska.
Ms. Bernadine Wallace**, JTPA Director, Montana United Indian Association, Helena, Montana.
Mr. Harold Wauneka**, JTPA Director, Navajo Nation, Window Rock, Arizona.
Ms. Carol Pelova**, JTPA Director, Seattle Indian Center, Seattle, Washington.
Mr. Richard Fett**, Director, Community Services Department, Cook Inlet Tribal Council, Inc., Anchorage, Alaska.

Representing Other Disciplines

Mr. Eddie L. Tulis*, Tribal Chairman, Pecos Bank of Creek Indians, Atmore, Alabama.
Dr. Rose-Alma McDonald-Jackson*, Native American Consultant, Hoganburg, New York.
Mr. Gaiahhkibo*, Chairman, Lac Courte Oreilles, Hayward, Wisconsin.
Mr. Clarence W. Skyo*, Executive Director, United Sioux Tribes of South Dakota, Pierre, South Dakota.
Mr. Dave Archambault*, President, American Indian College Fund, Fort Yates, North Dakota.

The Native American Employment and Training Council was established under section 401(k)(1) of title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments were made and were effective on July 9, 1993. Eight of these appointments will expire on June 30, 1994, and the remaining nine will expire on June 30, 1995.

CONTACT PERSON FOR MORE INFORMATION: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5500 (this is not a toll-free number).

Signed at Washington, DC on this 23rd day of July, 1993.

Carolyn M. Golding,
Acting Assistant Secretary.

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.


SUMMARY: The purpose of this notice is to announce the availability of calendar year 1992 Quality Control (QC) Annual Reports of each State’s Unemployment Insurance (UI) Program and indicate how they may be obtained.

DATES: The Federal digest will be available after July 31, 1993.

ADDRESSES: Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. The digest and this notice contain a list of names and addresses of persons in each State who will provide the State report and clarifications upon request.

FOR FURTHER INFORMATION CONTACT: John Sharkey, Chief, Division of System Operations and Analysis, Office of Quality Control at 202–219–7656.

SUPPLEMENTARY INFORMATION: Each week, staff in each State’s Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.
The Department of Labor is publishing results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants; size of the QC samples; and the percentages of proper payments, overpayments, and underpayments in the population estimated from the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

In addition, each State has published its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 13, 1993.

Carolyn M. Golding,
Acting Assistant Secretary of Labor for Employment and Training.

UI QC Annual Report—State Contacts—Cy 1992

Alabama
Bill Mauldin, QC Supervisor, Department of Industrial Relations, 649 Monroe Street, room 321, Montgomery, AL 36131, (205) 242-8130

Alaska
Karen Van Dusseldorp, QC Data Analyst, Alaska Department of Labor, P.O. Box 21149, Juneau, AK 99802-1149, (907) 465-3900

Arizona
Dave Berggren, UI Technical Support Section, P.O. Box 6123, Site code 701B4, Department of Economic Security, Phoenix, AZ 85005, (602) 542-3771

Arkansas
Rober Morgan, UI Director, Employment Security Department, P.O. Box 2981, Little Rock, AR 72203, (501) 682-3300

California
Suzanne Schroeder, Office of Constituent Affairs, Employment Development Dept., P.O. Box 828860, MIC 85, Sacramento, CA 94280-0001, (916) 654-9029

Colorado
Glenn Reynolds or Bill Lafferty, Colorado Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 393 South Harland, Lakewood, CO 80228, (303) 937-4905

Connecticut
Robert Pollick, Director of Communications, Employment Security Division, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (203) 566-4374

Delaware
W. Thomas MacPherson, Director, Division of Unemployment Insurance P.O. Box 9029, Newark, DE 19714, (302) 368-6735

District of Columbia
Roberta Bauer, Assistant Director, Compliance & Ind. Monitoring Staff, DC Dept. of Employment Services, 500 C Street, NW., room 511, Washington, DC 20001, (202) 724-7492

Florida

Georgia
David B. Poythress, Commissioner, Georgia Department of Labor, 148 International Blvd., NE., Suite 500, Atlanta, GA 30303, (404) 656-3011

Hawaii
Douglas Odo, UI Administrator, Dept. of Labor & Ind. Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813, (808) 586-9069

Idaho
Dale Edstrom, QC Research Analyst, Idaho Department of Employment, 317 Main Street, Boise ID 83705, (208) 334-6285

Illinois
Joseph Wojick, Department of Employment Security, One Congress Center, QC Unit, room 301, 401 South State Street, Chicago, IL 60605, (312) 793-1175

Indiana
Sandy Tipton, Quality Control Supervisor, Department of Workforce Development, IN Dept. of Emp. & Training Services, 10 North Senate Avenue, Indianapolis, IN 46204, (317) 232-7680

Iowa
Larry Venenga, QC Supervisor, Iowa Dept. of Employment Services, 1000 East Grand Avenue, Des Moines, IA 50319, (515) 281-8598

Kansas
Joseph Ybara, QC Supervisor, 401 SW Topeka Blvd., Topeka, KS 66603, (913) 296-4077

Kentucky
Thomas DeName, Director, Div. of Unemployment Insurance, 275 East Main Street, 2nd Floor, East, Frankfort, KY 40621, (502) 564-5283

Louisiana
Marianne Sullivan, UI Claims Coordinator, Louisiana Dept. of Labor, P.O. Box 94094, Baton Rouge, LA 70804-9094, (504) 342-7103

Maine
Gail Thayer, UI Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207) 289-2318

Maryland
Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 North Eutaw Street, Baltimore, MD 21201, (301) 333-5306

Massachusetts
Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617) 727-6556

Michigan
Powell Cozart, Bureau Manager, Audits and Investigations, MI Employment Security Commission, Fisher Building, Suite 1030, 3011 West Grand Blvd., Detroit, MI 48202, (313) 876-5691

Minnesota
Bob Dockendorf, Minnesota Dept. of Jobs & Training, QC Unit, 2nd Floor, 390 North Roberts Street, St. Paul, MN 55101, (612) 297-3458

Mississippi
Merrill Merklo, QC Supervisor, Mississippi Employment Security Commission, P.O. Box 1699, Jackson, MS 39215-1699, (601) 961-7764

Missouri
Marilyn Hutcherson, Asst. Dir. for UI, Missouri Division of Emp. Security, P.O. Box 58, Jefferson City, MO 65104, (314) 751-3670

Montana
Robert R. Jensen, Administrator, Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406) 444-2723

Nebraska
Allan Ambers, UI Director or Don Gammill, UI Program Evaluation Administrator, P.O. Box 94600, Lincoln, NE 68509-4600, (402) 471-9000

Nevada
Karen Rhodes, Public Information Officer, Nevada Employment Security Dept., 500 East Third Street, Carson City, NV 89713, (702) 687-4620

New Hampshire
Paul Grace, QC Supervisor, Quality Control Unit, New Hampshire Dept. of Employment Security, 10 West Street, Concord, NH 03301, (603) 226-4073

New Jersey
Charles G. Davis, Asst. Commissioner for Employment Security & Training, New Jersey Dept. of Labor, CN 058, Trenton, NJ 08625-0058, (609) 884-5566

New Mexico

Betty Campbell, QC Supervisor, Quality Control Section, New Mexico Department of Labor, 401 Broadway NE., Albuquerque, NM 87103, (505) 841-8435

New York
Charles G. Kilb, Director, Division of Audit & Compliance, NY State Department of Labor, State Office Campus, Building 12–room 261, Albany, NY 12240, (518) 457–0284

North Dakota
Preston L. Johnson, Unemployment Insurance, Department of Labor, State Office Campus, Building 12–room 261, Aberdeen, SD 57402–4730, (605) 622–2005

North Carolina
James Jackson, Deputy Administrator for UI, Department of Labor and Human Resources, Employment Division, 112 California Avenue, Charleston, WV 25305, (304) 556–2829

North Dakota
Lyle Holverson, Unemployment Insurance, Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–9756

Ohio
Gay M. Gilbert, Director, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–9756

Oklahoma
Terry McHale, Oklahoma Employment Security Comm., Will Rogers Memorial Office Bldg., rm. 102, Oklahoma City, OK 73105, (405) 557–7206

Oregon
Michelle Kennedy, Communications Manager, Oregon Department of Human Resources, Employment Division, 875 Union Street NE, room 303, Salem, OR 97311, (503) 376–3216

Pennsylvania
Jack Rudy, Acting Director, Bureau of Unemployment Compensation, Department of Labor & Industry, 7th & Forster Streets, rm. 415, Harrisburg, PA 17121, (717) 787–3547

Puerto Rico
Denis Cruz de Hernandez, Assistant Secretary, Puerto Rico Dept. of Labor, and Human Resources, 505 Munoz Rivier Avenue, Hato Rey, PR 00918, (809) 754–2131

Rhode Island
Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648

South Carolina
R. Michael Baker, Deputy Exec. Dir.–UI, South Carolina Emp. Security Comm., P.O. Box 995, Columbia, SC 29202, (803) 737–2400

South Dakota
Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 622–2005

Tennessee
Ann Ridings, QC Supervisor, TN Department of Employment Security, 10th Floor, Volunteer Plaza Bldg., 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190

Texas
James Jackson, Deputy Administrator for UI, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2661 or
Bert West, QC Supervisor, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2394

Utah
Terry Burns, Director, Unemployment Compensation, Department of Employment & Training, P.O. Box 31249, Salt Lake City, UT 84170, (801) 533–2201

Vermont
Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 229–0311

Virginia
F W. Tucker, IV, Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032

Washington
Teresa Morris, Director, WA Employment Security Department, Office of Management Review, P.O. Box 9046, Olympia, WA 98507–9046, (206) 493–9435

West Virginia
Andrew Richardson, Commissioner, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 559–2029

Wisconsin
Chet Frederick, Department of Industry, Labor and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707, (608) 266–8260

Wyoming
Beth Nelson, Administrator, Unemployment Insurance Administration, P.O. Box 2760, Casper, WY 82602, (307) 225–2354

[FR Doc. 93–17991 Filed 7–29–93; 8:45 am] BILLING CODE 4810–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. Rm 93–8]

Duration of Copyright Term of Protection

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of Public Hearing and Notice of Inquiry

SUMMARY: The Copyright Office publishes this Notice to inform the public that it is preparing a report on the arguments for and against possible amendment of the copyright law to extend the duration of copyright protection under U.S. copyright law. In order to assist in the preparation of this report, the Copyright Office is scheduling an open public hearing in order to gather input, as well as requesting the submission of written comments.

DATES: The public hearing will be held in room 407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC on September 29, 1993 beginning at 10 a.m. Those persons who wish to make oral presentations should contact Dorothy Schrader, Copyright General Counsel by telephone at (202) 707–8380 or fax (202) 707–8366, one week before the date of the hearing. Written comments by those persons who are making oral presentations at the hearing are due one week prior to the date of the hearing; other comments, including reply comments are due 30 days after the date of the hearing.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room 407, James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC 20559.


SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Office is conducting a study examining the term of protection for copyrighted works under U.S. law, 17 U.S.C. 300 et seq. This study is conducted in light of the recent developments in Europe favoring harmonization of the terms of protection.

Section 302 of the Copyright Act, 17 U.S.C., specifies the copyright term of protection for works created on or after January 1, 1978, the effective date of the Act. In the case of a work created by a natural author, the term of copyright begins “from its creation” and lasts for “the life of the author and fifty years after the author’s death.” 17 U.S.C. 302(a). In the case of works of joint authorship, protection continues for fifty years after the death of the last surviving author, section 302(b), and for anonymous and pseudonymous works and works made for hire, the term is “seventy-five years from the year of its first publication, or a term of one hundred years from the year of its
creation, whichever expires first." Section 302(c).

The term of life of the author plus fifty years embodied in the 1976 Copyright Act marked a distinct break in tradition from the first copyright statute in 1790. Previous American copyright law had always established a specific period of protection (in the case of the 1909 Copyright Act, 28 years with a potential for a renewal period of an additional 28 years) which commenced from either publication or registration of the work. The current law, however, creates a generally broader and less specific period of protection by utilizing the date of the author's death, and commences the term of protection from the creation of the work, as opposed to its publication or registration.1 The House Report to the 1976 Act described the reasons for the change:

(1) The 50 year term of protection under the 1909 Act is not long enough "to assure an author and his dependents the fair economic benefits from his works" due to increases in normal life expectancy.

(2) The growth in communications media substantially lengthened the commercial life of many works, particularly serious works whose value might not be recognized until after many years.

(3) Too short a term harms the author without a corresponding benefit to the public, since "[t]he public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to users at the author's expense."2

(4) The death of the author is a more certain and discernible date than the publication of the work, and means that all of the author's works will go into the public domain at the same time, eliminating the need for keeping track of varied publishing dates.

(5) The life-plus-50 system eliminates the need for copyright renewal.

(6) The generous life-plus-50 term compensates authors for the loss of previously enjoyed common law protections, due to federal preemption of copyright.

(7) The life-plus-50 term brings the U.S. in line with the term of protection granted in most foreign countries and opens the way for U.S. adherence to the Berne Convention.


The life-plus-50 term has served its purpose well and, indeed, was one of the key elements which aided in eventual U.S. adherence to the Berne Convention. However, several recent international developments have once again raised the issue of whether the duration of U.S. copyright protection is too limited.

2. European Community Draft Directive

One significant development affecting duration of protection in the international arena has been a proposal for a Council Directive published by the European Communities in March, 1992. Concerned over the varying terms of protection in European countries and the barriers to trade and distortions of competition brought about by those differences, the Commission proposed a uniform standard. For natural authors, protection would last for the life of the author plus seventy years. As with current U.S. law, publication has no bearing on the term of protection for such works, since protection begins at the time of creation of the work. Joint works would likewise have the life-plus-70 term from the death of the last surviving author.

For anonymous, pseudonymous and collective works and works made for hire (described as "works considered under the legislation of a Member State to have been created by a legal person"). the Commission proposed a term of protection of seventy years from the time when "the work is lawfully made available to the public"—i.e. publication. Art. I, para. 3. Anonymous and pseudonymous works do not continue to receive protection if it is reasonable to presume that the author has been dead for seventy years. Art. I, para. 4. And for collective works which are works for hire, protection runs for seventy years from the date of its creation. Art. I, para. 6.

The Commission also proposed separate terms of protection for so-called "related rights,"3 only some of which are recognized under U.S. copyright law. Thus, for performers, the duration of protection is fifty years from the publication of the fixation of the performance or, if there has been no publication of the fixation, fifty years from the first dissemination of the performance. Likewise, the rights of producers of phonograms and producers of cinematographic works run for fifty years from first publication, or from the date of fixation if there has been no publication. And the rights of broadcasters run for fifty years from the first transmission of a broadcast.

Although the Commission's proposal is not without controversy, European Community member states agreed in Luxembourg in mid-June 1993 to adopt the life-plus-70 term by an 8 to 4 vote.

3. Berne Protocol

The other recent international development affecting copyright duration is the possible protocol to the Berne Convention. Article 7(1) of the Berne Convention establishes the general rule that "the term of protection granted by this Convention shall be the life of the author and fifty years after his death." The life-plus-50 term of protection is a Convention minima—i.e. countries may accord greater protection than life-plus-50 if they so desire. Numerous Berne countries currently grant such greater protection (ex. Brazil and Spain for 60 years; Austria, Germany and France (musical works) for 70 years).

In a 1991 report of the First Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee stated that "it may be justified to consider the inclusion of a provision in the possible Protocol under which all references to the 50 years in the Berne Convention would be replaced by 70 years." Report at 30. A certain period of time, possibly 5 years, would be granted to member countries whose term of protection was shorter than life-plus-70 to enact legislation to raise their standards to the Convention minima. If this provision is included in a final protocol to which the United States should subscribe, the United States would be obligated to amend Chapter 3 of the Copyright Act to meet the life-plus-70 term. Although the Committee has not formally adopted the position of life-plus-70, there nonetheless remains the real possibility of it someday becoming the Berne Convention standard especially in light of the recent decision by the European Community.

4. Copyright Office Study and Public Hearing

Because of changes in the international arena and the extensive

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1 As noted above, publication still has significance for term of protection for anonymous and pseudonymous works and works made for hire.

2 Related rights or "neighboring rights" constitute separate legal forms of protection for categories of persons who are not considered copyright authors in the traditional sense under the laws of many European countries. Examples are broadcasters, performers, and producers of phonorecords. U.S. law, which does not recognize neighboring rights, treats some of these categories as works of authorship, subject to copyright protection.

3 In its 1992 Report from the Second Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee noted that there was considerable discussion and disagreement over a life-plus-70 proposal. Absent general agreement, the proposal has been postponed to future meetings of the Committee.
circulation and use of U.S. copyrighted works in foreign markets, the Copyright Office is studying the arguments for and against an expanded term of protection in our copyright laws. In order to facilitate this endeavor, the Office announces an open public hearing to address the implications of an extension to the Copyright Act's duration of protection. The Copyright Office also requests that interested parties submit formal written comments regarding extension of the duration of copyright. Such comments should address issues related to changes in foreign protection, such as the effect on marketplace competition and U.S. works in foreign markets, as well as issues related to domestic protection. In order to better facilitate discussion during the open hearing, comments from those who intend to make oral presentations at the hearing are due one week prior to the date of the hearing.

Dated: July 26, 1993.

Ralph Oman,
Register of Copyrights.
[FR Doc. 93-18187 Filed 7-29-93; 8:45 am]

Billing Code: 1410-07-F

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338, 50-339]

Virginia Electric and Power Company North Anna Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR part 50 appendix E to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would allow temporary relief from the requirements of 10 CFR part 50 appendix E, Section IV.F.2., for the licensee at NA-1&2 to annually exercise its emergency plan. The one-time exemption would relieve the licensee from the requirement to conduct the 1993 NA-1&2 Emergency Plan partial participation exercise which is presently scheduled for August 18, 1993.

The request for exemption is based on the implementation of the licensees emergency response capability during the April 24, 1993 Alert at NA-2. The licensee states that the implementation of the NA-1&2 and Corporate emergency plans, along with the demonstration of the response capability, satisfy the requirements for the partial participation (small scale) exercise demonstration as specified in the North Anna Emergency Plan.

The licensee also states that this response demonstration included involvement of the cognizant State and local jurisdictions and was critiqued by the license and evaluated by the Nuclear Regulatory Commission (NRC). As the implementation of the emergency plan was demonstrated and evaluated, the licensee concludes that the adequacy of the emergency preparedness program implementation has already been demonstrated during the year 1993.

The Need for the Proposed Action

The proposed exemption is needed in order to reduce the duplication of the demonstration of emergency response elements. The license states that the conduct of the exercise is an unnecessary use of Federal, company, State and local resources that would only serve to reconfirm the established adequacy of the plan as well as the company's capability to implement the plan. Performance of the 1993 NA-1&2 Emergency Plan partial participation exercise, given the licensees specific circumstances and performance in this area, represents an undue regulatory burden with minimal benefit to public safety.

Environmental Impacts on the Proposed Action

The proposed exemption does not involve any measurable environmental impacts since the exemption deals with the exercise of the licensees emergency plan. Plant configuration and operations are not changed. The requirements for annual testing of the NA-1&2 Emergency Plan in a partial participation exercise in 1993 were essentially satisfied based on implementation of the licensees emergency response during the April 24, 1993 alert at NA-2. Thus, the proposed exemption would not affect the probability or consequences of a potential reactor accident and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves the action of emergency plan exercises. It does not affect nonradiological plant effluents and there are no other nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the staff has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require strict compliance with 10 CFR part 50, appendix E, section IV.F.2., for the licensee at NA-1&2 to annually exercise its emergency plan. The 1993 NA-1&2 Emergency Plan partial participation exercise would take place during the calendar year.

Alternative Use of Resources

This exemption from the scheduled partial participation exercise on August 18, 1993, would allow the licensee, State, local agencies and NRC, to reallocate the resources that are scheduled to support the exercise to other necessary functions.

Agencies and Persons Consulted

The staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated June 18, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 23rd day of July 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,
Acting Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-18201 Filed 7-29-93; 8:45 am]
Iowa Electric Light & Power Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49 issued to Iowa Electric Light and Power Company (IELP or the licensee), for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The proposed amendment would revise the Technical Specifications to increase the storage capacity of the Spent Fuel Pool to a maximum of 3152 fuel assemblies, including storage capacity for 323 fuel assemblies in a proposed rack that could temporarily be located in the cask loading area of the cask pit during full-core offloading.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission’s regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission’s regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated

In the course of the analysis, IELP has considered the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool (SFP).
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.

The increased storage capacity of the DAEC SFP has been analyzed for the existing fuel handling equipment and procedures, SFP cooling system, and seismic events. As with the existing racks, movement of a spent fuel cask over the SFP is prevented by safety interlocks and limit switches, as discussed in the DAEC UPSAR (Reference Section 9.1.4.4.5). Additionally, all fuel movements associated with this modification will be accomplished in accordance with existing fuel handling procedures. Consequently, the probability of dropping a fuel assembly per individual fuel movement is not increased. Thus, this modification does not increase the probability of movement of heavy loads within the SFP. No heavy loads will be moved directly over irradiated fuel. The DAEC SFP was re-arranged once before in 1979 and this modification will employ similar controls. Thus, the proposed amendment will not increase the probability of any of the above accidents. Sections 5.1.1, 5.1.2 and 5.1.6 of NUREG-0612, entitled “Control of Heavy Loads at Nuclear Power Plants,” provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Alternative (1) of Section 5.1.2 provides that the control of heavy loads can be satisfied by establishing that the potential for a heavy load drop is extremely small, as demonstrated by satisfaction of the single-failure-proof crane guidelines. The provisions of alternative (1) will be met during implementation of the subject activities.

NUREG-0554, entitled “Single-Failure-Proof Cranes for Nuclear Power Plants,” provides guidance for the design, fabrication, installation and testing of new cranes that are of a high reliability class. For operating plants, NUREG-0612, Appendix C, entitled “Modification of Existing Cranes,” provides guidelines on the implementation of NUREG-0554 at operating plants. An evaluation of storage rack movements, which will be accomplished by the DAEC Reactor Building crane, to determine conformance with the NUREG-0612, Appendix C guidelines demonstrated that alternative (1) above is satisfied, i.e., the probability of a drop of a storage rack is extremely small. As stated in the DAEC UPSAR, the Reactor Building crane has a rated capacity of 100 tons, which incorporated a design safety factor of five. The maximum weight of any existing or replacement storage rack and its associated handling tool is 12 tons. Therefore, there is ample safety factor margin for movements of the storage racks by the Reactor Building crane. This applies to non-redundant load-bearing components. Redundant special lifting devices, which have a rated capacity sufficient to maintain the safety factor in the movements of the storage racks. As per NUREG-0612, Appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low.

IELP evaluated the consequences of a spent fuel assembly drop in the spent fuel pool and found that the criticality acceptance criterion, k-effective is less than or equal to 0.95, is not violated. In addition, IELP found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analysis. IELP analyses found that the calculated doses are well within 10 CFR part 100 guidelines. The results of an analysis show that a dropped, spent fuel assembly on the racks will not
distort the racks to the extent that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly increased from the previously evaluated spent fuel assembly drops.

The probability and consequences of a spent fuel rack drop will not be affected by the replacement of the racks. During the modification phase of the rerack project, administrative controls governing safe load paths will supplant the Reactor Building crane interlocks and limit switches. The limit switches represent a physical limitation on Reactor Building crane travel to prevent heavy load movement over irradiated fuel. The proposed administrative controls will accomplish the same objective of restricting movement of heavy loads to safe load paths. Similar controls were implemented during the previous SFP reracking modification in 1979. Upon completion of the rerack, the Reactor Building crane safety interlock and limit switch functions will be restored.

The consequence of a fuel handling accident during this modification has been considered. No heavy loads will be carried directly over irradiated fuel. In addition, any load weighing more than the combined weight of a fuel bundle and gravity (assumption for fuel handling accident) will be carried in the spent fuel pool area until all fuel in the pool has decayed for a minimum of three months. This provides a sufficient time for decay of gaseous radionuclides (includes the fuel gap activity) such that an assumed release of gases from damage to all stored fuel assemblies would result in a potential offsite dose less than 10% of 10 CFR part 100 limits. Therefore, the consequences of a fuel handling accident are not significantly increased from previously evaluated events.

The consequences of a loss of spent fuel pool cooling system flow have been evaluated and it was found that sufficient time is still available to provide an alternate means of cooling in the event of a complete failure of the cooling system. Thus, the consequences of this type of accident are not significantly increased from the previously evaluated loss of cooling system flow accidents.

The consequences of a seismic event have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing racks, so that the integrity of the racks and the pool structure is maintained during and after a seismic event. Thus, the consequences of a seismic event are not increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the spent fuel pool does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated

IELP has evaluated the proposed modification in accordance with the
guidance of the NRC Position Paper entitled "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, IELP has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification.

No unique technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology in this instance has been developed and demonstrated in over 80 applications for fuel pool capacity increases previously approved by the NRC.

Further, IELP reracked the SFP previously. That modification was accomplished following similar procedures. This modification will not introduce any new accidents from those previously analyzed.

The temporary installation of a spent fuel rack in the cask pit will only be done if the storage is necessary to support full core offloading. If this rack is installed, a cask cannot be placed in the cask pit. No heavy loads will be allowed above the pit with irradiated fuel stored in it. Several additional restrictions will be implemented if this rack is to be utilized. The analysis performed for the SFP reracking also supports temporary installation of a rack in the cask pit. The cask pit is included as part of the SFP so that a cask drop in the water would, if it results in local failure of the floor, only drain the cask pit. Since a cask will not be allowed in the pit with the temporary fuel rack installed, there is no possibility for an accident involving a heavy load being dropped on irradiated fuel, or pool drainage resulting in uncovered fuel.

Based upon the foregoing, IELP concludes that the proposed reracking does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety?

The NRC Staff Evaluation Review process has established that the issue of margin of safety, when applied to a reracking modification, should address the following areas:

1. Nuclear criticality considerations
2. Thermal-hydraulic considerations
3. Mechanical, material and structural considerations

The established acceptance criterion for criticality is that the effective neutron multiplication factor k-effective in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis comport with the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications. The acceptance criteria for maintaining fuel subcritical in the SFP is met if k-effective is always less than 1. The SFP analysis for this rerack modification includes uncertainties at 95%/95% probability and confidence levels, therefore the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods were used to calculate fuel pool temperatures during all core decay and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present spent fuel racks to demonstrate that the temperature margins are maintained. The proposed modification will increase the heat load in the spent fuel pool. The evaluation shows that the existing spent fuel cooling system will maintain the bulk pool water temperature at or below 165°F. Thus a margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. The evaluation also shows that maximum local water temperatures along the hottest fuel assembly are below the allowed fuel handling condition to exist. Thus, there is no significant reduction in the margin of safety for spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the drop of a spent fuel assembly, or the drop of any other heavy object in the pool. The mechanical, material, and structural design of the new spent fuel racks is in accordance with applicable portions of NRC Position Paper, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.8.4; and other applicable NRC guidance and industry codes. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural conservatism of the new p.m. level racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other during the postulated seismic events. In addition the spent fuel assemblies remain intact and no criticality concerns exist. Thus the margins of safety are not significantly reduced by the proposed rerack.

In summation, it has been shown that the proposed spent fuel storage facility modifications do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it finds that the conditions of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room F–223, Phillips Building, 7920 Norford Avenue, Bethesda, Maryland, from 8:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 30, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman
petitioner intends to rely to establish that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Services Branch, or may be delivered to the Commission’s Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 942-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John H. Hannon, petitioner’s name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esquire and Kathleen H. Shee, Esquire; Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorney for the licensor.

Timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(iv) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to “any matter which the Commission determines to be in controversy among the parties.” The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission’s rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission’s rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K. “Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors” (published at 50 FR 41662 (October 15, 1985)). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. As outlined above, the Commission’s rules in 10 CFR part 2, subpart K continue to govern the filing of request for a hearing or petitions to intervene, as well as the admission of contentions. The presiding officer shall grant a timely request for oral argument.

The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely
request. If the presiding officer grants a request or oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available to discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated March 26, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Cedar Rapids Public Library, 501 1st Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 26th day of July 1993.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,
Acting Director, Project Directorate III-3, Division of Reactor Projects—III/V/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18202 Filed 7–29–93; 8:45 am]
BILLING CODE 7550–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-fifth meeting of the Federal Salary Council will be held at the time and place shown below. The agenda for the meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATES: August 31, 1993, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.


For the President’s Pay Agent.

Patricia W. Lattimore,
Acting Deputy Director.

[FR Doc. 93–18091 Filed 7–29–93; 8:45 am]
BILLING CODE 8020–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve a Classroom Speaker Form to be used by the World Wise Schools program through September 1996. A copy of the information collection may be obtained from Sue Anne Athens, Office of World Wise Schools, Peace Corps, 1990 K St. NW, Washington DC 20526, Ms. Athens may be called at (202) 606–3294. Comments on this form should be addressed to Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Classroom Speaker Form. Frequency of collection: Ongoing per the needs of educators.

Need for and Use of the Information

This form is completed voluntarily by educators throughout the country. Once returned, the form will provide information regarding the specific request of the educator. From this, speakers or information resources will be provided from a willing pool of former Peace Corps Volunteers. The effort to involve the returned Peace Corps Volunteer is an effort to fulfill the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program. Participation in the World Wise Schools program is voluntary.

Description of Respondents

All parties who are interested in being assisted by former Peace Corps Volunteers. These include educators and librarians throughout public and private school systems.

Burden on the Public

a. Annual Reporting Burden: 1,667 hours.
b. Annual Record Keeping Burden: 520 hours.
c. Estimated Maximum Burden per Response: 20 minutes.

This notice is issued in Washington, DC on July 20, 1993.

Joan Ambre,
Acting Associate Director for Management.

[FR Doc. 93–18199 Filed 7–29–93; 8:45 am]
BILLING CODE 8051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of Collection of Information No. 1212–0030

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget under the Paperwork Reduction Act for a currently approved collection of information. The collection of information, which is not contained in a regulation, is a survey of insurance company rates for pricing annuity contracts that is conducted under the auspices of the American Council of Life Insurance.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0030), Washington, DC 20503. The request for extension will be available for public inspection at the PBCC Communications and Public Affairs Department, suite 7100, 2020 K Street NW, Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.


SUPPLEMENTARY INFORMATION: The title of the collection of information for which extension of approval is requested is: Survey of Nonparticipating Single Premium Group Annuity Rates.

The Pension Benefit Guaranty Corporation (PBGC) has promulgated regulations prescribing actuarial valuation methods and assumptions to be used in determining the actuarial
present value of benefits under single-employer plans that terminate (29 CFR part 2519) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 2676). The PBGC calculates interest rates under those regulations each month. In order that the rates may reflect current conditions in the investment and annuity markets, the PBGC gathers data from those markets that are used in setting the rates. The Survey of Nonparticipating Single Premium Group Annuity Rates is needed to give the PBGC information about the annuity market so that its rates will reflect conditions in that market. The information gathered through the survey is used by the PBGC in determining those rates.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance (ACLI). The survey is conducted quarterly. The PBGC estimates that the total annual burden of responding to the survey is 72 hours.

Issued at Washington, DC, this 23rd day of July 1993.

Martin State,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–18209 Filed 7–29–93; 8:45 am]
BILLING CODE 7708–01–M

DEPARTMENT OF STATE
[Public Notice 1843]
Preparatory Meeting for U.S. Participation in International Telecommunication Union World Telecommunication Development Conference (WTDC); Meeting

The Department of State/CIP announces that the initial meeting of government officials and private sector representatives preparing for U.S. participation in the International Telecommunication Union (ITU) World Telecommunication Development Conference (WTDC) will be held on Friday, August 20, 1993, from 2 to 4 p.m. in room 3519, Department of State, 2201 "C" Street, NW., Washington, DC.

The WTDC is scheduled for March 21–29, 1994, in Buenos Aires. The U.S. will be preparing proposals addressing the principal topics for consideration by the Conference such as:

2. Investment strategies and mobilization of resources for telecommunication development worldwide.
3. Harmonization of telecommunication networks, including, among others,
   - Measures to enhance the participation of developing countries in the activities of the standardization and radiocommunications sectors;
   - Use of the radio spectrum and the geostationary satellite orbit;
   - New technologies and applications;
   - Industrialization, including transfer of technology.
5. Special programs for the Least Developed Countries (LDCs).

The purpose of this initial meeting will be to review the Conference agenda and to establish a process for preparing U.S. positions.

Mr. Richard C. Beard, Acting U.S. Coordinator and Director of the Bureau of International Communications and Information Policy, U.S. Department of State, will chair the meeting.

Members of the general public may attend the meeting and participate in the preparations for the Conference, subject to instructions of the Chairperson. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled, and individual passes are required for each attendee. Arrangements must be made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Ms. Doreen F. McGirr, CIP, Room 6317, Department of State, Washington, DC 20520; telephone (202) 647–5220, FAX (202) 647–0158. They must provide their name, title, company name, social security number, and date of birth. All attendees must use the “C” Street entrance to the building.

Dated: July 26, 1993.

Doreen F. McGirr, Senior Counselor, Bureau of International Communications and Information Policy.

[FR Doc. 93–18194 Filed 7–29–93; 8:45 am]
BILLING CODE 4710–45–M

Bureau of Political-Military Affairs
[Public Notice 1844]
Policy on Munitions Export Licenses to Nigeria

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that, until further notice, all license applications and other approvals to export or otherwise transfer commercial defense articles or defense services to Nigeria are being reviewed on a more highly scrutinized case-by-case basis with a presumption of denial. This action is being taken pursuant to Sections 2, 38, and 42 of the Arms Export Control Act.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to review all license applications and other approvals to export or otherwise transfer commercial defense articles and defense services to Nigeria with a presumption of denial. This action is being taken in response to the Nigerian military regime’s continuing refusal to allow an orderly and timely transition to unhindered elected civilian government.

The licenses and approvals that are affected include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Nigeria subject to the Arms Export Control Act. This action also precludes the use in connection with Nigeria of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to Sections 2, 38, and 42 of the Arms Export Control Act (22 U.S.C. 2752, 2778, and 2791) and §126.7 of the ITAR in furtherance of the foreign policy of the United States. In accordance with §§126.3 and 126.7 of the ITAR, affected persons desiring review of this policy with regard to a particular export may petition the Director, Office of Defense Trade Controls. Exceptions to this policy will be considered on a case-by-case basis.


Robert L. Gallucci,
Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93–18195 Filed 7–29–93; 8:45 am]
BILLING CODE 4710–25–M
SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: July 22, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

Pilot Schools-FAR Part 141

Administration: Federal Aviation Administration.
Title: Pilot Schools—FAR Part 141.
Need for Information: The information is needed to certify pilot schools and insure that minimum acceptable training standards are met.

Proposed Use of Information: The information will be used to assure continuing compliance with Part 141, renewal of certificates every 24 months, and for any amendments to pilot school certificates.

Frequency: On occasion.
Burden Estimate: 46,674 hours.
Respondents: Businesses/pilot schools.
Form(s): FAA Form 8420-8.
Average Burden Hours Per Response: 4 hours and 12 minutes reporting; 50 hours recordkeeping.
DOT No: 3783.
OMB No: 2115-0507.
Administration: U.S. Coast Guard.
Title: Cargo Pump System Test.
Need for Information: This information is needed to ensure that waterfront cargo pump systems are in compliance with the testing requirements of the Ports and Waterways Safety Act of 1972.

Proposed Use of Information: This information will be used to determine that testing has been done at each facility and that a record of the results have been made.

Frequency: On occasion.
Burden Estimate: 1,403 hours.
Respondents: Owners or operators of waterfront facilities.
Form(s): None.
Average Burden Hours Per Response: 7 hours and 15 minutes recordkeeping.
DOT No: 3784.
OMB No: 2115-0143.
Administration: U.S. Coast Guard.
Title: Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.
Need for Information: This information collection is needed to ensure compliance with statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.

Proposed Use of Information: This information will be used to ascertain the citizenship of personnel employed on the OCS. This requirement is used in conjunction with the commercial vessel safety program.

Frequency: On occasion.
Burden Estimate: 1,510 hours.
Respondents: Employers of personnel, and the employees engaged in exploration, development and production or resources on the OCS.
Form(s): None.

Average Burden Hours Per Response: 3 minutes reporting; 54 minutes recordkeeping.
DOT No: 3785.
OMB No: 2115-0005.
Administration: U.S. Coast Guard.
Title: Bridge Permit Application Guide.

Need for Information: This information collection is needed to evaluate plans to construct bridges or causeways over navigable waters of the United States.

Proposed Use of Information: Coast Guard will use this information to determine the level of compliance with MARPOL 73/78 Annex V.

Proposed Use of Information: Coast Guard will use this information collection to: (1) Determine how ship-generated waste is being handled; (2) enforce MARPOL 73/78 Annex V; and (3) provide research material in evaluating the regulatory program.

Frequency: On occasion.
Burden Estimate: 169,372 hours.
Respondents: Masters or persons in charge of oceangoing vessels.
Form(s): None.
Average Burden Hours Per Response: 7 hours and 42 minutes recordkeeping.
DOT No: 3787.
OMB No: 2115-0042.
Administration: U.S. Coast Guard.
Title: Certificate of Discharge to Merchant Mariners.

Need for Information: This information collection is needed to provide merchant mariners with evidence of their sea service, determine eligibility of various union benefits and to develop maritime sea service statistics for the Federal Government.

Proposed Use of Information: Coast Guard will use this information collection to establish sea service time and to determine qualifications of merchant mariners in issuing or upgrading their documents.
Frequency: On occasion.
Burden Estimate: 2,340 hours.
Respondents: Merchant mariners.
Form(s): CG–718A.
Average Burden Hours Per Response: 3 minutes reporting.
DOT No: 3786.
OMB No: 2115–0111.
Administration: U.S. Coast Guard.
Title: Course Approvals for Merchant Marine Training Schools.
Need for Information: This information collection is needed to ensure that training schools desiring to have a course approved by the Coast Guard are in compliance with the statutory requirements.
Proposed Use of Information: The information will be used to determine if approved training received by mariners can be substituted for the requirements mandated by the Coast Guard.

Frequency: Once (unless the vessel is altered).
Burden Estimate: 20,620 hours.
Respondents: Vessel owners.
Form(s): CG–5397.
Average Burden Hours Per Response: 2 hours and 11 minutes reporting.
DOT No: 3791.
OMB No: 2105–0009.
Administration: Office of the Secretary.
Title: Advisory Committee Candidate Biographical Information Request.
Need for Information: In accordance with the Federal Advisory Committee Act (P.L. 92–463), the information is needed to prepare an annual report on the membership of each committee as part of the President’s Report to the Congress on Federal Advisory Committees.
Proposed Use of Information: The information will be used to determine if prospective members fit statutory and other requirements for balance and represent particular interest groups or affected parties.
Frequency: Once per candidate for a two or three-year term.
Burden Estimate: 35 hours.
Respondents: Individuals being considered for appointment to DOT advisory committees.
Form(s): DOT 1120.1.
Average Burden Hours Per Response: 15 minutes reporting; 1 hour recordkeeping.
DOT No: 3792.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Kansas City Center Customer Satisfaction Questionnaire.
Need for Information: As part of Total Quality Management, the Kansas City Air Route Traffic Control Center (ARTCC) wants to have contact with their customers to assure that customers’ needs are being met and that service is improved.
Proposed Use of Information: This information will be used by the facility to solve problems and to generally improve service to the public. Problems that cannot be solved at the facility level will be escalated to the regional level.
Frequency: Annually.
Burden Estimate: 25 hours.
Respondents: Users of the Kansas City ARTCC.
Form(s): ZKC Form 7010–1.
Average Burden Hours Per Response: 15 minutes reporting.
DOT No: 3793.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes.
Need for Information: The information is needed to check for compliance of seat flammability.
Proposed Use of Information: The information collected will be a record of the test results on seat cushion flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane.
Frequency: On occasion.
Burden Estimate: 2.5 hours.
Respondents: Businesses (airplane seat manufacturers).
Form(s): None.
Average Burden Hours Per Response: 30 minutes reporting.
DOT No: 3794.
OMB No: 2120–0536.
Administration: Federal Aviation Administration.
Title: Security Programs for Foreign Air Carriers.
Need for Information: Section 129.25(e)(1) requires each foreign air carrier landing or taking off in the United States to submit a security program to the Administrator to ensure the acceptance of seat flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane.
Frequency: On occasion.
Burden Estimate: 25,280 hours.
Respondents: Foreign air carriers/governments.
Form(s): None.
Average Burden Hours Per Response: 160 hours reporting.
DOT No: 3795.
OMB No: 2132–0647.
Administration: Federal Transit Administration.
Title: Section 11(a) University Research and Training Program.
Need for Information: Information is needed to determine the eligibility of
grant applicants and to assure that all FTA and Federal requirements are met.

**Proposed Use of Information:** The information will be used for certain research purposes that address specific public transportation problems and policy issues.

**Frequency:** Annually, quarterly.

**Burden Estimate:** 4,727 hours.

**Respondents:** Federal agencies or employees, non-profit institutions.

**Form(s):** None.

**Average Burden Hours Per Response:** 39 hours and 24 minutes reporting.

**DOT No:** 3798.

**OMB No:** 2132-0546.

**Administration:** Federal Transit Administration.

**Title:** Section 6 of the Federal Transit Act, as amended.

**Need for Information:** The information is needed as part of the application for grants and cooperative agreements and as a project management tool.

**Proposed Use of Information:** The purpose of the data is to assist FTA in providing technical assistance to improve mass transportation (facilities, equipment, etc.) and to assist State or local governments, and transit and planning agencies in such improvements.

**Frequency:** Quarterly, semi-annually, annually.

**Burden Estimate:** 31,240 hours.

**Respondents:** State or local governments, businesses or other for-profit and non-profit organizations.

**Form(s):** SF-424.

**Average Burden Hours Per Response:** 11 hours and 24 minutes reporting.

**DOT No:** 3797.

**OMB No:** 2132-0551.

**Administration:** Federal Transit Administration.

**Title:** Section 10 Managerial Training Program.

**Need for Information:** Collection is necessary to assist the Federal Government in providing important training programs for the transit industry.

**Proposed Use of Information:** Information will be used to determine the eligibility of grant applicants, assure that FTA/Federal requirements are met, and to collect data on the number of transit employees trained and the cost effectiveness of the training grant program.

**Frequency:** Annually, semi-annually, quarterly.

**Burden Estimate:** 4,142 hours.

**Respondents:** State or local governments, businesses or other for-profit, and non-profit institutions.

**Form(s):** None.

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<td><strong>Average Burden Hours Per Response:</strong> 3 hours and 36 minutes reporting.</td>
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<td><strong>DOT No:</strong> 3798.</td>
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<td><strong>OMB No:</strong> 2127-0512.</td>
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<td><strong>Administration:</strong> National Highway Traffic Safety Administration.</td>
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**Title:** Consolidated Labeling Requirements for Motor Vehicles (except VIN numbers), 49 CFR 571.105, 205, 209 and Part 567.

**Need for Information:** The information is necessary because motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users, and to ensure prompt identification of such equipment in the event of safety-related defects.

**Proposed Use of Information:** The information is used to ensure the proper handling of equipment, to certify compliance with applicable safety requirements, and to determine product liability.

**Frequency:** On occasion.

**Burden Estimate:** 71,095 hours.

**Respondents:** Manufacturers.

**Form(s):** None.

**Average Burden Hours Per Response:** 3 minutes reporting.

**DOT No:** 3799.

**OMB No:** 2127-0038.

**Administration:** National Highway Traffic Safety Administration.

**Title:** Assigning DOT Code Numbers to Glazing Materials.

**Need for Information:** Federal Motor Vehicle Safety Standard No. 205 requires all automotive glazing materials to be certified by affixing a DOT Code Number on each piece of glazing material manufactured. The DOT Code is assigned by NHTSA.

**Proposed Use of Information:** The information is used to identify the manufacturer if a defect is found in the glazing material.

**Frequency:** On occasion.

**Burden Estimate:** 11 hours.

**Respondents:** Manufacturers of Glazing Materials.

**Form(s):** None.

**Average Burden Hours Per Response:** 30 minutes reporting.

**DOT No:** 3800.

**OMB No:** 2133-0015.

**Administration:** Maritime Administration.

**Title:** Trustee's Supplemental Certification.

**Need for Information:** The Shipping Act of 1916, as amended, requires the approval of banks and trust companies to act as Trustees under certain ship financing trusts and provides a procedure for assuring the validity and preferred status of certain mortgages on U.S.-flag vessels. The approved bank or trust company is required to furnish its supplemental certification every five years in order to remain on the roster of Approved Trustees.

**Proposed Use of Information:** The information will be used by the Maritime Administration to determine whether the bank or trust company continues to qualify financially to act as Trustee under ship financing guarantees.

**Frequency:** Every five years, or when requested for ship financing closings.

**Burden Estimate:** 49 hours.

**Respondents:** Banks, Trust Companies.

**Form(s):** MA-580.

**Average Burden Hours Per Response:** 45 minutes reporting.

**DOT No:** 3801.

**OMB No:** 2125-0028.

**Administration:** Federal Highway Administration.

**Title:** Highway Performance Monitoring System.

**Need for Information:** The information is needed by the FHWA to evaluate the effectiveness of Federal-aid highway safety programs and future highway needs.

**Proposed Use of Information:** The information will be used to plan, design and administer safe and efficient transportation systems; to develop and implement legislation; to prepare reports; and to respond to inquiries, including those of the Congress.

**Frequency:** Annually.

**Burden Estimate:** 111,013 hours.

**Respondents:** State highway agencies.

**Form(s):** None.

**Average Burden Hours Per Response:** 1,982 hours reporting.

**DOT No:** 3802.

**OMB No:** 2133-0508.

**Administration:** Maritime Administration.

**Title:** Claims Against the Maritime Administration Under the Federal Tort Claims Act.

**Need for Information:** The information is necessary to process and settle claims involving the Maritime Administration under the Federal Tort Claims Act.

**Proposed Use of Information:** The information is used to evaluate and allow, disallow, or settle claims.

**Frequency:** On occasion.

**Burden Estimate:** 22 hours.

**Respondents:** Claimants.

**Form(s):** SF-95.

**Average Burden Hours Per Response:** 2 hours reporting.

**DOT No:** 3803.

**OMB No:** 2127-0511.

**Administration:** National Highway Traffic Safety Administration.
Federal Aviation Administration

Intent To Rule on Application To Impose and Use Passenger Facility Charge (PFC) at Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 24, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by The Metropolitan Washington Airports Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, whole or in part, no later than October 21, 1993. The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1993

Proposed charge expiration date: August 6, 2003

Total estimated PFC revenue: $198,752,390

Brief description of proposed project(s):

New Midfield Facilities, including Aprons/Taxiways and Electrical services

Midfield Apron, Service Building and Fuel Line (Bravo Ramp)

Replace Airfield Lighting Circuits

Airfield Signage

Perimeter Fencing

North Service Road Upgrades

Reconstruct Dulles Access Highway and Bridges

Mobile Lounge Road and Apron Area

Access Road, Third Lane Phase I

Holding Apron, Runway 1R

Holding Apron 1R

Touch Down Zone Lighting, Runway 1L

Extend Taxiway E-2 to E-7

FOR FURTHER INFORMATION CONTACT: Mr. Larry Heil, Staff Environmentalist, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, room 254, Indianapolis, IN 46204. Telephone (317) 226-7491.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Indiana Department of Transportation, will prepare an environmental impact statement (EIS) on a proposed construction of a new segment of State Road 145 in Crawford and Perry counties of southern Indiana. The proposed alignments generally follow three different corridors through the counties of southern Indiana.
region. The alignments vary in length from 9.57 miles for Alternate 1, or 9.60 miles for Alternate 2 and 8.35 miles for the third alternate. The last alternate uses more of the existing state road 145 than any of the other alignments. The proposed roadway section will be a 2 lane facility built to current standards. It will also include several small bridges across the various small to intermittent waterways. This project will provide a more direct access to the Patoka Reservoir and its facilities from interstate 64. This route will reduce the distance traveled to the reservoir by about five miles for some of the visitors.

The following alternatives are being considered: (1) Do-nothing; (2) Alternate 1 (length 9.57 miles); (3) Alternate 2 (length 9.6 miles); (3) Alternate 3 (length 8.35 miles); (4) Improve existing SR 145 (either totally or TSM improvements).

The project has been coordinated with the following Indiana Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Soil Conservation Service, Indiana Aeronautics Commission, Indiana Department of Environmental Management, U.S. Department of the Interior, Army Corps of Engineers, Crawford County Community School Corporation, Perry Central Community School Corporation, local health departments, county commissioners and state/local police agencies.

No public informational meeting has been held as of this date. Notification of public meetings or hearing will be advertised. Public notice will be given of the time and place of the public hearing. The draft Environmental Impact Statement will be available for public and agency review and comment. At this point in the planning process, it is not expected that a formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.285, (Highway Research, Planning and Construction). The provisions of OMB Circular A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.)

Robert L. Burch, Assistant Division Administrator, Indianapolis, Indiana.

[FR Doc. 93-18138 Filed 7-29-93; 8:45 am] BILeNG CODE 4830-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

July 26, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Application to Develop Software for the 1993 1120-A/PC
Format Return, U.S. Corporation Short-Form Income Tax Return.
Description: Form 9550 will be filled in by software developers and submitted to IRS as an application for producing software for Form 1120-A/PC
Distributed Input System (DIS) data processing tax returns.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1545-0091.
Form Number: IRS Form 1040X.
Type of Review: Revision.
Title: Amended U.S. Individual Income Tax Return.
Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 2,395,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—1 hour, 12 minutes Learning about the law or the form—20 minutes Preparing the form—1 hour, 10 minutes
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,879,550 hours.

Robert L. Burch,
Assistant Division Administrator, Indianapolis, Indiana.

[FR Doc. 93-18265 Filed 7-29-93; 8:45 am] BILeNG CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review.

July 26, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 1120-A/PC
Type of Review: New collection.
Title: Application to Develop Software for the 1993 1120-A/PC
Format Return, U.S. Corporation Short-Form Income Tax Return.
Description: Form 9550 will be filled in by software developers and submitted to IRS as an application for producing software for Form 1120-A/PC
Distributed Input System (DIS) data processing tax returns.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1545-0091.
Form Number: IRS Form 1040X.
Type of Review: Revision.
Title: Amended U.S. Individual Income Tax Return.
Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 2,395,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—1 hour, 12 minutes Learning about the law or the form—20 minutes Preparing the form—1 hour, 10 minutes
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,879,550 hours.

Robert L. Burch,
Assistant Division Administrator, Indianapolis, Indiana.

[FR Doc. 93-18265 Filed 7-29-93; 8:45 am] BILeNG CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review.

July 26, 1993.
UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, “Eighteen Century Dutch Watercolors from the Rijksmuseum Printroom, Amsterdam” (see list), imported from abroad for the temporary exhibition without profit to the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Frick Collection, New York, New York, from on or about September 13, 1993, to on or about November 7, 1993; at the Center for Fine Arts, Miami, Florida, from on or about November 20, 1993, to on or about January 2, 1994; and at the Flint Institute of Arts from on or about January 15, 1994, to on or about February 27, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.


R. Wallace Stuart,
Acting General Counsel.

[FR Doc. 93-18266 Filed 7-29-93; 8:45 am] 
BILLING CODE 4530-01-P

DEPARTMENT OF VETERANS AFFAIRS

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 3692, will be held on August 23 and 24, 1993, from 8:30 a.m. to 4:30 p.m. each day. The meeting will take place at The Vista Hotel, 1400 M Street, NW., Washington DC 20005. Meeting room number to be posted in lobby of hotel. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Colia P. Dollardiz, Executive Secretary, Veterans' Education Advisory Committee (phone 202-233-2152) prior to August 16, 1993.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10 a.m. on August 24, 1993.


By direction of the Secretary.

Heyward Bannister,
Committee Management Officer.

[FR Doc. 93-18167 Filed 7-29-93; 8:45 am]
BILLING CODE 8320-01-M

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) income tax records with VA pension, compensation and parents' dependency and indemnity compensation records. The match will include the records of current VA beneficiaries as well as records of former beneficiaries. The goal of this match is to compare income and employment status as reported to VA with income tax records maintained by SSA. This is a reinstatement of a matching program which expired September 30, 1992. The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with income tax records maintained by SSA. VA also plans to match records of veterans who are receiving compensation pursuant to a rating of disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability or disabilities, not rated as total with wage and self-employment income tax information maintained by SSA. The match with SSA will provide VA with data from the SSA Earnings Recording and Self-Employment Income System. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of wages, self employment and other income as well as employment status is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income and employment status.

Records To Be Matched

The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1991 compilation, Volume II, pages 967-971 as amended. The SSA records consist of information from the Earnings Recordings and Self-Employment Income System HHS/SSA/OSR, 09-60-0059. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100-503.

The match is estimated to start August 1, 1993, but will start no sooner than 30 days after publication of this Notice in the Federal Register, or 30 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program...
Privacy Act of 1974, Amendment of Routine Uses

ACTION: Notice; amendment of routine uses.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending a routine use statement that appears in 19 systems of records.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the routine uses. All relevant materials received before August 30, 1993 will be considered. All written comments received will be available for public inspection in Room 170 of the address given below between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 8, 1993. If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the Federal Register by VA, the routine uses are effective August 30, 1993.

ADDRESSES: Written comments concerning the proposed amendment to the routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Harold Ramsey, Program Specialist, Medical Administration Service (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-7657.

SUPPLEMENTARY INFORMATION: The Health Care Quality Improvement Act of 1986 (Title IV of Pub. L. 99-660) set forth requirements for private sector health care facilities and organizations to report to the Secretary of the Department of Health and Human Services (HHS) adverse actions taken against physicians and licensed health care practitioners. These reports on medical malpractice, sanctions taken by State Licensing Board, and reduction of clinical privileges following peer review are to be reported to the National Practitioner Data Bank.

Under the terms of a memorandum of understanding with HHS, VA participates in the Bank. Two routine uses were added to the appropriate notices of the Privacy Act systems of records that contain information which may be used for participation in the Bank. One routine use addresses inquiries to the Bank when individuals apply for VA employment. The second routine use addresses the disclosure of information to the Bank concerning malpractice payments and settlements made on behalf of physicians, dentists and other licensed health care practitioners, and actions taken by health care entities which adversely affect a practitioner’s clinical privileges. This routine use is being amended to provide also for the reporting of the acceptance of the surrender of clinical privileges or any restriction of privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. The routine use is included in the following systems of records which are contained in the Federal Register publication, “Privacy Act Issuances, 1991 Compilation, Volume II,” on the pages indicated:

08VA05 Employee Medical File Records (Title 38)—VA on page 924.
09VA05 Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement Grievances and Arbitrations—VA on page 926.
11VA51 Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.—VA on page 927.
13VA047 Individuals Submitting Invoices/ Vouchers for Payment—VA on page 930.
14VA135 Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendings, Others) Personnel Records—VA on page 931.

27VA947 Personnel and Accounting Pay System—VA on page 942.
28VA119 Personnel Registration Under Controlled Substance Act—VA on page 943.
32VA00 Veteran, Employee and Citizen Health Care Facility Investigation Records—VA on page 945.
34VA11 Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA on page 947.
63VA05 Grievance Records—VA on page 972.
66VA53 Inspector General Complaint Center Records—VA on page 975.
73VA14 Health Professional Scholarship Program—VA on page 979.
76VA05 General Personnel Records (Title 38)—VA on page 981.
77VA11 Health Care Provider Records—VA on page 983.
79VA162 Decentralized Hospital Computer Program (DHCP) Medical Management Records—VA on page 986.

Also, the retention and disposal sections in two system notices are being amended, Patient Medical Records—VA (24VA136) and Health Care Provider Records—VA (77VA11).

Approved: July 20, 1993.

Jesse Brown, Secretary, Department of Veterans Affairs.

Notice of Amendment to System of Records

1. In the system identified as 02VA135, “Applicants for Employment Under Title 38, U.S.C.—VA” appearing on page 920 of the Federal Register publication, “Privacy Act Issuances, 1991 Compilation, Volume II,” the following routine use is amended:

02VA135

SYSTEM NAME:
Applicants for Employment Under Title 38, U.S.C.—VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning:

(1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical
malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual;

(2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or,

(3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

3. In the system identified as 09VA05, "Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement Grievances and Arbitrations—VA" appearing on page 926 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

09VA05
SYSTEM NAME:
Employee Medical File System Records (Title 38)—VA.
* * * *
ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:
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26. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice; or (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

4. In the system identified as 11VA51, "Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.—VA" appearing on page 927 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

11VA51
SYSTEM NAME:
Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.—VA.
* * * *
ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:
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14. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

5. In the system identified as 13VA047, "Individuals Submitting Invoices/Vouchers for Payment—VA"
appearing on page 930 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**13VA047**

**SYSTEM NAME:**
Individuals Submitting Invoices/Vouchers for Payment.—VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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8. In the system identified as 24VA136, "Patient Medical Records-VA" appearing on page 938 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," and amended at 57 FR 28003, June 23, 1992, 57 FR 45419, October 1, 1992, and 58 FR 29853, May 24, 1993, the following changes are being made:

**24VA136**

**SYSTEM NAME:**
Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendants, Others) Personnel Records.—VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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7. In the system identified as 23VA136, "Patient Fee Basis Medical and Pharmacy Records-VA" appearing on page 937 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," and amended at 57 FR 28003, June 23, 1992, the following routine use is amended:

**23VA136**

**SYSTEM NAME:**
Patient Fee Basis Medical and Pharmacy Records.—VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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11. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a
claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:
Consolidated health records are retained at health care facilities for a minimum of 3 years after the last episode of care. After the third year of inactivity the paper record is transferred to the nearest Federal record center for 72 more years of storage. Information stored on electronic storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

9. In the system identified as 27VA047, "Personnel and Accounting Pay System—VA," appearing on page 942 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

27VA047

SYSTEM NAME:
Personnel and Accounting Pay System—VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

24. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding.

These records may also be disclosed as part of a computer matching program to accomplish these purposes.

11. In the system identified as 28VA119, "Personnel Registration Under Controlled Substance Act—VA," appearing on page 944 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

28VA119

SYSTEM NAME:
Personnel registration Under Controlled Substance Act—VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

8. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist
either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

12. In the system identified as 32VA00, "Veteran, Employee and Citizen Health Care Facility Investigation Records-VA" appearing on page 945 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**SYSTEM NAME:**
Veteran, Employee and Citizen Health Care Facility Investigation Records-VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

13. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

14. In the system identified as 63VA05, "Grievance Records-VA" appearing on page 972 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**SYSTEM NAME:**
Grievance Records-VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

15. In the system identified as 66VA53, Inspector General Complaint Center Records-VA" appearing on page 975 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**SYSTEM NAME:**
Inspector General Complaint Center Records-VA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

10. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located and/or in which an act or omission occurred upon which a medical malpractice
claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

17. In the system identified as 76VA05, “General Personnel Records (Title 38)–VA” appearing on page 981 of the Federal Register publication, “Privacy Act Issuances, 1991 Compilation, Volume II,” the following routine use is amended:

SYSTEM NAME:

76VA05

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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18. In the system identified as 77VA11, “Health Care Provider Records-VA” appearing on page 983 of the Federal Register publication, “Privacy Act Issuances, 1991 Compilation, Volume II,” the following changes are being made:

SYSTEM NAME:

77VA11

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * *
RECORDS MAINTAINED AT THE 
employing VA facility. If the individual 
transfers to another VA facility location, 
the record is transferred to the new 
employing location. Records are retired 
to a Federal records center 3 years after 
the individual separates from VA 
employment (in some cases, records 
may be maintained at the facility for a 
longer period of time) and are destroyed 
30 years after separation from 
employment. Records for applicants 
who are not selected for VA 
employment are destroyed 2 years after 
non-selection or when no longer needed 
for reference, whichever is sooner. 
Information stored on electronic storage 
media is maintained and disposed of in 
accordance with records disposition 
authority approved by the Archivist of 
the United States.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning current health or safety questions at the Y-12 Plant, Oak Ridge, Tennessee.

TIME AND DATE: 5:00 p.m., August 26, 1993—Department of Energy presentation; 7:00 p.m.—Opportunity for interested persons to present oral comments concerning the matters to be considered.


STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The open public meeting and hearing are being held so as to provide the Board with the latest and best information on topics related to the adequate protection of public health and safety at the Y-12 Plant, and to receive from members of the public any pertinent comments they wish to make on health and safety issues at the Y-12 Plant. The Department of Energy (DOE) will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 629 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202)208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone.

We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on August 25, 1993, will be scheduled for time slots, beginning at approximately 7:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the auditorium at the start of the 5:00 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until September 7, 1993, for the receipt of materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board’s Washington office and at the DOE’s public reading room at the DOE Federal Building, 200 Administration Road, Oak Ridge, TN 37830.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

John T. Conway, Chairman.

[FR Doc. 93-18307 Filed 7-28-93; 8:59 am] BILLING CODE 6820-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, July 27, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation concerning an administrative enforcement proceeding. Matters relating to the probable failure of a certain insured bank. Recommendation regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: 1993 National Real Estate Auction (Case No. 000-00021-93-BOD) Matters relating to the Corporation's corporate and supervisory activities. Matters relating to an assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludvig (Comptroller of the Currency), 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), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC. Dated: July 27, 1993. Federal Deposit Insurance Corporation. Robert E. Feldman, Deputy Executive Secretary. [FR Doc. 93-18328 Filed 7-28-93; 11:13 am] BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, August 4, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Payments system risk policy matters: (a) publication for comment of proposed revisions to the Payments System Risk Policy Statement and accompanying changes to the Guide to the Payments System Risk Policy, and (b) issuance of an Overview of the Payments System Risk Policy.

2. Any items carried forward from a previously announced meeting.
Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.


Jennifer J. Johnson, Associate Secretary of the Board.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 4, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.


Jennifer J. Johnson, Associate Secretary of the Board.

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 38601 July 19, 1993].

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.


CHANGE IN THE MEETING: Deletion.

An open meeting scheduled for Friday, July 3, 1993, at 10:00 a.m. was cancelled.

Consideration of whether to adopt rules 53, 54 and 57, under the Public Utility Holding Company Act of 1935. Rule 53 defines a partial safe harbor for registered holding company financing of exempt wholesale generator acquisitions, and rule 54 creates a similar safe harbor for other transactions involving companies in the registered system. Rule 57 prescribes notification (Form U-57) and reporting requirements (Form U-33-S) for foreign utility companies and their associate public-utility companies. The Commission will also consider amendments to Forms USS and U-33a-2. Further, the Commission will consider whether to publish for comment proposed amendments to rule 87 to require Commission approval for the sale of goods and services rendered, directly or indirectly, both to exempt wholesale generators and foreign utility companies from, and by such entities to, other companies in the registered holding company system. For further information, please contact Karrie McMillan at (202) 504-3387.

Commissioner Beese, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

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: Bruce Rosenblum at (202) 272-2100.

Dated: July 27, 1993

Jonathan G. Katz, Secretary.
Part II

Department of Agriculture

Farmers Home Administration

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients; Final Rule
Environmental Policy Act of 1969, of the human environment and in accordance with Environmental Impact Statement based enterprises in domestic or export on the ability of United States-based agencies, or competition, employment, consumers, individual industries, will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or 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.

Environmental Impact Statement

This document has been reviewed in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required. Civil Justice Reform

This document has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 501 and 2102 of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

General Information

The Fair Housing Amendments Act of 1988 was enacted September 13, 1988, and became effective on March 12, 1989. The Act expanded title VIII of the Civil Rights Act of 1968 to prohibit discriminatory housing practices based on handicap and familial status and to otherwise undergird the idea that persons with handicaps be accorded reasonable accommodation in all facets of access to housing. This action incorporates the provisions of the Fair Housing Amendments Act.

Other changes correct, revise, and clarify the proposed rule in response to questions and comments received from the public in the proposed rulemaking action. One other response was received in August 27, 1991, at page 42364. There were 35 from Agency staff; 18 from rental housing management firms; 8 from state and national councils of owners and managers; 6 from tenant advocacy groups; 5 from Certified Public Accounting firms; 4 from housing consultants; 3 from profit motivated developers; 2 from nonprofit housing sponsors; 2 from energy auditors; and 1 from the Department of Treasury. One response identified this rulemaking action but actually provided response to another rulemaking action. One other response was received in duplicate. Several responses represented an aggregate of constituent contribution to the submitted responses. General comment was provided by 36 commenters covering a variety of topics not specific to any particular section or paragraph in the regulation. Several expressed concern that the Agency would become more involved in micromanagement of project operations if the proposed rule was adopted without change. The Agency has duly considered this concern and has modified its stance by providing program objective statements in such areas as the management plan, management agreement, management reporting and Agency review of management reports. A concept of reasonable tolerance is introduced in further response to this concern. This means that project actual expenses within plus or minus five percent of planned expenses will be considered reasonable. Throughout this final rule, the Agency stresses its role as a monitor of borrower compliance in the tone and intent of the regulation.

A number of commenters suggested the Agency prepare a topical index of the material contained in the regulation. The Agency recognizes this would be helpful but it is not immediately essential in view of the urgency to complete and issue this rulemaking. Waste, fraud and abuse was the theme of a number of commenters, both in general and specific comment. The agency is responding to this concern in its management reporting, review and audit process requirements. Specific changes are made for disclosure and certification of identity of interest between borrowers and management firms and any combination of relationship with vendors or providers of supplies and/or services. One commenter suggested that the Agency require audits of management firms.

The Agency declines this suggestion on the basis that the internal operation of a management firm is not governed by the Agency; rather the Agency is concerned that the borrower receives management services that meet the standards of the management plan as contracted for in the management agreement and provided by the management firm.

A general change was proposed throughout the regulation by the Agency to change the term "market rent" to "note rate rent." Another general change proposed by the Agency was to distinguish farm labor housing where rent is assessed from on-farm labor housing where no rent is assessed. Public comment was generally supportive of these changes.

A general administrative change is being made with this action. All references to District Office and District Director are changed to Servicing Official and Servicing Office respectively throughout. This change is made to conform with restructuring of the state organization by some FmHA State Offices. The new terms are generic and will apply to those states retaining the traditional Agency structure and those who will adopt a different structure. Other general changes identified in the proposed rule are addressed where they are primarily mentioned in sequence of the text.
Part 1930—General

The Agency made modifications to its prior rulemaking action in response to comments concerning the responsibility of projects to ensure that accommodations in rules, policies, practices or services are afforded to ensure that those persons with handicaps or disabilities are treated with fairness required by law and the dictates of common sense.

Comments were received which suggested the Agency should be using this rulemaking action to move more aggressively against owners of farm labor projects who have agreed to provide housing for free to their laborers in exchange for not signing loan agreements but are not honoring their responsibilities. This commenter’s concerns have been primarily addressed in a separate rulemaking action at 57 FR 59900, December 17, 1992, which included modifications now inclusive in this rulemaking.

Several commenters stated concerns about the Agency’s responsiveness to requests for budget approval, rent changes, and other requests such as return on investment or withdrawal of initial operating capital, warranting a timely response by Agency personnel. The Agency is concerned that it be able to provide timely responses to the public. In its review of the proposed rulemaking action, the Agency identified several underlying causes which may be contributing to these concerns and the Agency is taking steps to address these concerns.

A major step taken is to modify the manner and timing in which annual management reports will be submitted, reviewed and evaluated by Agency officials. What has previously been an annual reports process will now be divided into an annual budget review process, that should take place in the last quarter of a project fiscal year in preparation for the ensuing fiscal year, and an annual audit review which will follow after a fiscal year is complete.

Concurrent with the budget review process will be a process of annual review of project operations. This review will incorporate review of the preceding year’s audit and recommendations, the current and proposed budget, and other items such as the latest supervisory visit, energy audit report, and identity of interest disclosure documents already on file in the Servicing Office. This is intended to permit the Agency and the borrower to evaluate project operations and incorporate appropriate planned changes for the ensuing fiscal year of project operation before the beginning of the new fiscal year.

Agency adoption of the foregoing annual budget review and audit review process is intended to forestall a practice often used by the Agency by waiting for the audit report before reviewing a project budget and completing evaluation of the preceding year’s project operation. Often this evaluation was completed several months into the fiscal year when results of the evaluation should have already taken place. This practice has contributed to unsound evaluation practices and unwarranted delays in taking action on proposed budgets and rent change requests.

Exhibits A and A–1

Exhibits A and A–1 dealing with Agency review of project audits have been slightly modified to correspond with the shift in timing for audit review and to indicate whether an audit addressed the concerns identified in the Agency’s Audit Program booklet.

Several commenters requested definition of subjective terms such as reasonable, significant and excessive. Such terms are used to convey intent. The Agency believes defining these terms could be detrimental as well as beneficial. The Agency would rather allow judgment to be exercised within the idea of reasonable tolerance.

Exhibit B

Paragraph II—Definitions

The definitions of Adjusted Annual Income, Annual Income, Net Family Assets and Resident Assistant are revised to incorporate changes of wording for the same definitions used by the Department of Housing and Urban Development (HUD). The Housing and Urban-Rural Recovery Act of 1983 requires the Departments of HUD and Agriculture to use the same meanings of the definitions. The Agency is clarifying that forecasting of medical expenses may be calculated using past experience as a guide. The Agency agrees with several commenters who pointed out the futility in forecasting such expenses on exclusively a prospective basis.

The definition for Congregate Housing is clarified to distinguish that such facilities may provide specific services which may possibly not be all services needed by some tenants.

Some commenters suggested that the definitions for handicap and disability be combined since the Fair Housing Act only mentions handicap. The Agency considered this but chooses to retain the separate definitions since the Housing Act of 1949 governing Agency housing programs includes coverage for persons who are disabled.

Definitions for Member/Comember, Overage and Utility Allowance have been added to explain the meaning of these terms used throughout the regulation. In response to comment, the term Minor is revised to identify a minor as a dependent person under 18 years of age rather than any person, such as a cohabitant, who is under 18.

Paragraph III—Borrower Responsibilities

Comments indicated that the regulations should be clarified to bring out the fact that residents of on-farm single family housing type dwelling units need not complete Form FmHA 1944–6, “Tenant Certification.” The Agency has clarified its regulations to eliminate the need for the tenant certification form in instances where farm labor housing residents are not required to pay rent for their housing.

Public comments also suggested additional wording to more clearly highlight existing policies; however, the Agency determined that if several of these suggestions were adopted, it would repeat policies found elsewhere in the regulations.

Paragraph IV—Rent Subsidy Opportunities

Comments pointed out that paragraph IV(A)(2)(d) is no longer needed. This paragraph limited an increase of tenant rent by 10 percent in any 12 month period caused by a previous change that increased tenant contribution from 25 percent to 30 percent of adjusted monthly income. The Agency agrees and has deleted the paragraph.

In paragraph IV C, the Agency has clarified that HUD Section 8 tenant subsidies can be administered through other agencies such as State Housing Finance Agencies. The Agency made other minor editorial changes to paragraph IV while not altering existing policies.

One commenter suggested that private rental assistance agreements which call for a per unit ceiling to limit the amount of subsidy exposure to a known maximum was not a good idea. The Agency disagrees because other tenant subsidies will benefit additional tenants and financially strengthen projects. To prohibit other sources of subsidy just because they provide less subsidy than the subsidy the Agency can provide would unacceptably deny benefit to tenants.
Paragraph V—Management Operations

One commenter recommended that the management fee be based on gross rents and other collections. The Agency did not adopt this recommendation. Management fees are established in a variety of ways in both the private and public sector. The Agency does not want to arbitrarily impose a particular manner in which management fees are established. It is sufficient to evaluate the reasonableness of the fees without restricting the methodology used to establish the fees.

Several commenters recommended that clarifications be made as to the types of management plans and management agreements acceptable to the Agency. The Agency is not adopting these recommendations because regulations are adequate in this area. Exhibit B-1 of this rule describes the various kinds of information that should be described in a management plan. Exhibit B-3 of this rule is a sample management agreement and is intended as a guide to set the tone of items, information and contractual language that should be used in carrying out program objectives. With the guidance contained in these two exhibits, the Agency believes it prudent to allow owners the flexibility to tailor management plans and agreements to fit the particular features and needs of each project.

Recommendations were also made to clarify policies with regard to projects managed by companies sharing an identity of interest relationship with the owner/borrower. Commenters stated identity of interest managers were being subjected to having fees curtailed by Agency staff for unjustified reasons. Other commenters stated the need for better guidance to improve the Agency's ability to curtail management fees of identity of interest management companies when compensation for services they provide are deemed too high. In response to these concerns, the Agency believes there is a need to require better disclosure of when an identity of interest exists. The Agency believes compensation must be evaluated for reasonableness on a case by case basis in view of facts unique to a project such as its management plan, project location, and availability of services, compared to actual data of other project operations similarly situated. The Agency adopted modifications to paragraph V to clarify and implement these principles. The Agency is hopeful of later establishing standards of management with measurable criteria for use in the evaluation process.

Comments suggested that requiring site managers/caretakers to pay rent based on their total income, when in a revenue producing unit, will cause many of them to move off site. This represents a fundamental misunderstanding of the regulation's intent. Site managers or caretakers occupying a rent producing unit occupy the unit as an employee, not as a tenant per se. However, to determine the rent to be paid by the employee, rent contribution is calculated by the same rules applying to a tenant. Likewise any rental assistance or interest credit subsidy is paid or credited respectively, or average collected, same as for a tenant. The Agency has clearly distinguished two scenarios of operation: one where the site manager/caretaker lives in a rent-free nonrevenue unit and one where the person lives in rent producing unit. This clarity should not, nor is it intended to, force site managers/caretakers from a project; rather the opposite is the intended result by allowing project owners the option to choose which of the two scenarios to use in their plan of operation.

Paragraph VI—Renting Procedure

Extensive comments were received dealing with the myriad of tenant-landlord issues covered in this paragraph. Most prominent were those from each of the tenant advocacy groups who responded. Two of the groups focused only on occupancy standards; three dealt with all aspects of the paragraph. One focused on the specific provisions of the Fair Housing Amendments Act of 1988, and by reference, supported comments of another commenter who addressed many concerns.

The Agency has made substantive modifications to the prior rule which are consistent with the intent and application of the Fair Housing Amendments Act. The concept of reasonable accommodation in attitudes, rules, policies, practices, and access are incorporated throughout the paragraph in such areas as affirmative action, handicap accessibility, tenant eligibility, occupancy standards, applications, waiting lists, and tenant or member selection.

A central theme in the Fair Housing Amendments Act is that persons with handicaps shall not be deterred by physical or administrative barriers from otherwise acquiring housing, like other qualified persons can, that meet their needs to maintain their sense of independence in living within their own freedom of choice. Thus, the long held Agency requirement that a project owner or manager determine an applicant's, tenant's or member's ability to live independently is summarily removed and other references or inferences throughout the regulation are removed or modified. A person other than the applicant, tenant or member making such a determination would be performing a discriminatory act in violation of law.

Occupancy standards will remain the responsibility of the borrower to establish as proposed. However, the standards first proposed have been replaced with more objective guidelines than originally described. These standards are adopted from those used by HUD's Public and Indian Housing and Multi-Family Housing Programs. The net result will be that applicant or resident families will have greater choice and flexibility in being housed within the unit sizes available in FmHA financed projects.

The Agency has additionally established an objective threshold for determining when overcrowded occupancy occurs for guidance when State or local statutes or codes are silent on the issue. The general intent of the threshold of overcrowding is to achieve a balance between the needs of a family for housing and community health and safety concerns. The Agency looked to several codes, including the Uniform Housing Code issued by the International Conference of Building Officials in Whittier, California, the Standard Housing Code issued by the Southern Building Code Congress International, Inc. of Birmingham, Alabama, and the recommended minimum housing standards adopted by the American Public Health Association and the Center for Disease Control (APHA-CDC). These codes state that minimum space in a habitable sleeping room shall be 70 square feet. The Uniform Housing Code states that two people may occupy this minimum space and such space shall be increased at the rate of 50 square feet for each additional person in excess of two. Both the Southern Housing Code and the APHA-CDC state that one person may occupy the minimum 70 square feet and when more than one person occupies the sleeping room, it shall have at least 50 square feet for each person over two people. Thus, in the first instance, three people in one habitable sleeping room would need 120 square feet or 40 square feet per person, and in the second instance, three people would need 150 square feet or 50 square feet per person. Habitable sleeping room in FmHA financed housing meet and generally exceed the 70 square foot minimum stated in all of the three model codes.
Agency occupancy standard guidelines are based on the premise that two people can occupy a habitable sleeping room. The Agency is further adopting the guidance that when more than two people occupy a sleeping room, there shall be at least 50 square feet of area per person. Fifty square feet of sleeping area per person is recommended by each of the three model codes. FmHA believes this standard of 50 square feet per person is reasonable when more than two persons occupy a habitable sleeping room given the types and sizes of dwelling units typically financed by the Agency. The adopted standard will allow a family to use a living room as a sleeping room if such use will meet their needs for housing.

Paragraph VII—Certification and Verification of Information and Corrective Actions

Commenters presented a number of suggestions for improving certification and verification of information and for improving guidance on pursuing corrective actions when abuses are uncovered. The Agency is responding by providing greater guidance on what information is applicable for labor housing residents, particularly those residing in rent free units. Greater guidance is provided on how reviews of tenant or member income and/or employment verifications may be conducted, particularly in matters of timing and third party verification. Better guidance is provided on how to service and recover unauthorized benefits discovered as a result of a review of receipt of information from third party sources.

The Agency received a large number of comments about the need to better define the magnitude of change in income, be it one or family size that warrant being reported to the landlord, and further, when filing of a new tenant certification is required. Tenants or cooperative members will be required to report any change in household income, size or composition. Borrowers will be required to recertify tenants or members when their gross monthly income or adjustments to income increase by $40 or more per month ($480 per year). Likewise, the same will be required when a tenant’s or member’s change of gross income or adjustments to income decrease by $20 or more per month ($240 per year). Borrowers will be required to recertify a tenant or member whenever there is a change of household size or composition.

The Agency also provided positive response to requests for policy clarifications on processing tenant certifications when delay in receiving third party verifications is beyond the control of the tenant or landlord. The Agency is also providing additional guidance on how to proceed to resolve cases where inaccurate information is suspected or shown to occur on tenant certifications.

Paragraph VIII—Lease Agreements, Occupancy Agreements, Rules, and Other Tenant Information

Several comments pointed out that the proposed rule did not include certain lease references to occupancy surcharges promulgated by a previous rulemaking. As a matter of course, this rulemaking includes those previous changes. The Agency has provided added coverage of lease provisions to ensure that tenants are protected against having to incur higher out of pocket expenditures for shelter costs as a result of a monetary or non-monetary default by the borrower which resulted in subsidy being suspended or cancelled by the Agency.

The lease provisions are modified to address public concerns over the policies which should apply where the use of controlled substances are involved. Many and varied comments were received on the policies set out in the prior rulemaking on the controlled substance issue. As a result of the concerns noted, the Agency determined its policies should be modified to provide more extensive coverage. As a result of public comments objecting to the lack of adequate guidance in this area, the Agency determined that its regulations should attempt to afford greater protection against requiring non-adult members to vacate a unit as a result of controlled substance abuse. The Agency also determined that it needed better guidance on how to proceed when an adult member is required to vacate the unit and any remaining adult or non-adult member seeks to continue residency in the unit. The Agency determined that its policies should be modified to be more specific about the circumstances under which a member who was asked to vacate a unit as a result of controlled substance abuse could return to the unit.

Paragraph IX—Rent or Occupancy Charge and/or Utility Allowance Changes

No changes were proposed to this paragraph which refers the reader to exhibit C of this rule for guidance in processing changes of rent or occupancy charges. However, reference to utility allowance change is now included to correlate to changes proposed and incorporated at the aforementioned exhibit C.

Paragraph XII—Borrower Project Budget, and Paragraph XIII—Accounting and Reporting Requirements and Financial Management Analysis

As discussed in the general section, the Agency made extensive changes to the content of these sections to modify discussion about project budget processes and Agency evaluation practices. Also, the Agency has expanded its discussion and guidance concerning the investment of reserve account funds in response to public comment. Additionally, the Agency has included revised guidance in the matter of separate accountability of project funds. The Agency will now allow combining of multiple project funds owned by the same borrower in one bank account. It will not, however, permit funds of multiple projects owned by multiple borrowers to be combined in one bank account. A management agent handling multiple bank accounts for multiple borrowers will be permitted to maintain a central funds collection and disbursement system that is linked to the separate bank accounts of separate projects provided the principle of separate accountability is maintained as described in this rulemaking.
Paragraph XIV—Termination and Eviction

Public comment came from a cross-section of interests on this topic. The issues of illegal use of controlled substances and protection of tenant rights captured the greatest concern. The Agency has removed arrest of a tenant or household member as a cause for termination of occupancy on the principle that a person is innocent until proven guilty. Notice requirements have been modified to comply with State or local law, or in the absence of same, to follow the guidance of this paragraph. The Agency has added the provision that a tenant, or tenant’s counsel, may view its tenant occupancy file and copy any information it contains to aid in the tenant’s defense of termination.

Paragraph XV—Security Servicing

Public comment was generally supportive of the Agency proposal to permit blanket crime policies as well as fidelity bonds as instruments of fiduciary coverage. Most of the commenters expressed concern that the proposed formula for determining an exposure index and the proposed sloping line chart for determining an amount of coverage would be confusing to understand and apply. The Agency simplified the formula to determine exposure index and the line chart has been replaced with a chart that accomplishes the same intent by listing coverage factors for various levels of exposure index.

Commenters also recommended that hazard insurance requirements be modernized in the same general manner as with fidelity coverage. The Agency agrees and has modified this paragraph to require evidence of first year paid premium with follow up notice of any cancellation for nonpayment of premium or nonrenewal to be sent to the Agency. Other administrative changes were made concerning policy endorsements and source of coverage amount.

Paragraph XVI—Automation of FmHA Forms and Formats

All comments concerning this paragraph were supportive of the new paragraph that describes Agency recognition and provision for automating various aspects of project administration.

Exhibit B-1 Management Plan Requirements

The central theme of public comment was that a detailed management procedure would evolve rather than a plan for management. Other comments were very specific in nature in suggesting improvements of wording. Taking this into account, the Agency has maintained the former structure of topic discussion but has restated many of the management requirements into management issues, whereby the Agency is asking the borrower to describe its standards of performance in the management of its project. To help make the management plan as generic as possible, the Agency is further asking owners to describe the employee or staff position responsible for any particular function rather than naming the person.

Exhibit B-2 Requirements for Management Agreements

The few comments received on this exhibit focused on identity of interest concerns. The Agency is requiring full disclosure of such identity when it exists or will exist between the management agent and borrower and vendors and suppliers. The Agency agrees with comments that the borrower may delegate responsibility to represent the borrower in appeal matters. The balance of changes made correlate to the discussion that follows for exhibit B-3.

Exhibit B-3 Sample Management Agreement

Public comment on this exhibit was more technical than philosophical. The Agency responds to the comment by first making it clear in the title that the exhibit is a sample which means a sample outline for an owner and management agent to be guided by when preparing and adopting a management agreement. The Agency intends that all points or issues shown in the exhibit be addressed, but actual wording will depend on local conditions and factors. A definition of “agent” is included along with identity of interest disclosure requirements. Discussion is added for a borrower’s authorization to the management agent. Language has been modified for the management agreement to distinguish whether site staff are employees of the management agent or the borrower. The description of project accounts has been eliminated from the text of the management agreement and may henceforth reference paragraph XIII of this rulemaking to cover the topic of project accounts.

Exhibits B-4 and B-5 Outlines for Prospective Management Agent and Owner

Only one comment was received concerning these exhibits; it dealt with identity of interest disclosure. In keeping with this comment and other comments in general, the Agency made appropriate changes to have those persons or groups who will manage a rental property to describe any identity of interest that exists or will exist in connection with management of a project.

Exhibits B-6, B-7 and B-8 Management Reports

The few comments received on these exhibits were correlated to comments made by the same commenters in other parts of the rulemaking. The comments dealt with timing of the various management reports. These exhibits are handy reference charts and have been modified to reflect changes made in text.

Exhibit B-9 Notice of Authorization to Withdraw and Use Reserve Funds

This exhibit was shown as exhibit B-10 in the proposed rulemaking. Public comment generally supported adoption of this new exhibit. Commenters, however, suggested a more definitive description of what the terms “capital type” and “annual recurring type” expenses mean. Some commenters wanted a detailed list of examples shown. The Agency rejected the last idea but has adopted generic terms which are meant to convey the intended meanings.

Exhibit B-10 Reserve Account Tally

Shown as exhibit B-14 in the proposed rulemaking, comments were divided as to support or opposition to its use. The Agency believes it wise to establish a consistent tracking format for use across the country in view of waste, fraud and abuse concerns. The Agency is moving toward some form of increased Agency surveillance of the withdrawal and use of reserve funds in response to Office of Inspector General findings. This tracking form will assist in that effort.

Exhibits B-11, B-12, and B-13 Equal Housing Opportunity Logotype, Farmers Home Administration Logotype, and International Symbol of Accessibility

The two logotypes were proposed as exhibits B-11 and B-12, respectively. Exhibit B-13 has been added as part of the Agency response to the reasonable accommodation aspects of the Fair Housing Amendments Act of 1988 and section 504 of the Rehabilitation Act of 1973. This international symbol is to be used at any handicap parking spaces and along routes of accessibility. It will not be necessary to show it on the project identifier sign.

Two commenters indicated that another exhibit showing only the words “Equal Housing Opportunity” should be provided to augment the logotype now
at exhibit B–11. The Agency chose to not add another exhibit, but within text, the Agency recognizes as acceptable, use of only the words “Equal Housing Opportunity” without showing the house symbol or when it pointed out the words “Farmers Home Administration” on the FmHA logotype are unnecessary and the Agency agrees. Further, the Agency will not require use of the FmHA logotype on the project identifier sign.

Exhibit B–14 Sample Waiting List

This exhibit provoked polarized supportive and oppositional comments. Some felt the example contained too much information and others suggested additional or different information. The intent of this sample waiting list is to standardize this item across the country. All too often, the Agency has observed inadequate waiting lists or the absence of waiting lists during its site visits. The Agency believes adherence to properly prepared and maintained waiting lists is vital to proper compliance in tenant and subsidy selection decisions.

Exhibit C Rental and Occupancy Charge and/or Utility Allowance Changes

The Agency received many and varied comments concerning its rent change policies. The most significant of these centered on the need to have policies that ensure timely processing of rent changes; to improve coverage on how to process rent changes where section 8 assistance is involved; to include the average policy clarifications contained in FmHA AN’s 2256 and 2319 dated March 28, 1991, and July 3, 1991, respectively; and to modify the Special Market Rent (SMR) policies. The Agency adopted many of the recommended policy changes. The Agency did not agree that it is prudent to significantly alter its SMR policies to make it significantly easier to qualify for an SMR. The Agency did modify its policies however to eliminate the need to demonstrate that a borrower request to rent to ineligible tenants as a condition to qualify for an SMR. The Agency determined however, that it is sufficient to require a borrower to have evidenced attempting to resolve the problems through the servicing or budget workout provisions, exclusive of SMR considerations, prior to considering approval of an SMR.

Exhibit D Energy Audit

Two energy auditors offered support and technical changes to the proposed language. Most of the several other commenters suggested that energy audits are not needed beyond an initial energy audit performed several years after initial construction. The Agency is retaining the energy audit in keeping with the National Energy Strategy which calls for all citizens and activities in the nation to conserve energy in an effort to lessen national dependence on foreign sources of energy. Exhibit D is modified to place greater emphasis on energy conservation practices. In the past, the exhibit placed emphasis on energy conservation measures, which are addressed in the design and construction phase of a project’s life. Energy conservation practices involve those attitudes and applications of management and maintenance throughout the operation and maintenance life of the project. Exhibit D was modified to incorporate these ideas.

Exhibit E Rental Assistance Program

Comments on this exhibit were of a technical and administrative nature. The Agency has responded accordingly to provide clarification of policy and otherwise make editorial changes. A significant policy modification is that once a borrower has filed an application for rental assistance, further submittals of applications will not be required. This is intended to reduce paperwork, especially at times when rent changes will cause rent overburden on one or more tenants, and section 530 of the Housing Act of 1949, as amended, requires the borrower to apply for rental assistance, even when the borrower and the Agency know that rental assistance allocation is not available. The Agency is also adding language to indicate that tenants can be informed that their rents will increase and they may quit their lease should the event ever occur where their landlord’s rental assistance contract cannot be renewed because of lack of appropriated funds. The Agency is making provision that in certain situations, when a borrower loan is delinquent, the Agency may agree to releasing that portion of rental assistance payment needed for project operation while holding in suspense that portion it would otherwise capture as payment on the borrower’s loan.

The rental assistance transfer policy is modified to permit transfer of any remaining unused rental assistance unit that remains unused after a specified time.

Exhibits F and G Supervisory Visit Preparation Worksheet and Checklist

All comments about these exhibits were of a technical nature, many of them offering suggested changes. Many of the comments pointed out a typographical error in the proposed rulemaking concerning the random sapling formula. The Agency has retained the substance of these companion exhibits but has restructured them to make preparation easier and recording of findings more succinct.

Exhibit H Interest Credits

This exhibit is largely an administrative and informational exhibit. All comment focused on the Agency’s discussion that interest credit would cease for any unit 60 days after loss of operation due to fire, natural cause or other substantial damage. Commenters understood the principle behind the Agency’s reason for ceasing interest credit, but stressed that 60 days is often an inadequate time to restore a severely damaged unit or units, let alone arrange an insurance settlement. In view of this rationale, the Agency is increasing this period to 180 days. If after that time, repair or replacement has not occurred, the interest credit will be withdrawn unless the FmHA State Director makes an exception under certain conditions.

Exhibit I Section 8 Rental Certificates and Rental Vouchers

The few comments received here were supportive of the inclusion of discussion about section 8 rental vouchers. With assistance from the staff of HUD’s Office of Public and Indian Housing, the Agency has modified and clarified the discussion about these two HUD subsidy programs in how they interface with the FmHAs section 515 rental and cooperative housing program.

Exhibit J Management of Congregate and Group Home Housing

Virtually all commenters pointed out that the provisions of the Fair Housing Amendment Act of 1988 were not adequately incorporated into this portion of the proposed rule. The Agency has made fundamental changes in program objective and direction, particularly in its congregate housing program as a result of public comment. As revised, borrowers will develop a strategic marketing plan to attract that universe of people, from a tenant base or market area, that desire and request the services provided at or arranged by the congregate project located in the market area. Project owners and management personnel will not determine whether such tenants or applicants can live independently; that decision is for the applicant or tenant to make. In the case of group home housing, however, applicants must prove to the owner and management that they qualify for the unique services provided by the housing.
change of wording was made throughout the exhibit to reflect the preceding discussion.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

2. Subpart C of part 1930 is revised to read as follows:

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Sec. 1930.101 General.
1930.102 Definitions.
1930.103 Nondiscrimination assurance.
1930.104 Reasonable accommodations.
1930.105 Objective of management and supervision.
1930.106-1930.107 [Reserved]
1930.108 Extent of borrower management.
1930.109 Extent of FMHA supervision.
1930.110 Methods of supervision.
1930.111-1930.112 [Reserved]
1930.113 Borrower responsibilities.
1930.114-1930.116 [Reserved]
1930.117 Agency responsibilities.
1930.118 [Reserved]
1930.119 Supervisory visits, compliance review, and inspections.
1930.120-1930.121 [Reserved]

Sec. 1930.122 Borrower accounting methods, management reporting, and audits.
1930.123 Annual review.
1930.124 [Reserved]
1930.125 Changing project designation.
1930.126-1930.127 [Reserved]
1930.128 LIA grants.
1930.129 RHS loans.
1930.130-1930.133 [Reserved]
1930.134 FMHA office records.
1930.135-1930.136 [Reserved]
1930.137 State Supplements, guides, forms and other issuances.
1930.138 Supervisory actions for distressed projects.
1930.139-1930.140 [Reserved]
1930.141 Materials to be provided borrower/applicant.
1930.142 Complaints regarding discrimination in use and occupancy of MFH.
1930.143 Delegation of responsibility and authority.
1930.144 Exception authority.
1930.145 Appeals.
1930.146-1930.149 [Reserved]
1930.150 OMB control number.

Exhibits to Subpart C

Exhibit A—Steps for Farmers Home Administration (FMHA) Personnel in Conducting Annual Review of Multiple Housing Operations
Exhibit A-1—Audit Report Review Guide
Exhibit B—Multiple Housing Management Handbook
Exhibit B-1—Management Plan
Exhibit B-2—Requirements for Management Agreements
Exhibit B-3—Sample Management Agreement for Farmers Home Administration Financed Multiple Family Housing (MFH) Projects
Exhibit B-4—Outline for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project
Exhibit B-5—Outline for Owner who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project
Exhibit B-6 Monthly and Quarterly Project Management Reports
Exhibit B-7—Annual Project Management Reports
Exhibit B-8—Miscellaneous Project Management Reports or Submittals
Exhibit B-9—Notice of Authorization to Withdraw and Use Reserve Funds
Exhibit B-10 Reserve Account Tally
Exhibit B-11—Equal Housing Opportunity Logotype (Optional for Project Sign)
Exhibit B-12—Farmers Home Administration Logotype (Optional for Project sign)
Exhibit B-13—International Symbol of Accessibility (Required for Handicap Parking Space and along Handicap Accessibility Route)
Exhibit B-14—Sample Waiting List
Exhibit C—Rental and Occupancy Charge and/or Utility Allowance Changes
Exhibit C-1—Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Changes
Exhibit C-2—Notice of Approved Rent (Occupancy Charge) and Utility Allowance Changes
Exhibit D—Energy Audit
Exhibit D-1—Calculation of Financial Impact (Energy Audit)
Exhibit E—Rental Assistance Program
Exhibit F—Farmers Home Administration Multiple Family Housing Supervisory Visit—Pre-Visit
Exhibit F-1—Suggested Random Sampling Technique for Tenant Reviews
Exhibit F-2—Suggested Format for a Pre-Visit Tenant Contact Letter
Exhibit G—Farmers Home Administration Multiple Family Housing Supervisory Visit—Summary of Findings
Exhibit G-1—Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant File Review
Exhibit G-2—Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant Interview and Unit Review
Exhibit H—Interest Credits on Insured Rural Rental Housing and Rural Cooperative Housing Loans
Exhibit H-1—Example of Interest Credit Determination for Rural Rental Housing or Rural Cooperative Housing Projects
Exhibit I—Rural Rental Housing Loans and the Housing and Urban Development Section 8 Rental Certificate and Rental Voucher Programs (Existing Units)
Exhibit I—Management of Congregate Housing and Group Homes

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§1930.101 General.

This subpart prescribes the policies, authorizations, and procedures for management and supervision of all of the following Farmers Home Administration (FMHA) Multiple Family Housing (MFH) loan and grant recipients:

(a) Farm Labor Housing (LH).
(b) Rural Rental Housing (RRH) including congregate housing.
(c) Rural Cooperative Housing (RC).
(d) Rural Housing Site Loans (RSS).
(e) Special provisions and exceptions.

1. Unless otherwise specified in this subpart and except for Exhibit C of this Subpart, individual type RRH borrowers who were not required by program regulation to execute a loan agreement are exempted from the requirements of this subpart as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FMHA. However, these borrowers must provide evidence of tenant income.
eligibility by properly completing Form FmHA 1944-8, "Tenant Certification," for each tenant as required by the Forms Manual Insert (FMI), except in LH situations where the tenant is not paying rent.

(2) The State Director may require any borrower determined to be in default of any program requirement, security instrument, payment, or other agreement with FmHA, or when otherwise failing to meet the program objectives, to comply with any appropriate section of this subpart to assure that the loan objectives are met.

(3) For RHS borrowers, the following sections of this subpart do not apply: §§1930.108, 1930.122, and 1930.141.

§1930.102 Definitions.

Acceptable tolerance. For the purpose of this subpart, acceptable tolerance means actual financial activity as expressed in numeric terms that is operating within plus or minus 5 percent of projected or forecasted estimates.

Advisor to the board. An individual or organization who will work with and provide guidance to a cooperative board of directors.

Borrowers. Borrowers means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations who have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

Consumer cooperative. A corporation which is organized under the cooperative laws of a State or Federally recognized Indian tribe; will own and operate the housing on a cooperative basis solely for the benefit of the members; will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with Subpart E of Part 1944 of this chapter will not be considered gains or profits; and will restrict membership in the housing to eligible persons, to any extent the cooperative and FmHA permit, to others in special circumstances.

FmHA. FmHA means the United States of America acting through the Farmers Home Administration or FmHA's predecessor agencies.

Governing body. Governing body means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

Management. Management is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants or members, maintain the project, and provide sound and economical project operation.

Member. A person who has executed documents pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Occupancy agreement. A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

Office of the General Counsel (OCC). OCC means the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney in the field office of the Office of the General Counsel of the United States Department of Agriculture (USDA).


Patronage capital refund. Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

Project. A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. (The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under §1965.68 of subpart B of part 1965 of this chapter.)

Servicing Office. The FmHA office designated by the State Director to service MFH accounts.

Servicing Official. The individual who by job description or other qualification is designated by the State Director with delegated responsibility to service MFH accounts.

State Director. For the purpose of this subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this subpart according to §1930.143 and the provisions of FmHA Instruction 2006-F, (available in any FmHA office).

Supervision. Supervision includes the broad scope of FmHA guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA regulations.

§1930.103 Nondiscrimination assurance.

All management and supervision actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or handicap. Borrowers, tenants and cooperative members must possess the legal capacity to enter into a legal contract. The provisions of subpart E of part 1901 of this chapter enforcing title VI of the Civil Rights Act of 1964, as amended, along with other similarly worded statutes will be complied with.

§1930.104 Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations would afford an individual with a handicap equal opportunity to use or continue to use and enjoy a dwelling unit, including public and common use areas.

(b) It shall be unlawful for any person to refuse to permit, at the expense of an individual with a handicap, reasonable modifications of an existing unit, occupied or to be occupied by an individual with a handicap, if the proposed modifications may be necessary to afford the individual with a handicap full enjoyment of the dwelling unit.

§1930.105 Objective of management and supervision.

(a) The primary objective of management and supervision is to provide effective supervision to each borrower to accomplish the objectives of the loan or grant.

(b) To provide effective supervision, FmHA will assure that the borrower's management plan accomplishes the following:

(1) Provide proper and efficient management policies as prescribed in exhibit B of this subpart.

(2) Comply with loan and grant agreements.

(3) Repay loans on schedule.

(4) Maintain security property.

(5) Protect the interests of FmHA.

(6) Operate facilities according to State and local laws and regulations.

(7) Maintain accounts and records.

(8) Submit reports and audits.

(9) Process rent and occupancy charge changes according to exhibit C of this subpart.


(11) Maintain facilities and premises that are free of illegal controlled substances.

(12) Collect and remit any occupancy surcharges as applicable.
§§ 1930.106–1930.107 [Reserved]

§ 1930.108 Extent of borrower management.

According to exhibit B of this subpart, the borrower and/or the borrower’s agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA officials. A sample management agreement is provided in exhibit B–3 of this subpart.

§ 1930.109 Extent of FmHA supervision.

The objective of FmHA supervision is to guide and advise borrowers and their designated representatives in their quest to meet MFH program objectives, goals, and obligations, not to direct the borrower’s activity. Supervision does not relieve borrowers of their own responsibilities and obligations.

Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of borrowers is a primary responsibility of the Servicing Official; however, additional supervision and guidance will be given by the State Director and/or other appropriate members of the State Office staff. Security servicing actions will be handled according to part B of part 1965 of this chapter.

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports; guidance by memorandum; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this subpart.

(a) Applicants. Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as an applicant’s attorney, architect, property manager, etc. Examples of supervision include:

1. Organizational meetings to discuss needs, services available, owner obligations, and to establish organizational committees.
2. Preapplication and application conferences.
3. Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed.
4. The applicant at this point should be made fully aware of the responsibilities detailed in § 1930.103 of this subpart.
5. Preloan or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan and to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this subpart.
6. The applicant is responsible for supervisory conferences during conferences and meetings with prospective borrowers and their representatives during the life of the project.
7. Borrowers who have demonstrated ability and borrowers with problems. When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(a) Implementation and/or review for compliance with the management plan.
(b) Establishment and maintenance of a financial recordkeeping and reporting system.
(c) Compliance with the requirements of the loan agreement or loan resolution.
(d) Review of annual audit and budget requirements.
(e) Any other supervision that may be necessary to assure effective and successful operation of the project.
(f) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of cooperative housing, this stipulation will apply only when it has been specifically demonstrated that the cooperative is unable to manage itself.
(g) Borrowers who have demonstrated ability. Supervision will consist of at least an annual review of budgets and other management reports according to § 1930.122, and a triennial supervisory visit according to § 1930.119 of this subpart when the borrower is:

1. Successful in completing a first full fiscal year of operation.
2. Current with loan payments.
3. In compliance with other loan or grant requirements.
4. Maintaining the security in a satisfactory manner.
5. Otherwise progressing satisfactorily.

§§ 1930.111–1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of exhibit B of this subpart.

§§ 1930.114–1930.116 [Reserved]

§ 1930.117 Agency responsibilities. Effective supervision requires FmHA employees to be familiar with the various types of borrowers and their management plan; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) Servicing Official. Servicing Officials are responsible for effective borrower supervision. Servicing Officials will:

1. Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision and place emphasis on supervisory visits and review of borrower management reports.
2. Emphasize to the borrower and/or the borrower’s management agent that they, not FmHA, are responsible for managing the project, planning and following budgets within acceptable tolerance, collecting rents or occupancy charges, repaying the loan on schedule, budgeting for adequate project operations and maintenance; and for compliance with any loan or grant agreement or resolution, State laws, and other FmHA requirements.
3. Monitor all provisions or conditions of the FmHA approval documents to ensure that they are fully complied with throughout the life of the project.
4. Monitor the borrowers’ compliance with FmHA regulations concerning real property tax, insurance, bonding, security, budgeting, and reporting requirements.
5. Systematically monitor response to OIG report findings at specific intervals and/or during routine supervisory visits, compliance reviews, and physical inspections.
6. Assure that borrower financing statements are continued and not allowed to lapse.
(7) Have each borrower designate a representative to serve as its contact source for Agency communication on project related matters.

(8) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA program civil rights and Fair Housing Act requirements.

(9) Provide borrower governing bodies with suggestions for information distribution that may be helpful in keeping the membership in touch with activities to increase and maintain membership interest.

(10) Provide informed advice and guidance to borrowers as needed.

(11) Identify problem borrower accounts and initiate servicing plans including workout agreements with the borrower according to Exhibit F of Subpart B of Part 1965 of this chapter.

(12) Gather, maintain, analyze, and distribute a database of actual MFH operation and maintenance expense for determination of expense reasonableness that reflects variables of project operation and characteristics.

(13) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower only through its attorney, architect, or management agent.

(iv) Assume that projects without adverse complaints do not require monitoring and supervision by FmHA.

(b) State Director. State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this subpart.

(2) Provide guidance and leadership to assure the State staff and Servicing staff thoroughly understand and carry out their responsibilities.

(3) Develop and conduct training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive adequate supervision and financial counseling.

(4) Establish and maintain a system to monitor followup to findings in OIG reports, supervisory visits, compliance reviews, physical inspections, or other factual sources.

(5) Maintain necessary liaison with the OCC.

(6) Maintain necessary liaison with State and local authorities, agencies, and other organizations. For example, in the case of projects benefiting the elderly, it is essential that liaison be maintained with the aging network such as State and Area Agencies on Aging to assure that available support services are offered to or accessible by the tenants.

(7) Maintain and update State Office records for effective program supervision and evaluation.

(8) Assist the Servicing Official in developing a realistic plan to resolve project operational problems.

(c) State staff. State staff members who are designated by the State Director as MFH Servicing Officials responsible for supervision of borrowers covered by this subpart will:

(1) Continuously monitor supervisory and account servicing activities and borrower status to assure that each project is receiving timely and effective supervision.

(2) Train staff to effectively perform the required supervisory and account servicing activities, and to provide informed guidance in sound operation and management policies. The assistance of the aging network such as State and Area Agencies on Aging should be sought in connection with training which pertains to the management of services to the elderly.

(3) Post review closing of loans and grants to determine that they have been properly closed.

(4) Visit a sufficient number of projects to assure that proper supervision and account servicing is being provided.

(5) Assemble, analyze, and distribute a statewide database of actual MFH operation and maintenance costs for determination of cost reasonableness that reflects variable characteristics of project operation.

§ 1930.118 [Reserved]

§ 1930.119 Supervisory visits, compliance reviews, and inspections.

(a) Purpose. Servicing Officials and other FmHA authorized persons will visit the MFH project site, including the management office, as necessary to accomplish the objectives of the loan or grant. Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaluate the management program of the project pursuant to exhibit B of this subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.


(3) To review borrower records and verify required compliance and information, such as:

(i) Tenant or member eligibility.

(ii) Tenant or member income.

(iii) Tenant or member selection criteria.

(iv) Waiting lists.

(v) Rental or occupancy rates are in accordance with an FmHA approved budget.

(vi) Other necessary items.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(5) To determine if the project is being operated according to the approved budget.

(6) To determine that borrower and/or borrower's management agent is fully complying with all provisions and conditions of the approval document regarding site development and use restrictions.

(7) In the case of all LH borrowers, including on-farm LH, to determine that the housing is serving domestic farm laborers, as defined by paragraph (a) of section 3 of Exhibit B of this subpart, and that the LH housing provided is decent, safe, and sanitary.

(b) Frequency and standards. Visits will be made as follows:

(1) Supervisory visits will be made as needed to assure compliance with FmHA policies and objectives. A Servicing staff person or other FmHA authorized person will perform a post-rent-up or occupancy visit before the end of the first 90 days of operation; and a thorough supervisory visit no later than 12 months following the post occupancy visit, and at least every 36 months thereafter at each project.

(i) More frequent visits to delinquent or problem projects, irrespective of loan type, should be scheduled as needed.

(ii) In the case of borrowers with on-farm LH unit(s) or LH borrowers providing seasonal farm labor housing, such visits should be made during the season of occupancy and preferably during an annual farm visit.

(iii) Planned visits will be included in the monthly work calendar.

(iv) The visit shall be conducted with the borrower and/or the borrower's designated representative.

(v) Exhibits F, F-1, F-2, G-1, and G-2 of this subpart should be used to assist in the preparation, completion, and follow up of visits.

(vi) For small rental projects consisting of only a few units (usually
1 to 3), the degree of completion of exhibits F, G, G–1 and G–2 may be minimized. Supervisory visits to such projects are required only once every three years and should concentrate on tenant eligibility, income and adjustments to income verification, maintenance, insurance coverage, and status of loan payments.

(2) The Servicing Official or other FmHA authorized person will conduct an inspection of each project at least once every 36 months with the borrower, site manager, or designated representative present.

(i) This inspection may be made simultaneously with a supervisory visit scheduled in accordance with this section.

(ii) The results of the inspection will be documented on HUD Form 9822, "Report of Physical Condition and Estimate of Repair Costs," or a similar form. The same purpose may be used for this inspection.

(iii) Based on the Servicing person's knowledge, without further research, the estimated repair need and cost columns of the form will be completed during the inspection visit.

(c) Preparation. The person planning to make the visit and inspection will review the most recent quarterquarterly or annual reports, the running records, correspondence, and other Servicing Office records to be fully aware of the supervisory needs of the project. This awareness should be developed into an informal visit plan and include, but not be limited to such things as: payment status, subsidy status, due dates of taxes and insurance, adequacy of fidelity coverage, and any known maintenance problems.

(d) Notice of visit or inspection. The management agent, or where applicable, the owner should receive a written notice of the scheduled visit or inspection from the Servicing Office 30 days before the event to assure that needed records and staff are available (see Guide Letter 1930–2 for borrower notification.)

(e) Conducting visit or inspection. The person making the visit or inspection should spend sufficient time at the project to accomplish the visit plan and any additional needs that are observed or brought out by the tenants, members, or management staff.

(f) Recording, reporting and followup. The preparation notes and results of each visit should be recorded on exhibits F, G, G–1 and G–2 of this subpart and filed in the borrower's servicing file. A letter highlighting any needed followup actions and a copy of the completed supervisory visit checklist will be directed to the management agent and/or the borrower within 30 days after the visit. Followup will continue through resolution of any problems. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to subpart A of part 1955 of this chapter or Form FmHA 1955–2, "Report on Real Estate Problem Case," may be used as appropriate.

(g) Compliance reviews. As authorized State or Servicing staff member or other FmHA authorized person will complete the Civil Rights and Fair Housing review requirements according to subpart E of part 1901 of this chapter. If initial rent-up or occupancy has not occurred by the time of initial review, a subsequent review will be due one year following initial occupancy and then every 36 months thereafter or in accordance with subpart E of part 1901 of this chapter.

§§ 1930.120–1930.121 [Reserved]

§ 1930.122 Borrower accounting methods, management reporting and audits.

It is the objective of FmHA that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA for review, and otherwise comply with the terms of their loan agreements with the Agency. Borrower accounts and records will be kept or made available in a location within reasonable access for inspection, review, and copying by representatives of FmHA or other agencies of the U.S. Department of Agriculture authorized by the Department.

(a) Accounting methods and records—

(1) Method of accounting and financial statements. Borrowers may choose a cash or accrual method of accounting, bookkeeping, and budget preparation as described in their project management plan, unless otherwise specified in a work-out plan as part of a servicing action. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

(2) Approval requirement. Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing, in the project management plan that must be approved by FmHA.

(3) Records. Form FmHA 1930–5, "Bookkeeping System-Small Borrower," may be used by small organizations as a method of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of exhibit B of this subpart.

(4) Record retention. Each borrower shall retain all financial records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the OIC, the Comptroller General, or to their representatives.

(b) Management reports and review processes. The objective of management reports and review processes is to furnish the management and FmHA with a means of evaluating prior decisions and to serve as a basis for planning future operations and financial controls. Time and the review furnish necessary information to make sound management decisions. All reports will relate only to the FmHA financed project and borrower entity. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA. The various review processes described in this paragraph are illustrated at § 1930.123 of this chapter.

(1) Annual budget and utility allowance—

(i) Objective. It is the objective of FmHA that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

(ii) Documents

(A) The annual project budget will be prepared on Form FmHA 1930–7, "Multiple Family Housing Project Budget," by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the "actual" column will reflect at least 9 months of actual fiscal year activity and not more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience.

(B) When tenants pay their own utilities, the housing allowance for utilities and other public services will be prepared on exhibit A-6 to exhibit E of part 1944 of this chapter. Exhibit A–6 will be prepared by the borrower or its agent following instructions attached to the exhibit and will be submitted to FmHA together with Form FmHA 1930–
7 with justification to either retain or change the utility allowance.

(iii) Supporting data. Any data, justification, or other documentation required may be included for the purpose of Form FmHA 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be attached to the respective document when submitted to the Servicing Office.

(iv) Due date. The borrower can submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated in (b)(1)(i) of this section. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

(v) FmHA review. Form FmHA 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

(2) Rental or occupancy charge budget and/or utility allowance change—(i) Objective. It is the objective of FmHA that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

(ii) Documents. When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter and any attachment following the instructions for either document.

(iii) Standards and timing. (A) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in any FmHA office or the "Borrower Handbook" made up of selected exhibits of this Subpart and parts of this chapter).

(B) To meet the projected effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead of the effective date of change to allow FmHA review to authorize a 60 day notice to tenants or members of an impending change. The "actual" column of Form FmHA 1930–7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days. The same supporting data standards of paragraph (b)(1)(iii) of this section will apply.

(C) Should the borrower need to request a rental or occupancy charge and/or utility allowance change at some time other than described in paragraph (b)(2)(iii)(B) of this section, e.g., mid-fiscal year, Form FmHA 1930–7 shall reflect the project’s financial needs for the next 12 months of operation and the "actual" column shall reflect the most recent 12 months of actual data. The previous fiscal year’s audit report, or Form FmHA 1930–4, “Multiple Family Housing Borrower Balance Sheet,” as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

(iv) FmHA review. Exhibit C of this subpart shall govern FmHA review of the borrower’s request for rental or occupancy charge and/or utility allowance change.

(3) Quarterly report—(i) Objective. The objective of FmHA is for quarterly reports to provide a monitoring means for borrowers and FmHA to mutually check a borrower’s progress in achieving program objectives and when applicable, meeting servicing goals.

(ii) Document. Form FmHA 1930–7 will be used by borrowers to prepare the quarterly report.

(iii) Standards. Form FmHA 1930–7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

(A) Start up of initial occupancy after completion of new construction or substantial rehabilitation.

(B) Reamortization, transfer of an existing project loan, or a 100 percent membership change.

(C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

(D) Existence of reasons stated in paragraph (b)(3)(iv)(B) of this section when quarterly reports will suffice in place of monthly reports.

(iv) Frequency and discontinuance—(A) Quarterly reports. Quarterly reports shall be prepared and submitted for each quarter year at least through the first year of operation for any situation described in paragraph (b)(3)(iii) of this section and each quarter year thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Official will evaluate the following in reaching a decision to discontinue:

(1) An adequate accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

(2) Project loan payments to FmHA are on schedule.

(3) The project reserve account is ahead or on schedule, allowing for authorized expenditures or authorized reduction in funding as set forth in an approved servicing plan or budget.

(4) The annual review has been completed by the Servicing Office and the annual audit, or certification of review when appropriate, has been found acceptable.

(5) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. When this and the preceding determinations are made, a letter of discontinuance of the quarterly report shall be sent to the borrower or its agent with a copy sent to the State Director.

(B) Monthly reports. Preparation and submission of the reports described in this paragraph may be required monthly at the option of the Servicing Official, rather than quarterly, when warranted in unusual situations.

(I) This requirement may be invoked when determined essential by the Servicing Official as part of a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA office).

(2) Reasons for invoking the reporting requirement on a monthly basis may include, but not be limited to, factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

(v) Due date. Quarterly (or monthly) reports shall be due in the FmHA Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

(vi) FmHA review. (A) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget SUBTOTAL item, or vacancies and accounts receivable and/or payable are increasing, the Servicing Official will initiate verbal/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.
(B) The Servicing Official will complete the FmHA review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following the close of the reporting period.

(C) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period: otherwise, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.

(4) Annual audit reports and verifications of review—(A) Annual audit report. An audit report will be in the format as prepared by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1970.

(1) All audits are to be performed in accordance with generally accepted government auditing standards, as set forth in “Government Auditing Standards” (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (this publication is commonly referred to as the “Yellow Book” or “General Accounting Office Standards”). In addition, the audits are also to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FmHA Audit Program as specified in separate sections of this subpart.

(2) An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower’s operation consists of multiple projects where each project is 24 or fewer units (with subsidiary reports prepared for each project).

Note: The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(3) The project audit report should cover the borrower entity and the expense for preparation of the audit report may include the auditor's preparation of any Internal Revenue Service (IRS) required borrower entity reports, i.e., Schedule K1 (IRS Form 1065), “Partner’s Share of Income, Credits, Deductions, etc.”

(4) The CPA or LPA auditor who prepares the audit report may not be an individual or organization that is associated with the borrower in any other than the performance of the audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph B of Exhibit B of this part). For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

(5) The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

(6) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case involving the performance of the: The borrower submits a written request; the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $4.00; and the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year’s project operations.

(7) Verification of review. Form FmHA 1930–8 will be prepared by a competent person qualified by education and/or experience who has no identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director or employee of the borrower.

(1) Form FmHA 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FmHA 1930–7 for projects with 24 or fewer units unless the requirements of paragraph (b) of this section are invoked by the State Director or Servicing Official.

(2) The State Director or Servicing Official may authorize the initial verification of review to cover a period of up to 18 months for a new project whose first operating year was less than 6 months.

(C) Project operating budget actuals. An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FmHA 1930–7. The report will reflect the actual income and expenses for the project for the borrower’s 12 month operating year. The report will be submitted with the annual audit report or Form FmHA 1930–8, as appropriate.

(D) Form FmHA 1930–10. “Annual Multiple Family Housing Project Review.” When the annual audit report or verification of review is received by the Servicing Office, parts II C and D of Form FmHA 1930–10 may be prefilled to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FmHA 1930–10 will be completed later as described in § 1930.123 (e)(2) and (i) of this subpart.

(E) Fraud, abuse, and illegal acts. If the review verifier becomes aware of any indication of fraud, abuse or illegal acts in the FmHA financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the Servicing Official.

(ii) Specific standards—(A) State and local governments and Indian tribes. These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR part 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable.

For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for “Audits of State and Local Governmental Units.” The term “Federal financial assistance” used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(1) Cognizant agency. (i) “Cognizant agency” means the Federal agency assigned by OMB Circular A–128. Within USDA, the USDA OIG shall fulfill cognizant agency responsibilities.

(ii) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(2) Audit standards. It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the
audit work should be done in conjunction with those audits. 

(i) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(ii) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with the FmHA Audit Program. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be in accordance with paragraph (b)(4)(ii)(C) of this section.

(iii) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and the FmHA Audit Program. These State and local governments and Indian tribes shall be governed by audit standards prescribed by State and local law or regulation.

(iv) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit standards. If such entities are excluded, audits shall be made in accordance with paragraph (b)(4)(ii)(B) of this section.

(v) Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph (b)(4)(ii)(C) of this section.

(B) Nonprofit institutions. These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR Part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Officer and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(C) FmHA Audit Program. For-profit organizations and other entities referred to in paragraph (b)(4)(ii) (A) and/or (B) of this section, audits will be performed in accordance with the audit guide entitled “U.S. Department of Agriculture, Farmers Home Administration–Audit Program” (available in any FmHA office).

(iii) Due date. (A) Annual audit reports and verifications of review, as appropriate, and Form FmHA 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(B) If the auditor or verification of review cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Officer may authorize up to a 30-day extension of the due date.

(C) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60 day period.

(D) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIG.

(3) FmHA review. An audit report or verification of review will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

(5) Miscellaneous management reports. These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

(i) Documents and formats—(A) Minutes of annual meetings. Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(B) Energy audit. Prepared according to the guidance of exhibit D of this subpart. Energy audits, including implementation plans for energy conservation, are prepared and submitted on 5-year cycles.

(C) Miscellaneous items. These include other written or electronically stored data or information such as financial or income/expense data, justification statements, or other technical or informative material that stands alone or supports other management reports described in this section, whether volunteered by the borrower or requested by the Servicing Official.

(ii) Due date. Annual minutes and miscellaneous items are due along with the report they are attached to as supporting documentation. New energy audits are due with the next submission of Form FmHA 1930–7 following expiration of the old energy audit.

(iii) FmHA review. FmHA review of miscellaneous management reports will coincide with review of the management report that each is attached to as documentation.

§1930.123 Annual review.

(a) Objective. The objective of the annual review is for the FmHA Servicing Official to determine the degree and adequacy of the borrower’s achievement of operational compliance with the applicable FmHA loan and/or grant agreements and to provide followup consultation or supervision to
the borrower in meeting program objectives.

(b) Annual review process. During the annual review process, the Servicing Official will consider the overall project financial and operational activity. Project strengths and weaknesses will be identified, based on review of various documents, and resultant conclusions will be incorporated into the annual budget planning process that should happen concurrently with the annual review process.

(c) Documents used in the review. (1) Form FmHA 1930–7.
(2) Exhibit A–6 of subpart E of part 1944 of this chapter.
(3) Prior fiscal year annual audit report as prepared by a CPA or LPA, or when applicable, Form FmHA 1930–8 prepared by a review verifier accompanied by Form FmHA 1930–7 with actual income and expense data.
(4) Exhibit A–1 of this subpart prepared in conjunction with the prior year annual audit report.
(5) Applicable attachments required as part of any of the above documents (other information as volunteered by the borrower or specifically requested by the FmHA Servicing Officer for the review at hand).
(6) Minutes of annual meeting for association type borrowers.
(7) Current energy audit with energy conservation implementation plan (from FmHA borrower casefile) except when new energy audit is due with Form FmHA 1930–7.
(8) Latest supervisory visit and physical inspection of property reports (from FmHA borrower casefile).
(d) Preparation for the annual review. Some documents needed are available in the borrower's casefile and the balance needed will be submitted with the annual budget review request. Therefore, annual review should occur within 30 days of receipt of all necessary documents. This should result in annual reviews being completed in the last 2 months of a fiscal year or the first 2 months of the next fiscal year. When determined necessary, the Servicing Officer should:

(1) Notify the borrower of the required management reports and their due dates, and provide the borrower with necessary guides and forms for use in preparing the reports.
(2) With a new nonprofit borrower organization, determine that the borrower is properly planning for its annual meeting for the correct date according to its organizational documents. The Servicing Official should plan to attend the annual meeting unless the borrower has progressed as described in § 1930.110(c) of this subpart.
(e) Timing, conducting, and completing the review. (1) The annual review process will be scheduled and performed concurrently with the budget planning process, normally in the last quarter of a project fiscal year (see illustration in paragraph (i) of this section). This process will occur separately from the annual audit review process (which will occur following close of a project fiscal year).
(2) The Servicing Official will use the applicable resource documents listed above when performing the review. The Servicing Official will conduct the annual review following the review and recording guidance of Form FmHA 1930–10. The Form FmHA 1930–10 will be completed during the prescribed last quarter review period.
(3) The Servicing Official may invite the borrower or its agent to participate in any part of the annual review.
(f) Distribution of reviewed documents. (1) A copy of the results of the annual review on Form FmHA 1930–10 along with recommendations or compliance requirements will be sent to the borrower and/or its agent and to the State Director as soon as the review is completed.
(2) The individual items required to perform the annual review will be distributed according to appropriate FMI's as listed on exhibit B–7 of this subpart.
(g) State Director's review of annual reviews. Upon receipt of the items identified in this section, the State Director will:

(1) Review all submissions of Form FmHA 1930–10 that are used by the Servicing Official to record summary results of an annual project review.
(2) Conduct a more detailed review of only those annual reviews that warrant further review. The State Director should provide summarized comment to Servicing Officials after completion of statewide review, otherwise the State Director will comment on any specific borrower and/or project annual review selected for further review.
(3) Will review Form 1930–7 and exhibit A–6 of subpart E of part 1944 for approval when the authority to approve budgets as part of the annual review is not delegated to the FmHA Servicing Official.
(4) Be prepared for a sample review of annual reviews by the National Office upon request during a combined assessment review or other specific need.
(h) On-farm LH annual review. For individual farm borrowers with on-farm LH unit(s), the objective of this section will be satisfied by completing the recordkeeping and reporting requirements of their farm and home planning with FmHA as outlined in subpart D of part 1944 of this chapter.
(i) Illustration of MFH budget planning, annual review, and annual audit review cycles.
§ 1930.124 [Reserved]

§ 1930.125 Changing project designation.

Generally, RRH projects designated for families, elderly and persons with handicaps, including congregate housing, will be used for the original purpose throughout the life of the FmHA loan. However, if it becomes necessary to change the designation of a project due to housing market changes which inhibit the borrower’s ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation. Project design must meet the housing requirements of the target group when changing the designation. The State Director shall consider such requests on a case-by-case basis when all of the following information has been provided:

(a) The complete borrower case files have been submitted together with the Servicing Official’s specific recommendations and analysis of the present and long term situation.

(b) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the present long term marketability of the project is significantly changed from the original market, and include the appropriate demographic information which reflects the population trends in the area.)

(c) A summary of all servicing actions taken by FmHA to aid the borrower in maintaining the present designation.

(d) A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants.

(e) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

(f) A summary of any needed or required physical modifications and analysis of cost feasibility to complete the modifications.

§ 1930.126–1930.127 [Reserved]

§ 1930.128 LH grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued to assure that the grant purposes will be accomplished. Comments on the following points will be included in appropriate reports, to assure that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No public or private nonprofit organization borrower may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

§ 1930.129 RHS loans.

RHS loans will be serviced according to program regulations and the conditions specified in the borrower’s loan resolution. The following additional supervisory action by the Servicing Official will also apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price, not to exceed market value, of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest, and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to plan for the sale of all lots prior to the due date of the note.

(e) Should the RHS borrower default in its loan obligations, the account will be serviced according to §1965.85 of subpart B of part 1965 of this chapter. The Servicing Official’s report to the State Director should contain the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary.

(2) If a satisfactory proposal for selling the lots can be developed, the account will be serviced according to program regulations and the provisions of this subpart and subpart B of part 1965 of this chapter.

(3) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled according to §1965.85(e) of subpart B of part 1965 of this chapter for liquidation.

§§ 1930.130–1930.133 [Reserved]

§ 1930.134 FmHA office records.

FmHA officials will maintain records in accordance with FmHA Instructions 2033–A and G (available in any FmHA office).

§§ 1930.135–1930.136 [Reserved]

§ 1930.137 State Supplements, guides, forms, and other issuances.

It is FmHA’s practice to follow the provisions of the Administrative Procedures Act by inviting public comment before adopting public policy, unless otherwise directed by statute. However, the State Director may, in accordance with FmHA Instruction 2006–B (available in any FmHA office), and with prior approval of the National Office and the assistance of the OGC, develop State Supplements, guides, or issuances to the extent necessary to enable borrowers to comply with the policies, procedures, and exhibits of this subpart and the applicable provisions of State laws. Under no circumstances will State forms be developed as replacements for the forms referred to in this subpart.

§ 1930.138 Supervisory actions for distressed projects.

MFH projects experiencing high vacancy rates which would lead to project failure can apply for a special servicing market rate rent change in accordance with paragraph IX of exhibit C of this subpart.

<table>
<thead>
<tr>
<th>Items on hand during fiscal year</th>
<th>Last quarter of fiscal year</th>
<th>First quarter of next fiscal year</th>
<th>Second quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identity of Interest Disclosure</td>
<td>FMHA completes Form</td>
<td>Take immediate action on</td>
<td></td>
</tr>
<tr>
<td>Certification Memo randum.</td>
<td>FMHA 1930-10.</td>
<td>significant items found in the Audit Review.</td>
<td></td>
</tr>
</tbody>
</table>
§ 1930.141 Materials to be provided borrower/applicant.

To enable borrowers and applicants to meet the intent of this subpart, they will be supplied with one reproducible copy of the following FMHA exhibits and forms and materials as they are issued and/or updated:

(a) Exhibits B and B–1 thru 14 of this subpart, when applicable.
(b) Exhibits C, C–1, and C–2 of this subpart.
(c) Exhibits D and D–1 of this subpart.
(d) Exhibit E of this subpart.
(e) Exhibits H and H–1 of this subpart.
(f) Exhibit I of this subpart.
(g) Exhibit J of this subpart, when applicable.
(h) Subpart L of part 1944 of this chapter.

(i) Booklet entitled “Audit Program.”
(j) For farm housing borrowers and/or applicants, exhibit B of subpart D of part 1944 of this chapter in addition to the preceding items of this section.

(k) The following forms:
(1) Form FMHA 1930–7 and attached exhibit A–6 of subpart E of part 1944, if applicable.
(2) Form FMHA 1930–8.
(3) Form FMHA 1944–7, “Multiple Family Housing Interest Credit and Rental Assistance Agreement.”
(4) Form FMHA 1944–29, “Project Worksheet for Interest Credit and Rental Assistance.”
(5) Form FMHA 1944–8.
(6) Form FMHA 1910–5, “Request for Verification of Employment.”

§ 1930.142 Complaints regarding discrimination in use and occupancy of MFH.

Any tenant or prospective tenant seeking occupancy or use of RH, RCH, LH, or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, familial status, or handicap may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC 20410, or any HUD office, or to the Administrator, FHWA, USDA, Washington, DC 20250. If the complaint is made to an FHWA County, Servicing, or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office by the FHWA employee in charge of that office. When a complaint is sent to FHWA–EOS by a FHWA Servicing Office, the State Director will be made aware of the complaint.

(a) Personnel in FHWA field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

1. The name and address of the respondent (complainant).
2. The name and address of the aggrieved person.
3. A description and the address of the dwelling which is involved, if appropriate.
4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
5. Participants in FHWA’s housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure. Victims of alleged discriminatory housing practices may seek reparations through HUD or by private lawsuit.

§ 1930.143 Delegation of responsibility and authority.

(a) The Administrator may on an individual state basis, authorize the State Director to contract out selective fact gathering, nondisclosure making servicing actions in this subpart.

(b) The State Director may delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to those State staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the FHWA policies and procedures of FHWA. The State Director may further delegate such authority in like manner to Servicing Offices by either of two options:

1. To individual Servicing Office staff members, including the Servicing Official.

2. To the position of Servicing Official, the incumbent of which may further delegate specified authority to identified Servicing Office staff members. A copy of such delegation will be filed with the State Director.

(c) Individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director, or the Servicing Official when applicable, and will be prepared according to FHWA Instruction 2006–F (available in any FHWA office).

§ 1930.144 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the MFH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director or the Assistant Administrator for Housing. The request must be supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§ 1930.145 Appeals.

Only the borrower, or the borrower’s representative (as defined in subpart B of part 1900 of this chapter), can appeal an FHWA decision. The borrower’s management agent may not request an appeal unless he/she has been designated as the borrower’s representative. This means he/she must be authorized in writing by the borrower to act for the borrower in the administrative appeal, as required by subpart B of part 1900 of this chapter (this may be addressed in the management agreement). The borrower’s request for review of an alleged adverse decision must be made to FHWA in written form. Appeals and reviews will be handled in accordance with directions set forth in subpart B of part 1900 of this chapter.

§ 1930.146–1930.149 [Reserved]

§ 1930.150 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0033. Public reporting and recordkeeping burden for this collection of information is estimated to vary from 5 minutes to 10.25 hours per response, with an average of 0.43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Office, OIRM, room 404–W, Washington, DC 20250;
and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0033), Washington, DC 20503.

Exhibits to Subpart C

Exhibit A—Steps for Farmers Home Administration (FmHA) Personnel in Conducting Annual Review of Multiple Housing Operations

I Examine the Condition of the Borrower/Management Reports to Determine that:
A Required accounts are being properly maintained in accordance with the loan resolution or agreement.
B Decisions of officials are being entered in the minutes book, if applicable.
C Any membership or stock transfers have been approved by FmHA and recorded as required.
D Financial records are maintained by qualified persons.
E The financial records are being reviewed by a qualified auditor where an audit is required or by a competent individual or committee when a verification of review of accounts is required.

II Study the Financial Progress: Compare current financial condition and owner's equity with previous years to discover any trends, for example:
A Has cash carryover increased or decreased?
B Are the debts greater or less?
C Is the owner's equity greater or less?
D Are accounts receivable greater or less?
E Are collection provisions being enforced?
F Are reserve and other required funds or accounts properly maintained?

III Study the State of Income and Expenditures for the Past Year: Compare it with the budget for the past year and the same statement for previous years.
A Were rents or occupancy charges, subsidies, and other monies collected sufficient to meet the required revenues for planned expenditures?
B Were actual expenditures significantly different from those budgeted?
C Were the expenditures sufficient to adequately maintain the project?
D Were expenditures reasonable and typical for similar projects?
E Were any essential items of maintenance deferred during the past year?
F Were payments made on authorized debts in the proper amounts and on the dates agreed to?
G If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?
H Did the borrower charge late fees to project accounts other than the Return on Investment Account?
I Were an excessive number of overage charges paid by the project?
J Budget for the next Year: Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year and the prevailing costs of doing similar business in the market area.

A Are proposed expenditures adequate for normal maintenance and operation of the project?
B Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?
C Does the budget make provision for financing maintenance or energy conservation measures/practices deferred from the previous year?
D Does it provide for the required financial reserves?
E Is planned revenue adequate to cover planned expenditures?
F Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V Study the Audit Report: Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A—1 of this subpart may be used as a guide.

VI Review the Energy Audit: Review the most recent energy audit and the borrower's plan for implementation.

VII Determine Whether or Not the Borrower Has:
A Maintained required financial records and accounts, made required reports, submitted required financial audits or verifications of review and taken appropriate action to correct previously noted deficiencies of such records, reports, audits, or verifications.
B Renewed fidelity coverage and insurance policies.
C For borrowers with governing bodies.
   1 Held regular board, committee, and membership meetings.
   2 Conducted the affairs along sound business lines.
D Made a change in any organizational documents without FMHA consent.
E Made a change in the plans for management and operations of the project without FMHA consent.
F Made a change in the membership or interest in ownership without FMHA consent.

VIII Summary: Summarize major observations and decisions reached as the result of the review and record on Form FMHA 1930-10, "Annual Multiple Family Housing Project Review."

Exhibit A—1—Audit Report Review Guide

I Purpose.
To present a general guide for use of Farmers Home Administration (FmHA) staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing, and help to promote better independent audits.

II General. FmHA guidelines for independent auditors are detailed in the booklet, "U.S. Department of Agriculture, Farmers Home Administration—Audit Program" (hereinafter called Audit Program and available in any FmHA office). This Audit Program, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to improve audit practices.

III Scope. The review should include:
A A determination of the adequacy of the audit in relation to FmHA regulations and the Audit Program.
B Interpretation of information included in the audit.
C Preparing a letter to the borrower on any missing or adverse audit data.
D Informing appropriate FmHA offices of review results and recommendations.

IV Review Procedures to Be Followed.
A General. The independent professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:
1 Exercise circumstances peculiar to the borrower.
2 Degree of importance attached to each item questioned.
3 Number of exceptions.
4 Whether the exceptions relate to the auditor's work or the borrower's records and operations.
5 If specific action is to be requested of the borrower.
6 Whether or not the report, as a whole, is acceptable.

B Review and Procedure.
1 Specific.
   a Determine if the audit was performed by a Certified Public Accountant (CPA) or a Licensed Public Accountant (LPA) who was licensed on or before December 31, 1970.
   b Determine if the audit was conducted in accordance with Government Auditing Standards (1988 Revision), often referred to as generally accepted government auditing standards (GAGAS).
   c Does the audit cover the most recent 12 months since the previous audit?
   d Was the audit received within 90 days after the borrower's year end, or was an extension of up to an additional 30 days authorized by the Servicing Official, and if so, was it met?

2 Evaluation checklist for audit reports.
   a The "Evaluation Checklist for Audit Reports" which is attachment 1 of this exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact(s) need to be made with the borrower.
   b Previous audits and correspondence. Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year have been made, and whether the borrower has complied with previous suggestions for improvement in the audit report.
   c Preparing the audit review letter. After completion of the "Evaluation Checklist for Audit Reports" (attachment 1 of this exhibit) and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as attachment 2 of this exhibit.
<table>
<thead>
<tr>
<th>Yes/no</th>
<th>1. Auditor's Opinion. (Section G-1).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) Unqualified.</td>
</tr>
<tr>
<td></td>
<td>(b) Qualified.</td>
</tr>
<tr>
<td></td>
<td>(c) No Opinion.</td>
</tr>
<tr>
<td></td>
<td>2. Financial Statement. (Section J-1).</td>
</tr>
<tr>
<td></td>
<td>(a) Balance Sheet.</td>
</tr>
<tr>
<td></td>
<td>(b) Results of Operations.</td>
</tr>
<tr>
<td></td>
<td>(c) Statement of Cashflow.</td>
</tr>
<tr>
<td></td>
<td>(d) Statement of Changes in Retained Earnings.</td>
</tr>
<tr>
<td></td>
<td>(e) Notes to the Financial Statements.</td>
</tr>
<tr>
<td></td>
<td>3. Statement on Auditing Standards. (Section J-2).</td>
</tr>
<tr>
<td></td>
<td>4. Report on Compliance. (Section J-3).</td>
</tr>
<tr>
<td></td>
<td>The auditor should prepare a written report on the tests of compliance with applicable laws, regulations, loan covenants and agreement and grant agreements. List significant compliance findings:</td>
</tr>
</tbody>
</table>

| Yes/no | 5. Report on Internal Controls. (Section J-4). The auditor's report should assess the borrower's control risk including discussion on the scope of the auditor's assessment, significant internal controls assessed, and any material weaknesses of internal control noted. List significant internal control findings: |

| Yes/no | 6. Reporting Instances of Indication of Illegal Acts. (Section J-5). List any noted: |

| Yes/no | 7. Uncorrected Prior Audit Findings. (Section J-6). List: |

| Yes/no | 8. Was report received within 90 days after the end of the borrower's operating year or within a 30 day extension? |

| Yes/no | 9. Was audit performed and signed by a CPA or LPA? If by an LPA, verify that the LPA was licensed on or before December 31, 1970. |

*References to “Sections” indicate the appropriate section of the FmHA Audit Program booklet.*

### Attachment 2—Example Audit Review Letter

Dear Borrower (or Borrower Representative):

We have reviewed your audit report for the period __________ to __________, prepared by __________ on __________. This review was made in accordance with the Government Auditing Standards (GAGAS).

We have reviewed your audit report for the period __________ to __________, prepared by __________ on __________. This review was made in accordance with current FmHA regulations and the Audit Program entitled “U.S. Department of Agriculture, Farmers Home Administration—Audit Program.” Based on this review, your audit:

1. ( ) Is acceptable. However, the auditor's recommendations concerning __________ should be implemented prior to next year’s audit.

2. ( ) Is acceptable but did not include comparative-type financial statements as indicated in Section J-1 of the Audit Program. Please inform the auditor to prepare such statements next year.

3. ( ) Is acceptable but was not submitted within 90 days or an authorized delay of __________ days after the end of the borrower's fiscal year. Please insure that next year's audit is forward dated before __________.

4. ( ) Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Program, Section J, “Reporting Standards.” Please have your auditor comment on the item(s) circled and forward a copy to us. The circled numbers correspond to the 6 items listed in Section J of the August Program. J-1, J-2, J-3, J-4, J-5, J-6.

5. ( ) Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Program.

   a. [ ] It was prepared without audit.
   b. [ ] The following financial statements were omitted: (Audit Program, Section J-1)
      - [ ] Balance Sheet.
      - [ ] Results of Operations.
      - [ ] Statement of Cash Flow.
      - [ ] Statement of Changes in Retained Earnings, or
      - [ ] Reconciliation of Owner's or Partner's Equity.
   c. [ ] The auditor's opinion of Compliance.
      (Audit Program, Section J-3).
   d. [ ] The auditor's opinion of internal control. (Audit Program, Section J-4).

### Exhibit B—Multiple Housing Management Handbook

#### I Purpose
This exhibit prescribes the regulations, policies, and procedures for management of Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide guidance. These regulations are intended to assist borrowers in the successful operation of FmHA-financed rental and cooperative projects.

#### II Definitions

**Adjusted annual income.** This is the annual income of the household members, who live or propose to live in the unit for the next 12 months. (Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify, excluding:)

1. $480 for each member of the family residing in the household (other than the tenant, covenant, member, or coowner or spouse of either, or foster children) who is under 18 years of age; or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full-time by the educational institution attended. This deduction does not apply to an unborn child in the household.

2. $400 for any elderly family.

3. In the case of an elderly family, the total of actual medical and/or handicap assistance expenses paid in excess of 3 percent of annual family income may be deducted. If an elderly family has both medical and handicap assistance expense, the 3 percent of annual income must first be deducted from handicap assistance and any
a. Total medical expense includes medical expenses not covered by insurance that the tenant or member anticipates incurring over the 12 months following the effective date of the certification, using past experience as a guide.
b. Examples of medical expenses are dental expenses, prescription and nonprescription medicines, medical insurance premiums including Medicare, eyeglasses, hearing aids and batteries, medical related travel cost, the cost of attendant care including a live-in resident assistant, monthly payments required on accumulated major medical bills including that portion of a household member's nursing home care paid from household income(s). Note: Premiums paid for nursing home insurance are not an allowable deduction unless a household member is housed at a nursing home and that person's income is included in the household income.

c. Handicap assistance includes reasonable attendant care and auxiliary apparatus as permitted as follows for each member with handicaps of the family to the extent needed to enable any family member (including such member with handicaps) to be employed:
   (1) That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).
   (2) Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually impaired, and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

4. In the case of any nonelderly family, total handicap assistance expense in excess of 3 percent of annual family income may be deducted:
   a. For any handicap assistance expense described in paragraph 3c of this definition that is anticipated to occur over the 12 months following the effective date of the certification, using past experience as a guide, to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed.
   b. The amount of deduction may not exceed the LESSER of the amount by which total expenses for handicap assistance exceed 3 percent of annual family income, or the amount of income received by adult members from such employment.

5. The amounts paid by the family for the care of minor members under 13 years of age may be deducted only to the extent such expenses are not reimbursed. In the case of families assisted by American Indian housing authorities, the amount will be the greater of child care expenses; or excessive travel expenses, allowed $25 per family per week. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including two hours of gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. The tenant file must contain justifying documentation. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expense).

Adjusted monthly income. This is the amount obtained by dividing the adjusted annual income by 12.

Annual income. Annual income is the anticipated total amount of income to be received by all members of the household (even if temporarily absent) to be in residence during 12 months following the effective date of Form FmHA 1944-8, "Tenant Certification."

1 Income Included. The following are included when determining annual income:
   a. The gross amount (before any deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses reasonably expected to be received by all members of the household.
   b. The portion reasonably expected to be received from operations of a business or profession or from rental of real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be computed as zero.
   c. Deductions from gross business or rental income to arrive at net income may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members under the straight line method of depreciation. An itemized schedule must be provided in support of any deductions from gross income made under the provisions of this section. The schedule should be consistent with the amount of depreciation permitted for these items for Federal income tax purposes under the straight line method of depreciation.
   d. Interest, dividends, and other received income as defined under net family assets in this paragraph. On contracts for sale of real estate, deeds of trust, or mortgages held by the applicant, tenant or member, only the interest portion of the monthly or annual payments received by the applicant, tenant or member is included as income.
   e. The gross amount of periodic payments from Social Security (including Social Security payments received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements), and other similar types of periodic payments.
   f. Payments received in lieu of earnings, such as unemployment and disability compensation, worker compensation, and severance pay.
   g. Regularly recurring contributions or gifts received from persons not residing in the dwelling.
   h. Any amount of education grants or scholarships or Veterans Administration benefits expected to be received on behalf of tenant, cotenant, member, or companion, eg, reduction, or other adult that exceeds attendance expenses for tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student (i.e., that portion of benefits received for "room and board").
   i. All regular pay, separation pay, special pay (except hazard duty pay for persons exposed to hostile fire), and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.
   j. Payment received from an adoption incentive program to compensate support of a minor child legally adopted by the tenant household.

k. Public assistance.
   (1) A public assistance payment that DOES NOT designate an amount specifically for rent and utilities shall be counted entirely as income.
   (2) A public assistance payment, when administered "as-paid" by the public assistance agency, DOES designate a specific amount for rent and utilities and may adjust (or ratably reduce) that amount based on what the family is currently paying for those items (one only ratably reduction will be permitted). The SUM of the ratably reduced amount for rent and utilities and the amount for subsistence and other needs shall be counted as income.
   (3) Example: The public agency's published schedule shows a monthly maximum of $180 for rent and utilities for a particular size family. The public assistance agency has verified that the family will receive $220 monthly for subsistence and other needs. If the agency does not apply a ratably reduction, $40 per month ($180 + $220) will be included in annual income. If the agency applies a ratable reduction (e.g., 20 percent) annual income will be computed as shown below:

Public assistance (P.A.) rent

<table>
<thead>
<tr>
<th>Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$180 maximum allowed for housing.</td>
</tr>
<tr>
<td>x .80 P.A. adjustment factor.</td>
</tr>
<tr>
<td>$144 monthly P.A. rent.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$180 max. rent.</td>
</tr>
<tr>
<td>$220 basic needs</td>
</tr>
<tr>
<td>+144 P.A. rent</td>
</tr>
<tr>
<td>$364 mthly income</td>
</tr>
<tr>
<td>$144 monthly P.A. rent.</td>
</tr>
<tr>
<td>x 12 months</td>
</tr>
<tr>
<td>$4,368 annual income</td>
</tr>
</tbody>
</table>

* Shown on line 17 of Form FmHA 1944-8.

2 Income Exempted. The following are not included in annual income:
   a. Income of dependent minors (including foster children) under 18 years of age except specified under 1d of the definition of annual income in this paragraph. (Tenant, cotenant, member or companion, or spouse of either may never be considered minors.)
b In the case of contracts for sale of real estate, mortgages or Deeds of Trust held by the tenant, co-tenant, member, or co-member, the principal portion of the payments received by the tenant, co-tenant, member, or co-member.

c The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

d Payments received for the care of foster children.

e Temporary, nonrecurring, or sporadic income (including gifts).

f Lump-sum additions to family assets such as inheritances; capital gains; insurance payments included under health, accident, hazard, or worker compensation policies, and settlements for personal or property losses.

g Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses for any household member. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may maintain independence in living (e.g., attendant care).

h Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the attendance costs of tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence and shelter, are considered to be income of tenant, co-tenant, member, co-member, or applicant.

i Student loans.

j The special hazard duty pay to a household member serving in the Armed Forces away from home, who is exposed to hostile fire.

k Payments received pursuant to participation in the following programs:

(1) Programs under the Domestic Volunteer Service Act of 1973 including, but not limited to, the National Older Americans Volunteer Programs of the Federal Action Agency for persons age 60 and over including the:

(i) Retired Senior Volunteer Program.

(ii) Foster Grandparent Program.

(iii) Senior Companion Program.

(iv) Older American Committee Service Program.

(2) National Volunteer Antipoverty Programs such as Volunteers in Service to America, Peace Corps, Service Learning Program and Special Volunteer Programs.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives and Active Corps of Executives.

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program.

(ii) National Council on Aged.

(iii) National Urban League.

(iv) Association National Pro Persons Mayors.

(v) National Council on Aging.

(vi) American Association of Retired Persons.

(vii) National Council of Senior Citizens.

(viii) Green Thumb.

(v) Payments received from a State or local low income energy assistance program.

1 Relocation payments made pursuant to title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

m Payments received under the Alaska Native Claims Settlement Act.

n Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

o Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

p That portion of tenant income paid from the Job Training Partnership Act, whether paid directly or through the employer.

q Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

r The first $2,000 of per capital shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

s Any funds which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled. (Note: The Department of Housing and Urban Development (HUD) periodically publishes a notice in the Federal Register identifying the programs and benefits that qualify for this exemption.)

1 Income of a resident assistant, as defined in this paragraph.

u Amounts received under training programs funded by HUD.

v Amounts received by a disabled person (including a sight impaired person) that are disregarded for a limited time for purposes of Supplemental Security Income eligibility, and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency.

w Amounts received by a participant in other public assisted programs which are specifically for, or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

x Gifts, payments, or credits provided by the borrower for the same purposes as interest credit or rental assistance for the benefit of residents in accordance with an FMHA approved budget when needed to alleviate or avoid financial distress in a project for a temporary specified time period identified in the management plan.

y Interest accrual to an annuity that cannot be withdrawn due to the terms of the annuity or its being under the control of others.

z Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange product liability litigation, M.D.L. No. 361 (E.D.N.Y.).

aa Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law (Pub. L.) 96-420, 94 Stat 1785).

bb Earned Income Tax Credit Refund Payments.

cc Redress payments received by Japanese American Internment camp survivors.

dd Reparations paid by foreign governments arising out of the Holocaust.

ee Deferred periodic payments received in a lump sum from SSI and Social Security.

ff Borrowers, "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations and have received a loan or grant from FHA for LH, RH, RCH, or Rural Housing Site (RHS) purposes.

Caretaker. The individual(s) employed by the borrower or the management agent to handle normal interior and exterior maintenance and upkeep of the project as specified in the management plan.

Cash value of assets. Current market value less cost to convert assets to cash.

Chore service worker. An individual who provides intermittent assistance essential to the well being of household members whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the household living unit.

Congregate Housing. Residential housing for persons or families who are elderly or have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the Medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial or social resources.

Domestic farm laborers. Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States or are Indians.

Elderly (senior citizen). A person who is at least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this paragraph regardless of age.

Elderly family. A household where the tenant, co-tenant, member, or co-member (individual) is at least 62 years old, disabled or handicapped as defined separately in this paragraph. An elderly family may include a person(s) younger than 62 years of age who is essential to the care and well being of the person who is elderly or has handicaps or disabilities. (To receive an elderly family deduction, the person who is elderly, or has handicaps or disabilities must be the tenant or co-tenant or member or co-member.)


Eligibility income. The calculated adjusted annual income which is compared to the income limits in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA office).

**Familial status.** This term means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

**Forms Manual Insert (FMI).** A type of directive which includes a sample of the form and complete instructions for its preparation, use, and distribution.

**Group home.** Housing that is occupied by individuals who have, or can have, handicaps or disabilities sharing living space in a rental or cooperative unit, but not including a resident assistant or chore service worker.

**Individual with disability.** A person is considered disabled if the person meets the criteria of either of the following:

1. The person has an inability to engage in any substantial gainful activity, but with use of auxiliary apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment, where the disability:
   a. Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and
   b. Substantially impedes the ability to live independently, and
   c. Is of such a nature that such ability could be improved by more suitable housing conditions, or

2. In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 231 of the Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

   a. Receipt of veteran's or Social Security Disability payments benefits for disability, whether service-oriented or otherwise does not automatically establish disability.
   b. The person has a developmental disability (see definitions above) by reason of a mental or physical impairment which;
      a. Is attributable to a mental or physical impairment or combination of mental or physical impairment; and
      b. Was manifested before age 22; and
   c. Is likely to continue indefinitely; and
   d. Results in substantial functional limitations in three or more of the following areas of major life activity:
      (1) Self-care
      (2) Receptive and expressive language
      (3) Learning
      (4) Mobility
      (5) Self-direction
      (6) Capacity for independent living
      (7) Economic self-sufficiency
   e. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment services which are of lifelong or extended duration and are individually planned and coordinated.

**Individual with handicap.**

1. A person with a physical or mental impairment, that:
   a. Is experienced to be of long-continued and indefinite duration; and
   b. Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

2. The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition:
   a. Physical or mental impairment includes:
      (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
      (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.
   b. Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
   c. A record of such an impairment means a history of, or has been misconstrued as having a mental or physical impairment that substantially limits one or more major life activities.
   d. Is regarded as having an impairment means:
      (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
      (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
      (3) Has one of the impairments defined in paragraph 2 a (1) and 2 a (2) of this definition but is treated by another person as having such an impairment.

**LH.** Means Farm labor housing loans and/or grants.

**Limited equity.** The amount of funds which have accumulated in the cooperative member's patronage capital account and as further described in Subpart E of Part 1944 of this chapter.

**Low-income household.** A household having an adjusted annual income not exceeding the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter which is periodically updated (available in any FmHA Office).

**Management agent.** The firm or individual engaged by the borrower and charged with the responsibility to manage the project in accordance with a written agreement.

**Management agreement.** The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for management services.

**Management fee.** The compensation for providing overall management services for a Multiple Family Housing (MFH) project as described in the management plan. The fee is compensation for the time, expertise, and knowledge required to direct and oversee the present and future operation of the project. A management fee does not include the compensation paid to a site manager.

**Management plan.** The primary management charter constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

**Management reserve.** That portion of the cooperative occupancy charge which is designated for payment of professional management services.

**Member/comemember.** A person(s) who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

**Migrant.** A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

**Minor.** A person who is a Dependent of the tenant, cotenant, member or comember under 18 years of age. A dependent person age 18 or older who is a full-time student is treated as a minor.

**Moderate-income household.** A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA Office).

**Net family assets.** Net family assets include cash on hand and the value of savings, certificates of deposit, and dollars in checking accounts reported as "cash on hand." It will be such amounts reported on the day of third party verification. This definition also includes the net cash value of real property, cash value of whole life insurance policies, IRA's, market value of bonds and other forms of capital, or personal property held as investments, irrespective of location, minus debts against them, minus cost of converting such assets to cash. Examples of conversion costs are...
penalties for early withdrawal, broker/legal fees assessed to sell an asset, and settlement costs for real estate transactions.

2. Net family assets also include the value of equity of any business or household assets disposed of by a member of the household for less than fair market value (including disposition through a foreclosure or bankruptcy sale) in excess of the consideration received therefrom during the 2 years preceding the effective date of certification/recertification. In the case of a disposition as part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

3. Income from net family assets which is included in annual income is determined as follows:
   a. If net family assets equal $5,000 or less, annual income is the actual income from the net family assets.
   b. If net sold $5,000, annual income includes the greater of:
      (1) Actual income derived from all net family assets,
      (2) A percentage of the cash value of such assets based on the Bank Fasseebook annual savings rate.

4. Net family assets exclude:
   a. Interests in Indian trust land.
   b. The value of necessary items of personal property such as furniture and automobiles, and the debts against them.
   c. The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation.
   d. The value of a trust fund (i.e., for a minor or a legally incompetent household member) that has been established and the trust is not revocable.
   e. A vehicle specially equipped for the handicapped.
   f. Face value of life insurance policies.
   g. A cooperative member's patronage capital in the housing cooperative unit in which the family resides.
   h. Prepaid funeral arrangements and expenses.
   i. Retirement funds not accessible for withdrawal by a household member.
   j. Assets legally owned but not accessible or that accru to income to someone else.
   k. Savings accounts of dependent minors when such accounts are under the minor's social security number.

New housing. Newly constructed or substantially rehabilitated RH, RCH, or LH project financed by FmHA. For new construction rental assistance (RA) purposes, it further means before any units are occupied.

Nonprofit corporation. A corporation which is organized and operated for purposes other than making gains or profits for the corporation or its members, is legally precluded from distributing to its members any gains or profits during its existence; and in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a public corporation which will operate the housing for the same or similar purposes.

Occupancy charge. The amount of money charged a cooperative member to cover his/her proportionate share of the cooperative's operating costs and cash requirements.

Occupancy surcharge. A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into, on or after December 15, 1988. This surcharge will be collected from tenants by borrowers and transmitted to FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date of the loan in the project which made the project subject to surcharge.

Operational housing. A completed RH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants or members.

Overage. The portion of a tenant's or member's net contribution to shelter cost that exceeds basic rent.

Pet. A commonly accepted domesticated household animal (e.g., dog, cat, bird, etc.) owned or kept by a tenant or member.

Profit basis. Applies to an individual or organizational applicant who will operate the housing at rental rates low- and moderate-income nonelderly or nonhandicapped persons, and persons with handicaps of any income can afford, where return on initial investment is not limited to a certain percentage per year.

Project. A project is the total number of rental or cooperative housing units that are operated under the same management plan with one loan agreement/resolution.

RCH means Rural Cooperative Housing Loans.

Rental agent. The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower or the management agent as specified in the management plan.

Rental assistance (RA). RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA. The difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV of this exhibit. When the monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to Exhibit IX A 2 of exhibit E of this subpart. RA used in cooperative housing will be calculated in the same manner.

Resident assistant. A person(s) residing in a tenant's housing unit who is essential to the well-being and care of the person(s) who are elderly or have handicaps or disabilities residing in the unit, but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or grant recipient. The resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

RHS means Rural Housing Site loans.

RRH means Rural Rental Housing loans.

Service agreement. A written agreement between the borrower and a service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing the services to be provided to a FmHA financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Shelter cost. Consists of basic and/or net rate rent plus utility allowance and occupancy surcharge, when required. Basic and/or net rate rent must be shown on the project budget for the year and approved according to paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to Exhibit A-6 of Subpart E of Part 1944 of this chapter. Any change in rental rates or utility allowance must be proposed to and approved to Exhibit C of this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

Site manager. The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager. A site manager is not an "independent contractor."

Tenant contribution. The portion of the approved shelter cost, including occupancy surcharge, paid by the tenant household (tenant rent). For tenants not receiving HUD Section 8, this amount will be calculated according to Form FmHA 50059. For tenants receiving HUD Section 8, this will be the amount referred to on HUD Form 50059, "Certification and Recertification of Tenant Eligibility," (or other HUD approved Form), as family contribution. The proportion of tenant income and assets paid as the tenant contribution will vary according to the type of subsidy provided to the household.

Tenant/cotenant. A person(s) who has signed a lease and is, or will be, an occupant of a unit in an RH or LH project.

Utility allowance. A monetary allowance used by a tenant or member to pay the utility cost portion of their total shelter cost when such amounts are not otherwise included in project rents or occupancy charges.

Very low-income household. A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

V. Borrower Responsibilities.

A. General. All borrowers are responsible for:

1. Understanding the distinction between FmHA supervised credit and the credit provided by other Federal, State, or conventional loans.

2. Meeting the objectives for which the loan or/and grant was made and complying with the respective program requirements.

3. Understanding the unique characteristics and function of their
particular type of borrower entity as provided by charter, articles of incorporation, by-laws, or statutes.

4. Assuring that a site manager or contact person is in close proximity to their MPH project.

5. Complying with the provisions of their security instruments and any directive issued by FmHA. A Borrower without a loan agreement. Unless otherwise specified, these borrowers are exempt from the requirements of this subpart, except for Exhibit C of this subpart, as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, except for LHI borrowers not charging for on-farm labor housing, these borrowers must provide evidence of tenant eligibility.

B. Borrowers with a loan agreement. Unless otherwise specified, these borrowers must meet the requirements and conditions of their agreement, resolution, and the requirements of this subpart.

D. Borrowers with governing bodies. The elected or appointed officials comprising the governing body of the borrower are responsible for:

1. Maintaining records of all current members and maintaining membership at the required level.
2. Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.
3. Coordinating and monitoring activities of any affiliated committees.

E. Borrowers with a membership. Members of a membership type borrower are responsible for full support of the project and operation by:

1. Promptly paying any dues, fees, and other required payments.
2. Electing responsible officials.
3. Complying with organization rules and regulations.
4. Participating in annual and special meetings.
5. Participating in established cooperative committees to which they have voluntarily accepted assignment.
6. Carrying out duties and services necessary to maintain the cooperative property for which they have voluntarily accepted assignment.

F. Delegation of responsibility and authority. The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements and job descriptions. FmHA will hold the borrower ultimately responsible for management of the project. FmHA may require a borrower to change the plan of

project management and/or make appropriate redemptions of project management responsibility to achieve program objectives.

IV. Rent Subsidy Opportunities: The availability of rental assistance and the requirements of this subpart. The multiple unit project. The borrower is deemed to have made a determination of meet the tenants’ needs. Congregate type services such as meals, limited income, medical, transportation, and social activities are included in these subsidy programs. The subsidy programs are as follows:

A. FmHA Interest Credit—RRH and RCH Loans. Regulations are contained in Exhibit H to this subpart and include:

1. Plan I—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. These broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:
   a. Occupancy is limited to very-low or low-income non-elderly; very low-, low-, moderate-income person(s) who is elderly or have disabilities or handicaps.
   b. Budgeted rents and rates are based on a 3 percent loan amortization.

2. Plan II—This Interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis. The minimum (basic) rate for persons not receiving rental assistance is based on a 1 percent subsidized rate. The maximum note rate is based on the loan amortized at the interest rate shown in the promissory note.
   c. Tenant’s or member’s contribution for shelter cost, calculated according to the FMI for Form FmHA 1944-6, may not exceed the highest of:
      (1) Thirty percent of monthly adjusted income.
      (2) Ten percent of gross monthly income.
      (3) If the household is receiving payment for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household’s shelter costs (see example in 1 of the definition of annual income in paragraph II of this exhibit), or
      (4) The basic rent or occupancy charge when no RA is available from FmHA.
   d. RRH borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit agreement according to Exhibit H of this subpart.
   e. RRH borrowers with Plan I Section 8 interest credit agreements may change to Plan II when the 1 percent or 2 percent interest reduction is insufficient for the HUD contract rent to meet budgeting needs. The change of interest credit plan will be approved in accordance with paragraph VII B of Exhibit C of this subpart (available at any FmHA office). A new Form FmHA 1944-7, "Multiple Unit Housing Interest Credit and Rental Assistance Agreement," is required.

B. Rental assistance (RA) program—FmHA. This is a subsidy program available to RRH and RCH borrowers to assist very-low and low-income tenants and members in paying their shelter cost. RA is not authorized for tenants or members whose adjusted income is initially above the low-income level. RA is not available to LHI borrowers who are individual farmers, partnerships, family corporations, or an association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full profit borrowers may utilize RA by converting to a limited profit operation. The provisions of the RA program are covered in detail in Exhibit B of this subpart.

C. HUD project based Section 8 and tenant based Section 8 Rental Certificate or Rental Voucher Program. These programs are administered by HUD or others authorized to administer the program such as State Housing Finance Agencies or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD (available at the FmHA National Office, Washington, D.C. 20250) will also be subject to the requirements of the Housing Assistance Payments Contract executed by the borrower. Projects accepting tenants receiving section 8 assistance must meet the eligibility requirements specified in paragraph VI of this exhibit. Requirements that conflict with FmHA requirements should be deferred to the Servicing Official for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.)

D. State provided subsidy. This is a subsidy program provided and funded by some States and available to RRH borrowers to assist tenants on approximately the same basis as the FmHA RA Program. The assistance is in accordance with a contract between the borrower and the State and concurred in by FmHA.

E. Privately provided subsidy. This is a subsidy program whereby the project owner(s) or others enter into an Agreement with FmHA to provide and fund subsidy to tenants of the project on approximately the same basis as the FmHA RA Program. In some instances, the agreement may include a limit on the number of units and a Per Unit Ceiling on the amount of assistance. Privately provided subsidies are typically referred to as a "contract rent."
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detailed objectives, policies and procedures in managing the project. A management plan is required at least twice to the Agency for all projects, new and existing, except for those on-farm LH units where rent is not required. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated initially by the borrower. To reflect project needs and to meet current program objectives, use of an addendum is permitted when few changes are made in the update of the plan. Exhibit B-1 of this subpart outlines the requirements of the plan.

2 In the case of congregate housing/group homes, the management plan should describe, in addition to the preceding general items, the specific items in paragraph V B of exhibit I of this subpart.

B Identity of interest disclosure.

1 General principles. FmHA requires that applicants/borrowers and/or management agents describe and fully justify any identity of interest, or appearance of same, that exists or will exist between the borrower and/or management agent, suppliers of materials or services, or vendors in any combination of relationship. Identity of interest will be construed as existing between the applicant/borrower and/or management entity and suppliers of materials or services described under but not limited to any of the following conditions:

a When there is any financial interest between the applicant/borrower and/or management entity and the supplying entity.

b When one or more of the officers, directors, stockholders or partners of the applicant/borrower or management entity is also an officer, director, stockholder, or partner of the supplying entity.

c When any officer, director, stockholder, or partner of the applicant/borrower and/or management entity has any financial interest whatsoever in the supplying entity.

d When the supplying entity advances any funds to the applicant/borrower and/or management entity.

e When the supplying entity provides and pays on behalf of the applicant/borrower and/or management entity the cost of any materials and/or services in connection with obligations under the management plan.

f When the supplying entity takes stock or any interest in the applicant/borrower and/or management entity as part of the consideration to be paid.

g When there exist or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or cancelling any of the management plan/mangement agreement documents, except as approved by FmHA.

2 Any individual or organization sharing an identity of interest for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract.

a The initial disclosure shall be in effect for a period of 3 years and renewed every 3 years that such are any changes in the business practices of the applicant/borrower and/or management entity during the interim years that include identity of Interest concerns, the entity must file an amended disclosure.

b Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of subpart M of part 1940 of this chapter (available in any FmHA office).

C Management agreement. The management agreement is the primary document by which the management agent is engaged, evaluated, and compensated. It bears a close relationship to the management plan. A qualifications statement by the management agent is required by the borrower and FmHA. Exhibit B-4 of this subpart provides a guideline for preparing the statement.

2 The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing on-site management and/or services of a caretaker when justified by the size of the project. FmHA requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B-5 of this subpart provides a guideline for preparing the statement.

D Responsibility. The management plan and management agreement must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA for personal, regardless of the authority delegated by the owner to the management agent.

E Compensation for project administration.

1 General principles. Compensation for project administration is the remuneration for performance of administrative duties and responsibilities by those selected by the owner and approved by the Agency as having sufficient background and experience to manage project operations. The administrative duties and responsibilities must be set out in the management plan along with the manner in which compensation will be determined. It is the option of the project owners to determine whether to use a management agent to carry out project administrative functions in full or in part. A management agent used, it is the option of the owner to decide which duties the management agent will perform and which duties will be performed by the owner. Whenever the owner chooses to use a management agent, a management agreement must be used. The management agreement must describe the duties and compensation for services provided by the management agent. Any other duties and compensation for project administration not covered in by the management agreement, may also be considered as project expenditures. All project administrative expenditures must be reviewed and approved by the Agency as being reasonable for the services provided, including the reasonableness of the expenditures for management agent services.

2 Review of administrative expenses. The Agency is responsible for determining that project administrative expenses are reasonable for the services performed in administering project operations in an acceptable manner. Therefore, the Agency may use data from FmHA projects or other sources for use in making any such determination. The Agency may establish guidelines for administrative expenses for use within a State or area. Administrative expenses falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for approval. Administrative expenses falling outside of such guidelines for services typically performed under the guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when the administrative expenses are falling outside of any established guidelines.

3 Review of management fees. The Agency is responsible for determining that the fees paid for services performed by management agents are reasonable. Therefore, the Agency may use data from FmHA projects or other sources for use in determining what fees are reasonable for the services performed in an acceptable manner by management agents. The Agency may establish guidelines for management fees for use within a State or area. Management fees falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for approval of management agreements and budgets. Management fees falling outside of those guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when management fees are falling outside of any established guidelines. Whenever disputes arise as to whether an administrative expense is appropriate for listing under the management fee, or as to some other project expense, the Agency will seek to mutually resolve such concerns. This will be done by using the approved management agreement or management plan to determine which services are being performed by the management agent.
instructions that accompany Form FnHFA 1939-7, "Multiple Family Housing Project Budget," provide further guidance on acceptable project administrative expenses. Preparation of an IRS required report for the project, if required (e.g., Schedule K-1 (IRS Form 1065), "Partner's Share of Income, Credits, Deductions, Etc."
  is an acceptable project expense.)

b Unacceptable administrative expenses. Those administrative expenses not necessary to successfully carry out project operations may be denied. Preparation of income tax returns for rent-up owners are unacceptable project expenses.

5 Projects with a management agent. When management agents are used, the duties and compensation of the management agent must be set out in a management agreement. All such agreements are subject to Agency review and concurrence. The amount of compensation for the services rendered is to be negotiated between the owner and the management agent and is subject to Agency concurrence on tenant agreement and approval in the project budget.

6 Owner-managed projects. The owner will be authorized to manage the rental project only when FnHFA determines in writing that the owner (either as the individual borrower or as a part of an organization/borrower) has the necessary management capabilities. a Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner-managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V B of this exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

b Since cooperatives are to be organized as self-managed entities, the board of directors is not expected to have management experience or experience in the real estate industry; the advice to the board will provide management guidance during the formative years of the cooperative. Under the adviser's direction, the cooperative will become accustomed to this role and thus gain the ability to assume management responsibilities. If, after the required trial period outlined in subpart E of part 1944 of this chapter, the cooperative's board is unable to assume management responsibilities it will not be considered as an owner-managed project. The management will be hired by the cooperative. We would expect the amount of compensation paid to a cooperative advisor to be less than that paid to other types of management agents in order to provide the members with some equity in the early years. (See subpart E of part 1944 of this chapter).

7 Initial rent-up fees. Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed rental project is permitted when it is determined necessary and documented. The compensation must be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

generally be made from the 2 percent initial operation and maintenance fund. A person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

F Site manager and/or caretaker services. The borrower is responsible for describing the plan for site management in the management plan. The plan needs to identify whether the site manager will occupy one of the project units as a revenue producing unit or as a rent free unit, or will live away from the project. The on-site services of a site manager and/or caretaker may be used when justified by the size, composition, and location of a project. Whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties and compensation for the site manager and to promote the maintaining the site manager's performance. FnHFA may require an on-site resident management and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or Government's interests. It is not mandatory that the site manager and/or caretaker must tenant occupancy eligibility requirements. However, if management considers the occupied unit to be a rental unit, the rent paid will be determined according to the site manager's/ caretaker's income.

1 Calculation of rental rate for site manager or caretaker. The expense of providing the unit occupied by the site manager or caretaker will be included in the project budget the same as the expense for other non-revenue producing portions of the project such as a day room or community room. The rental rate will be determined as follows:

a When used as a revenue producing unit at approved rental rates, the salary paid to the site manager or caretaker will be included in the project operation and maintenance expenses. The amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form. Occupancy surcharges will be applicable in eligible projects.

b When the unit is used as a non-revenue producing unit, the project cost of providing the unit will be treated the same as those of other non-revenue producing portions of the project. Project rental rates will be established to reflect the fact that the occupancy exists as living quarters. Debt payment will be as if the unit were rented at basic rent. A tenant certification form will not be prepared for this situation. Occupancy surcharge will not be collected in non-revenue producing units.

2 Owner-managed projects. With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rates will be included as described in paragraph V F 1 of this exhibit.

G Projects without a site manager and/or caretaker. Projects within a management agent and/or caretaker must have, at a minimum, a tenant who will serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

H Supplemental services. Supplemental services include laundry, vending machine, commissary store, pay telephones, or similar tenant benefit services.

1 Borrower provided supplemental services.

a Income from supplemental services and/or equipment and expense of acquisition and replacement cost shall be planned and recorded as part of the annual operating budget.

b Failure to account for all proceeds is a fraudulent act.

2 Consiqer provide supplemental services.

a A written contact between the borrower and the management agent is required. The contract terms should follow "industry" standards for the type of service.

b Comparability in all respects to conventional supplemental services contracts shall govern contracts with identity of interest between the contracting parties.

c The borrower's share of income will be shown as planned and actual income in the project operating budget.

d Failure by the contractual parties to account for all proceeds is a fraudulent act.

VI Renting Procedure:

A General. Preparations for initial rent-up, occupancy and maintenance should begin at least 90 to 120 days ahead of the projected completion date of the project as described in §1944.235 of subpart E of part 1944 of this chapter. This procedure will include a pre-enumeration conference between the FmHFA Servicing Official, the borrower, and the person(s) responsible for project management. Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria. It is important that this conference precede active marketing and the receipt of tenant applications.

B Accommodations in communication.

1 The borrower shall take appropriate steps to ensure effective communication with applicants, tenants, members, and members of the public with handicaps and disabilities.

The borrower shall furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary to afford an individual with handicaps or disabilities an equal opportunity to participate in and enjoy the benefits of a FmHFA project receiving FmHFA financial assistance.

1 In determining what auxiliary aids are necessary, the borrower shall give primary consideration to the requests of an individual with handicaps or disabilities.
(2) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

b Where a borrower communicates with applicants and tenants or members by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be available for use.

2 The borrower shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision) can obtain information concerning the existence and location of accessible services, activities, and facilities in the project and community.

3 This paragraph does not require a borrower to take any action that the borrower can demonstrate would result in a fundamental alteration in the nature of the project or operation or an undue financial and administrative burden. If an action would result in such undue alteration or burden, the borrower may take any action that would otherwise ensure that, to the maximum extent possible, individuals with handicaps or disabilities receive the benefits and services of the project.

C Affirmative Fair Housing Marketing Plan. All borrowers with five or more rental units must meet the requirements of §1901.203(c) of subpart E of part 1901 of this chapter by preparing and submitting HUD Form 935.2, "Affirmative Fair Housing Marketing (AFHM) Plan." Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be reviewed by FmHA and updated by the borrower during compliance reviews for title VI of the Civil Rights Act of 1964. The approved plan will be posted by the borrower for public inspection at the borrower's project site, rental office, or at any other location where tenant applications are received for the project. In developing the plan, the following items should be considered:

1 Direction of marketing activities. The plan shall attract or motivate applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, familial status, national origin, or handicap. The plan must show which efforts will be made to reach very low-income or low-income groups who traditionally would least likely be expected to apply for such housing without special outreach efforts.

2 Marketing program. The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are least likely to apply for occupancy in the project. Marketing efforts should not totally rely on "word of mouth" advertising. Appropriate social agencies and networks should be contacted to assist in reaching elderly (senior citizens), persons with handicaps, etc.

a Advertising

(1) Frequent advertising. The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications, determine eligibility, and arrange for move-in of tenants or members in a smooth flow of project operation. Advertising by newspaper or electronic media should occur at least annually to promote project visibility, even if there is an adequate waiting list.

(2) Posters, brochures, etc. Any radio, TV, or newspaper advertisement, pamphlets, or brochures should specify the project's handicap accessibility and state the appropriate fair housing logotype or the equal housing opportunity slogan. A copy of this proposed material is to be submitted along with the HUD Form 935.2 for approval. The minimum requirements for an existing or new project, the sign, subject to state or local code:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside.

(ii) Must be located near the site manager's (or contact person's) office when the project has multiple sites. Portable signs will be placed where vacancies exist at other site locations of a "scattered" project.

(iii) May be of any shape.

(iv) For projects with more units, must have no less than 16 square feet of area.

Smaller projects may have smaller signs.

(v) Including its supports, must be made of durable material.

(vi) Must include the project name.

(vii) Must show rental contact information including but not limited to the project's office location and a telephone number where applicant inquiries may be made.

(viii) Must show the equal housing opportunity logotype (house symbol and slogan) as shown in exhibit B-11 of this subpart, OR the slogan "Equal Housing Opportunity" OR the statement "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin." The logotype and/or slogan must be permanently affixed, clearly visible and should be at least equal to approximately 3 to 5 percent of the sign area.

(ix) May display the FmHA logotype as shown in exhibit B-12 of this subpart.

(2) Handicap accessibility signs.

(i) Parking spaces. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the international symbol of accessibility (see exhibit B-13 of this subpart). The sign should be mounted on a post at an easily visible location near a parked vehicle. In snowy areas, the sign needs to be visible above piled snow.

(ii) Handicap accessibility route. When the continuous unobstructed ingress/egress handicap accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for handicapped persons should be clearly marked with handicap symbols and directional signs to aid a handicapped person's ingress/egress to the building, through an accessible entrance, and to accessible common use and public and living areas.

b Community contact. Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the handicapped should be contacted in small communities without formal communication media aimed at the group or groups least likely to apply for available housing. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups determined least likely to apply for the available housing.

d Rental staff. All staff persons responsible for renting the units must have had training provided on Federal, State, and local fair housing laws and regulations and in the requirements for fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing must be attached to the AFHM plan according to the instructions for part 7 of HUD Form 935.2.

3 Marketing records. The borrower will be required to develop and maintain a system to provide data to indicate to what extent the borrower is carrying out the objective of the AFHM plan.

d Tenant eligibility and occupancy guidelines. The rental agent of the project must be knowledgeable about the FmHA tenant eligibility and occupancy requirements as they relate to a particular project. FmHA loans require occupancy of the unit by eligible tenants. Except for migrant farmworker tenants in LH projects, tenant/applicants must occupy the housing unit they qualify for as their permanent residence on the provision they do/will not maintain a separate subsidized rental unit in a different location.

1 Eligible tenants. The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized such as in the case of LH as described in subpart D of part 1944 of this chapter.

a To determine eligibility for occupancy, the applicant's eligibility income must be as defined in paragraph II and include income from net family assets as defined in paragraph II of this exhibit.

b The adjusted annual income must meet the definition of very low-, low- or moderate-income as defined in paragraph II of this exhibit as required for that specific project for applicant selection, tenant contribution, and continued occupancy.

c To determine eligibility for continued occupancy, the tenant's adjusted annual income must be determined at least once every 12 months. When the tenant's adjusted annual income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease.
and paragraph VI D 6 of this exhibit. Continued occupancy by cooperative members will not be affected by this income criteria. Cooperative members, after initial certification of income eligibility, may remain members regardless of income.

d In RRH projects operating on a Plan I basis, tenants will:

(1) Be very low-, low-, or moderate-income person who is elderly, or has handicaps, or disabilities, or

(2) Be a very low or low-income nonelderly, nondisabled, or nonhandicapped person.

e In RRH projects operating on a nonprofit or limited profit Plan II basis, tenants will be a very low-, low-, or moderate-income person regardless of age, disability, or handicapping condition.

f In RRH projects operating on a full-profit basis, tenants will:

(1) Be a person of any income who is elderly, or has handicaps, or disabilities, or

(2) Be a very low-, low-, or moderate-income nonelderly, nondisabled, or nonhandicapped person.

g In LH projects designed and operated either for year-round or seasonal occupancy, eligibility is established in subpart D of part 1944 of this chapter.

h Occupancy in RRH project units designated by FMHA as:

(1) Family housing may be occupied by any combination of elderly, disabled, or handicapped, and/or nonelderly, nondisabled, or nonhandicapped tenants, including those tenants with familial status. Marketing priorities for this category should not exclude one group over another.

(2) Elderly housing must be occupied by tenants who are elderly, disabled, and/or handicapped but not at the exclusion of children if they are members of the "elderly" household, nor shall they be restricted exclusively for use by tenants who are disabled and/or handicapped.

(3) Housing which consists of specific units in a project designated as family housing and other units designated as elderly housing units shall be governed by paragraphs VI D 1 b (1) and (2) of this exhibit.

(4) Congregate housing and group homes shall be occupied by persons described in the definitions for congregate housing and group home, respectively in paragraph II of this exhibit.

i Tenant of member independence.

(1) RRH, RCH, and LH housing. It shall be a tenant’s or member's responsibility to determine the ability to meet the legitimate and uniform requirements of tenancy, thus assuming risk and responsibility of living within and upon the project premises. It shall be the owner's or representative's responsibility to respond to requests for what reasonable accommodations tenant or member may need, otherwise the owner or its representative MAY NOT under any penalty prescribed by Pub. Law No. 100-430, 102 Stat. 1619 (1986) codified at 42 U.S.C. 3601 et seq.

(2) Judge whether individuals with handicap or disability are capable of independent living.

(3) Require a physical examination as a condition for tenant or member selection.

(4) Provide reasonable accommodations for the elderly, disabled, and handicapped.

(5) Be a very low-income family described in the five categories identified by the Fair Housing Act.

(6) Require that the tenant continue to reside in a rental unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, is considered ineligible for occupancy, and shall be required to pay the total rent in Plan II projects or 125 percent of rent in Plan I projects for the period of absence exceeding 60 consecutive days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start termination proceedings.

(2) In those cases where the tenant's lease does not contain the lease clause in paragraph VIII B 4 c of this exhibit, the tenant will be advised that the lease will not be renewed, unless replaced with a lease meeting current requirements.

2 Occupancy policy and guidelines.

a Objective. The objective of the occupancy policy and guidelines in FMHA financed projects is to achieve utilization of support spaces without overcrowding or providing extra space than is needed by the number of people in the household.

b Policy.

(1) FMHA does not specify the number of persons who may live in MPH housing units of various sizes.

(2) The borrower must set reasonable occupancy standards which will assist as many people as possible without overcrowding the unit or the project and which will minimize waste of space.

(3) In setting the occupancy standards, the borrower must comply with all reasonable State and local health and safety restrictions regarding the maximum number of occupants permitted to occupy a dwelling. In the absence of State or local health and safety restrictions, overcrowding shall occur when the TOTAL occupancy level in a housing unit exceeds 2 people per habitable sleeping room, except that an additional person(s) may be allowed when a habitable sleeping room provides at least 50 square feet per person. A habitable sleeping room shall not include a kitchen, bathroom, hallway, or dining area.

(4) In placing families on waiting lists and in assigning families to MPH housing, a borrower should allow families to choose whether to opt for larger or smaller units to permit families to occupy units of sufficient size, so that the persons of opposite sex (other than spouses) or persons of same sex, persons of different or same generation, and unrelated or related adults may have separate bedrooms according to the particular needs of the family.

(5) Borrowers may have different standards for different projects but such standards must not result in or perpetuate a pattern of occupancy which would be inconsistent with title VI of the Civil Rights Act of 1964 or the Fair Housing Act.

(6) For the purpose of determining unit size, a borrower may be allowed to include, as members of the household:

(i) All full-time members of the household.

(ii) Dependent minors who are away at school but live with the family during school recess.

(iii) Dependent minors who are subject to a joint custody agreement but live in the unit at least 50 percent of the time.
(iv) An unborn child or a child in the process of being adopted by or granted custody of an adult.
(v) A foster child residing in the unit, or a household child temporarily residing elsewhere in foster care.
(vi) A live-in attendant.
(7) Borrowers shall not provide bedroom space for others who are not members of the household such as adult children on active military duty, permanently institutionalized family members, or visitors.

b Guidelines. These guidelines are designed to ensure that the borrower in implementing the occupancy policy into workable occupancy standards. The project occupancy standard should be available for review by applicant, tenant, member, and project representative upon request.

Guidelines:

(a) The tenant may be admitted and/or remain, provided the unit is not overcrowded or underutilized.
(b) The tenant may receive available rental subsidy if otherwise qualified by income.
(c) When an occupied unit becomes overcrowded or underutilized and there is a waiting list for the size unit occupied:

(i) The tenant is to be moved to an available unit, or if none is available, to vacate the project within a reasonable time period established by the borrower in the lease or by the end of the lease period, whichever is later.

(d) To avoid prolonged vacancy and loss of revenue, management may permit temporary occupancy of specially designed features of a handicapped accessible unit to occupy the unit and management has made a diligent effort to reach tenants who qualify for the specially designed unit;

(2) The tenant agrees to transfer to an appropriate unit if and when it becomes available.

(b) The tenant may receive available rental subsidy if otherwise qualified by income.

Guidelines:

(c) Tenants who became income ineligible due to changes of income and shelter cost determination on October 1, 1986. This provision did not apply to normal increase of household income which may have made them ineligible before October 1, 1986.

For example, if the borrower adopts these standards, households with three people generally should be accommodated in a two bedroom unit and should not have three occupied apartments with more than three bedrooms.

(1) The tenant may be admitted and/or remain, provided the unit is not overcrowded or underutilized.

(2) The tenant may receive available rental subsidy if otherwise qualified by income.

(3) If a tenant who was determined eligible and allowed to occupy under regulations in effect prior to October 1, 1986, who does not meet eligibility requirements regarding income or occupancy policy as prescribed in these regulations may have their continued occupancy in the same unit for the duration of their residency. This provision specifically refers to:

(1) Elderly tenants of any income level who have occupied their unit, since before October 27, 1980.

(2) Tenants who were determined eligible before October 27, 1980, but did not meet income and occupancy requirements on that date. Examples are:

(i) Individual tenants occupying a unit will separate tenant certifications whose combined income on October 27, 1980, would disqualify joint tenancy.

(ii) Tenants whose composition did not meet the occupancy guidelines in paragraph VI D 2 (c) (2) of this exhibit.

(iii) Tenants who became income ineligible due to changes in income and shelter cost determination on October 1, 1986. This provision did not apply to normal increase of household income which may have made them ineligible before October 1, 1986.

(k) For each RRH project specifically designated for the elderly, the borrower or management may not prohibit, prevent, restrict, or discriminate against any tenant for continued occupancy or applicant for admission to the complex.

(3) Reasonable accommodations.

a) The Fair Housing Amendment Act of 1988 requires persons to make reasonable accommodations in rules, policies, practices, or services, when such accommodations would afford a handicapped or disabled person equal opportunity to occupy or continue to occupy and enjoy a dwelling unit, including public and common use areas. For example:

(i) It would be unlawful to refuse a person with a sight impairment with a service animal to live in an apartment with a gas cooking stove and install a microwave oven when such accommodations to a tenant or member would remove a direct
threat to the project, the tenant and other tenants. Other examples are changing water faucets to push or electronic activated faucets and door knobs to door handles for persons with infirmed hands.

b The Fair Housing Amendment Act requires owners to permit, at the expense of a person with handicaps, reasonable modifications of an existing unit, occupied or to be occupied by a person with handicaps, if the proposed modifications may be necessary to afford that person full enjoyment of the dwelling unit.

(1) The borrower may, where it is reasonable to do so, condition permission for a modification on the applicant or tenant agreeing to restore the interior of the dwelling unit to the condition that existed before the modifications, reasonable wear and tear excepted. (Note: It should not, for example, be necessary to remove blocking previously installed to support bathtub handrails when restoring to "original" condition since the blocking does not affect future use.)

(2) The borrower may not increase the customarily required security deposit.

Wherever it is necessary to ensure with reasonable certainty that funds will be available to pay for restorations at the end of tenancy, the borrower may negotiate as part of such a restoration agreement a provision requiring that a tenant pay into an interest bearing escrow account, over a reasonable period, a proportionate amount of money not to exceed the cost of restoration. The interest in any such account shall accrue to the tenant's benefit.

4 Other items the borrower should consider in determining eligibility of applicants for admission to the project.

a Any criteria or documentation must be applied uniformly for all applicants for occupancy for the following items:

(1) Verification of income and/or employment according to paragraph VII of this exhibit, if applicable.

(2) Credit reports to reflect the applicant's creditworthiness.

(Option.)

(3) Prior landlord references to determine if the tenant was responsive to meeting rent payment obligations and maintenance of the unit.

(Option.)

(4) The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where RA is not available, the borrower should inform any very-low or low-income household that would be required but unable to pay the approved rent, including utilities, that they may be eligible for a particular form of rent subsidy described in paragraph IV of this subpart. The borrower should indicate where information about other subsidies can be obtained. (Option.)

(5) Written verification of an unborn child by a doctor or other qualified third party. (When applicable.)

b A borrower or manager should consider mitigating factors when tenants or members have had or presently have a period of hardship beyond their control, when they have had disputes with creditors, including landlords, or when they were having difficulty paying increased rent levels.

5 Surviving or remaining members of eligible tenant household.

a Surviving members of an elderly, disabled, and/or handicapped tenant's household may continue occupancy of the unit after the death of the original tenant, even though they may not meet the definition of an elderly, disabled or handicapped person stated in paragraph II of this exhibit, provided:

(1) They are eligible occupants with respect to income and were either co tenant or member of the household and have legal capacity to sign and assume the lease,

(2) They occupied the unit with the original tenant at the time that the original tenant died,

(3) A surviving nonco tenant or co member shall not qualify for the elderly family adjustments to income.

b Surviving members of a domestic farm laborer's household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II of this exhibit.

c Remaining household member(s) of a nonelderly, nondisabled and/or nonhandicapped household, who is included on the current tenant certification may continue to occupy the rental unit if they otherwise independently meet tenant eligibility requirements with respect to income and cannot find an appropriate sized unit does not exist in the project.

d When tenants no longer meet the requirements of paragraph VI D 5 a, b, or c of this exhibit, the provisions for formerly eligible tenants in paragraph VI D 6 of this exhibit shall apply.

6 Formerly eligible tenants.

Unless authorized by paragraph VI D 2 of this exhibit, formerly eligible tenants will be required to vacate their unit within 30 days (7 days for tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer. If, however, there is not an eligible applicant on the waiting list available for occupancy, the formerly eligible tenant may remain in the unit. The tenant on the waiting list available to occupy the unit; at which time, the requirements for notice to vacate stated in paragraph VI D 6 c of this exhibit will take effect. If vacating the unit in the time period described creates an undue hardship on the family, the Servicing Official may permit continued occupancy for a reasonable period of time. The following "formerly eligible" situations apply to this paragraph:

a Tenants who no longer meet FmHA income eligibility requirements. (This includes tenants receiving RA or Section 8 assistance.)

b Tenants in LH projects who no longer meet the farm labor occupation requirements, and who are neither retired nor disabled domestic farm laborers, are considered to be "formerly eligible tenants" as long as a need for housing for domestic farm laborers exists in the project's farm market area.

c Tenants who no longer meet the occupancy policy for the project. These tenants must agree to write to a representative at a project when one becomes available, or when an appropriate sized unit does not exist in the project, vacate the project at the termination of their lease. However, the tenant may remain as an ineligible tenant if the unit is overcrowded and there are no other applicants on the waiting list for the size of unit presently occupied.

7 Servicing official authority to permit an RH or LH borrower to rent to ineligible tenants.

a The Servicing Official may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move for initially documented ineligibility. A copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to locate eligible tenants and submit to the Servicing Office, along with Form FmHA 1944-29 "Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The required followup should be posted in the Servicing Office on Form FmHA 1905-6, "Management System Card-Multifamily Housing."

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the Servicing Office, along with Form FmHA 1944-29 "Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The required followup should be posted in the Servicing Office on Form FmHA 1905-6, "Management System Card-Multifamily Housing."

(4) To protect the security interest of the Government, the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when eligible persons become available. The ineligible tenant will then be given 30 days to vacate.

(5) Tenants residing in RH units who are ineligible, because their adjusted annual income exceeds the maximum for the RH project, will be charged the FmHA approved note rate rental rate for the size of unit occupied in a Plan II RH project. In projects operated under Plan I, ineligible tenants will be charged a rental surcharge of 25 percent of the approved note rate rental rate.

(6) Tenants permitted to occupy but who are ineligible for reasons other than income may benefit from RA and/or interest credit.

(7) Tenants residing in off-farm LH units who are ineligible because their adjusted income...
The actual determination of eligibility will be conducted according to the application process described in paragraph VI F of this exhibit.

When a prospective tenant or member files a complete application for occupancy and is determined eligible, the borrower or rental agent will place the prospect's name chronologically by date and time on the appropriate written waiting list. Exhibit B-14 of this subpart contains a sample waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent to complete the steps necessary to determine eligibility.

a. Eligibility shall be governed by paragraph VI F of this exhibit.

b. The actual determination of eligibility will be conducted according to the application process described in paragraph VI F of this exhibit.

c. Prior to the actual application date, a waiting list shall be determined according to paragraph VI E 3 of this exhibit. Eligibility for cooperative membership will be determined in accordance with subpart E to part 1944 of this chapter.

3. Separate waiting lists by categories and/or a master waiting list with income levels identified (very low-, low- and moderate-income), and categories or priorities indicated will be maintained for rural rental, cooperative, and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fit more than one category or priority. Separate lists may be maintained for:

a. Income levels (very low-, low-, moderate-income, or ineligible).

b. Various size units.

c. Units for elderly, disabled, or handicapped persons, families, or any other combination as planned for the project according to the borrower's loan agreement or resolution and management plan.

d. Persons who require the special design features of the handicapped accessible unit(s) in the project such as persons confined to a wheelchair or requiring other auxiliary apparatus for mobility and/or life support. Persons on this list have priority for these units.

e. Holders of Letters of Priority. Entitlement issued by FmHA according to subpart E of part 1965 of this chapter will be given top of the waiting list priority within an income group for the category of unit size for which the applicant qualifies. This same priority shall also extend to persons displaced due to housing rendered uninhabitable or actually seized by legal action (for other than illegal activities).

f. In congregate housing projects, priority can be given to tenants who qualify for the services provided by the congregate facility insofar as there is available capacity in the facility to provide the services.

g. In LH projects, lists should be maintained in accordance with the priorities of occupancy established by § 1944.154 of subpart D of part 1944 of this chapter.

h. In only those projects with project based Section 8 units, priority for such units will go to applicants who, at their time of housing need, are involuntarily displaced, or living in subsidized housing, or paying more than 50 percent of income for rent.

i. Tenant applicants that qualify the borrower for tax credit.

4. For seasonal farm LH a waiting list should be chronologically compiled by date and time received as in paragraphs VI E 2 and VI E 3 of this exhibit. These lists should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season. Tenant selection shall be governed according to paragraph VI H 6 of this exhibit.

a. Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b. A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

c. A waiting list must show the racial identity of the prospective tenant. Rental housing managers may determine how the identity of the prospective tenant. Rental housing managers may determine how the

5. When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application. Prospective tenants may inquire to determine the place of their application in the waiting list. However, to protect the privacy of all prospective tenants, the waiting list should not be shown to any prospective tenants.

6. When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application. Prospective tenants may inquire to determine the place of their application in the waiting list. However, to protect the privacy of all prospective tenants, the waiting list should not be shown to any prospective tenants.

7. Borrowers may establish a procedure for purging the waiting list(s) periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list by the borrower, the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under subpart L of part 1944 of this chapter.

8. Expired waiting lists must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA in accordance with the provisions of part 1965 of this exhibit.

F. Applications, eligibility determination and notification of eligibility or rejection.

1. Application status for determining eligibility. All persons desiring to apply for occupancy, whether as the initial applicant household or as a person(s) later joining an application on the waiting list, must provide the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants or members with a written list of all information required for a complete application and offer assistance in completing the application if needed.

a. After the potential tenant or member has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b. When the application is complete, and occupancy by the applicant is expected within 60 days of completion, eligibility will be determined, including verification of applicant information performed according to paragraph VII of this exhibit. Otherwise, verification of applicant information will be initially satisfied upon sufficient review of the information to determine whether the applicant is clearly eligible or not eligible.

c. Applicants determined eligible will be added to the waiting list according to paragraph VI E 2 of this exhibit, even when there are no vacancies. Provided an applicant is found to be eligible, there are sufficient active applications from households determined eligible to fill expected vacancies.

d. Application fees are discouraged, but not prohibited. Any fee charged for a prospective tenant shall be limited to the cost of actual services incurred for obtaining necessary information associated with completing a tenant certification.

2. Fair housing restrictions and procedures.

a. It shall be unlawful for a person to make an inquiry to determine whether an
applicant for a housing unit, or anyone associated with that applicant, has a handicap or disability or to make inquiry as to the nature or severity of a handicap or disability of such a person. However,
the following inquiries are not prohibited, provided these inquiries are made of all applicants, whether or not they have handicaps or disabilities.

(1) Inquiry into an applicant's ability to meet the requirements of tenancy (i.e., eligibility, history of meeting financial obligations) and without being a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(2) Inquiry to determine whether an applicant is qualified for a housing unit or adjustment to income available only to persons with handicaps or disabilities or to a person with a particular type of handicap or disability.

(3) Inquiry to determine whether an applicant for a housing unit is qualified for a priority available to persons with a particular type of handicap.

(4) Inquiring whether an applicant for a dwelling is a current illegal user of a controlled substance or has a previous conviction of the same.

(5) Inquiry to determine whether an applicant is qualified for a housing unit or adjustment to income available only to persons with handicaps or disabilities or to a person with a particular type of handicap.

(6) Inquiring whether an applicant answering positively to F 2 b (4) or (5) of this paragraph has successfully completed a controlled substance abuse recovery program or is presently enrolled in such a program.

3 Application requirements. At a minimum to be considered complete, applications must include for each prospective tenant household sufficient information, such as the following, to complete a tenant certification form:

a. Name and present address.

b. Household income information, as defined under annual income, adjusted annual income, and not family assets in paragraph II of this exhibit.

c. Age and number of household members.

d. Indication whether applicant requests either a handicap/disability adjustment to income or a special handicapped accessible unit or both.

e. Applicant's certification that the unit applied for will be the applicant household's permanent residence and it does/will not maintain a separate subsidized rental unit in a different location.

f. Name and date section.

g. Race, national origin and sex designation. This designation shall be placed as the last section of the application form beneath the signature and date section.

(1) The borrower or management agent will request that an applicant or member provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent or board will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

"The information on race, national origin, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Farmers Home Administration, that Federal Laws prohibiting discrimination against tenant applicants are in the following basis of race, color, national origin, religion, sex, familial status, age, and handicap are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

h. The application form shall contain the fair housing logo type or slogan and indication of handicap accessibility on the first page of the paragraph has successfully completed a controlled substance abuse recovery program or is presently enrolled in such a program.

4 Notification to applicant. The applicant who has submitted an application will be notified in writing that he or she has been selected for immediate occupancy, placed on a waiting list, or rejected.

5 Applicants determined ineligible. After due consideration of all circumstances, applicants determined ineligible will be notified in writing of the specific reasons for rejection. The letter will include the following statement: "The Fair Housing Act prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. Federal law also prohibits discrimination on the basis of age. Complaints of discrimination may be forwarded to the Administrator, FmHA, USDA Washington, DC 20250. This statement can be placed on all materials and correspondence done by the borrower, owner, or management company.

a. The rejection letter must also outline the applicant's rights to appeal the rejection and be sent or hand-delivered according to subpart I of part 44 of this chapter except for those clearly not eligible for occupancy according to FmHA regulations.

b. When the rejection is based on information from a credit bureau, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c. Any applicant household may be rejected due to:

(1) A history of unjustified and/or chronic nonpayment of rent and/or financial obligations.

(2) A history of living or housekeeping habits that would pose a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(3) A history of disturbance of neighbors.

(4) A history of violations of the terms of previous rental agreements, especially those resulting in eviction from housing or termination from residential programs.

d. Rejection of applicants on a arbitrary basis is prohibited. Examples of such arbitrary rejections includes considering the following factors in determining a tenant's eligibility:

(1) Race, color, religion, sex, age, familial status, national origin, handicap (except in those projects or portions of projects designated for elderly, disabled and/or handicapped, where occupancy by nonelderly, nondisabled or nonhandicapped can be prohibited).

(2) Receipt of income from public assistance.

(3) Families with children of uncertain parentage.

(4) Participation in tenant organizations.

(5) Tenants or tenant family members with AIDS.

e. In the case of LH projects, no organization borrower, other than an association of farmers of family farm corporation or partnership, will block lease to, or otherwise require that an occupant work on any particular farm or for any particular owner or interest or as a condition of occupancy of the housing.

f. Rejected applications must be kept on file by the borrower or management agent for a period of 3 years or until a compliance review has been conducted by FmHA in accordance with subpart E of part 1901 of this chapter.

G Tax credit compliance. The Tax Reform Act of 1986 permits certain RRH borrowers to receive tax credits for low-income housing projects if 20 percent or more of the units are occupied by very low-income tenants whose annual gross income in 50 percent or less of the area median gross income; or 40 percent or more of the units are occupied by tenants whose annual gross income is 60 percent or less of the area median gross income.

1 Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI H of this exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2 Borrowers using IRS tax credits may neither terminate a tenant's occupancy nor refuse to renew a tenant's lease except for material noncompliance or other good cause as described in paragraph XIV of this exhibit. Tenants whose income increases after initial occupancy and exceeds IRS tax credit thresholds, but otherwise still meet FmHA income eligibility thresholds, remain qualified to occupy with respect to income eligibility.

H Tenant and member selection.

1 An eligible applicant will be selected from a waiting list(s) identifying the category on basis of the applicant's unit size needed, income level (very low-, low-, moderate-income, or ineligible) and from a separate priority waiting list, as described in paragraph VI E of this exhibit, when the available size unit meets the applicant's need. The eligible applicant will further be selected on a first-come, first-served basis from the selected category or priority waiting list in the following order:

a. Very low-income
b Low-income, up to 60 percent of median income, (in "tax credit" projects)
c Moderate-income
e Ineligible

2 When RA is available:

a Very low-income applicants eligible for RA have a priority over all other applicants on each type of waiting list maintained by the borrower in accordance with paragraph XI of exhibit E to this subpart.
b Low-income applicants may be selected provided no very low-income applicants remain on the waiting list.
c Moderate-income applicants may not be selected for occupancy when the number of unassigned RA units equals or exceeds the number of vacant units. (Borrowers unable to use RA may consider requesting a transfer of RA authority according to paragraph XV of this exhibit of this subpart).

3 In only those projects where a lease based section 8 is available, the following applicants, as described in HUD Handbook 4350.3 (available at any HUD regional or area office), will have priority over other applicants if at the time of their housing needs, they are:

a involuntarily displaced, or
b living in substandard housing, or
c paying more than 50 percent of income for rent.

4 Selections are to be made from the waiting list or category maintained for the particular unit size and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented in the project records and confirmed with the applicant in writing. The applicant’s name will then be removed from the waiting list following the notice procedure at paragraph VI E 7 of this exhibit unless the rental agent determines that hardship exists for reasons such as documented health problems or project rent exceeds 30 percent of adjusted monthly income without RA in which case the applicant’s name will remain on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply.

5 When there are no applicant names on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application on the master waiting list. The selected tenant will be subject to the provisions for ineligible tenants found in paragraph VI D 7 of this exhibit and the provisions of paragraph VI D 2 of this exhibit. In LH projects, paragraphs VI H 1 and 2 of this exhibit do not apply. Eligible LH applicants will be selected according to paragraphs VI H 4 and 5 of this exhibit and the priority stated in § 1944.154 (a) of subpart D of part 1944 of this chapter irrespective of the availability of RA. However, when FMHA concurs with the LH borrower’s determination that there is a diminished need for housing for domestic farm laborers in accordance with § 1944.154 (b) of subpart D of part 1944 of this chapter, all the provisions of the paragraphs are applicable to initial occupancy by applicants eligible only under the RRH program.

1 Tenant or member record file. A separate file must maintain each tenant’s name, address, and other necessary information. The file must include additional forms and calculations (e.g., tenant occupancy agreement) and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant or member, and any other necessary information. The file must be maintained in accordance with any applicable FmHA or other member eligibility certification and recertification information must be retained for at least 3 years while the tenant or member is living in the unit and for 3 years after the tenant or member has moved out.

J Marketing incentives: Marketing incentives, as described in the management plan, may be used anytime as a means of maintaining occupancy levels and revenue needed to carry out the objectives of the housing and the projections of the annual project budget.

1 When a need is documented, marketing incentives will be included in annual project operations as reflected in the project budget, Form FmHA 1930-7. The incentives will be governed by the guidance at paragraph VI B 3 c of exhibit F of subpart B of Part 1965 of this chapter (available at any FmHA office).

2 FmHA approval of marketing incentives.

a When marketing incentives will enhance program objectives during a “soft” market and are otherwise not aware of any loan servicing difficulties of major concern, cost effective incentives may be approved by the FmHA Servicing Official as part of normal project budget approval.

b When loan servicing difficulties exist, cost effective marketing incentives may be approved as part of a servicing plan according to the provisions of exhibit F of subpart B of part 1965 of this chapter (available at any FmHA office).

VII Certification and Verification of Tenant or Member Income and/or Employment Information and Corrective Actions.

The borrower/management agent shall obtain tenant or member authorization to verify income and/or employment information needed to establish eligibility before pursuing verifications. The borrower/management agent shall seek verification of income and/or employment information disclosed from third party sources without further involvement of the members of the tenant household. This borrower/management agent shall seek to verify employment for all FMH program recipients. The borrower/management agent shall also seek to verify income for all MFH program recipients, except in the case of LH farm borrowers where the living in housing provided on a nonrental basis. The applicable employment and/or income verifications must normally be verified by the borrower or management agent before the person is determined eligible. Exceptions may be made for those unusual cases described herein. Information for the determination of eligibility is valid for not more than 90 days before the effective date of the tenant certification. Should verifications reveal discrepancies from the information provided, the borrower or management agent will seek prompt resolution using the principles set out in this subpart.

A Verification of income from employment. Verification of income from employment, authorized by the tenant or member/applicant, must be obtained from the employer in writing and filed in the "Tenant or Member Record File." Form FmHA 1910-5, "Request for Verification of Employment," or comparable form, will be used for this purpose. (A reproducible copy of Form FmHA 1910-5 is available in any FmHA office.)

B Verification of income from other sources. Any income from other than employment (e.g., social security, Veterans Administration, public assistance) must be verified in writing by the source. Verification of income must be documented and filed in the "Tenant or Member Record File." When it is not immediately possible to obtain the written verification from the source, income can be temporarily verified by reviewing the source, examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income.

C Verification of income and/or employment for LH tenants.

1 Verification of income from all sources. Income verification is required for domestic farm laborers, including migrant farmworkers, except for those farmworkers where their housing is provided rent free on a farm as part of their employment compensation for farm labor performed on the farm where they live and work. All domestic farmworkers, where income verification is required, must have a substantial portion of income from farm labor as defined in § 1944.153 of subpart D of part 1944 of this chapter. When the tenants do not have easily verifiable income, the borrower may forecast income expected to be received by the tenant during occupancy for determining eligibility and subvention assistance.

2 Farm labor employment verification. Farm labor employment verification is required for all domestic farm laborers, whether they are year-round, seasonal, or migrant farmworkers, or farmworkers living in rent-free housing on the farm where they work. Such employment verification is in addition to the income verification requirements described in paragraph VII C 1 of this exhibit.

3 Third party verification.

a Third party verification of income and employment, as applicable, is required whenever it is possible or available.

b When third party verification of income and employment is not possible or available, for reasons such as refusal of third party availability or cooperation, the borrower may "self-certify" the farmworker applicant using any available documents or records the applicant may have or information the applicant can provide. In the absence of available income and employment documents, records, or information, the borrower may forecast income as described in paragraph VII C 1 of this exhibit.
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4 Tenant record file. Verifications of any type must be documented and filed in the "Tenant Record File" or in the borrower loan docket, as appropriate.

D Sample of tenant or member income and/or employment verification.

1 The Servicing Office staff is required to make a sample of tenant or member income verifications and adjustments to income; in the case of the FmHA office, sample verifications for use in evaluating the adequacy of such verifications. This will normally be performed during a scheduled supervisory visit.

2 The sample will follow the process set out in exhibit F of this subpart. The sample can be derived from information on the certification forms that will be submitted to the Servicing Office in accordance with paragraph VII F of this exhibit and may include verification of income from third party sources. At least six tenant households will be sampled (or 100 percent of all tenant households for projects having six or fewer units) during any sampling.

3 The sample should be representative of very low-, low-, moderate-, and high-income persons in the project, including those receiving subsidy assistance, those paying in excess of the level cited in paragraph IV A 2c (1), (2), or (3) of this exhibit for the costs of rent or occupancy charge and utilities, and those paying the note rate rent.

4 The Servicing Office staff will conduct the sample (and document the selection method) at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications.

5 If the sample discloses discrepancies of amounts in excess of $40 monthly or $480 annually, the Servicing Officer will be required to notify the borrower/management agent to resolve the issues. Should resolution not be satisfied, the Servicing Officer will be required to investigate and report to the State Director along with a recommendation for further action. Such further actions may include those authorized under FmHA Instructions 2012–B or 1940–M (available in any FmHA office) or subpart N of Part 519 of this chapter.

E Use of HUD certification form for Section 8 or Section 8 Rental Certificate or Rental Voucher Recipients. HUD Form 50059, or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA 1944–8 for the tenants receiving project based Section 8 or tenant based Rental Certificate or Rental Voucher assistance. However, the tenant’s income cannot exceed FmHA limits for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA 1944–8.

F Certifications and corrective actions.

1 To be current, the tenant or member certification Form FmHA 1944–8 (or for section 8 and section 8 moderate) must be submitted in such manner that it is received in the FmHA Servicing Office by the close of business (COB) of the due date as follows:

a New tenant or member move-in certification:

(1) Move in on the 2nd through the 23rd. The certification is due for receipt in the Servicing Office on or before the first of the next month for all new tenants or members permitted to move in for occupancy from the 2nd through the 23rd day of a month for average charges to be avoided (Example: A change is reported on July 2nd, the effective date is August 1, and the Servicing Office must receive the certification by COB on August 1). If the due date falls on a non-working day, average will not be charged if the tenant certification is received in the Servicing Office on the next working day.

(2) Move in from 24th through the 1st of next month. The certification is due for receipt in the Servicing Office on or before the tenth of the month in which it is effective in order to avoid average charges (Example #1: Move-in is June 24th, effective date is July 1st and the Servicing Office must receive the certification by COB July 10th. Example #2: Move-in is July 1st, effective date is July 1st and the Servicing Office must receive by COB July 10th). If the due date falls on a non-working day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

b Certification due dates for renewals. Tenant certifications represent adjustments to the contractual basis for delivery of benefits to tenants. Therefore, any certification being renewed must be received by Servicing Officials on or before the effective date in order to avoid overage charges. The effective date is the first day of the month following expiration of the current certification. Certifications expire on the last day of the month, 12 months from the effective date (Example: The last certification was effective on July 1, and its ending period date was 12 months later on June 30, therefore, the renewed certification effective date is July 1). If the due date falls on a non-working day, overage will not be charged if the tenant certification is received in the Servicing Office on or before the first of the month.

c Tenant reported changes and corrective actions. Changes to unexpired tenant certifications represent adjustments to the existing contractual basis for delivery of benefits to tenants. Therefore, overage may not be charged for failure to report changes in a timely manner and the note rate rent will not be charged. Processing corrective actions will use the corrected accurate information to establish the proper rent levels, subsidies, and any late overage charges using the same principles as would apply had the change been promptly processed.

2 Reporting 2nd through 23rd. If the third-party verifications are received from the 24th through the 1st of the next month, the recertification is due for receipt in the Servicing Office on or before the first day of the new month. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(2) Reporting 24th through the 1st of the next month. If the third-party verifications are received from the 24th through the 1st of the next month, the recertification is due for receipt in the Servicing Office on or before the effective date. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(3) Effective date of changed net tenant contribution. The effective date of a tenant’s changed net tenant contribution will be the first day of the month following third-party verification of changes or the first day of the following month (generally 30 days later) permitted according to the tenant notice requirements of State or local law.

(4) Corrective actions on tenant problems.

(i) Should the tenant be found to not comply with the 30-day reporting requirements, the landlord may initiate actions as set out in the lease and the Agency may initiate action to end appropriate corrective action is taken.

(ii) If the landlord chooses to pursue termination, the landlord need not further pursue recovery of any improper benefits from the tenant but shall instead forward a report on the circumstances to the Agency for its consideration on whether to initiate an appropriate servicing action.

(iii) If the landlord chooses to permit the continued occupancy by the tenant the landlord must take steps to pursue corrective actions, taking into consideration any rights the tenant may have under the grievance procedures in subpart L of part 1944 of this chapter.

(iv) In processing corrective actions where reports are not timely, overage may not be charged for failure to report changes in a timely manner and the note rate rent will not be charged. Processing corrective actions will use the corrected accurate information to establish the proper rent levels, subsidies, and late overage charges using the same principles as would apply had the change been promptly processed.

(v) Upon determining any resulting differences, the landlord may initiate actions to seek recovery from the tenant of any improper benefits derived from inappropriate rent levels or inappropriate subsidies. Such recovery efforts will normally not extend over a 3-month period, but may not extend over a 12-month period.

(vi) The Servicing Office may be consulted if guidance is needed on processing corrective actions when payments are affected.

(vii) When appropriate, the Agency may pursue servicing initiatives which may include seeking corrective action from the landlord or using the authorities set out in subpart N of part 519 of this chapter or FmHA Instruction 2012–B (available in any FmHA office).

(5) Correcting actions on landlord problems. Should the landlord be found to not comply with the above reporting dates, the Agency may initiate action to ensure that
the proper rent levels were assessed, the proper payments were remitted to the Government, and that any remittances involving any improperly paid Government subsidies are recovered by the Government. Such initiations may involve seeking corrected payment remittances, or the use of authorities set out in subpart N of part 1951 of this part or entitled in paragraph VII F 1 c (4) of this exhibit.

d Modifications.

(1) Modifications will likely result from changes to project rents or utility allowances or when the tenant household moves to a different unit within the project. In such cases the landlord may revise the unexpired tenant certification form by noting the changes in rents or utility allowances and recomputing the net tenant contribution when necessary.

(2) Unexpired tenant certification forms showing modification(s) which do not result from changes in income or adjustments to income or change of household size or composition need not be submitted to the Agency. Such modifications do not affect the certification effective dates or expiration dates of the certification form being modified, therefore, the certification expiration date will remain unchanged (and overage is not applicable). (Example: Certification with a July, 19xx effective date is in effect for a 12-month period, and any mid-term modification will not alter the July 1, 19xx effective date).

(3) Form FmHA 1951–29, “Multiple Family Housing—Changes To Tenant Status,” containing forms, will be prepared and submitted to report the modifications, impact on rental assistance, move-outs, 60-day absences, and expired tenant certifications.

2 When the Servicing Office does not have a certification in the office as required in paragraph VII F 6 of this exhibit will be followed.

a If a formal eviction process has started, the provisions of paragraph VII F 6 d of this exhibit will be followed.

b If the late certification was due to noncooperation by the tenant or member (noncooperation does not include situations beyond the control of the tenant member, such as delays by third-party sources in completing income or employment verifications), overage must be paid and is a project expense; however, the borrower or management agent may attempt to recover the charge by billing the person net rate rent (overage) for the month. If the error was due to the borrower’s or management’s action, the cost of overage will be a project expense and it will not be charged to the person.

c Overage charges due to negligent management may not be considered cause for a rent increase. Such overages should be deducted from return on owner investment or from management agent fees and may be cause for requiring different management.

3 Reporting changes.

a Tenant reporting. Tenants must report changes in household income (gross income) or adjustments to household income. In addition, any change in household size must be promptly reported to the landlord. Changes to household income may result from changes in hours worked, salary rates, social security, pensions, public assistance payments, the sale of assets, interest income, the amount of net family assets exceeding $5,000, imputed income, or other sources of income. Changes in adjustments to income may result from changes in household members other than the tenant or cotenant (e.g., changes in the number of minors, disabled, handicapped or full-time students 18 or older), changes in the tenant or cotenant (e.g., changes in the elderly, disabled, or handicapped status), changes in medical care expenses, and changes in childcare expenses.

b Landlord reporting. Landlords must recertify tenant households whenever permanent changes to gross household income or permanent adjustments to household income result in an increase of $40 or more per month or $480 or more per year. Landlords must recertify tenant households whenever changes to permanent household income or permanent adjustments to household income result in a decrease of $20 or more per month or $240 or more per year. If the permanent gross income of a tenant household does not exceed $20 a month or $240 annually, and the tenant requests certification, the borrower will process the recertification; however, if the tenant or member has RA, the landlord must recertify changes in household size or composition.

4 The current certification form will be revised by correcting entries and being initialed by the tenant or member and the owner’s representative when there are project changes such as:

a Changed rental or occupancy rates and/or utility allowances.

b Tenant or member relocation within the project.

c Addition or removal of household RA.

5 Form FmHA 1944–8 must be processed as follows:

a Borrowers or their representatives may sign Form FmHA 1944–8 up to 60 days prior to the effective date.

b Borrowers or their representatives should submit Form FmHA 1944–8 to the FmHA Servicing Office during the 30 day period preceding the effective date. Borrowers should not delay submitting certifications until Form FmHA 1944–29 is submitted. Borrowers should advise the Servicing Office of any changes in certification just before or on the first day of a month to avoid impact on first of month account servicing at the Servicing Office, and to minimize late delivery and the charge of overage.

c The FmHA Servicing Office date stamps each Form FmHA 1944–8 when received, reviews each form submitted and determines that the information is complete, and correctly computed based on the information provided on the form (see Guide Letter 3030–12 for use in noting exceptions).

d The FmHA approved tenant certifications and recertifications have an effective period of 12 months. The effective period begins on the effective date which is always the first day of a month.

6 Each tenant or member must be recertified within 12 months of the previous certification. Tenants receiving Section 8 assistance will be certified according to HUD regulations.

It is the tenant’s or member’s responsibility to provide income information and sign the certification form as a condition for continued occupancy. Failure to do so will cause a charge for overage surcharge during those months such information was not provided, and it may result in termination of occupancy.

b The borrower’s responsibility is to:

(1) Notify the tenant or member that a current certification and income verification is required before the due date and explain the process an annual recertification is required for continued occupancy. Normally, this initial written notice will be sent 75 to 90 days prior to the expiration date of the current certification; then

(2) Obtain verification of income from tenant or member records and/or directly from tenant or member employers and process the appropriate tenant recertification; and

(3) Submit the signed recertification to be released by the Servicing Office by the due date stipulated in paragraph VII F 1.

(c) The borrower must provide a second written notice to the tenant or member 30 days prior to the due date if they have not responded. The second notice must advise the tenant or member that without a current certification, the person will be required to pay net rate rent or occupancy charge (i.e., the person pays overage) as well as maximum occupancy surcharge, and that termination proceedings may be started as of the due date since an annual recertification is required for continued occupancy. (Note: In any event, the borrower is required to pay the overage amount to FmHA according to § 1951.506 (a)(5)(iii) of subpart K to part 1951 of this chapter. If the tenant or member has RA, the borrower must be advised that without a current certification, the person’s RA will be canceled and possibly may not be immediately available for reinstatement should a proper certification be provided at a later date.

When a notice of termination has been served on a tenant or member for failure to recertify, the borrower must provide a copy of the termination notice to the Servicing Office prepared according to paragraph XIV B of this exhibit. If the Servicing Office does not receive a new certification on such person(s), the Servicing Official will annotate the project master list with an E beside the “Expiration Date of Tenant Certification” on Form FmHA 1944–29 for the appropriate tenant member(s). The Servicing Official will continue to authorize interest credit and waiver of overages and occupancy surcharges while the termination is being actively pursued until resolution of the termination. The payment of RA will be suspended during the termination process. Upon conclusion of the termination process, the RA may be reinstated or given to another tenant or member.
7 The borrower must submit Form FnHa 1944-29 to the Servicing Office with each payment, report of overage, or request for RA as required in paragraph XIII(C)1) of this exhibit. The calculations on Part II of the form must be based on the member's total income, or if a member is temporarily occupying a unit for which they are not occupancy eligible, they will have been previously approved by the Agency. The Servicing Office will forward a report to the Agency along with a note of the number of units involved. A borrower or management agent may request a waiver from the Agency to pay less than the surcharge due to hardship. A request for a waiver must be submitted in writing to the Servicing Office. The Servicing Office may evaluate such material to determine whether further action is warranted. Such actions may include those authorized under FnHa Instructions 2012-B, 1940-M, or subpart N of part 1951 of this chapter (available in any FnHa office).

VIII Lease agreements
A. Occupancy Agreements, Rules, and Other Tenant Information: A lease agreement is a written contract between a tenant and landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property. The contract between a cooperative member and the cooperative is called an occupancy agreement. Should the provisions of any lease or occupancy agreement be in violation of any State or local law, it may be modified to the extent needed to comply with the law; however, the change should be as consistent as possible with the provisions set out herein.

b. When a tenant or member decides to continue occupancy after giving indication of vacating the project and insufficient time remains to complete the verification of income or when an employer fails to return a verification of income on time, the procedure of F 10 a of this paragraph may be followed.

c. When a delay is caused by circumstances beyond the control of the tenant or landlord, such as when delays are encountered in processing income, employment, etc., from third party sources, the procedure of F 10 a of this paragraph may be followed.

G. Mid-month tenant or member certification. The certification effective date for a tenant or member starting occupancy on a day other than the first day of the month shall be the first day of the following month. Certification shall be completed according to paragraph VII F of this exhibit.

H. Resolution of suspected inaccurate information. Should forms, interviews, unit inspections, complaints, or other information bring into question the accuracy or reasonableness of information relied upon to qualify the residents for occupancy or benefits, it should be explored and resolved by the owner and/or management agent. Should the matter remain unsolved, the borrower or management agent may forward a report to the Agency along with a recommendation for further action. The Agency may evaluate such material to determine whether further action is warranted. Such actions may include those authorized under FnHa Instructions 2012-B, 1940-M, or subpart N of part 1951 of this chapter (available in any FnHa office).

VII Lease agreements
A. Form of lease or occupancy agreement. Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FnHa requirements. Occupancy agreements for cooperatives are to be prepared in accordance with applicable State laws and subpart B of part 1944 of this chapter. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OCC before being provided to borrowers as a guide for preparing an acceptable lease.

1. All leases will be in writing. Initial leases for units for which tenants are eligible must cover a period of 1 year. If the tenant is not subject to termination of occupancy according to paragraph XIV A of this exhibit, a renewal lease, or an addendum of lease extension, shall cover a period of 1 year. Leases for LH may be for shorter periods where occupancy is typically seasonal. Leases for all tenants signed after notification of intent to prepay, but prior to prepayment, may be for a term which ends on the date of prepayment. Leases for tenants who entered a project with a Letter of Priority Entitlement and who are temporarily occupying a unit for which they are not occupancy eligible, will have the clause in paragraph VIII C 1 of this exhibit inserted to deal with their obligation to move when an eligible unit becomes available.

2. Leases and occupancy agreements must contain an appropriate escalation clause permitting changes in basic and/or note rate rents or occupancy charges prior to the expiration of the document. Such changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FnHa according to exhibit C of this subpart. Leases must specify that no increases in tenant contribution to rent will take place due to prepayment of the FnHa mortgage in the form of the lease. Leases must also state that should any Federal subsidies paid to the borrower on behalf of tenants be suspended or canceled, due to a monetary or nonmonetary default by the borrower, the monetary payment made by the tenant to the borrower (or, when applicable, the monetary payment received by the tenant from the borrower) shall not change over that which would have been required had the subsidy remained in place.

3. Projects in which occupant surcharge collection is required must contain an appropriate lease clause permitting increases in the surcharge assessed. This clause should contain at least the following:

a. That occupancy surcharges are mandated by law, therefore, they must be paid by the tenant in addition to regular rent. If they are not paid, these unpaid surcharges constitute good cause for possible termination of occupancy.

b. That the current occupancy surcharge unit rate is $___ per unit and will increase annually on the surcharge anniversary date by $2 per month for each unit, not to exceed a total of $40 per month per unit.

c. That the portion of the unit surcharge assessment which the tenant pays will be based upon the tenant household income and will not cause the tenant's contribution for rent and occupancy charge plus utility allowance to exceed 30 percent of adjusted household income.

d. That tenant households may experience increases or decreases in the amount of occupancy surcharge they pay prior to the expiration of the lease.

4. Pursuant to the Fair Housing Amendments Act of 1988, no provision may be incorporated into a lease that would prohibit:

a. Occupancy by families with children under 18 years of age. As applied to housing designated as elderly, those residing with the elderly household who are under 18 years of age may not be excluded under the terms of the lease.

b. Occupancy by a person with a handicap who is willing and able to make reasonable...
modifications to an apartment unit at the tenant's expense, to afford such person full enjoyment of the apartment. The owner may include in the lease, where reasonable, permission to occupy the apartment on the condition that the tenant agrees to restore to the interior of the apartment the condition that existed before any modifications, reasonable wear and tear excepted.

5 In areas where there is a concentration of non-English speaking individuals in the project or in the community, leases or occupancy agreements and the established rules and regulations for the project written in both plain English and the appropriate non-English language must be available to the tenants or members. The tenant or member should have the opportunity to examine and execute either form of lease or occupancy agreement.

6 The form of lease or occupancy agreement to be used by the borrower and any modifications to be added must be approved by the FmHA Servicing Official. When submitting a lease or occupancy agreement form for FmHA approval, it must be accompanied by a letter from a practicing attorney stating that the legal sufficiency and compliance with State law and FmHA regulations.

7 A copy of a properly completed and approved exhibit A-6 of subpart B of part 494 (when the tenant or member will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant or member as attachments to the lease or occupancy agreement.

8 A copy of a properly completed and signed Form FmHA 1944-8 or HUD Form 50059 or other HUD approved form for those tenants receiving HUD section 8 tenant subsidy will be used to calculate each tenant's contribution and will be provided to the tenant as an attachment to the lease. 

B Required lease or occupancy agreement clauses. The following clauses will be required in leases used in connection with FairHousing-financed housing projects. Only clauses 1, 2, 3, 4, 5, and 7 of this exhibit are applicable to cooperative occupancy agreements.

1 All lease and occupancy agreements must include a statement indicating that the project is financed by FmHA and is subject to nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title VIII of the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975; and that all complaints are to be directed to the Administrator, FmHA, USDA, Washington, DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, DC 20410.

2 All lease agreements must specify that should the unit become overcrowded or underutilized or should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, the tenant would be required to vacate the unit at the end of the lease term unless eligibility can be established following specified steps, such as moving to an appropriate size unit, or an exception is granted by management.

3 All lease agreements must contain a provision that a tenant household's tenancy still exists during the time that the tenant household's personal possessions remain in the apartment unit after the tenant household has personally ceased occupancy with the intent to vacate and leave the project, until such time the personal possessions have been removed voluntarily or by legal means, subject to the provision of State or local law in such matters.

4 All leases used in FmHA-financed RRH projects must include the following clauses except for persons who are elderly, disabled, or handicapped living in a full profit plan project unless otherwise noted. (Occupancy agreements must include the clauses contained in paragraphs VII B 4 b, d, and e of this exhibit.)

a "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration for the (State/ Territory)."

b "I agree I must immediately notify the (landlord or cooperative) when there is a change in my gross income or adjustment to income, or when there is a change in the number of persons living in the household. I understand my rent or benefits may be affected as a result of this information. I also understand that failure to report such changes may result in my losing benefits to which I may be entitled or may result in the (landlord or cooperative) taking corrective action if benefits were mistakenly received. I understand the corrective action the (landlord or cooperative) may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or section 8 assistance being received for the balance of my certification period, initiation of a notice to increase my monthly rent to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects), or initiation of a notice of termination. I understand that one or more of these remedies may be initiated at the option of the (landlord or cooperative)."

c "I understand that I must promptly notify the lessor of any extended absences such time the personal possessions have been left in the unit after the tenant household's tenancy is terminated due to the tenant's absence for any period exceeding six months. I also understand that if I do not personally reside in the unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord, you may take the appropriate steps to terminate my tenancy."

d "I understand that should I receive occupancy benefits to which I am not entitled or I refuse to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled."

e "I understand that income certification is a requirement of occupancy and I agree to promptly provide any certifications and income verifications required by the owner or cooperative board to permit determination of eligibility and, when applicable, the monthly tenant or member contribution to be charged."

5 Leases and occupancy agreements used by borrowers participating in the FmHA RA program will contain the following clauses. (These clauses can be made an addendum to the lease and they must be signed by the lessor and lessee):

a "I understand and agree that as long as I receive rental assistance, my gross monthly contribution (as determined on the latest Form FmHA 1944-8, which must be attached to this lease) for rent or occupancy charge and utilities will be $____. If I pay any or all utilities directly (not including phone or cable TV), a utility allowance of $____ will be deducted from my gross monthly contribution and my resulting net monthly contribution will be $____. If my net monthly contribution would be less than zero, the lessor will pay me $____."

b I also understand and agree that my monthly contribution under this lease or occupancy agreement may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the (owner or cooperative) and FmHA expires, I understand and agree that my monthly contribution may be adjusted to no less than $____basic nor more than $____ (note rate during the remaining term of this lease or occupancy agreement), except that based on the escalation clause in this contract these rates may be changed by a Farmers Home Administration approved rent or occupancy charge change.

[Note No. 1: Eligible borrowers with LH loans and grants, Plan I direct RRH or insured RRH loans approved before August 1, 1968, may omit the words "no less than $____Basic nor more than" from the last sentence of the above statement.]

c "I understand that every effort will be made to provide rental assistance as long as I remain eligible and the rental assistance agreement between the (owner or cooperative) and FmHA remains in effect. However, should this assistance be terminated I may arrange to terminate this contract, giving proper notice as set forth elsewhere in this (lease or occupancy agreement).

[Note No. 2: The following additional clause is needed by those borrowers with Plan I direct or insured RRH loans approved before August 1, 1968.]

d "I further agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in addition to my rental rate of $____."
6 For leases with tenants occupying units in which borrowers are operating under Plan I either with or without interest credit approved on or after August 1, 1968:

"I understand and agree that my rent rate of $____(includes) (excludes) my cost of utilities. I further and agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental surcharge in addition to my rental rate.

7 For lease occupancy agreements in projects which borrowers are operating under Plan II Interest Credit Only:

"I understand and agree that my gross monthly contribution as determined on the latest Form FmHA 1944-6, which must be attached to this contract, for [rent or occupancy charge] and utilities will be $____.

If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____ will be deducted from my gross monthly contribution except that I will pay not less than the basic rent nor more than the note rate [rent or occupancy charge] stated below. My net monthly [rent or occupancy charge] will be $____.

I understand that should I receive rental subsidy credit (credit to which I am not entitled), I may be required to make restitution and I agree to pay any amount of benefit to which I was not entitled. I also understand and agree that my monthly tenant [rent or occupancy charge] under this [lease or occupancy agreement] may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. My [rent or occupancy charge] will not, however, be less than $____(basic) nor more than $____(note rate) during the term of this contract, except that based on the escalation clause in this [lease or occupancy agreement], these rental rates or occupancy charges may be changed by a Farmers Home Administration approved [rent or occupancy charge] change."

8 Leases used by borrowers with LH loans and/or grants will use the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their immediate families. I do hereby certify that a substantial portion of my immediate family income is and will be derived from farm labor. I understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage. It also includes labor for the production of aquatic organisms under a controlled or selected environment.

b. "I agree that my annual household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will vacate my dwelling after proper notification by the owner.""

9 All leases, including all renewal leases, shall contain the following clause:

"It is understood that the use, attempted use, or possession, manufacture, sale, or distribution of any controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations [hereafter called "drug""] may be evidenced upon the admission to or conviction of a drug violation.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or the nonadult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord or the court case. The landlord may also, at the option of the landlord, permit another adult member of the tenant household to be a lessee. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program.

The landlord may also, at the option of the lessee to show evidence that any nonadult member of the tenant household occupying the unit, who committed a drug violation, agrees to not commit a drug violation in the future, and to show evidence that the person is actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program.

The landlord may require a tenant's lessee to show evidence that any nonadult member of the tenant household occupying the unit, who committed a drug violation, agrees to not commit a drug violation in the future, and to show evidence that the person is actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program. Should a further drug violation be committed by any nonadult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

A person vacating the unit, as a result of any of the above provisions, including violation of the restrictive-use provision accepted by the owner (see §1965.215(e)(5) of subpart E of part 1965 of this chapter). Specifically, the tenant household contribution level (rent) must be consistent with those necessary to maintain the project for low- and moderate-income tenants. Those tenant households whose tenant household contribution level (rent) did not exceed 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of 30 percent of their monthly adjusted income or 10 percent of their gross monthly income per year. Those tenant households whose tenant household contribution level (rent) exceeded 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of the latest U.S. Consumer Price Index or 10 percent per year."

D Other lease provisions. All leases or occupancy agreements must contain provisions covering:

1 Names of the parties to the contract and all individuals to reside in the unit and the identification of the unit.

2 The amount and due date of monthly contributions, including occupancy surcharge levied, if any."

"/I agree that [my/our] rent rate [basic] will be $____ per month during the term of this contract, except that the project is specially designed for handicapped accessible use. I/we acknowledge that priority for such units is given to those needing special physical design features. I/ we acknowledge that I/we am/are occupying a designated handicapped accessible unit. I/we acknowledge that I/we am/are permitted to occupy the unit until management issues a notice that a priority applicant is on the waiting list and that I/we must move to another suitably sized vacant unit in the project. Upon receiving this notice, I/we agree to move at [my/our own] [shared (as agreed)] [project] expense within 30 calendar days to the suitably sized vacant unit within the project, if one is available. I/we further understand my/our rental rate will change, when appropriate, to the rental rate for the unit I/we move to and this lease will be modified accordingly."

2 Prepayment subject to restrictive-use covenants. Upon FmHA approval and acceptance of a prepayment, subject to restrictive-use covenants, the landlord will ensure all existing tenant leases and renewals of such leases are amended to include the following provisions:

"As a condition of the Government's approval of a request to accept early payment on notes owed, the tenant household is protected, to the extent herein disclosed, against involuntary displacement (except for good cause) and against having the tenant household contribution level (rent) materially increased until [insert a date 20 years from the date of the last FmHA loan or servicing action making the loan subject to prepayment restrictions, or insert "the tenant household decides to move" depending on the restrictive-use provision accepted by the owner (see §1965.215(e)(5) of subpart E of part 1965 of this chapter)). Specifically, the tenant household contribution level (rent) must be consistent with those necessary to maintain the project for low- and moderate-income tenants. Those tenant households whose tenant household contribution level (rent) did not exceed 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of 30 percent of their monthly adjusted income or 10 percent of their gross monthly income per year. Those tenant households whose tenant household contribution level (rent) exceeded 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of the latest U.S. Consumer Price Index or 10 percent per year."
3. Any penalty for late payment of monthly contributions according to paragraph IX B of this exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant or member by the management or cooperative and the tenant’s or member’s responsibility to pay utility charges promptly when due.

5. The process by which contribution and eligibility for occupancy shall be determined and reevaluated including:
   a. The frequency of such contribution and eligibility determinations.
   b. The information which the tenant or member shall supply to permit such determinations. Usually, income verification; names and ages of household members; in congregate facilities, only that essential information about the person’s request for provided services (to determine whether the project provides the services requested by the applicant) and/or to determine how to best serve the applicant’s tenant’s member’s request with reasonable accommodation, referral services, etc. In the case of a group home, the information may also include an assessment by a professional medical, examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc., that the tenant/applicant provides to support the application or recertification for housing and services.
   c. The standards by which rents or occupancy charge, eligibility, and appropriate dwelling unit size shall be determined.
   d. The tenant’s household agreement to move to a unit of appropriate size if the household size changes.
   e. The circumstances under which a tenant or member may request a redetermination of tenant contribution.
   f. The effect of misrepresentation by the tenant or member of the facts upon which contributions or eligibility determinations are based.
   g. The time at which shelter cost change, contribution changes, or notice of ineligibility becomes effective.

6. The limitation upon the tenant or member of the right to the use and occupancy of the dwellings. Limitations may not be discriminatory in nature.

7. The responsibilities of the tenant or member in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8. Agreement of management or cooperative to accept a tenant or member contribution without regard to any other charges owed by tenant or member to management or cooperative and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s) or member(s).

9. The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management or cooperative to provide the tenant or member with a written statement of the condition of the dwelling unit (when the tenant or member initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant or member may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management or the cooperative may enter the premises during the tenant’s or member’s possession thereof, including a periodic inspection in the nature of a part of a preventive maintenance program.

12. Responsibility of tenant or member to advise management or the cooperative of any planned absence for an extended period, usually 12 weeks or more.

13. Agreement that tenant or member may not let or sublet all or any part of the premises without the consent of management or cooperative and FmHA.

14. Understanding that should the RRH project be sold to a buyer approved by FmHA, the lease will be transferred to the new owner.

15. The formalities that shall be observed by management or the cooperative and the tenant or member concerning notice to the other as may be called for under the terms of the lease or occupancy agreement.

16. The circumstances under which management or the cooperative may terminate the lease or occupancy agreement, all limited to good cause, and the length of notice required for the tenant or member to exercise the right to terminate.

17. The procedure for handling tenant’s or member’s abandoned property as provided by State law.

18. Disposition of lease or occupancy agreement if building becomes uninhabitable because of fire or other disaster. Right of owner or cooperative to repair or rehabilitate the building within a certain period or terminate the lease or occupancy agreement.

19. The landlord or cooperative grievance or appeal from management’s or cooperative’s decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures not to be included in the rental office or at the cooperative.

20. That the lease may be terminated by the tenant, with 30 days notice, prior to expiration of its term for “good cause” such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by RRH borrower of intent to prepay. The prior notice on which a cooperative member may cancel an occupancy agreement for “good cause” shall be 4 months.

21. The usual signature clause attesting that the lease or occupancy agreement has been executed by the parties.

22. Prohibited lease or occupancy agreement clauses. In the classifications listed below shall not be included in any lease or occupancy agreement.

   a. Confession of judgment. Prior consent by tenant or member to any lawsuit the landlord or board may bring against the tenant or member in connection with the lease or occupancy agreement and to a judgment in favor of the landlord or board.

   b. Distraint for rental or occupancy charge or other charges. Authorization to the landlord or cooperative board to take property of the tenant or member and hold it as a pledge until the tenant or member performs any obligation which the landlord has determined the tenant or member has failed to perform.

   c. Exculpatory clause. Agreement by tenant or member not to hold the landlord or landlord’s agents or cooperative board liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord’s authorized representative or agent or the cooperative board.

23. Waiver of legal notice by tenant or member prior to actions for eviction or money judgments. Agreement by tenant or member that the landlord or board may institute suit without any notice to the tenant or member that the suit had been filed.

24. Waiver of legal proceedings. Authorization to the landlord or board to evict the tenant or member or hold or sell the tenant’s or member’s possessions whenever the landlord or board determines that a breach or default has occurred.

25. Waiver of jury trial. Authorization to the landlord’s or board’s lawyer to appear in court for the tenant or member and to waive the tenant’s or member’s right to trial by jury.

26. Waiver of right to appeal judicial error in legal proceedings. Authorization to the landlord’s or board’s lawyer to waive the tenant’s or member’s right to appeal on the ground of judicial error in any suit or the tenant’s or member’s right to file a suit in equity to prevent the execution of a judgment.

27. Tenant or member chargeable with costs or legal actions regardless of outcome. Agreement by the tenant or member to pay attorney’s fees or other legal costs whenever the landlord or board enters into action against the tenant or member even though the court finds in favor of the tenant or member. (Omission of this clause does not mean that the tenant or member, as a party to a lawsuit, may be obligated to pay attorney’s fees or other costs if the tenant or member loses the suit.)

28. Modification of lease or occupancy agreement and notification to tenants or members. The landlord or board may modify the terms and conditions of the lease or occupancy agreement with FmHA prior consent, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant or members, together with the tenant of a revised lease or occupancy agreement or an addendum revising the existing lease or occupancy agreement. This notice and tender shall be delivered to the tenant or member either by first-class mail, properly stamped and addressed or hand-delivered to the premises to an adult member of the household. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant or
member has the right to terminate the occupancy without executing the renewed lease or occupancy agreement. The notice must advise the tenants or members that they may appeal modifications to the rules or occupancy agreements in accordance with subpart L of part 1944 of this chapter if the modification will result in a denial, substantial reduction, or termination of benefits being received. The same notification shall be applicable to any changes in the rules and regulations for the project.

6 For each HPRF project or portion of a project specifically designated for the elderly, the borrower must have established project rules permitting elderly, handicapped, or disabled tenants to keep commonly accepted household pets. These pet rules are to be governed by the following guidelines:
   a. Pet rules must not:
      (1) Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in his apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.
      (2) Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project.
   b. Charge an extra monthly rental charge for pets.
   c. Borrowers with operational projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.
   d. Pet rules will be approved by the FmHA as part of, or an amendment to, the lease. FmHA approval will be granted when the rules meet the provisions and intent of this subparagraph.
   e. Pet rules will be reasonable and will be written to consider at the least the following factors:
      (1) Density of project units.
      (2) Pet size.
      (3) Type of pet.
      (4) Potential financial obligations of tenants who own or keep pets.
      (5) Standards of pet care.
      (6) Pet exercise areas.
      (7) State and local animal laws or ordinances.
      (8) Liability insurance.
   f. Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition has only determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.
   g. Initial rules will be attached to the lease or occupancy agreement. Approval by FmHA for changes and additions may be requested as needed.

7 Initial rules will be attached to the lease or occupancy agreement. Approval by FmHA for changes and additions may be requested as needed.

8 The following items illustrate areas that are among those which should be addressed in rules or informative materials developed by management and provided to all tenants or members prior to move-in:
   a. Explanation of rights and responsibilities under the lease or occupancy agreement.
   b. Rent payment or occupancy charge policies and procedures should be fully explained.
   c. Policy on periodic inspection of units.
   d. Responding to tenant or member complaints.
   e. Maintenance request procedure.
   f. Project services and facilities available to tenants or members.
   g. Office location, hours, and emergency telephone numbers.
   h. Map showing location of community facilities including schools, health care, libraries, parks, etc.
   i. Restrictions on storage and prohibition against abandoning vehicles in the project.

9 A rental project newsletter or other printed material distributed to potential tenants or the public. If a newsletter or other printed material is desired, it must contain an appropriate nondiscrimination statement, or fair housing sign, in a 45-day period without prior notification of the management. Should the tenant or person in question not provide the requested information needed to confirm other domicile, or that the facts are insufficient to admit domicile to the project, the landlord may consider such person(s) a member of the tenant household and may enforce any lease covenant shown to be broken and/or require recertification.

10 No provisions may be incorporated into occupancy rules that would discriminate against or otherwise deny equal opportunity to any person (whether the tenant or a person associated with the tenant) in the terms, conditions, or privileges of rental of a dwelling unit, or in the provisions for services or facilities in connection therewith, because of race, color, religion, sex, familial status, National origin, or handicap.

11 The borrower must establish and enforce rules to ensure there are reasonable accommodations for persons who are handicapped or disabled.

H Security deposits.

1 Security deposits are encouraged and should be used when it is reasonable and customary for the area for assurance of rental payment or charges for damages. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA Servicing Official. When security deposits are used, they should not exceed an amount equal to the net tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets is reasonable and not designed to prohibit or discourage tenancy but in no case should it exceed the basic rent of the project. Where a service animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be
charged. A membership fee, equal to one month's occupancy charge, will be required from members of a cooperative.

2. Security deposits or membership fees for RA or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants or members cannot pay the full amount initially, they may be given terms that may ordinarily:

a. For R CH projects, not exceed a downpayment of 30 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within three months, whichever is greater (landlords may provide payment over longer terms if desired). For R CH projects, not exceed an initial payment of $25 plus the amount needed monthly to complete the membership fee within three months (longer terms may be permitted if desired by the borrower). Should installments not be met, the total security deposit charge may become due and payable in full.

b. For low-income farmworkers in a LH project, not exceed $25 downpayment and $15 per month or that amount needed monthly to complete one month's project rent is reached. In the case of migrants who will occupy the units for a period of three months, whichever is greater, then one month's occupancy charge, will be required charged. A 5-day grace period, or

3. Security deposits or membership fees shall be handled in accordance with any State or local laws governing security deposits. Borrowers may assess fair and reasonable charges to the security deposit for damage and loss caused or allowed by the tenant or member. An itemized accounting for such charges must be presented to the tenant or member after the move-out inspection provided for in paragraph X B 2 of this exhibit, unless the tenant or member has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

5. The owner may not increase, for persons with handicaps, any customarily required security or membership fee deposit for restoration made to earlier modifications that permitted the handicapped person's full enjoyment of the dwelling unit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available for restoration and at the end of the occupancy, the borrower may negotiate as part of such a restoration agreement, a provision requiring that the tenant or member pay into an interest bearing escrow account for a period of one year, a reasonable amount of money not to exceed the cost of the restoration(s). The interest in any such account shall accrue to the benefit of the tenant or member.

- Leases for Section 8 and Section 6 Rental Certificate or Rental Voucher tenants/members. Guidance on leases for such tenants/members is set out herein; however, the use of any addendum necessary to meet the requirements of FmHA, HUD, or other providers of such funds as needed to comply with the requirements of any such other program, may be used as needed. Whenever conflicts or disputes arise, the servicing office may forward a request for guidance to the State Director, along with any recommendation. The State Director may take those actions necessary to resolve the issue with the advice and consent of the Office of the General Counsel.

1. Borrowers/Members of agents are encouraged to use HUD approved lease agreements. Evidence of HUD's approval should be contained in the borrower casefile.

2. The HUD approved lease must include modifications of addenda that meet the conditions or requirements of paragraphs VIII A, B1, B2, and B3 of this subpart.

3. An FmHA-approved lease may also be used when acceptable by HUD and the local housing authority when this option proves more practical.

IX. Rent or Occupancy Charge Collection and Account Servicing: Rent or occupancy charges shall be due on the first day of each month of the lease period. The time and place of on-site collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours depository if needed.

A. Receipts. A form of serially-numbered receipts should be selected for use and the collection agent has the responsibility for each receipt. Optional collection services may be considered when they are available.

B. Delinquencies. A system to identify and detect unpaid rents or occupancy charges within the project would be instituted in the management plan. An account known to tenants in their lease. The borrower may adopt the late rental payment penalty and grace period prescribed by State law; otherwise, they may not exceed a grace period of 10 days from the rental or occupancy charge due date and not have the late payment penalty exceed the highest of:

1. An amount up to $10 after the grace period,

2. An amount equal to 5 percent of the tenant's gross tenant contribution (GTC) (found at line 30 of Form 1944-8) after the grace period,

3. Any late payment policy established should address unusual situations such as tenants receiving income from Social Security, pensions, and retirement type funds that tenants receive routinely in the few days following the first day of a month. A 5-day grace period following the usual receipt date of such payment could be permitted.

4. The plan should also address any provision for waivers of late payment penalty, if appropriate

C. Recapture of improperly advanced RA and interest credit. Recapture of improperly advanced RA and interest credit will be provided in accordance with subpart N of part 51 of this chapter.

D. Project late fees on Predetermined Amortization Schedule System (PASS) accounts.

E. Project late fees are charged on PASS account loan payments not received by FmHA by close of business of the 10th day of the month as further described in § 1951.510(c)(2) of subpart K of part 51 of this chapter.

F. A borrower may request in writing a waiver of a late fee according to § 1951.510(c)(2) of subpart K of part 51 of this chapter. Borrowers may appeal a denial of a request for a late fee waiver under the Agency's uniform appeal procedures set out in subpart B of this chapter.

G. Late fee waivers are determined to be a benefit to the borrower entity and must be reported to IRS by the FmHA Finance Office.

H. If the cause of the late fee is an FmHA accounting system error, the FmHA may suspend sending monthly bills to the borrower until the error is corrected. If delinquency persists after correcting the error, late fees will be charged. Late fees charged as a result of FmHA error will be administratively corrected and not reported to IRS by the FmHA Finance Office.

I. Except for cooperatives, project late fees are not a project expense. Borrowers shall record a line item entry on Form FmHA 1930–7 showing late fees, offset by an equal transfer-in of the borrower's own funds or a reduction of the borrower's return to owner.

X. Maintenance: Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be established in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A. Routine maintenance. Routine maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics. Tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B. Responsive maintenance. This includes all maintenance tasks performed in response to either requests for service from tenants or members or unplanned breakdowns. An example of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager or the cooperative's board of directors should develop a plan to focus on: who receives requests, how they are handled, how specific employees or members
are assigned to the tasks, and what kind of records are kept. The capacity of the project manager as bound to be neglected or requests and emergencies is one of the true tests of a successful maintenance program.

C. Preventive maintenance: This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building services, elevators, and heating and cooling systems in projects require specially trained personnel. The project manager should establish bisexual or monthly schedules in which the routine checking, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D. Long-term maintenance and replacement (sizable depreciation): These are major expense items which normally do not occur for many years, but that may be afforded from an annual budget income. These expenses include items such as repaving the parking lot or repainting an entire building or project, replacement of furnishings and equipment, including such items as generators, computers, water heaters, furnishings, etc.; and, wherever such replacements are beyond the capacity of the project, to pay out of the normal operating budget. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be pre-approved by FmHA.

E. Inspection maintenance. These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each apartment should be made at appropriate times:

1. Move-in inspection. Before move-in occurs, the management and the applicant accepted for occupancy should inspect the unit to be occupied and agree upon any needed repairs. A written inspection report shall be prepared and a copy retained in the tenant's or applicant's file. A move-in inspection report, when completed prior to occupancy should be noted on the lease or occupancy agreement or inspection move-in report and signed by the tenant or member and borrower's or cooperative's representative.

2. Move-out inspection. An inspection should be scheduled with the tenant or member when the management becomes aware that the tenant or member is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the move-out has been completed, before any portion of the security deposit or membership fee is returned to the tenant or member. Any repairs or costs to be charged to the tenant or member will be according to the terms of the lease or occupancy agreement. Preventive maintenance inspections governing security deposits or membership fees in paragraphs VIII B 10 of this exhibit.

3. Periodic inspection. An inspection of this type should be made at least annually. The borrower should make provisions in the lease or occupancy agreement for periodic inspections of the units as a part of a preventive maintenance program.

XII. Borrower Project Budgets

A. Budget development and preparation. Borrowers are responsible for developing project budgets using past actual experiences in developing realistic forecasts of projects' project operations. The budgets must reflect realistic income sources, uses and amounts of funds, and allow realistic vacancy and contingency factors. Generated funds must be sufficient to meet the normal project costs requirements; the borrower is responsible for reducing expenditures, seeking FmHA consent for authorized withdrawals from the reserve account and for providing other funds (unauthorized funds) to meet project budget requirements.

1. Budgets will be prepared according to the instructions contained in Form FmHA-1986-8.

2. Borrowers are required to develop a project budget annually.

3. Borrowers will cover a 12-month period selected by the borrower that is to be the project fiscal year of operation.

4. Separate budgets will be developed for each project and these borrower-awarded more than one FmHA project.

5. The priority order of planned and actual budget expenditures will be:

a. Critical operating and maintenance expenses.

b. FmHA debt service.

c. Reserve account requirements.

d. Other authorized expenditures.

e. Return on owner's investment.

6. Project funds may not be used for borrower organizational expenses, except in the case of a cooperative or a nonprofit organization.

7. When tenants pay their own utilities, an updated or current exhibit A-6 to subject E of part 1986 of this chapter is to accompany each budget increased and be approved with justification to either reduce or change the utility allowances.

8. When planned expenses appear to be excessive (such as when expenses at any budget level on the budget exceed 5 percent of the current budget for the area, based on current cost data), the FmHA debt service will require justification prior to any approval action. Such justification may include evidence that the cost is in line with what is currently available or estimated from other summary statements of rental, housing revenues and expenditures from Agency or third-party sources, etc. Such evidence may also be verified by the Agency at its option. If differences cannot be mutually resolved, the request for budget approval may be denied and the borrower or representative will be advised of any applicable appeal rights in accordance with subpart B of part 1986 of this chapter. If any unapproved expenditures actually paid which is clearly in excess of a fair and equitable amount may be required to be repaid to the project from any authorized return or owner's investment or from nonproject sources, such that tenant rents will not be increased.

B. Return on investments authorized by borrower's FmHA loan agreement/resolution.

3. Limited profit borrowers may take the return authorized for the project's current budget year without further FmHA approval under the following conditions (NOTE: This does not require delaying project return on owner's investment pending submission, review and/or action on any required audit by Agency officials):

a. Payment may be only one year based on the project's financial condition as of the end of the fiscal year. Borrowers are encouraged to draw the return on investment in the following 12 months of the fiscal year. The return on owner's investment must be taken within 9 months of the last day earned, except when the circumstances described in paragraph XII B 2 of this exhibit are applicable.

b. Payment must have been approved as part of the borrower's annual budget on FmHA Form FmHA-1303-9.

The project manager must prepare income at approved monthly rental rates during that year, which is used to pay for project expenses in accordance with the approved budget and, when appropriate, an approved project plan.

t. The balance in the reserve account must be on schedule less any authorized withdrawals not requiring immediate redepot. The amount of reduction of the annual reserve requirement approved as part of the servicing plan will be considered as an authorized withdrawal not requiring redepot.

d. Payment of the return may not produce a negative ending year unrestricted cash balance on FmHA Form FmHA-1304-9.

2. If income is not adequate in any given fiscal year to cover payment of the return to owner, FmHA may authorize a well-documented request that the return be paid, providing:

a. The return can be paid from excess funds available as of the end of the following fiscal year of operation, as long as it does not result in a net increase in the reserve account in current less authorized withdrawal. (Noncash: losses of the borrower entity do not qualify to be recomputed in following fiscal year and designated as supplemental only for the year immediately following the year in which the return was not paid. The prior year's return on owner's investment may be taken first, and any residual left to apply to the current year's return on owner's investment at the borrower's option.)

b. Release of reserve funds of the end of the current budget year with Servicing
Official approval, if the principles set out in paragraphs XII B 1 b, c, and d of this exhibit are met, and further provided that:

1. The amount will not be reduced below the amount required to be accumulated by that time considering any previously authorized withdrawals or adjustments; and,

2. During the next 12 months, the amount in the reserve account will not likely fall below that required to be accumulated by the end of such 12-month period.

3. This option is authorized only for the year immediately following the year in which the return was not paid. This does not apply to the return on investment waived while a special market rent budget is in effect.

4. Borrowers operating under a servicing (workout) plan and/or using special servicing market rate rents, which is allowed for less than full debt service payment to FmHA shall forego and cannot recoup the annual return to owner for the budget year that such plans or rents are in place.

5. Should the return to owner be suspected or discovered as being improperly taken, the return must be re-applied to the appropriate servicing actions, including using the authorities set out in subpart B of part 1951 of this chapter and/or FmHA Instructions 1912-B and/or 1940-M (available at any FmHA office).

C. Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.

1. Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in subpart B of this chapter.

Justification will be based on the following:

a. A review of the documented circumstances and the project operating budget before any funds are advanced.

b. The financial position of the project must not be jeopardized.

c. Funds are not immediately available from any of the following sources:

   (1) Reserve funds
   (2) Initial operating capital
   (3) An imminent rent increase

2. The funds will be applied to ordinary project operating and maintenance expenses.

3. Interest may be charged or paid on the loan from project income; however, interest must be reasonable.

   The proposal may be denied if FmHA financing can be provided to resolve the problem in a more cost-effective manner.

4. No lien in connection with the loan will be filed against the property securing the FmHA loan or project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

5. The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and FmHA at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the FmHA debt is current and the reserve requirements are not being maintained at the authorized levels.

D. Special budget planning.

1. Budgets must be prepared according to the special servicing guidelines of subpart B of part 1965 of this chapter when a project is experiencing economic reversals or is otherwise detrimentally impacted by economic reversal in the community.

2. The borrower is responsible for obtaining FmHA approval of budget revisions that reflect significant change to approved operating cost levels that occur during the budget year. Minor revisions to an approved FmHA budget to reflect changes of 5 percent or less in any subtotal area of the budget need not be subject to FmHA approval unless specifically required by an approval condition. Other revisions, including a few line items may be entered on the current approved budget as "pencil" changes and initiated by the borrower and approved by FmHA. Major changes involving many budget line items will warrant a new budget being prepared and approved by FmHA.

3. When revisions to approved budgets are required, the agency action should normally be obtained within 30 days. Should action be delayed, the borrower or management should notify the Agency of changes which it deems as being essential and in the project's best interest provided such changes do not involve the use of reserve funds, a rent change, or added secured debt, and proceed to meet the needs of the project. In such cases, the borrower may request, and the Agency may grant, postapproval of the actions when shown to be in the best interest of the project.

XIII. Accounting and Reporting Requirements and Financial Management Analysis:

A. General. FmHA anticipates that RRH, RCH, and LH borrowers will account for all project income and expenses through a bookkeeping or accounting system as a normal business practice appropriately reflecting the complexity of project operations. The degree of sophistication will also reflect such factors as the type of borrower, the size, location, and type of project and the type of financial management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1. Separate accountability. Separate accountability of funds is required and may be accomplished by bookkeeping entry for each required account for a particular project owned by the same borrower. The policies set out herein are aimed at facilitating efficient accounting of services by one borrower.

   A. Commingling of funds of two or more borrowers is prohibited to guard against the failure of one borrower threatening the financial resources of other borrowers (i.e., ensuring that a bankruptcy of one borrower does not result in freezing bank accounts of several borrowers due to the failure of one borrower to fulfill its responsibilities).

   a. Multiple projects owned by one borrower.

   (1) The principle of separate accountability permits a borrower's approved accounting system to combine project funds in one or more bank accounts for two or more projects owned by the same borrower. The principle is met as long as the accounting system segregates and tracks each project's funds separately. This means for example, that a Housing Authority, or any other borrower owning two or more projects, can maintain one bank account for:

   (i) All project accounts, or
   (ii) The same type of account, such as general operating account or tax and insurance account, for two or more projects.

   (2) When the borrower seeks approval of its accounting and funds tracking system according to § 1930.122(a)(2) of this subpart, it must demonstrate to FmHA that the funds tracking system will segregate and maintain separate recordkeeping accountability for separate projects. Such demonstration must include a certification issued by a Certified Public Accountant (CPA) stating the system will function to meet this principle of separate accountability.

   b. Multiple projects owned by multiple borrowers. When a management agent is handling funds for multiple borrowers, the principles of separate accountability within a bank account does not extend across multiple borrowers, thus a separate general operating bank account is required for each separate borrower.

   c. Central funds collection and disbursement system. When a management agent is handling multiple bank accounts for multiple borrowers, a central funds collection and disbursement accounting system may be maintained. This would permit systems under which a management agent could track funds going into and out of the bank accounts of more than one borrower. This practice would facilitate the billing and payment of financial and accounting services to multiple borrowers. A central funds collection and disbursement accounting system would permit billings to be prorated between projects and permit funds to be withdrawn from many bank accounts to facilitate payment by one check to a firm providing services to multiple borrowers.

   d. Prorating. The accounting system and/or management plan must document how funds are prorated for revenue and expenses which are not clearly identifiable as being associated with a particular project (e.g., how interest earned on a general operating account or reserve account serving two or more projects owned by a single borrower will be prorated between projects, etc.)

   Where this documentation is not present for some unusual reason, and the general and the borrower become involved in a dispute over this issue which cannot be mutually resolved, the Agency will consider proration by the number of units in the respective projects to be an appropriate guide for prorating the funds involved.

   e. Tenant security deposit concerns. When tenant security deposits are being accounted for, the provisions of state and local laws
must be met. This may dictate that such accounts be held in a separate bank account or otherwise separately identified and may require such funds to be held in trust for the tenant. The manner in which tenant security deposits must be kept must also be documented in the accounting system and/or management plan. Where this documentation is not provided for some unusual reason, results of such security deposits must be done according to State and local law.

2 Borrowers with loan agreements or resolutions. Borrowers with loan agreements or resolutions are subject to the following conditions:

a) All RRH, RCH, and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of paragraph XIII of this chapter.

b) All RRH, RCH, and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

1. If the State Director, however, adopts the provisions of this paragraph by amending their existing loan agreement or resolution.

2. The State Director may require adoption of these provisions when deemed necessary as a loan servicing action.

3. Any amendment to an existing loan agreement, or resolution, requires the concurrence of all parties and written consent of the Servicing Office staff who may, when deemed necessary, obtain advice from the State Director or the OCC prior to enactment of the amendment.

3 Individual LH Borrowers. Individual farm borrowers with nonrental LH units will be considered in general compliance with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home planning with FmHA as outlined in subpart D of part 1944 of this chapter.

4 Borrowers without loan agreements or resolutions. Borrowers without loan agreements are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B Accounting System. A bookkeeping and accounting system provides the financial information needed to effectively plan, control, and evaluate project activity, whether required by FmHA or not. The type of system should be determined prior to loan closing, but may be revised with FmHA approval to meet program objectives. The Agency may also prescribe the system to be used. Form FmHA 1930-5, "Bookkeeping System—Schedule Borrower," can be adapted to the bookkeeping needs of small MHF borrowers. Bookkeeping for MPH operations may be maintained using a cash or accrual method of accounting.

1 Type of borrower accounts. As used in this part, a loan account is used interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account, or an actual securities account. An actual securities account provided any securities account meets the conditions set out herein. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements.

Regardless of the number or types of accounts established, or whether a bookkeeping and accounting system is required, the borrower must meet the following:

a) All project funds shall be held in a governmental bank accounts insured by an agency of the Federal Government, or backed by collateral provided by the bank, or held in securities meeting the conditions set out herein.

b) All funds in any account shall be used only for purposes as described in their loan agreement or resolution and this exhibit.

c) All funds received and held in any account, except the tenant security deposit, shall be held in trust for the borrower for the loan obligation until used and serve as security for the FmHA loan.

d) All project funds will be accounted for by adequate and clear accounting methods or practices that otherwise maintain proprietary identity of said funds for each borrower.

e) Each borrower will maintain at least a demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

f) In no case shall project fund accounts be pledged as collateral for non-FmHA debt.

2 Accounting. All RRH, RCH, and LH borrowers will maintain, or minimum, the accounts required by their loan agreement or resolution. The following accounts are standard for all RRH and RCH loans and require approval after October 27, 1980, for those who have amended their previous loan agreement or resolutions to adopt these accounts, or those required by a servicing plan. The following listing of accounts also identifies the order of funding of each of the listed accounts through available project revenues each month:

a General operating account. This account records all project income and disbursements exclusive of tenant security deposits. Excess project cash held in this account may be combined with other project funds described in this paragraph in the complexity of the accounting system. When separate bookkeeping records are maintained for the individual project accounts, the following accounts may be further subdivided as follows:

i) Initial operating capital.

1. The initial operating capital may be in the form of cash, an irrevocable letter of credit, or a combination of the two as set forth in § 1944.211(a)(6) of subpart C of part 1944 of this chapter.

ii) The borrower will have deposited the initial operating capital in the general operating account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner. Any letters of credit will be supplied by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first.

2. Letters of credit will be maintained in the casefile.

(i) They must be renewed as needed so that a current letter of credit is always in effect.

(ii) If a borrower does not renew the letter of credit they will be required to deposit an equivalent amount of cash into the general operating account before the letter of credit expires.

(iii) If a borrower supplied all or part of the initial operating capital in the form of a letter of credit and the borrower makes cash deposits into the general operating account for operating purposes, the borrower can provide the Servicing Office with a new letter of credit in a smaller amount with evidence of cash deposit.

(iv) The new letter of credit and the cash deposit must total the required initial operating capital.

(v) The old letter of credit will be returned to the borrower.

2. After two, but before five full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a one-time withdrawal of the initial operating capital, or a part of it. The withdrawal can be made in the form of cash, release or reduction in the letter of credit, or a combination of both. The one-time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

A. The project has achieved at least a 95 percent occupancy level at time of withdrawal request or achieved a 95 percent occupancy level for a 12-month period preceding the request and shown prospects of retaining at least a 95 percent occupancy level in the immediate future.

B. The withdrawal will not affect the financial integrity of the project. After withdrawal, 10 percent of projected project expenses should remain in the general operating account in excess of current liabilities then outstanding. The reserve account must be on schedule less authorized withdrawals. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses is not being deferred.

C. The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation, except that rent increases needed because of normal increases of operation and maintenance expenses unrelated to the withdrawal may be approved; and

D. The State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn. Promptness is expected but
actual withdrawal of funds could occur in the sixth year.

(2) Deposits. All income and revenue from the housing project, as well as any other revenue in excess of the loan agreements set out herein. The borrower may also deposit other funds at any time which are to be used for purposes authorized by this section, including transfers from the reserve account.

(3) Disbursements. The borrower shall pay or fund the actual, reasonable, and necessary monthly project expenses out of the general operating account. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the general operating account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial capital purposes as authorized in subparts D and E of part 491 of this chapter.) Other authorized disbursements are FmHA approved installments of debt service including occupancy surcharge; real estate tax and insurance escrow as provided in paragraph XIII B 2 b of this exhibit; reserve, and return on investment as provided in paragraph XIII B 2 c of this exhibit. In RH accounts, any balance remaining in a general operating account, except as authorized, above, may be retained in this account or transferred to the Reserve Account. In RH accounts, any balance in excess of three months of average operating expenses remaining in a general operating account will be transferred into the cooperative’s patronage capital account at the end of the fiscal year.

(4) Unauthorized disbursements. Except for cooperatives, late fees charged the borrower according to subpart K of part 4951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from the proceeds of project income, the project general operating account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner’s return on investment.

b Real estate tax and insurance escrow account. According to the borrower’s management plan, project funds for periodic payment(s) of real estate taxes and real property insurance may be deposited in a real estate tax and insurance escrow account or held in the general operating account as cash on hand. The escrow account may be an interest bearing account. Deposits to the account should be in monthly increments of one-twelfth of the annual anticipated real estate tax and insurance payments. Any interest earned on the escrow account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA. As projects age, the required reserve account level may be adjusted to meet anticipated “life-cycle” needs, including equipment and facility replacement costs, by amending the loan agreement/resolution.

(1) Monthly installments. Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower’s quarterly note, required installment transfers shall be transferred to the Reserve Account at least at the monthly rate stipulated by the borrower’s loan agreement or resolution starting with the date the first payment is due to the Agency. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the reserve account balance below its required level until it is restored to the specified total minimum sum.

(2) Reserve account principles. Reserve account funds are governed by the following principles:

(i) Primary use. The reserve account is primarily used to meet the major capital expense needs of a project. It is expected that the reserve account should rarely have to be used to meet any noncapital expense need for a project, however, the Servicing Official may approve such uses when warranted in unusual circumstances (e.g., a cash income shortfall, using the notice of approval at exhibit B–9 of this section).

(ii) Investment vehicles and institutions. Reserve account funds not immediately needed to pay for expenses for authorized purposes may be held as set out herein. Reserve account funds may be held in the form of a checking, savings, negotiable order of withdrawal, or similar account at a Federally insured domestic institution such as a bank, savings and loan, or credit union. Reserve account funds may be held in the form of readily marketable obligations of the United States Treasury (e.g., U.S. Treasury bonds, U.S. Savings bonds, zero coupon bonds, etc.) at a Federally insured domestic institution or at an insured domestic institution authorized to sell securities. Reserve account funds may also be held in the form of an account (the account may be a tax exempt account or a taxable account) established at an insured domestic institution authorized to sell securities (the institution may or may not charge brokerage fees), provided the accounts so established meet the remaining conditions set out herein and are not used in a speculative manner. Additional financial advisor services may also be provided as part of the normal brokerage fee service package to consummate the purchase and sale of securities. Separate financial advisor services fees, apart from normal brokerage fees, are prohibited, however.

(iii) Limitations on investments in securities. Any security must be backed by the United States (U.S.) Government or an Agency of the United States and be triple A (AAA) rated Government National Mortgage Association collateralized tax-exempt bonds or be AAA rated or other bonds. Prerefunded bonds are bonds that originally may have been issued as general obligation or revenue bonds but are now secured, until the call date or maturity, by an “escrow fund” consisting entirely of direct U.S. Government obligations that are sufficient for paying the bondholders.

(iv) Reporting actual costs. In order to assure that required amounts have been paid into the reserve account, the actual costs of securities (which in many cases may not be the face value) must be shown on the project books. In addition, details of these transactions should be disclosed in footnotes to financial information provided to the Agency.

(v) Security sales. When the Agency approves withdrawals from the reserve account for the actual costs of securities, the borrower must, to the extent that securities are available, assure that securities are sold in an amount which results in proceeds sufficient to cover the disbursement.

(5) Forecasting security sales. Since the sale or redemption of any securities may result in cash proceeds of less than the amount invested, borrowers should take steps to minimize the risk of loss from converting securities to cash. Needed reserve account withdrawals should be forecasted well in advance to permit Agency approval of anticipated needs such that security sales may be arranged to be sold in favorable market conditions. When sales of securities take place the proceeds will not be held in a reserve fund at a domestic bank, savings and loan, credit union, or similar institution insured by an Agency of the Federal Government until such time as withdrawals are actually needed for the purposes authorized. Should unusual circumstances require the sale of securities in unfavorable market conditions the borrower will not be required to reimburse the project for any losses incurred.

(6) Knowledge required of securities (ii) Financial advisor services. Those investing in securities must be knowledgeable of common industry practices prior to investing in securities. Knowledge of the various fees that may be associated with the purchase and sale of securities and the maintenance of security accounts must be considered when selecting security investments (e.g., front end loads or fees, back end loads or fees, maintenance fees, etc.). Such fees may be paid by the general operating account or by the Reserve Account. However, the Agency must give its prior consent before reserve account funds may be used.

(7) Financial advisor services. Project proceeds may not be permitted to be used to pay for the services of a financial advisor to assist in the selecting of securities for investments, since the securities permitted are relatively limited and must meet the requirements set out herein. However, normal brokerage fees may be paid to secure and sell securities. It is recognized that financial advice may also be provided as part of the normal brokerage fee service package to consummate the purchase and sale of securities. Separate financial advisor services fees, apart from normal brokerage fees, are prohibited, however.

(8) Reserve account tracking. Any deposit and withdrawal from the Reserve Account should be recorded on a withdrawal format for tracking and reconciliation of the account similar to that found in exhibit B–10 of this exhibit.

(4) Excess reserve. Any amount in the Reserve Account which exceeds the total sum specified in the loan agreement or resolution
may be transferred to the general operating account for the authorized purposes only when it is agreed between the borrower and FmHA to be in excess of the requirement and there is a specific need for the excess funds. However, the FmHA Servicing Official may direct the excess sum to be retained in the reserve account or applied as an extra payment on the loan.

5) Reserve account use. Funds in the reserve account may be used for purposes in accordance with this paragraph. The borrower will request withdrawal of reserve funds in a written or confirmed manner before they are needed. Annual budgets are to include realistic routine income and expense levels to avoid the need to use the reserve for routine expenses (operating shortfalls), not caused by emergencies or very unusual servicing situations; but when needed, use of reserve funds will be permitted with Agency approval. The Servicing Official will take prompt action on a request for reserve withdrawal (normally within 5 working days of the request) and provide written authorization to the borrower for any such withdrawal of funds. The use of reserve funds by the borrower will be recorded as indicated in the loan agreement or resolution. 

(i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(ii) To pay for replacement of the housing, furnishings or equipment or shortfalls of current expenses. Withdrawal for planned authorized purposes should be approved in advance during the annual budget approval process.

(iii) To make improvements to the housing project without creating new living units or to retrofit units to make them accessible to the physically handicapped.

(iv) For other purposes desired by the borrower, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the project and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security. Reserve funds may also be used to facilitate payment of fees associated with the buying or selling of securities or maintaining a securities account.

(v) To pay a return on investment at the end of the Borrowers' project operating year, provided that after such disbursements the amount in the reserve account will not be less than that required by the loan agreement or resolution to be accumulated by that time (taking into consideration the provisions of any approved servicing plan which may be authorizing a temporary adjustment to these provisions), minus any authorized withdrawals, and provided that the amount in the reserve account will likely not fall below that required to be accumulated during the next 12 months.

A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's limited investment as identified in the loan agreement or resolution.

B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

6) Exhibit B-10 of this subpart may be used by the borrower and FmHA to record deposits and withdrawals in the reserve account and to perform reconciliation of the account to determine the current account balance.

d) Management reserve account (patronage capital account). Any funds in excess of three months of average operating expenses remaining in the general operating account of an RCH project at the end of the fiscal year will be transferred and maintained in a lump sum in an interest bearing patronage capital account and will be handled according to any state laws governing patronage capital. That amount will then be equally assigned, by bookkeeping entry only, to each member. The patronage capital funds will be held by the cooperative in trust for the respective member until that member terminates membership in the cooperative, provided the member has paid all charges and costs due the cooperative. The patronage capital funds will not be used for any other purpose.

e) Security deposit or membership fee account (when applicable). Upon receipt, all security deposit or membership fee funds collected shall be recorded in a bookkeeping account that is separate from the cooperative accounts. The security deposits shall be deposited in a separate bank account that is kept separate from any project funds and will be handled according to any state laws governing security deposits. Funds in the security or membership fee account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower or borrower's management agent in trust for the respective tenants or members until so used. Any amount of the security deposit account which is retained by the borrower as a result of lease or occupancy agreement violations shall be transferred to the general operating account and treated as income of the housing.

The owner will follow all State and local requirements governing the handling and disbursement of security or membership fee deposits.

In no case will interest earned on security or membership fee deposits accrue to project management or the owner of a rental project. Any interest earned but not returned to the tenants, or in the case of a cooperative, interest earned on membership fees retained by the cooperative, will be transferred to the project's general operating account for disposition as outlined in the management plan.

C) Borrower reporting requirements. It is the objective of FmHA that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA for review, and otherwise comply with the terms of their loan agreements with the Agency. Certain reports are necessary to verify compliance with FmHA requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA payments and others submitted to FmHA either monthly, quarterly, or annually. Exhibits B–6, B–7, and B–8 of this subpart are to be used as a guide for determining when reports are due and the number of copies required. Borrower accounts and records will be kept or made available in a location within reasonable access for management, review and copying by representatives of FmHA or other agencies of the U.S. Department of Agriculture authorized by the Department.

1) Accounting methods and records. The method of accounting and financial statements. Borrowers may use the cash or accrual method of accounting, bookkeeping, and budget preparation as described in their project management plan. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

2) Approval requirement. Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing in the project management plan that must be approved by FmHA.

3) Records. Form FmHA 1930–5 may be used by small organizations as a method of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of this exhibit.

4) Record retention. Each borrower shall retain all financial records, books, and supporting material at least 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the Office of Inspector General (OIG), the Comptroller General, or to their representatives.

5) Management reports and review processes. The objective of management reports and review processes is to furnish the management and FmHA with a means of evaluating prior decisions and to serve as a basis for planning future operations and determining sound conditions. Each borrower shall prepare and submit annual financial statements to FmHA either monthly, quarterly, or annually. Separate reports will be prepared and submitted for each project operated by the same borrower. Forms necessary in making the required reports may be requested from FmHA. The various review processes described in this paragraph are
illustrated at paragraph XIII C 3 of this exhibit.

   a Annual budget and utility allowance.
   (1) Objective. It is the objective of FmHA that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

   (2) Documents. (i) The annual project budget will be prepared on Form FmHA 1930-7 by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the "actual" column will reflect at least 9 months of actual fiscal year activity and no more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience. (ii) The housing allowance for utilities and other public services will be prepared on exhibit A-6 of subpart E of part 1944 of this chapter. The exhibit A-6 will be prepared by the borrower or its agent following the instructions attached to exhibit A-6 of subpart E of part 1944 of this chapter.

   (3) Supporting data. (A) Any data, justification or other documentation required by the Servicing Official for preparation of Form FmHA 1930-7 and exhibit A-6 of subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be attached to the respective document when submitted to the Servicing Office.

   (4) Due date. The borrower may submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated at C 2 a (1) of this paragraph. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

   (5) FmHA review. Form FmHA 1930-7 and exhibit A-6 of subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

   b Rental or occupancy charge budget and/or utility allowance change.

   (1) Objective. It is the objective of FmHA that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

   (2) Documents. When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA 1930-7 and exhibit A-6 of subpart E of part 1944 of this chapter and any supporting attachments following the instructions for either document.

   (3) Standards and timing.

   (i) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in the "Borrower Handbook" or any FmHA office).

   (ii) To meet the project effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead to allow FmHA review and allow for a 30 day notice to tenants or members of an impending change. The "actual" column of Form FmHA 1930-7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days. The same supporting data standards of paragraphs XIII C 2 a (3) of this exhibit will apply.

   (iii) Should the borrower need to request a rental or occupancy charge and/or utility allowance change, including any described at paragraph XIII C 2 b (3) of this exhibit (e.g., mid-fiscal year), the Form FmHA 1930-7 shall reflect the project's financial needs for the most recent 12 months of operation and the "actual" column shall reflect the most recent 12 months of actual data. The previous fiscal year's audit report, or Form FmHA 1930-8, as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

   (4) FmHA review. Exhibit C of this subpart shall govern FmHA review of the borrower's request for rental or occupancy charge and/or utility allowance change.

   c Quarterly report.

   (1) Objective. The objective of FmHA is for quarterly reports to provide a monitoring means for borrowers and FmHA to mutually check a borrower's progress in achieving program objectives and when applicable, meeting servicing goals. The Servicing Official may require monthly reports rather than quarterly reports when warranted in unusual situations.

   (2) Document. Form FmHA 1930-7 will be used by borrowers to prepare the quarterly report.

   (3) Standards.

   (i) For quarterly reports, Form FmHA 1930-7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

   (A) Start-up of initial occupancy after completion of new construction or substantial rehabilitation.

   (B) Reamortization, transfer of an existing project loan or a 100-percent membership change.

   (C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

   (ii) Formally reports, Form FmHA 1930-7 will be completed following the instructions on the form for preparing a monthly report. The monthly report may be invoked:

   (A) When determined by the Servicing Official or a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA office).

   (B) When there are factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

   (4) Frequency and discontinuance of quarterly and monthly reports.

   (i) Reports shall be prepared and submitted at least through the first year of operation for any situation described in paragraph XIII C 2 c (3) of this exhibit and each quarter or month thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Servicing Official will evaluate the following in reaching a decision to discontinue:

   (A) The project has been operated and maintained in a satisfactory manner during the most recent 6 months of the required reporting period.

   (B) A satisfactory accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

   (C) Project loan payments to FmHA are on schedule.

   (D) The project reserve account is ahead or in sufficient time to meet the objective stated at XI C 2 (d) of this chapter and perhaps reduce the need for funding as set forth in an approved servicing plan or budget.

   (E) The annual review has been completed by the Servicing Office and the annual audit, or verification of review when appropriate, has been found acceptable.

   (F) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. If a determination is made to discontinue, a letter shall be sent to the borrower or its agent with a copy sent to the State Director.

   (ii) The reporting and audit requirements of paragraphs XIII C 2 c (4) (i) (B) and (E) do not apply when the most recent 6 continuous months of successful operation occur before the first audit and/or annual review is due.

   (5) Due date. Quarterly (or monthly) reports shall be due in the FmHA Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

   (6) FmHA review.

   (i) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget Subtotal item, or vacancies and accounts receivable and/or payable are increasing, the Servicing Official will initiate verbal and/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.

   (ii) The Servicing Official will complete the FmHA review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following close of the reporting period.

   (iii) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period; at that time, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.
4 Annual audit reports and verifications of review.

(i) Documents and general standards. All annual audit reports will be in the format as prepared by a CPA or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1980. A Peer Review Audit of the LPA, provided the LPA was peer reviewed on or before December 31, 1980, and any subsequent revisions (this publication is commonly referred to as the “Yellow Book” or “Government Accounting Office Standards”). In addition, audits are to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FHA Audit Program as specified in separate sections of this subpart.

B An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower’s operation consists of multiple projects where each is 24 or fewer units (with subsidy reports prepared for each project). NOTE: The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

C The project audit report should cover the borrower entity and the expense for the preparation of the audit report and include the auditor’s preparation of any IRS required borrower entity reports (i.e., Schedule K-1 (IRS Form 1065), “Partner’s Share of Income, Credits, Deductions, etc.”).

D The CPA or LPA auditor who prepares the audit report must be an individual or organization that is associated with the borrower in any manner, other than the performance of the audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph V B of this exhibit). For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

E The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

F The State Director may make an exception to the CPA or LPA audit requirement for not more than one successive year in a spending period; the borrower submits a written request; the FHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $5.00 in any year; the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year’s project operations.

(ii) Verification of review. Form FHA 1930–8 will be prepared by a competent person qualified by education and/or experience who has an identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director, or employee of the borrower. (A) Form FHA 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FHA 1930–7 for projects with 24 or fewer units unless the requirements of paragraph XIII C 2.d (1)(i)(A) of this exhibit are voided by the State Director or Servicing Official. (B) The State Director or Servicing Official may authorize the initial verification of review to cover a period up to 18 months for new projects whose first operating year was less than 6 months.

(iii) Project operating budget actuals. An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FHA 1930–7. The report will reflect the actual income and expenses for the purpose of determining the repayment terms for the project. The report will include any noncompliance with the annual audit report or Form FHA 1930–8, if appropriate.

(iv) Form FHA 1930–10, “Annual Multiple Family Housing Project Review.” When the annual audit report or verification of review is received, Parts U C and D of Form FHA 1930–10 may be extended to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FHA 1930–10 will be completed later as described in § 1930.123(e)(2)(iv)(A) and (i) of this subpart.

(v) Fraud, abuse, and illegal acts. If the review verifier becomes aware of any indication of fraud, abuse, or illegal acts in an audit report, prompt written notice shall be given to the appropriate Servicing Official.

(2) Specific standards.

(i) State and local governments and Indian tribes. These organizations are to be audited in accordance with this subpart, 7 CFR parts 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for “Audits of State and Local Governmental Units.” The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower but not rental subsidies.

(A) Cognizant agency. See paragraph XIII C 2.d (2)(i) (A) of this exhibit.

(B) Audit standards. (1) Nonprofit institutions that receive $100,000 or more in Federal fiscal assistance shall have an audit made in accordance with OMB Circular A–128.

(ii) Nonprofit institutions. These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Office and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, or rental subsidies.

(A) Cognizant agency. See paragraph XIII C 2.d (2)(i) (A) of this exhibit.

(B) Audit standards. (1) Nonprofit institutions that receive $100,000 or more in Federal financial assistance shall have an audit made in accordance with the provisions of OMB Circular A–133. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution performed in accordance with the provisions of the OMB Circular A–133 or having an audit made of the one program in
accordance with paragraph XIII C 2 d (2) (iii) of this exhibit. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution will be required to conduct audits for those programs in accordance with paragraph XIII C 2 d (2) (iii) of this exhibit.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-133 or in accordance with the FmHA Audit Program. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be performed in accordance with paragraph XIII C 2 d (3) (iii) of this exhibit.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal financial assistance are exempt from Federal audit standards, but records must be available for review by appropriate officials of FmHA.

(C) Fraud, waste, and abuse. Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph XIII C 2 d (1) (v) of this exhibit.

(iii) FmHA Audit Program. For-profit organizations and other entities referred to this paragraph by paragraphs XIII C 2 d (2) (i) and/or (ii) of this exhibit, audits will be performed under the guidance of the audit guide entitled “U.S. Department of Agriculture, Farmers Home Administration-Audit Program” (available in any FmHA office).

(3) Due date. (1) Annual audit reports and verifications of review, as appropriate, and Form FmHA 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(ii) If the audit or verification of review and Form FmHA 1930–7 with 12 months of project operation actuals cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Official may authorize up to a 30-day extension of the due date.

(iii) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60-day period.

(iv) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIC.

(4) FmHA review. An audit report or verification of review and Form FmHA 1930–7 with 12 months of project operation actuals will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

Miscellaneous management reports. These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

Documents and formats. (1) Minutes of annual meetings. Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(2) Project worksheets.

(i) Submit Form FmHA 1944–29, with the payment to the Servicing Office. This form must be submitted each month to report overage, occupancy surcharge, and/or request RA, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of the month preceding the payment due date. The form will be retained indefinitely.

(ii) For LH projects, Form FmHA 1944–29 will be submitted monthly for the LH tenants who receive RA. Otherwise, the Form FmHA 1944–29 covering all LH tenants will be submitted to FmHA at least once annually with the annual reports. The form will be retained indefinitely.

(3) Illustration of MFH budget planning, annual review, and annual audit review cycles.

<table>
<thead>
<tr>
<th>Items on hand during fiscal year</th>
<th>Last quarter of fiscal year</th>
<th>First quarter of next FY</th>
<th>Second quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management Reports/items in borrower casefile</td>
<td>Budget Planning Process Form FmHA 1930–7 &amp; util. allowance Review change or no change of rents or occupancy charges and/or utility allowance.</td>
<td>Annual audit preparation by auditor or Form FmHA 1930–8 by verifier.</td>
<td>FmHA starts annual review process.</td>
</tr>
<tr>
<td>Previous fiscal year annual audit or Form FmHA 1930–8.</td>
<td></td>
<td></td>
<td>Form FmHA 1930–7 showing 12 months of project operating actuals submitted by borrower.</td>
</tr>
<tr>
<td>Exhibit A-1</td>
<td></td>
<td></td>
<td>FmHA completes annual review process.</td>
</tr>
<tr>
<td>Latest supervisory visit/inspection</td>
<td></td>
<td></td>
<td>FmHA may prefill Form FmHA 1930–10.</td>
</tr>
<tr>
<td>Energy audit &amp; implementation plan</td>
<td></td>
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<td>Compliance review</td>
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<td>Management plan</td>
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<td>Management agreement</td>
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</tbody>
</table>
Items on hand during fiscal year | Last quarter of fiscal year | First quarter of next fiscal year | Second quarter
--- | --- | ---
—Identity of Interest Disclosure Certification Memorandum. | FmHA completes Form FmHA 1930-10. | Take immediate action on significant items found in the Audit Review.

Other—as applicable

### D Financial and management analysis.
Financial and management analysis provides information on the status of the project's operation. Regular analysis by the borrower and/or FmHA can help identify strengths, weaknesses, and reasonableness of income and expenses so that appropriate corrective actions can be taken. Some methods of analysis FmHA encourages are:

1. **Budget analysis**: Using quarterly (or monthly if deemed necessary) and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2. **Ratio analysis**: Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratios are:

- **Vacancy rate**
  \[
  \text{Vacancy rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}} \times \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}
  \]

- **Resident turnover ratio**
  \[
  \text{Resident turnover ratio} = \frac{\text{Total expense (By category)}}{\text{Total no. of units}}
  \]

- **Expense ratio**
  \[
  \text{Expense ratio} = \frac{\text{Total expense}}{\text{Total income}}
  \]

- **O&M cost per unit**
  \[
  \text{O&M cost per unit} = \frac{\text{Total expense (By category)}}{\text{Total no. of units}}
  \]

- **Working capital ratio**
  \[
  \text{Working capital ratio} = \frac{\text{Current assets}}{\text{Current liabilities}}
  \]

- **Collection ratio**
  \[
  \text{Collection ratio} = \frac{\text{Total collections}}{\text{Total occupancy roll}}
  \]

- **Percent of revenue from Government**
  \[
  \text{Percent of revenue from Government} = \frac{\text{FmHA Rental Assistance or HUD Section 8 payments}}{\text{Total market rent}}
  \]

- **Management expense per unit**
  \[
  \text{Management expense per unit} = \frac{\text{Management fee and costs}}{\text{Total no. of units}}
  \]

### XIV Termination and Eviction:
Borrowers and project managers should actively develop ways and means to avoid forced termination of leases or occupancy agreements and the eviction of tenants or members by considering the following:

**A Entitlement to continued occupancy.**

- **General.** The borrower or project manager may terminate or refuse to renew any occupancy only for material noncompliance with the lease or occupancy agreement or other good cause such as:
  a. Noneligibility for tenancy.
  b. Action or conduct of the tenant or member which disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right of any tenant or member of the quiet enjoyment of the premises and related project facilities, or that results in substantial physical damage causing an adverse financial effect on the project, or the property of others. Except when such threat can be removed by applying a reasonable accommodation.
  c. Expiration of the lease or occupancy agreement period is not sufficient grounds for eviction of a tenant or member.

**2 Material noncompliance.** Material noncompliance with the lease or occupancy agreement includes:

- a. One or more substantial violations of the lease or occupancy agreement or nonpayment or repeated late payment of rent or occupancy charge or any other financial obligation due under the lease or occupancy agreement (including any portion thereof) beyond any grace period constitutes a substantial violation; or
- b. Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance that:
  (1) is conducted in or on the premises by the tenant or someone under the tenant's control:
  (2) is allowed to happen by a household member or guest because the tenant has not taken reasonable steps to prevent or control such illegal activity; or because the tenant has not taken steps to remove the household member or guest who is conducting the illegal activity.
(3) It is not the intent that this provision of material lease violation apply to innocent members of the tenant’s household who are not engaged in the activity, nor are they responsible for control of another household member or guest. It is the intent that such innocent persons can remain in the dwelling unit if an otherwise eligible household remains eligible to be served.

3 Other good cause.

a. Repeated minor violations of the lease or occupancy agreement which disrupt the livability and harmony of the project by adversely affecting the health, safety or welfare of any person, or the right of any tenant or member to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

b. The borrower or project manager must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.

c. Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant or member prior notice that the conduct will constitute a basis for termination of occupancy.

a. Rent overburden

(1) Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraphs IV A 2 c (1), (2), or (3) of this exhibit toward rent, including utilities, is considered to be experiencing rent overburden that may jeopardize a tenant’s ability to maintain occupancy.

b. Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental or private rental subsidies including FmHA RA and/or interest credit; or to inform tenants where they may apply for Section 8 housing assistance to minimize termination of tenancy.

c. With reference to FmHA RA or interest credit, no further action by the borrower is necessary if the borrower has already requested RA in conjunction with a previous rental or occupancy charge charge request.

d. For purposes of this provision, the term “rent overburden” also refers to occupancy charges paid by cooperative members.

5 Tenant or member benefits during termination through eviction.

a. Continued occupancy. Tenant or member households may continue occupancy through the specified termination date, or if judicial action is initiated to evict, to the specified date in a court order for eviction. In addition, this policy applies when a tenant or member has filed a discrimination complaint and a final decision on the complaint’s resolution is awaited from the Department’s Office of Advocacy and Enterprise or the Department of Housing and Urban Development.

b. Rental subsidy. During termination, RA payments and/or interest credit and occupancy surcharge will be administered following this outline according to type of situation:

(1) Failure to recertify.

(i) If failure to recertify is the fault of the tenant or member:

(A) The borrower will charge the tenant or member note rent or occupancy charge, and occupancy surcharge during the period of occupancy with an expired certification and will remit occupancy surcharge to the Servicing Office.

(B) If the tenant or member does not pay rent or occupancy charge and occupancy surcharge during this period, the project will not be required to pay overage or to pay the occupancy surcharge.

(ii) The Servicing Official will send a copy of the termination notice to the Servicing Official, together with a copy of the “90 day” and “30 day” letters sent to the tenant.

(iii) The Servicing Official will suspend payment of any RA until the recertification process is completed; otherwise until the tenant or member moves out or is evicted by court order, whichever occurs first.

(iv) The Servicing Official will annotate the next processed project master list with an “E” for expiration in column 5 of Part II of Form FmHA 1944-29 for the appropriate tenant(s) or member(s).

(v) If failure to recertify is the fault of the borrower or management, through no fault of the tenant or member:

(A) The Servicing Official will advise the borrower or management to rescind the notice of termination.

(B) Overage will be paid from project funds or by the management agent, depending on the provisions of the management plan and management agreement.

(C) Until a new tenant or member certification is effective, the tenant shall continue to pay the rent or occupancy charge established by the expired tenant certification, as well as the occupancy surcharge.

(d) If the termination process is nullified, either by completing the recertification process, by judicial action or the resolution of a discrimination complaint, the Servicing Official will restore RA and request RA payment retroactive to the date it was withheld, based on the newly verified tenant certification.

(2) Lease violation.

(i) The borrower will send a copy of the termination notice to the Servicing Official.

(ii) The Servicing Official will annotate the next processed project master list with a “T” for termination in column 5 of Part II of Form FmHA 1944-29 for the appropriate tenant(s) or member(s).

(iii) The Servicing Official will continue to authorize RA for the tenant or member.

(iv) The borrower will continue to charge and collect the rental or occupancy charge rate established by the tenant’s or member’s current tenant certification, as well as the occupancy surcharge.

(v) If the termination process is nullified, either by resolution of the lease violation or by court action, normal tenant/member status resumes. If the termination ends with tenant/member member move-out or court ordered eviction, whichever occurs first, the RA will be assigned to the next tenant or member that is RA eligible at the time of the move-out or eviction.

(vi) If the tenant certification expires while a notice of termination for lease violation or good cause is in effect (i.e., litigation is pending):

(A) The borrower will continue to assess the rent or occupancy charge and occupancy surcharge to the tenant/member at the rates established by the expired tenant certification, through such time the court has rendered a decision, or the tenant/member has moved out, whichever occurs first. (Note: the tenant/member must pay the rent or occupancy charge and occupancy surcharge into an escrow account pending the outcome of litigation.)

(B) The project will not be required to pay overage or the occupancy surcharge.

(C) Should the court deny the termination and order reinstatement of occupancy, the borrower will promptly complete the recertification process as of the current time to become effective as soon as possible, collect the due rent or occupancy charge and reimbursement for occupancy surcharge, and request RA retroactive to the date it was suspended.

B Notice of lease or occupancy agreement violation.

A notice of lease or occupancy agreement violation is prepared and issued by the borrower or authorized representative. Any such notice must be based on material violation of the lease or occupancy agreement terms or for other documented good cause as determined by the borrower or the project manager.

1 The notice of lease or occupancy agreement violation will be handled according to the terms of the lease or occupancy agreement. Tenants or members will be given prior notice of lease or occupancy agreement violation according to State or local law. The notice must:

a. Refer to relevant provisions in the lease or occupancy agreement.

b. State the violations with enough information describing the nature and frequency of the problem to enable the tenant or member to understand and correct the problem. In those cases where the lease or occupancy agreement violation is tied to the tenant’s failure to pay rent or the member’s failure to pay occupancy charge, a notice stating the dollar amount of the balance due on the rent or occupancy charge account and the date of such computation shall satisfy this requirement.

c. State that the tenant or member will be expected to correct the lease or occupancy agreement violation by a specified date.

d. State that the tenant or member may informally meet with the borrower or borrower representative to attempt to resolve the stated violation before the date of corrective action specified in the notice.

(e) Advise the tenant or member that if he or she has not corrected the stated violation by the date specified, the borrower may seek to terminate the lease or occupancy agreement by bringing forth a judicial action, at which time the tenant or member may present a defense.

2 The notice shall be accomplished by:

(a) Sending a letter by first class mail to the tenant or member at his or her address at the project; or by serving a copy of the notice on any adult person answering the door at the dwelling unit, or if no adult responds, by placing the notice under or through the door,
Notices of Eviction

E. Notice of eviction. A notice of eviction is prepared and issued by a court of law, not the borrower or its authorized representative. Eviction will be carried out as specified by the terms of the eviction notice and court order.

XV. Security Servicing: Security servicing, as referenced in this exhibit, concerns the borrower’s general responsibilities in relation to the loan agreement or resolution, note, mortgage, and other loan documents. It does not deal with security items between the borrower and the Servicing Official. FmHA will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A. Fidelity coverage. It is the borrower’s overall responsibility as described in the management plan to see that fidelity coverage is in place on any personnel entrusted with the receipt, custody, and disbursement of any project money, securities, or readily saleable property other than money or securities. The borrower should have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or financing funds are made available to the borrower. Coverage must be from a company licensed to provide coverage in the state where the project is located. Fidelity coverage obtained should utilize standard industry forms copyrighted by an organization such as the American Association of Insurance Services, or AAIS; Insurance Services Office, Inc., or ISO; or the Surety Association of America, or SSA. Use of the following guidelines will meet the administrative intent of FmHA:

1. Fidelity coverage policies must declare in the insuring agreement(s) that the insurance company will provide protection to the insured against the loss of project money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by an “employee,” whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage. The FmHA minimally requires any insuring policy to include an insuring agreement that covers employee dishonesty.

2. The types of coverage policies acceptable to FmHA are:
   a. Blanket crime policy. This type of policy usually covers the broader fidelity coverage and economy of cost options. Premiums are subject to discount based on the level of internal control exercised by the insured organization. This type of policy can provide the following insuring agreements:
      (1) Employment dishonesty—Form A, Blanket. (Required)
      (2) Loss inside the premises—Money and Securities Broad Form. (Recommended)
      (3) Loss outside the premises—Money and Securities Broad Form. (Recommended)
      (4) Deposit or forgery or alteration. (Recommended)
   b. Fidelity bond. Fidelity bonds limit coverage only to employee dishonesty. Fidelity bonds are generally used when one or two employees are covered. Premiums are based on established rate charges that are usually greater than for blanket crime policies.

1. Schedule and position bonds. A schedule bond covers a named employee and is acquired with each change of employment. A position bond covers a named position of responsibility and permits continuous coverage even though the person holding that position changes. Of the two, a position bond is preferred by FmHA.

2. Blanket bonds. Blanket bonds cover all employees in either of the two categories.

A commercial blanket bond (Form A). This bond limits coverage to each loss, irrespective of how many persons are involved. This form of bond is available on a “standard” basis.

B. Individual position bond (Form B). This bond limits coverage to each employee, hence it can provide greater protection if there is collusion of two or more persons. This is a nonstandard form of bond available from some insurance companies who use their own individually underwritten forms.

3. The FmHA requires only an endorsement listing all FmHA financed properties and their locations covered under the policy or bond. The policy or bond may also include properties or operations other than FmHA financed properties on separate endorsement listings.

4. Individual or organizational borrowers will have fidelity coverage when they have employees with access to project assets as cited in paragraph XV A 1 of this exhibit; otherwise, a management company with exclusive access to the borrower’s assets will have the fidelity coverage.

5. Borrowers who use a management agent with exclusive access to project assets as cited above will require the Agent to have fidelity coverage on all principals and employees with access to the project assets. Should active management revert to the borrower, the borrower will obtain fidelity coverage as specified in XV A 1 of this paragraph as a first course of business.

6. Fidelity coverage is not required when a loan is made to an individual (a natural person) or a General Partnership and that person or general partner will be responsible for the project’s financial activities. An individual person cannot bond or obtain coverage against its own actions.

7. In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

8. A limited partnership will not be required to have fidelity coverage on its general partners UNLESS one or more of its general partners perform financial acts coming within the scope of the usual duties of an “employee.”

9. The minimum amount of fidelity coverage will be the amount calculated by multiplying an exposure index by a coverage factor. When the calculated amount is less than $10,000, minimum coverage of $10,000 must be provided. This calculation is made as follows:
   a. Determine exposure index: Exposure Index = 25 percent of the SUM of annual cash receipts (rents, cash subsidy, Interest, etc.) and cash (cash carryover, reserves, CD’s, tax...
The objective of a management plan is to describe the property owner’s expectations and standards for performance, timing, and results of management of all aspects of the various components of project operation, maintenance, and compliance with applicable laws and regulations. This exhibit is intended to guide the owner in identifying the various components of property management in an organized manner. The listing of discussion items under each component is intended as further guidance. Items should be added if needed; likewise, those items listed and not applicable to a given property situation need not be addressed.

FmHA requires management of FmHA financed MFH projects to be in compliance with applicable Federal, State, and local laws and this regulation. Exhibit B–4 of this subpart will be used by a prospective management agent to provide a resume of management background and/or experience.

Exhibit B–5 of this subpart will be used by an owner who proposes to provide direct project management. In rural cooperative housing (RCH), a cooperative’s board of directors will manage the business of the cooperative with the assistance of the FmHA’s OMB. If the board is unable, in the adviser’s opinion, to manage the cooperative after an adequate period of training, then FmHA will make the determination of whether the cooperative will hire professional management.

FmHA will review the management plan to evaluate the borrower’s standards for project management. The management plan and any subsequent revisions must be signed by the borrower, and then approved and signed by the authorized FmHA official. No loan will be closed or construction started, or loan transfer completed, without a properly approved and signed management plan. Management plans should be reviewed annually and updated at least triannually by the borrower. Any updated or modified management plan will need to be reviewed and approved by the Servicing Official at the time of annual review. When only a few changes are needed, use of an addendum to the plan is acceptable to FmHA.

1. Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings included as security for the loan or grant (see Guide Letter 1930–7). The amount of coverage will be not less than the “Total Reproduction Cost New of Improvements,” on page 5 of Form FmHA 426–2, “Appraisal Report for Multi-Unit Housing.” The following additional provisions will apply:
   a. An initial insurance policy with evidence of first year premium will be delivered to the FmHA Servicing Official at the time of loan closing or transfer of loan, providing at least 1 year of coverage.
   b. Form FmHA 426–2, “Property Insurance Mortgage Clause,” or the provisions thereof printed in the policy or in a blanket letter from an insurance company, must be part of the policy, namely to provide FmHA, as mortgagee, with at least 10 days advance notice of cancellation.
   c. Evidence of paid premium in subsequent years will not be required.
   d. Any change in insurance provider or level of coverage or term, will be provided to the Servicing Official by use of Part VII “Notice of Change to Borrower/Project Status,” of Form FmHA 1930–7.
2. Pro forma Worker’s Compensation Insurance on all its employees. Worker’s Compensation Insurance for employees of a management agent shall be paid out of the agent’s management fee. When a project site employee is covered under the “umbrella” of the agent’s insurance, the portion of premium attributable to a project site employee may be a project expense.
3. Adequate liability insurance.
4. Flood insurance when the project is located in a designated flood hazard area.
5. A blanket letter from an insurance company may be accepted from a borrower when blanket coverage is more cost effective for each FmHA financed project on a prorata basis, and an endorsement is attached to the policy listing FmHA financed projects, locations, and coverage limits. For insurance from any other properties covered by the policy.
6. Real estate and personal property taxes. All borrowers will be required to pay their taxes before they become delinquent and provide FmHA with proof of payment (see Guide Letter 1930–7). Remind borrowers to pay taxes. An exception to the above may be made if the borrower has formally contested the amount of the property assessment and had escrowed the amount of taxes in question in a manner acceptable to the Servicing Official.

**Coverage chart:**

<table>
<thead>
<tr>
<th>Exposure Index</th>
<th>Coverage factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000 or less</td>
<td>0.30</td>
</tr>
<tr>
<td>$100,000 to $200,000</td>
<td>0.28</td>
</tr>
<tr>
<td>$200,000 to $300,000</td>
<td>0.26</td>
</tr>
<tr>
<td>$300,000 to $400,000</td>
<td>0.24</td>
</tr>
<tr>
<td>$400,000 to $500,000</td>
<td>0.22</td>
</tr>
<tr>
<td>$500,000 to $600,000</td>
<td>0.20</td>
</tr>
<tr>
<td>$600,000 to $700,000</td>
<td>0.18</td>
</tr>
<tr>
<td>$700,000 to $800,000</td>
<td>0.16</td>
</tr>
<tr>
<td>$800,000 to $900,000</td>
<td>0.14</td>
</tr>
<tr>
<td>$900,000 to $1,000,000</td>
<td>0.12</td>
</tr>
<tr>
<td>$1,000,000 or more</td>
<td>0.10</td>
</tr>
</tbody>
</table>

Example: $245,000 exposure index X (rounded) = $64,000

$$\text{Deductible level} = \frac{\text{Exposure Index Coverage factor}}{\text{Index X coverage factor}}$$

<table>
<thead>
<tr>
<th>Exposure Index</th>
<th>Coverage factor</th>
<th>Déductible level</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000</td>
<td>0.08</td>
<td>$1,000</td>
</tr>
<tr>
<td>In the area of $100,000</td>
<td>0.08</td>
<td>2,500</td>
</tr>
<tr>
<td>In the area of $250,000</td>
<td>0.08</td>
<td>5,000</td>
</tr>
<tr>
<td>In the area of $500,000</td>
<td>0.08</td>
<td>10,000</td>
</tr>
<tr>
<td>In the area of $1,000,000</td>
<td>0.08</td>
<td>15,000</td>
</tr>
</tbody>
</table>
A management plan will reflect understanding of FmHA program requirements for the project and address each of the following areas:

1. The role and responsibility of the owner and the relationship and delegations of authority to the management agent. A management agreement must be provided where a management agent is to be used. If there is no management agent, the management plan should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

a. Describe and fully justify any identity of interest as described in paragraph V B of Exhibit B of this subpart.

b. Identify the supervisory relationships, and to whom the incumbent of the position responsible for the day-to-day operation of the project is accountable.

c. Describe the conditions when the management agent must consult the owner before taking any action.

d. Identify the person or position in the owner's organization that is the key contact for the management agency. Describe the type of decisions to be made by this contact person.

e. Describe the fundamental responsibilities and duties of the owner and the managing agent. Identify any area of overlap and describe how the overlap will be handled.

f. Describe any pro rate divisions of singularly incurred operating expense that is common to the management agent and the owner (project) (i.e., fidelity coverage that may be divided between both).

2. Personnel policy and staffing arrangements.

a. Describe hiring practices of management and their conformance with equal employment opportunity requirements.

b. Include training plan for the project.

c. Describe the lines of authority, responsibility, and accountability (internal controls) within the management entity.

d. Describe the standards and plans for training and familiarizing employees with their job related responsibilities and applicable FmHA program requirements. Describe how such training will generally be achieved.

3. Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting HUD Form 935.2, “Affirmative Fair Housing Marketing Plan,” requirements.

a. Describe how affirmative marketing practices will be used. Describe the outreach and marketing efforts that will be used to reach those low-income and minority persons who are least likely to apply for such housing without special outreach efforts.

b. Describe the methods that will be used to achieve and maintain the highest possible level of occupancy that will be used, indicate any additional compensation or incentives that may be allowed management agents for early initial rent-up. (If this area is not covered in the management plan, it will usually not be allowed by FmHA at a later date.

c. Describe how the units will be advertised. Indicate minimum levels planned regardless of occupancy levels.

d. Describe the structure of the communication system, auxiliary aids, or other assistance that will be used to ensure effective communication with applicants, tenants or members, and members of the public that have sight or hearing impairments.

e. Describe the kinds of reasonable accommodation the project can readily provide such as changing water faucets, kitchen equipment, door knobs, assigning handicap parking spaces, etc.

f. Describe the process management will follow in reviewing and determining whether structural modification of an apartment unit is practical and feasible to reasonably accommodate a tenant or household member who has a handicap or disability.

Note: The process management will follow in reviewing and determining whether structural modification of an apartment unit is practical and feasible to reasonably accommodate a tenant or household member who has a handicap or disability. Indicate whether the FmHA sample waiting list (Exhibit B-14 of this subpart) or some other waiting list will be used. If another waiting list is used, indicate how its use will otherwise comply with FmHA guidelines.

h. Attach copies of sample forms that will be used to record unit condition, and indicate who will receive copies of the inspection forms.

i. Describe any orientation services to be provided tenants or members to acquaint them with the project and care of the units. Indicate what printed project information will be given to applicants.

j. Identify the person or staff position responsible for determining tenant or member eligibility and their location on the waiting list.

k. In projects receiving tax credits, describe how special waiting lists will be established and when eligible tenants with incomes higher than tax credit limits will be considered for occupancy.

4. Procedures for determining eligibility and for certifying and recertifying incomes.

a. Describe how application and other records relevant to this function will be kept. If application fees are used, describe them.

b. Describe the level of knowledge, skill, and ability that management official(s) will be expected to have in assuming rental related duties such as application processing, eligibility determination, selection, unit assignment, certification, recertification, rent or occupancy charge and occupancy surcharge collection policies and procedures.

5. Leasing and occupancy policies.

a. Describe the occupancy standards for the project. (This could be shown as an annex to the management plan.)

b. Describe the project admissions and leasing/occupancy policies and procedures, and criteria for selecting tenants/members for occupancy. (This could be shown as an annex to the management plan.)

c. Describe the level of knowledge, skill, and ability that management official(s) will be expected to possess and apply regarding project lease provisions and prohibitions, occupancy standards, and admissions policies.

d. Describe special procedures that will be used where the market area includes non-English speaking or reading persons to assure that such persons will understand leases or occupancy agreements and established rules.

6. Rent and occupancy charge and occupancy surcharge collection policies and procedures.

a. Describe the project rent/occupancy charge and occupancy surcharge collection policy and procedure, covering such matters as when the collection point is, which staff position handles the collection, provisions for collection after normal office hours, recording, and safeguarding of collections.

b. Describe the project security deposit/membership fee policy and procedure covering matters similar to the preceding item. Include discussion on handling of any interest earned on such deposits.

7. Procedures for requesting and implementing a rent or occupancy charge change.

a. Describe the process to be followed for preparation and request of a change of rent/occupancy charges and/or utility allowances, and to notify tenants of such change, to meet FmHA requirements.

b. Identify which staff position or person will process change requests.

c. Describe when such change requests will normally be made in terms of economic need and timing within a fiscal year of operation.

8. Plans and procedures for carrying out an effective maintenance, repair, and replacement program.

a. Describe the project objective and general plan for preventive maintenance.

b. Describe where the project's as-built plans and specifications will be located and identify the staff position responsible for updating it as modifications occur.

c. Describe the general maintenance procedures and schedules or cycles to: (this list could be attached as an addendum)

   (1) Check and service appliances and mechanical equipment.

   (2) Perform safety checks of smoke/fire alarms, fire extinguishers, outside lighting, and ice removal, etc.

   (3) Inspect and perform maintenance and redecoration incident to tenant/member move-out and move-in.

   (4) Perform major interior and exterior painting and redecorating.

   (5) Perform major repairs and grounds maintenance.

   (6) Remove garbage and trash.

   (7) Perform common areas cleanup (parking lot, entryways, hallways, community room, etc.)

   d. Describe the project policy and procedure for tenants/members to prepare and submit maintenance requests.

   e. Describe the general timing for handling purchase orders and payments.

   f. Describe the project policy for budgeting for and/or requesting use of reserve funds for funding major maintenance or replacement items.
g In migrant or seasonally occupied labor housing (LiH), describe the above items in terms of season opening and closing dates.

9 Plans and procedures for providing supplemental services:
   a Describe the types of supplemental services such as laundry and vending machines that will be provided to benefit occupants.
   b Explain whether this equipment will be owned and operated by the owner or a consignee (vendor).
   c Describe the safekeeping and recording practices (internal control) of any cash collections from use of the equipment.
   d Describe who will be responsible for maintaining the equipment and stocking any vending machines.

10 When a consignee will operate the equipment, describe the general terms of the consignment contract.

11 Plans for accounting, recordkeeping, and meeting FmHA reporting requirements:
   a Briefly describe the type of project accounting methods (i.e., cash or accrual) and records that will be used, how they will be maintained, and which staff position will prepare and maintain them.
   b Describe how interest earned on project reserve funds will be prorated and accounted "separately" if such funds are deposited jointly with funds of another project owned by the same borrower.
   c Describe whether the project bookkeeping chart of accounts and bank accounts is compatible with Form FmHA 1930-7, "Multiple Family Housing Project Budget," requirements, and if not, what adjustments will be made when reporting actuals on the form.
   d Identify which staff member or position will be responsible for the preparation and submission of the quarterly and annual reports required by FmHA.
   e Provide a statement or explanation that the person or firm who will perform and prepare the annual audit, or verification of review, is not associated with the project, other than to perform the audit or review.
   f Discuss the proposed tenant or member record management system including retention of records and identify which person/position will handle and maintain the records.
   g Identify where records subject to FmHA review will be kept and which person/position FmHA will contract to review the records.

12 Energy conservation measures and practices:
   a Describe the plan to inform and encourage tenants/members in use of energy conservation practices they can use in their unit to save utility expense (and thus minimize utility allowances and conserve rental assistance).
   b Describe the plan to utilize energy conservation practices in the common areas of the project (to conserve operating expense and help minimize rent/occupancy charge levels).
   c Describe the project objective in implementing energy conservation measures, if any, as they are identified in an energy audit.

13 Plans for member participation in RCH project operations:
   a Describe who will explain to the members the types of committees the cooperative will be using.
   b Describe what the cooperative will do to attract member participation on committees.
   c Describe how the board members will participate with the committee.
   d Describe what the cooperative will post, and otherwise make available to members, the Tenant Grievance and Appeals Procedure (subpart L of part 1944 of this chapter). Identify which person or staff position will be responsible for responses to and consideration of a tenant/member grievance.

14 Plan for carrying out management training programs:
   a Describe the standards of training and proficiency that management or board members will be expected to attain and maintain to perform their duties and responsibilities in carrying out project objectives, including compliance with applicable Federal, State, and local laws.
   b Describe the plan to conduct internal training and to otherwise use external training sources to maintain levels of attained proficiency.
   c For RCH, describe the actions the board will take if a board member(s) does not participate in training.
   d For RCH, describe the role the board will assume in making sure the RCH membership as a whole understands its role and functions in the cooperative.

15 Termination of leases or occupancy agreements:
   a Identify which person or staff position is responsible for knowing and administering State and local laws and FmHA's requirements regarding termination of leases or occupancy agreement and evictions.

16 Security servicing:
   a Identify which person or staff position is responsible for knowing and complying with FmHA's requirements for fidelity coverage and acquiring such coverage.
   b Identify which person or staff position is responsible for knowing and complying with FmHA's insurance coverage requirements and acquiring such coverage.

17 Management agreement. Attach a copy of the management agreement, when applicable. (If an initial loan, attachment of the proposed management agreement, when applicable.) See Exhibit B-2 of this subpart for requirements for management agreements.

18 RCH board of director/adviser relationship. Discuss the relationship of the adviser and its effect on decisions made by the board.

19 Management compensation:
   a If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid.
   b In the case of a cooperative, describe the amount of compensation to be paid to the adviser by the board.

20 On-site management:
   a Describe who (owner, site manager, caretaker, board) will perform on-site management duties and responsibilities.
   b Describe the duties and responsibilities of the on-site management staff.
   c Identify whether the site manager will live in the project in a rent-free unit or pay rent, or live off-site.
   d Describe established office hours and indicate where they will be posted.

21 Validity of the management plan. The plan must provide space at the end for the following:
   a Date, title, and signature of borrower or borrower's authorized representative.
   b Date, title, and signature of the FmHA official approving the plan.

Exhibit B-2—Requirements for Management Agreements

A completed and executed management agreement must be reviewed and approved by the Farmers Home Administration (FmHA) whenever a management agent is to be used. A management agreement must be submitted to FmHA for review as part of a project loan docket, whenever there is a change of management agents or ownership, or when a major revision of an existing agreement is necessary or required.

1 A written management agreement is required for any project when the owner retains a management agent. A management agreement is not required when the project is managed by the owner as described in paragraph V E 6 of Exhibit B of this subpart. However, a written management plan is required for all projects new and existing, except for on-farm labor housing units where rent is not required. Although the adviser to a cooperative board of directors is not the same type of agent as those who are now managing rental projects, a written agreement between the board and the adviser is required which sets forth their relationship and what the adviser is expected to do for the cooperative. Exhibits F, F-1, and G of subpart E of part 1944 of this chapter outline the functions and responsibilities of an adviser. The agreement may follow the content of Exhibit B-3 of this subpart.

2 The management agreement must address how FmHA requirements will be met. The owner may delegate to the agent any management duties which are not required to be performed by the owner. The
owner may delegate selected ownership responsibilities, such as requests for review and/or appeal of adverse decisions by third parties that affect the owner. However, the owner retains ultimate responsibility to FmHA for all aspects of management.

3 The management plan is the primary management charter, constituting a comprehensive description of the policies and procedures to be followed in managing the project. The management agreement describes how the objectives and policies in the management plan will be carried out. The agreement should be clear and concise, should not merely repeat the management plan, but indicate how the management agent will implement the plan.

4 The management agreement shall describe the management agent’s organization and staffing structure, management controls, and any management company identity of interest relationship(s) such as the borrower, vendors, and suppliers of materials, labor, and services. When such relationships exist, the management agent shall prepare and sign the forms described in paragraph B.2.a of Exhibit B of this subpart as “applicant.”

5 The management agreement sets forth the standards and expectations negotiated between the borrower and the management agent. The agreement should follow the guidelines of Exhibit B-3 of this subpart. Each management agreement should be tailored to the specific conditions and staffing arrangements of the particular project. The site, design, size of the project, and fiscal constraints; market conditions; social factors; local law; and business practices are among the elements which may require variations to Exhibit B-3 of this subpart.

Exhibit B-3—Sample Management Agreement for Farmers Home Administration (FmHA) Financed Multiple Family Housing (MFH) Projects

This Agreement is made this __ day of ____, 19__, between __________________ (the “Owner”), and __________________ (the “Agent”) under the terms and conditions set forth herein.

1 General

A Appointment and acceptance. The Owner appoints the Agent as exclusive agent for the management of the property described in paragraph B.1 of this agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this agreement.

B Project description. The property to be managed by the Agent under this agreement (the “Project”) is a housing development consisting of the land, buildings, and other improvements which make up Project No. ___. The Project is further described as follows:

County: ____________________
State: ____________________
No. of dwelling units: ________
Type of units: (Family, Elderly, Mixed Household) __________

C Definitions. As used in this agreement:

1 “FmHA” means the Farmers Home Administration, including any successor agencies.

2 “Principal Parties” means the Owner and the Agent.

3 “Agent,” as used throughout this agreement, means the person or business entity, including employees at the Agent’s office and project site, engaged in the task of providing management of a FmHA financed MFH project in contractual arrangement with the Owner.

D Identity of interest. The Agent discloses to the Owner and FmHA any and all identities of interest that exist or will exist between the Agent and the Owner, suppliers of material and/or services, or vendors in any combination of relationship. A certification by memorandum of such disclosure is attached and made part of this agreement.

E FmHA requirements. In performing its duties under this management agreement, the Agent will comply with all relevant requirements of FmHA. FmHA requirements include preparation of forms and reports in the format of prescribed FmHA forms and exhibits.

F Basic Information. As soon as possible, the Owner will furnish the Agent with a complete set of “as built” plans and specifications and copies of all guarantees and warranties relevant to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agency will become thoroughly familiar with the character, location, construction, layout, plan, and operation of the project, and especially with the physical plant.

G Compliance with governmental orders. The Agent will take such action as it may deem necessary to comply promptly with any and all governmental orders or other requirements affecting the project, whether imposed by Federal, State or local authorities, subject, however, to the limitation stated in paragraph IV D of this exhibit with respect to litigation and repairs. Nevertheless, the Agent shall take no action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within 72 hours from the time of their receipt.

H Non-discrimination. In the performance of its obligations under this agreement, the Agent will comply with the provisions of any Federal, State or local Fair Housing law prohibiting discrimination in housing on the grounds of race, color, religion, sex, familial status, national origin, or handicap. Other nondiscrimination provisions include title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as they relate to the FmHA multi-housing program.

I Fidelity. The Agent agrees to furnish, at its own expense, fidelity coverage to the Owner, with copies to the FmHA Servicing Office on the employees of the Agent who are entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily salable property other than money or securities. The minimum coverage of $ ______ will be provided according to the coverage chart found in paragraph XV of Exhibit B of this subpart. The Agent will obtain coverage from a company licensed to provide insurance in the project locality. Coverage will be in force to coincide with the assumption of fiscal responsibility by the Agent until that responsibility is relinquished. Endorsement listing FmHA projects separate from other projects/operations will be obtained and made part of the coverage policy or bond. The other terms and conditions of the coverage, and the severity thereon, will be subject to the requirements and approval of the owner.

J Bids, discounts, rebates, etc. With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the project, and is authorized to solicit bids, quotes, or information for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

II Management plan.

A Description. Attached is a copy of the management plan for the project, which provides a comprehensive description of the policies and procedures to be followed in the management of the property.

B Relationship with management plan. The Agent shall conduct its management activities in accordance with the policies and procedures set forth in the management plan. In addition, the Agent will also carry out the tasks and responsibilities set forth in paragraph IV of this agreement.

C Division of duties and common expense. An identification of duties and supervisory relationship for project site staff and Agent’s office staff are detailed in the management plan as is the pro-rata division of singularly incurred operating expense common to the Agent and the Owner.

III Budget.

A Preparation. The Agent shall prepare an original project budget for submission to the owner and FmHA for approval. For each subsequent fiscal year the Agent shall prepare a new budget.

B Budget categories. The budget shall be prepared using the format and categories of FmHA Form 1300-2, "Multiple Family Housing Project Budget."

IV Agent’s authorizations. The Owner authorizes the Agent to:

A Operate the project according to the Owner’s management plan and in compliance with the Owner’s loan agreement (or resolution) with FmHA, and applicable FmHA regulations as guidelines.

B Operate and maintain the project within reasonable tolerances (as defined by FmHA) of the expense category subtotals in the project budget.

C Purchase all material, equipment, tools, appliances, supplies and services necessary
for proper maintenance and repair of the project as stipulated by the Owner in the management plan, project budget, and/or other form of written documentation.

D. Notwithstanding any of the foregoing provisions or any similar provisions that follow, the prior written approval of the Owner will be required for any expenditure which exceeds $_ in any one instance for litigation involving the project, or labor, materials, or otherwise in connection with the maintenance and repair of the project. This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

E. Represent the Owner in specific matter related to management of the project. (Items such as representing the Owner's interest at appeal hearings, etc. If specified here or may be indicated that such authorizations will be provided in writing as an addendum when appropriate.)

V. Agent's obligations.

A. Management input during and after FmHA processing and subsequent review. The Agent's specific tasks will be:

1. Participation in any conference with FmHA officials involving project management.

2. Preparation and submission of Form FmHA 1930-7 as a quarterly report throughout the period from initial occupancy after FmHA loan closing until such time as no longer required by FmHA. If the management is authorized to sign the reports for the owner, a copy of the signed report as submitted to FmHA will be provided to the Owner.

3. Participation in the on-site final inspection of the project, required by FmHA prior to initial occupancy.

4. Continuing review of the management plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

B. Liaison with architect and general contractor. At the direction of the Owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to:

1. Coordinate management concerns with the design and construction of the project.

2. To facilitate completion of any corrective work, and

3. To facilitate the Agent's responsibilities for arranging utilities and services pursuant to paragraph V of this agreement. The Agent will keep the Owner advised of all significant matters of this nature.

C. Marketing. The Agent will market the rental units according to the management plan, observe all requirements of the Affirmative Marketing Plan, and maintain records of the marketing activity for compliance review purposes.

D. Rentals. The Agent will offer for rent and will endeavor to rent the dwelling units in the project. The following provisions will apply:

1. The Agent will make preparations for initial rent-up, as described in the management plan.

2. The Agent will follow the tenant selection policy described in the management plan.

3. The Agent will show the premises and available units to all prospective tenants without regard to race, color, national origin, sex, religion, familial status, handicap or age; and will provide for reasonable accommodation to individuals with handicaps.

4. The Agent will take and process all applications received for rentals. If an application is rejected, the Agent will inform the applicant in writing of the reason for rejection. The rejected application, with the reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a credit bureau, the source of the report must be revealed to the applicant according to the Fair Credit Reporting Act. A current list of qualified applicants will be maintained.

5. The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The terms of all leases will comply with the relevant provisions of FmHA regulations and State and local law. Dwelling leases will be in a form approved by the Owner.

6. The Owner will furnish the Agent with rental and income report forms required by FmHA, showing rents as appropriate for dwelling units, other charges for facilities and services, and income data relevant to determinations of tenant eligibility and tenant rents. In no event will the rents and other charges be exceeded.

7. The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements.

E. Reports. The Agent will furnish information (including occupancy reports) as may be requested by the Owner, FmHA, and/or the Office of Inspector General from time to time with respect to the project's financial, physical, or operational condition. The Agent will also prepare and submit:

Form FmHA 1944-8: “Tenant Certification”
Form FmHA 1944-29: “Project Worksheet for Interest Credit and Rental Assistance”
Form FmHA 1930-7: “Multiple Family Housing Project Budget”

The Agent will assist the owner in initiating or completing all additional reporting forms and data prescribed by FmHA affecting the operation and maintenance of the project.

F. Collection of rents, security deposits and other receipts. The Agent will endeavor to collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the project, and such receipts will be deposited immediately in the project's general operating account with (name of bank or such other financial institution designated by the owner), whose deposits are insured by an agency of the Federal Government. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account at a Federally insured institution. This Account will be carried in the owner's name and designated of record “Name of Project) Security Deposit as Account.”

G. Accounting system. The Agent must develop a systematic method to record the financial transactions of the project that appropriately reflects the complexity of project operations and the owner's requirements. The Agent may be required to implement and use a bookkeeping and accounting system acceptable to FmHA. The accounts described in paragraph VI of this agreement, as a minimum, will be established and regularly maintained by the Agent.

H. Enforcement of leases. The Agent will endeavor to ensure that all leases are in effect, to comply with the lease terms, and to take such action as may be necessary for the preservation of the property. The Agent will provide notice, if required, of his/her right to appeal the proposed action according to FmHA regulations. Attorney's fees, and other necessary costs incurred in connection with such actions will be paid out of the general operating accounts to project expenses within the itemized limit of the project budget.

1. Maintenance and repair. The Agent will endeavor to maintain and repair the project in accordance with the management plan and local codes, and keep it in a condition acceptable to the Owner and FmHA at all times. This will include, but is not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care, energy conservation measures and practices, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained therein.

Incidental thereto, the following provisions will apply:

1. Special attention will be given to preventive maintenance; and to the greatest extent feasible, the services of regular maintenance employees will be used.

2. The Agent will contract with qualified independent contractors acceptable to the Owner for the maintenance and repair of air conditioning, heating systems, and elevators, and for emergency repairs beyond the capability of regular maintenance employees. Any identity of interest will be identified in accordance with paragraph V B of Exhibit B of this subpart.
The Agent will systematically receive and promptly investigate all service requests from tenants, such action as may be justified, and keep records of the same. Emergency requests will be received and serviced on a 24-hour basis. Serious complaints will be reported to the Owner after investigation.

The Agent will advise the Owner of any cost-effective and adaptable energy conservation measures or practices that should be used in the project. The Agent will encourage their use and will assist the Owner during any validation of these measures or institutions of practices.

Utilities and services. In accordance with the Owner’s management plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service.

Insurance. The Owner will inform the Agent of insurance to be carried with respect to the project and its operation, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the general operating account, and premiums will be treated as operating expenses. All insurance will be placed with insurers acceptable to the Agent, in amounts, and with beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA, provided that the same will include public liability coverage, with the Agent designated as one of the insured, and all amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports on all accidents, claims, and potential claims for damage relating to the project, and will cooperate with the Owner’s insurers in connection therewith.

Taxes, fees and assessments. The Agent shall provide for the payment from project funds all taxes, assessments, and government fees for the owner promptly when due and payable. The Agent shall also evaluate local property taxes to determine if they bear a fair relationship to the project value and if they do, at the direction of the Owner, appeal such taxes on behalf of the Owner or assist the Owner in the appeal, whichever is required by local jurisdiction or is appropriate.

Employees and/or services. The Agent will employ persons and/or services, or will manage persons and/or services employed by the Owner to perform duties and responsibilities at the project site as described in the management plan.

Compensation of such persons and/or services will be paid as a direct expense to the project as specified in the management plan and the Agent will employ sufficient resources (staff and/or services) within the Agent’s operation to fulfill Agent’s obligation to the Owner under the terms of this agreement.

Project accounts. The Agent will maintain and safeguard the Owner’s project financial accounts and tenant security deposit accounts according to the current requirements set forth in paragraph XIII B 2 of Exhibit B of subpart C of part 1930 of this chapter, which is part of the “Multiple Housing Management Handbook.”

Agent’s compensation, tenure, and identification.

A. Agent’s compensation. The Agent will be compensated for its services for providing management described under this agreement, and the Owner’s management plan, by monthly fees, to be paid from the general operating account and treated as a project operation and maintenance expense. Such fees will be payable on the first day of each month for the preceding month. Each monthly fee will be in an amount computed as follows:

(The following are acceptable methods in no order of preference. Any other method of compensation will be fully described and inserted in this section.) The costs incurred by the Agent for performing the specified services listed in this agreement shall be allocated to the owner and Agent as outlined in the agreement, management plan, and approved project budget.

1. _X_ % occupied unit on the first of a month.
2. _Y_ % of capital cost collected. (Plan I and full profit)
3. _Z_ % of basic rent collected. (Plan II)

B. Term of agreement. This agreement shall be in effect for a period of not more than _X_ years, beginning on the _Y_ day of _Z_ month, subject, however, to the following conditions:

1. This agreement will not be binding upon the Principal Parties until approved by FmHA.
2. This agreement may be terminated by mutual consent of the principal parties as of the end of any calendar month, provided that at least 30 days advance written notice thereof with reasons given is submitted to FmHA.
3. In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or a voluntary liquidation of the project occurs, then the Agent may terminate this agreement without notice to the other, provided that prompt written notice with reasons given for such termination is submitted to FmHA.
4. It is expressly understood and agreed by and between the Principal Parties that the State Director may terminate this agreement with cause upon the issuance of a 30-day written notice of cancellation to each of the Principal Parties. It is further understood and agreed that no liability will attach to either of the Principal Parties in the event of such termination.

5. Upon termination of this agreement, the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA. After the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and principal amount satisfactory to the Agent, against any obligations or liabilities which the Agency may properly have incurred on behalf of the Owner hereunder.

C. Agent’s indemnification. Notwithstanding any provision of this agreement or any obligation of Agent hereunder, it is understood and agreed: that Owner has assumed and will maintain its responsibility and obligation throughout the term of this agreement for the finances and the financial stability of the project; and that Agent shall have no obligation, responsibility, or liability for any unauthorized projects, fundings, or accounts other than those funds generated by the project itself or provided to the project or to Agent by Owner. In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under paragraph VII A of this agreement, from the operating and maintenance account, immediately when such compensation is due and without regard to other project obligations or expenses provided the Agent has satisfactorily discharged all duties and responsibilities under this agreement.

Moreover, Owner hereby indemnifies and agrees to hold the Agent harmless with respect to project costs, expenses, accounts, liabilities, and obligations during the term of this agreement and further agrees to guarantee to Agent the payment of its compensation under paragraphs VII A of this agreement during the term of this agreement to the extent that the project’s operating and maintenance account is insufficiently funded for this purpose. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this agreement entitling Agent to obtain from Owner, upon demand, full payment of all compensation owed to Agent through the date of such breach and enabling Agent at its option, to terminate this agreement forthwith.

Interpretive provisions.

A. This agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the project. No change will be valid unless made by supplemental written agreement approved by FmHA.

B. This agreement has been executed in several counterparts, each of which shall constitute a complete original agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

C. This agreement is NOT in full force and effect unless and until concurred with by FmHA.

D. At all times, this agreement will be subject and subordinate to all rights of the FmHA, and will work to the benefit of and constitute a binding obligation upon the Principal parties and their respective successors and assigns. To the extent that this agreement conflicts with any of the consenting parties, it will be deemed to work to their benefit, but without liability to either, in the same manner and work with the same effect as though the consenting parties were primary parties to the agreement.

The Principal Parties [by their duly authorized officers] have executed this agreement on the date first above written. Owner: ____________________________

By: _______________________________
Title: ____________________________

Agent: ____________________________

By: _______________________________
Title: ____________________________
As lender and insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby concurs with this agreement.

Farmers Home Administration
By: ___________________________
Title: ___________________________

Date: __________________________

Attachments: Management plan, Loan resolution or agreement, Identity of interest disclosure certificate.

Exhibit B-4—Outline for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project

Farmers Home Administration (FmHA) expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members. The following outline is intended to be a guide that borrowers can use in evaluating the level and quality of services that a prospective management agent plans to provide in the management of a multiple housing project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply.

1. Provide your name, address, name of project, location of project, and the name of the owner.

2. Provide information about projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.

3. Describe your firm including number of main office staff employed in the following capacities: supervisory, clerical, maintenance, and social services.

4. Explain where project records will be kept.

5. Describe your plan for project on-site staff including their duties and work frequency.

6. Give the distance in miles from your home office and the nearest branch office, if applicable, to the project.

7. Describe the accounting system, rent-up procedure, rent collection policy, and preventive maintenance program including energy conservation you intend to use in the proposed project.

8. Describe any and all identities of interest as described in paragraph B of Exhibit B of this subpart.

9. Describe the frequency and type of direct supervision to be given the site manager.

10. Give a description of your financial condition, stability, and financial resources.

11. Describe your plan to implement applicable FmHA accounting requirements for the project. If you have managed this type of project before, cite those projects as an indication of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

12. Please also describe:
   a. Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.
   b. The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.
   c. Your plans to train your personnel in the management of FmHA MFH, including training on the nondiscrimination and fair housing (reasonable accommodation) provisions of the civil rights laws.
   d. Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

13. Provide evidence of fidelity coverage capacity.

14. Include where appropriate the following statement: "I hereby certify that there is no close association between the management agent and the owner of the above described project in such manner that creates a possible conflict of interest." If such an association exists (e.g., the management agent is a member, stockholder, partner, principal, etc., of the borrower organization, familial relationship) explain the relationship in detail (this may be combined with item 8 of this exhibit).

Exhibit B-5—Outline for Owner Who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project

Farmers Home Administration (FmHA) expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members.

The following outline is intended to be a guide that the borrower can use in describing the level and quality of services that the borrower plans to provide in the management of an MFH project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply. Response to the outline will be used by FmHA to evaluate the level and quality of project management planned by the borrower when the borrower plans to provide the project management.

1. Provide name of owner, address, and the name and location of project. State the number or rental units in the proposal.

2. Provide information about your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3. List names and addresses of management agents who manage your previously or presently owned projects, if any.

4. Describe your understanding of the responsibilities connected with owning and managing an MFH project under FmHA.

5. Outline your experience and capabilities in providing housing for low-and moderate-income tenants.

6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7. Describe any identities of interest as described in paragraph V B of Exhibit B of this subpart.

8. Describe your intentions and capacity to meet negative cash flow situations.

9. Describe your plans for the management and maintenance of the proposed project. If you intend to manage the project, describe your own management capacity by answering applicable portions of Exhibit B-4 of this subpart.

10. Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

Exhibit B-6—Monthly and Quarterly Project Management Reports

<table>
<thead>
<tr>
<th>Report of item required</th>
<th>Due date</th>
<th>Prepared by</th>
<th>Report or item applicable to</th>
<th>Distribution</th>
<th>References and notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project worksheet for interest credit and rental assistance (Form FmHA 1944–29).</td>
<td>Monthly payment date.</td>
<td>All borrowers (Agent).</td>
<td>Each project ......</td>
<td>Copy kept by borrower; original goes to the FmHA Servicing Office with payments.</td>
<td>Instructions for preparation are in the FMI for Form FmHA 1944–29.</td>
</tr>
</tbody>
</table>
### Exhibit B-7—Annual Project Management Reports

<table>
<thead>
<tr>
<th>Report of item required</th>
<th>Due date</th>
<th>Prepared by</th>
<th>Report or Item applicable to</th>
<th>Distribution</th>
<th>References and notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly Report</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Form FmHA 1930-7, Multiple Family Housing Project Budget).</td>
<td>Due in FmHA Servicing Office by the 20th of month following each reporting period; forward to State Office by the 30th.</td>
<td>All borrowers (Agent).</td>
<td>Each project until discontinued.</td>
<td>Copy kept by borrower. Original and one copy goes to FmHA Servicing Office; Servicing Office to forward original to State Office. *State Office makes copy and signed original returned to Servicing Office.</td>
<td>Reports will continue until written notice for discontinuance is received from FmHA Servicing Office. Instructions for preparation are in the FMI for Form FmHA 1930-7.</td>
</tr>
<tr>
<td>Housing allowance for Utilities &amp; Other Public Services (Exhibit A-6 to Subpart E of Part 1944 of this chapter).</td>
<td>Must be submitted with Form FmHA 1930-7.</td>
<td>Borrower (Agent).</td>
<td>Plan II and rental assistance projects where tenant pays any utilities.</td>
<td>Copy kept by borrower. Original and one copy to FmHA Servicing Office with backup data; Servicing Office returns original to borrower after State Office approval.*</td>
<td>Instructions for preparation are in the FMI for Form FmHA 1930-7.</td>
</tr>
</tbody>
</table>

Note: All Preceding Items Will Be Submitted Separate From Audit/Verification of Review

<table>
<thead>
<tr>
<th>Report of item required</th>
<th>Due date</th>
<th>Prepared by</th>
<th>Report or Item applicable to</th>
<th>Distribution</th>
<th>References and notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Report</td>
<td>Within 90 days following close of borrower’s fiscal year.</td>
<td>Borrower’s CPA or LPA in accordance with booklet “U.S. Department of Agriculture, Farmers Home Administration Audit Program”.</td>
<td>Projects with 25 or more units in one or more projects, or as required by FmHA State Director.</td>
<td>Copy kept by borrower. Original and one copy to FmHA Servicing Office; one copy to State Office.</td>
<td>Will be submitted separately from other borrower management reports.</td>
</tr>
<tr>
<td>Multiple Family Housing Borrower Balance Sheet (Form FmHA 1930-8).</td>
<td>Within 90 days following close of borrower’s fiscal year.</td>
<td>Borrower (Agent).</td>
<td>All projects</td>
<td>Copy kept by borrower. Original and one copy to FmHA Servicing Office. Servicing Office sends original to State Office. *State Office makes copy and returns signed original to Servicing Office.</td>
<td>Instruction for preparation in the Forms Manual Insert for Form FmHA 1930-8.</td>
</tr>
<tr>
<td>Verification of Review (in lieu of audit report) according to this Subpart (Form FmHA 1930-8).</td>
<td>Within 90 days following close of borrower’s fiscal year.</td>
<td>Qualified Individual, independent of the borrower.</td>
<td>Projects with 24 or fewer units.</td>
<td>Copy kept by borrower. Original to FmHA Servicing Office; Servicing Office makes one copy for State Office.</td>
<td>Instruction for preparation in the FMI for Form FmHA 1930-8. Submitted separately from annual review items.</td>
</tr>
</tbody>
</table>

*Signed copy goes to State Office when Servicing Office staff have received delegated approval authority.

### Exhibit B-8—Miscellaneous Project Management Reports or Submittals

<table>
<thead>
<tr>
<th>Report of item required</th>
<th>Due date</th>
<th>Prepared by</th>
<th>Report or Item applicable to</th>
<th>Distribution</th>
<th>References and notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes of Annual Meeting (when applicable).</td>
<td>Submit with next Form FmHA 1930-7, “Multiple Family Housing Project Budget”.</td>
<td>Borrower</td>
<td>All organizational borrowers with governing bodies, and all corporations.</td>
<td>Two copies to FmHA Servicing Office; one to be sent by Servicing Office to State Office.</td>
<td></td>
</tr>
<tr>
<td>Report of item required</td>
<td>Due date</td>
<td>Prepared by</td>
<td>Report or item applicable to</td>
<td>Distribution</td>
<td>References and notes</td>
</tr>
<tr>
<td>------------------------</td>
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</tr>
<tr>
<td>Energy Audit</td>
<td>Submit with next Form FmHA 1930-7. When rental assistance is requested.</td>
<td>Energy Auditor</td>
<td>All projects</td>
<td>One copy to Servicing Office.</td>
<td>Exhibit D of this subpart.</td>
</tr>
<tr>
<td>Request for Rental Assistance (Form FmHA 1944-25).</td>
<td></td>
<td>Borrower (Agent)</td>
<td>Multiple Family Housing borrowers and applicants with tenants paying rent in excess of 30% of their adjusted income.</td>
<td>Original and copy to Servicing Office; submit to State Office for approval after Servicing Office review.</td>
<td>Refer to Exhibit E of this subpart for material to be included with request. Instructions for preparation are in Forms Manual insert for Form FmHA 1944-25. Refer to 1901.204(e) of Subpart E of Part 1901 of this chapter.</td>
</tr>
<tr>
<td>Compliance reviews (review conducted within the 1st reporting year after the project opens for operation).</td>
<td>Nov. 1st to Oct. 31st of each year.</td>
<td>FmHA Servicing Official.</td>
<td>All Multiple Family Housing borrowers.</td>
<td>Copy to State Office; original retained in Servicing Office.</td>
<td>Reviewed annually during annual review.</td>
</tr>
<tr>
<td>(a) Initial reviews (Form FmHA 400-8, &quot;Compliance Review&quot; (Non-discrimination Recipients of Financial Assistance through FmHA)*.</td>
<td>The Oct. 31st following loan closing.</td>
<td></td>
<td></td>
<td>Reviewed at least annually during annual review.</td>
<td></td>
</tr>
<tr>
<td>(b) Subsequent reviews (Form FmHA 400-8).</td>
<td>Minimum of every 3 years.</td>
<td></td>
<td></td>
<td>Reviewed at least annually during annual review.</td>
<td></td>
</tr>
<tr>
<td>Management Plan</td>
<td>Start of operations; update every third year of operation. Start of management by management agent.</td>
<td>Borrower</td>
<td>All borrowers except those with nonrent LH projects.</td>
<td>Original to borrower; copy to Servicing Office. Copies with FmHA concurrence to Borrower, management agent and FmHA.</td>
<td></td>
</tr>
<tr>
<td>Management Agreement (Exhibit B-3 of this subpart).</td>
<td></td>
<td>Borrower and management agent.</td>
<td></td>
<td>Original to Servicing Office; copies to borrower and any other individual or organization sharing identity of interest with the project.</td>
<td></td>
</tr>
<tr>
<td>Identity of Interest (IOI) Disclosure Certificate Memorandum.</td>
<td>Start of operations or whenever there is a change in identity of interest relationship.</td>
<td>Borrower, management agent, individuals, vendors or organizations sharing identity of interest with the project.</td>
<td>All borrowers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*If initial rent-up has not occurred by initial review, a subsequent review will be due within 1 year following initial occupancy and then every 3 years.

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**Exhibit B-9—Notice of Authorization to Withdraw and Use Reserve Funds**

To: Borrower Name, Borrower Address
Subject: Authorization to Withdraw and Use Reserve Account Funds
Project Name & Number
This letter authorizes the withdrawal of $_____from the subject reserve account to be used for _____(describe uses)

- The (This) amount of $_____is an annual operating and maintenance expense and must be restored in the reserve account plus any required annual reserve payment before any return on investment can be authorized subsequent to this date. (During the second to fifth year of project operation, add this sentence if the initial operating capital has not yet been withdrawn. “This amount will be deducted from the initial operating capital to be withdrawn if said capital is being withdrawn during the current budget year, and this amount has not been restored to the reserve account.”)
- The (This) amount of $_____is an annual recurring type of expense and must be restored in the reserve account according to the terms and conditions contained in your special servicing work-out plan with Farmers Home Administration.

(Add any additional discussion required.) The correct level of funding of the project reserve account after this disbursement is (amount) as of (date).

---

**Exhibit B-10—Reserve Account Tally**

Starting Date: (1)
Amount Shown on Loan Agreement/Resolution: $$(2)
Contribution: $$(3)/Month × 12 = $$(4)
Annually
Reserve Account Tally Instructions

1. Enter month and year that cash flow started from rental income.
2. Enter the ultimate reserve amount to be achieved as shown on the loan agreement/resolution (as modified and increased, if applicable).
3. Enter monthly reserve deposit installment.
4. Enter yearly reserve deposit installment.
5. Enter borrower fiscal year for which records apply.
6. Enter fiscal year beginning balance carried forward from preceding fiscal year.
7. Enter the required annual deposit. If borrower is authorized by an approved budget to contribute less than the amount required by the loan agreement, enter the reduced amount. For amounts “restored” to reserve after a previous withdrawal, enter restored amount in this column on a separate line and describe in comment column.
8. Enter the required balance at the end of the borrower fiscal year.
9. Enter the date of authorization for withdrawal from reserve.
10. Enter the purpose (capital or annual recurring expense); and describe in comment column any agreement (see Exhibit B-9 of this subpart) to restore the withdrawal.
11. Enter amount of authorized withdrawal.
12. Enter the actual amount paid into the reserve account.
13. Enter amount of interest earned on reserve deposit during fiscal year.
14. Enter portion of earned interest transferred to project general operating account.
15. Enter balance of earned interest left (accrued) in the reserve account. (Note: At borrower's choice, this amount may be used to help meet or increase the annual reserve deposit.)
16. Enter the reserve balance at the end of the fiscal year.
   - Balance at end of last fiscal year.
   - Less authorized withdrawal.
   - Plus transfer to reserve.
   - Plus accrued interest.

Note: Reconciliation of the current account balance may be accomplished by entering the following calculations of the tally sheet.

1. Calculate: Gross Potential Reserve (GPR): No. of Deposit Installments since start date X $ amount of installments = GPR. Then separately,
2. Add: regular and extra deposits = $ Additions.
5. Compare GPR to current balance.

17. Enter appropriate notes (e.g., withdrawal uses, explain discrepancies with other documents).
Exhibit B-11—Equal Housing Opportunity Logotype (Required for Project Sign)
Exhibit B-12—Farmers Home Administration Logotype (Optional for Project Sign)
Exhibit B-13—International Symbol of Accessibility (Required for Handicap Parking Space and Along Handicap Accessibility Route)
EXHIBIT B-14—SAMPLE WAITING LIST

<table>
<thead>
<tr>
<th>Applicant Information</th>
<th>Selection Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>App. No.</td>
<td>Date/time</td>
</tr>
</tbody>
</table>

Waiting List Instructions

This sample waiting list may be used as a model in developing a project waiting list. It combines income level and unit size groupings on one page. Separate pages for different income levels or unit sizes are an option.

Waiting lists need to be updated periodically by carrying forward active applications and removing applications that have become tenants or members or have been withdrawn. This should be done with sufficient frequency so that a substantial number of lines on the waiting list are filled with active applications. Retired waiting lists must be kept through continual sequence from a given start date or may be the sequential number in a particular year. Example: 93–3 denotes the third application received in 1993.

1. Applicant No.—Application number. This is a sequential number of the order by which the completed application was received. This may be a continual sequence from a given start date or may be the sequential number in a particular year. Example: 93–3 denotes the third application received in 1993.
2. Date/time—The date and time a completed application is received.
3. Name/address—Name of applicant and current street and/or mailing address.
4. Phone number—Applicant's current phone number or a contact person's phone number.
5. Race code—Local management should use a code known to itself of the code provided in Form FmHA 1944–8, "Tenant Certification." Use letters or numbers or a combination of both. Do not state or abbreviate racial or ethnic descriptions.
6. Household size—The total number of people who will actually occupy a unit.
7. Blank column—For optional use; for labor housing purposes.
8. Displaced priority—If applicant possesses a letter of priority entitlement (LOPE) issued by FmHA or from other assisted housing enter yes/LOPE. If applicant is displaced due to a natural disaster or catastrophe, housing rendered uninhabitable, or seized by legal action (other than for illegal activity) enter yes/other. Enter no if applicant is not a displacer.
9. Note: Section 8 applicants who at time of housing need are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent have priority over other Section 8 applicants.
10. Income level—Enter a checkmark under the income level determined by income verification.
11. Unit size—Enter a checkmark under each unit size the applicant is qualified to occupy or deems appropriate to his need. Circle the checkmark denoting the size requested. Legend: VL—Very low-income, L—Low-income, M—Moderate-income, I—Ineligible.
12. Rental assistance eligibility—Indicate whether or not the income level qualifies the applicant to receive rental assistance (RA). (If RA is being used in the project).
13. Dates contacted for occupancy—Enter the dates management contacted or attempted to contact the applicant to offer an apartment for occupancy. Note the method of contact and the results.
14. Lease date—Fill in date of lease to denote that applicant has changed to tenant status.
15. Removal date—Enter date of removal from the waiting list, when applicable.
6. Changes in rental or occupancy charge rates will apply to all units in the project.
7. Proposing budgets that consistently generate a surplus of uncommitted cash greater than 10 percent of project yearly expense (exclusive of any qualifying refund of 2 percent initial operating budget) should reduce their rental or occupancy charge rates.
8. Current tenant or member certifications on Form FmHA 1944–8, “Tenant Certification,” or other form approved by FmHA must be on file in the Servicing Office.

C. All borrowers are encouraged to participate in the FmHA Rental Assistance (RA) program. However, unless the Administrator notifies State and Servicing Offices otherwise, all borrowers with projects meeting the eligibility requirements of paragraph II B of exhibit E of this subpart, except full profit borrowers, will be automatically treated as having applied for rental assistance, since section 530 of title V of the HOPE Act, as amended, requires such consideration.

D. Borrowers must accept RA when it is available and it appears that a rental or occupancy charge change will cause any very low or low-income tenant to pay in excess of 30 percent of adjusted monthly income for shelter costs. If FmHA does not have RA appropriation available for this purpose, the borrower is encouraged to use other sources of governmental subsidies. The availability or unavailability of governmental subsidies will not preclude FmHA from processing a rental or occupancy charge change request. The borrower will retain the option of submitting an RA request at any time that it appears that any very low- or low-income tenant cannot pay in excess of 30 percent of adjusted monthly income for shelter costs, even without a rent change action. In such cases, the borrower must apply for RA on Form FmHA 1944–25, “Request for Rental Assistance,” unless such form is already on file at the Servicing Office.

E. Even though RA is not available, borrowers are encouraged to convert to Interest Credit Plan II to give tenants and members the most favorable rental rates possible.

IV. Borrower’s Responsibility in Processing Rental or Occupancy Charge Change Requests Which Change Housing Costs to Tenants or Members

A. When an RH, RCH, or LH borrower determines that a project rental or occupancy charge change is needed, the borrower must meet or consult with the Servicing Office staff, unless such requirement is waived by the Servicing Office, to review the following information before the “Notice to Tenants (members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change,” Exhibit C–1 of this subpart, is posted and delivered to the tenants or members:

1. An application containing the need and justification for a rental or occupancy charge change in accordance with paragraph III A of this exhibit.
2. A new operating budget for the borrower fiscal year showing:
   a. Currently approved budget at old rents or occupancy charges.
   b. Actual income and expenses to date.
   c. Proposed budget at proposed new basic rents or occupancy charges.
   d. Proposed budget at proposed new rate rents or occupancy charges (when applicable).
3. An application for RA is considered to have been automatically filed with the Agency. However, the borrower may submit an application for RA at any time on Form FmHA 1944–25, if the borrower’s project is an eligible project and the proposed change will cause any very low- and low-income tenants or members to pay in excess of 30 percent of adjusted monthly income for shelter costs.
4. A new energy audit, if one is due, or a listing of deferred improvements identified in a previous energy audit that were performed within the past 5-year period according to the requirements of Exhibit D of this subpart.
5. Information on actual utility costs for representative units in the project and, whenever any utility allowance was approved over 12 months ago, an updated Exhibit A–6 of Subpart E of Part 1944 of this chapter when tenants or members pay their own utilities.
6. Any other information the borrower believes necessary to justify the proposed shelter cost change.

B. Required actions and timeframes for shelter cost changes. Requests for shelter cost charge changes (i.e. changes in the amount of utility allowance) may be submitted at any time, however, the Agency encourages such requests to be submitted within the last quarter of the calendar year in conjunction with the annual budget review.

1. Agency action.
   a. The Agency must act on any shelter cost change request and take one of the following actions within 25 days of its receipt:
      (1) Review the request package and if it is incomplete, return it to the borrower/manager, advising what additional information is needed, or
      (2) Request a meeting with the borrower/manager and state the proposed meeting date. The request should inform the borrower/manager of the purpose of the meeting. When a meeting is held, the Servicing Official will either:
         (i) Approve posting of the proposed rental or occupancy charge change and advise the borrower in writing to post the notice, or
         (ii) If the proposal submitted is not acceptable, the Servicing Official and the borrower/manager will arrive at a mutually acceptable change, and the Servicing Official will authorize in writing, posting of the agreed to revised figure. OR
      (iii) Reject posting of the proposed change, advise the borrower in writing to not post the notice and advise the borrower of their appeal or review rights in accordance with subpart B of part 1900 of this chapter.
   (3) If the borrower does not attend the proposed meeting or other mutually agreed date, the change request will be considered withdrawn and returned to the borrower/manager, or
   (4) The Servicing Official may waive the meeting requirement and authorize the posting subject to any minor changes or other requirements listed, if any, or

5. Allowing posting of the request by not taking action on the request (de facto posting).

b. Once a rental or occupancy charge change has been permitted to be posted, the only decision that can be made is to “approve” or “reject,” which would be based on material concerns in coming to tenants or members. When the request is rejected, the borrower will be advised of any appeal or review rights in accordance with subpart B of part 1900 of this chapter.

2. Borrower action. When approval to post notice is given by FmHA, the borrower is required to:
   a. Notify tenants or members.
      (1) Tenants or members must be notified in writing at least 60 days before the anticipated effective date of change using Exhibit C–1 of this subpart. The written notice may be delivered by mail or other means. In addition, the borrower must post at least one notice in a visible place at the project site.
      (2) Tenant or member comment period.
         Tenants or members will be informed of their right to submit comments to the Servicing Office during the 20-day period following the date of the notice. Tenants or members will also be informed of their rights to inspect and copy records on file with the Agency, which are related to the request, throughout the 20-day period.
   b. Notify the Agency. The Agency must be given a copy of the written and dated notification which was mailed or delivered to the tenants or members.

3. Implementation timeframes. Shelter cost changes cannot be implemented until such time as the tenants or members are informed of the changed rates. When increases are involved, tenants or members must be informed at least 30 days in advance of their effectiveness or such longer time as State law may prescribe. Tenants or members receiving notice of a shelter cost increase via the use of Exhibit C–1 of this subpart will already have been “informed at least 30 days in advance” and need not receive a second notice provided the final approval action (i.e., See Exhibit C–2 of this subpart) does not change the shelter cost rate established in Exhibit C–1.

V. Determination by FmHA

A. Actions by servicing official. The Servicing Official will not consider a rental or occupancy charge change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this exhibit. When the application and all attachments for the proposed change have been received (including the tenant or member comments when notification is required), the Agency will:
   1. Review all the material submitted.
   2. Review a copy of the borrower’s latest Form FmHA 1944–29, “Project Worksheet for Interest Credit and Rental Assistance.”
   3. Determine if RA is available for an eligible project on behalf of the low-income tenants or members. If RA is available, and it is apparent from record sources that at least one tenant is eligible for RA, the Servicing Office staff must require the borrower to apply for RA if an application for RA using
Form FmHA 1944.25 is not already on file at the Servicing Office.

4. When the change is requested for energy saving improvements identified in an energy audit, the Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The Servicing Official's determination will be made according to paragraph VI of Exhibit D of this subpart.

5. When State Office approval is required, the Servicing Office will submit to the State Director (see Guide Letter 1930–3 for outlining the change request package being submitted):

a. Appropriate recommendations on the request.

b. An indication of the number of tenants or members who will need RA as a result of the rent changes.

c. All the material received from the borrower, including tenant or member comments or objections at the end of the 20-day comment period, and

d. A short narrative describing the general tone and material content of tenant or member comments and concerns.

6. When a member of the Servicing Office staff is the approval official, the documentation required by paragraph V A 5 of this exhibit, will be attached to the rent change request.

7. When the borrower has requested RA, complete Form FmHA 1944–25 and forward it to the State Director.

B. Actions by the approval official. When the application, attachments, and comments are received, the approval official will review the material to determine if the change is justified and act on the request within 25 days. The borrower will be notified by the Approval Official of the determination within 45 days from the date the “Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change - (Exhibit C-2 of this Subpart)” is posted, otherwise the request will be considered approved.

1. Approval actions.

a. When a change is approved, the Approval Official will notify the borrower by using Exhibit C-2 of this subpart. The notice letter (Exhibit C-2 of this subpart) will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise. The notice letter will be mailed or hand delivered to each tenant or member and posted in a conspicuous place.

b. When the borrower’s project is operated on a profit basis and the purpose of the rental change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; and providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. Disapproval actions. When the Servicing Official determines an application for a proposed rental or occupancy charge change is not justified on the basis of the information submitted, the Servicing Official will notify the borrower in writing of the reason(s) why the change is not approved. The borrower will be advised of their appeal right in accordance with subpart B of part 1900 of this chapter. Rental or occupancy charge changes may not be approved when any of the following circumstances exist:

a. The borrower is able but unwilling: To comply with all the eligibility requirements; the audit and reporting requirements of this subpart; or, the conditions set forth in the borrower’s loan agreement or resolution, interest credit and/or rental assistance agreement, promissory note, or RA agreement.

b. The budget for the project reflects sufficient income at the present rental or occupancy charge structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.

c. The borrower’s project is operated on a profit basis and the proposed rental change is for purposes other than meeting operation and maintenance expenses and debt service (i.e., the purpose is to allow excessive profits and the proposed rental change will result in rental rates in excess of what eligible tenants can afford)

d. The borrower’s project is operated on a profit basis and the proposed rental change will result in rental rates in excess of what eligible tenants can afford.

e. The borrower is not operational on a profit basis and the proposed rental change is for purposes other than meeting operation and maintenance expenses and debt service (i.e., the purpose is to allow excessive profits).

f. The borrower has not applied for RA within 180 days prior to the most recent period of 180 days prior to the rental change request or otherwise already has an application for RA on file at the Servicing Office on Form FmHA 1944–25.

VI. Unauthorized Rental or Occupancy Charge Changes

When a borrower implements a change that does not meet the requirements of this exhibit, the borrower will be notified in writing that: the change has not been authorized; and the rates must be rolled back to the last FmHA authorized level. Tenants or members affected by an unauthorized change will be given a rebate or credit for the unauthorized amounts retroactive to the date of the unauthorized change. Those borrowers that fail to comply the provisions of this paragraph will be handled according to §1965.8(d) of subpart B of part 1965 of this chapter or paragraph X of this exhibit.

VII. Annual Adjustment Factors for Section 8 Units

A. HUD allowance of change.

1. If the Servicing Official disapproves a rental rate change, or approves a lesser amount than permitted by HUD, as a result of HUD’s annual adjustment factors for units receiving Section 8 assistance, the Servicing Official may direct the borrower to deposit any excess funds, the difference between the FmHA approved note rate rent and the higher HUD authorized rental rate, into the reserve account.

2. If this results in an accumulation of funds in the reserve account behind the sum shown in the loan agreement or loan resolution, the interest credit reduction on a Section 8/515 project should be adjusted or canceled through field office terminals.

3. This adjustment or cancellation can be done without borrower consent for projects with interest credit agreements dated on or after October 27, 1980. For projects with interest credit agreements dated before October 27, 1980, this adjustment or cancellation of interest credit may occur only with the borrower’s written consent.

4. When interest credit cannot be canceled or reduced, the Agency will collect overage. Overage, for each tenant, in this instance is the difference between the FmHA approved reduced rate rent and the lesser of the FmHA note rate rent or the HUD contract rent. The total overage collected should not exceed an amount equal to the interest credit authorized by the interest credit agreement for the period of time covered by the loan payment installment.

5. Even though interest credit is canceled or nullified by collecting overage, the borrower will still be required to operate on a profit basis.

B. HUD disallowance of change. If HUD will not allow an annual adjustment of rents, and the project operating budget justifies need for rent(s) greater than HUD’s contract rent(s), the State Director only may authorize a reduction of interest credit.

1. When HUD contract rent and the 1 or 2 percent reduced rate are the same. In a project where 100 percent of the units receive Section 8 (100 percent Section 8 projects), and the HUD contract rent rate and the 1 or 2 percent reduced rate are the same, only the HUD contract rent rate column on the budget is needed.

2. When HUD contract rent falls between the 1 or 2 percent reduced rate and the FmHA note rate. In a 100 percent Section 8 project where the HUD contract rent rate falls between the 1 or 2 percent reduced rate rent and the note rate rent, a 3 column budget showing the 1 or 2 percent reduced rate rent, the HUD contract rent rate, and FmHA note rate rent is needed.

3. When HUD contract rate exceeds the FmHA note rate. In a 100 percent Section 8 project without interest credit and where the HUD contract rent rate exceeds the note rate rent, the budget should show 2 columns reflecting each rent rate. The difference between the two rent rates is considered excess funds and is to be deposited in the reserve account.

4. When part of units are covered by Section 8 HAP contract. In a project where only part of the units are under a Section 8 HAP contract, a 3 column budget of basic
rental rate, HUD contract rental rate, and note rate rent is needed. The HUD contract rental rate may fall between the basic and note rate, or it may be higher than the note rate rent.

D. Overage payments and excess income from an interest credit agreement:

1. Overage is the amount by which total rental payments paid or to be paid by the tenants or members exceed the total basic monthly rental rate. In 100 percent Section 8/515 projects, and Plan II projects, where the HUD contract rental rate exceeds the approved 1 or 2 percent (or greater percentage in the case of Plan III) reduced rental rate, the FmHA approved rate is the required "basic" monthly rental rate. Whenever FmHA approves a note rate rent change for a lesser amount than the change permitted by HUD, the FmHA Servicing Official must require the borrower to deposit any excess funds into the reserve account.

2. Any Section 8 subsidy funds paid by HUD are paid on behalf of the tenant or member, and therefore, any Section 8 payments are not considered as excess funds until after any benefits provided by the interest credit agreement are recovered. Therefore, the following applies:

   a. Projects on an Interest Credit plan coded 7 or 8 on Form FmHA 1944-7. See figure 1 of paragraph VIII-2 of this exhibit.

   (1) When HUD rate is equal to or less than FmHA note rate. In 100 percent Section 8/515 projects when the HUD contract rental rate is more than the 1 or 2 percent reduced rate and is either equal to or less than the FmHA note rent, overage will be paid to FmHA in an amount equal to the difference between the HUD contract rental rate and the 1 or 2 percent reduced rate.

   (2) When HUD rate is greater than FmHA note rate. In 100 percent Section 8/515 projects when the HUD contract rental rate is greater than the FmHA note rate rent, overage will be paid to FmHA as in D 1 of this paragraph, and the amount equal to the difference between the HUD contract rental rate and the FmHA note rate rent will be deposited in the reserve account as excess income. In 100 percent Section 8/515 projects, when the HUD contract rental rate exceeds the note rate rent the borrower/manager needs to use FmHA Form 1944-29, part I, items 23 through 29, to document the required deposit in the reserve account.

   (3) Figure 1. Projects with 100 percent of units assisted by HUD Section 8.

Example 1:

<table>
<thead>
<tr>
<th>1 or 2 percent</th>
<th>HUD</th>
<th>FmHA</th>
</tr>
</thead>
<tbody>
<tr>
<td>reduced &quot;basic&quot; contract rent</td>
<td>rent w/ rent auto inc.</td>
<td>$350</td>
</tr>
<tr>
<td>$50 difference paid to FmHA as overage type 2</td>
<td>$75 interest credit</td>
<td></td>
</tr>
</tbody>
</table>

Note: If the HUD contract rent and FmHA 1 or 2 percent reduced rent are the same, then the first budget column would not apply.

Example 2:

<table>
<thead>
<tr>
<th>HUD cont. rent w/ auto inc.</th>
<th>$350</th>
<th>$475</th>
<th>$400</th>
</tr>
</thead>
<tbody>
<tr>
<td>$125 difference paid to FmHA as overage type 2</td>
<td>$25 required to be put in reserve account. (Excess income)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Projects on Interest Credit Plan II and receiving Section 8 Assistance. See figure 2 of paragraph VII D 2 b (3) of this exhibit.

(1) Calculating overage. In Section 8/515 projects the overage will be the difference between basic rental rate and the note rate including the income from HUD. The overage will be reported as type 3.

(2) Depositing excess income in the reserve account. In the cases where the HUD contract rental rate exceeds the note rate rent, the difference is excess income and will be deposited in the reserve account. The borrower/manager should use FmHA Form 1944–29, part I, item 23 through 29, to document the required deposit in the reserve account.

(3) Figure 2. Projects with some HUD Section 8/515 units.

Example 1:

<table>
<thead>
<tr>
<th>FmHA basic rent</th>
<th>HUD contract rent w/ auto inc.</th>
<th>FmHA note rate rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 250</td>
<td>$ 300</td>
<td>$ 375</td>
</tr>
</tbody>
</table>

$ 50 difference paid to FmHA as overage type 3 by Section 8 tenants and subject to overage by non-Section 8 tenants

$ 75 interest credit and subject to overage from non-Section 8 tenants

Example 2:

<table>
<thead>
<tr>
<th>HUD cont. rent w/ auto inc.</th>
<th>$ 400</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 250</td>
<td>$ 375</td>
</tr>
</tbody>
</table>

$ 125 difference paid to FmHA as overage by Section 8 tenants and subject to overage by non-Section 8 tenants

$ 25 required to be put in reserve account. (Excess income)

VIII Rental or Occupancy Charge Control Preemption Policy. In order to carry out the provisions of this subpart and to protect a housing source in rural areas for very low-, low- and moderate income families; the financial obligation of borrowers; and the financial interest of the government in such housing, the entire field of rental or occupancy charge control that may be exercised by any local rental control board or other authority pursuant to State and local law, as it affects housing covered by this subpart, is hereby preempted.

IX Special Servicing Market Rate Rent (SMR) Change. When a Plan II or Plan III RA RRH project is experiencing serve vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent as part of a workout plan according to the provisions of Exhibit F of subpart B of part 1965 of this chapter. An SMR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or note rate rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph I of Exhibit A–8 of subpart E of part 1944 of this chapter.
A Eligibility for SMR. Based on borrower documentation and FmHA servicing records, the Servicing Official will prepare a written recommendation for borrower eligibility for an SMR.

1. Based on borrower documentation and Servicing Office verification:
   a. Over the most recent 6-month period, the monthly vacancy rate has averaged at least 15 percent or the project shows financial loss, the Servicing Official will consider the following:
      (1) Each month was at least 12 percent vacant, and
      (2) When RA is not available, units subsidized by funds of the project/borrower will be considered vacant for SMR calculations, or
   b. The borrower has submitted financial records that show a 15 percent loss of rents available below basic rent not including project provided subsidies, and provided
      (1) The loss of rents available is not a result of management’s failure to effectively market the units.
      (2) Comparable market rental rates in the community are lower than the previously approved FmHA note rate rents. Exhibit A-2 of part 1944 of this chapter can be used to document comparable market rents.
      c. The borrower has aggressively marketed the project including the following actions:
         (1) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Marketing Plan.
         (2) The borrower has obtained approval from FmHA for a servicing workout plan, exclusive of SMR features, at least 3 months earlier.
      d. The borrower complies with FmHA regulations and encourages occupancy through good maintenance and positive relations with tenants.
      e. The borrower has provided a signed statement agreeing to forego, without provision to recoup, the return on initial investment in the previously approved FmHA project.
      f. The borrower has submitted a project budget on Form FmHA 1930-7, “Multiple Family Housing Project Budget,” with only minimally sufficient operation and maintenance expenses. The project budget should contain budgeting for other cash expenditures such as FmHA payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph IX A 1 e of this exhibit.

2. Based on Servicing Office servicing actions and documentation:
   a. The project has been operational for at least 24 months. The National Office may make exceptions to this requirement on a case-by-case basis for extreme hardship.
   b. No more than 10 percent of budgeted expenses are reflected in unrestricted cash hand, and reserve account balances do not exceed the required accumulation-to-date minus outstanding withdrawals.
   c. The Servicing Official has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII. C of Exhibit B of this exhibit.
   d. The Servicing Official has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph IX A 1 f of this exhibit.

3. The Servicing Official has reviewed any market studies or surveys received from FmHA loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B Approval of SMR.

1. The State Director may approve the use of an SMR when the conditions listed in paragraph IX A of this exhibit are met.

2. While a request for an SMR is pending or an SMR is in effect, no initial RRH loan may be obligated for the same market area unless such loans would not cause financial harm to any existing projects in the market area and the request is authorized by the Assistant Administrator, Housing.

C Implementing an SMR.

1. After the use of an SMR has been approved by the State Director, the Servicing Official will establish an SMR for the project with the borrower.
   a. The SMR will be obtained by adjusting the “FmHA Debt Payment” item in the “Proposed Budget” column of Form FmHA 1930-7, to reflect a payment to FmHA amortized at an interest rate which is less than the full note rate on the borrower’s promissory note. The interest rate chosen may never be less than 2 percent.
   b. The interest rate of the SMR budget will be set at a level that will make project SMR rents equal to the monthly vacancy rate has averaged at least 12 percent vacant, and
   c. The borrower will submit to the Servicing Official, the items listed in paragraph IV A 1, 2, 4, 5, and 6 of this exhibit.
   b. The Servicing Official shall review the budget and supporting documentation, and then found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.
   c. In addition to any State requirements, the borrower notifies each tenant or member of the new rates and/or utility allowance and:
      (1) Include in the notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants or members.
      (2) Mail a copy of the notice to the tenant or member at least 30 days prior to the effective date of the change.
      (3) Offer the tenants or members an opportunity to meet with management to discuss the change and review any material contributing to the change.
      (4) Inform the tenants or members of their right to request a review of the rate change approval decision within 45 days of the date of the notice by writing to the next higher FmHA approval official. Until the request is resolved, the tenants or members are required to pay the changed amount of rent as indicated in the notice of approval.
      (5) When an SMR is implemented in a Plan II section 8/S15 Project, use lines 23 through 29 of Form FmHA 1944-28 to report any additional payments to the reserve account required when HUD contract rents exceed SMR rental rates.

D Changing an SMR.

1. An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually.
   a. If the local market conditions that caused the need for the SMR have not been resolved and corrected, document same and update the monitoring timeframes and proceed no further. However, if the local market conditions have changed and change in the SMR is warranted, the requirements listed in paragraphs IX D 2, 3, and 4 of this exhibit apply.

2. An SMR must have the SMR rate rent increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA) when the:
   a. Vacancy rate drops to 10 percent or below for 6 consecutive months, or
   b. The borrower does not continue to satisfy the conditions of paragraphs IX A 1 c (1) and (2), e, or f of this exhibit.

3. An SMR is completely terminated when the note rate rent is regained.

4. An increase in an SMR will be accomplished in accordance with paragraph IV E of this exhibit.

E Disapproval of SMR. When the approval official determines a request for an SMR is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the SMR is not approved. The borrower will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter.

X Special Problem Cases. Problem cases which cannot be handled under this subpart should be submitted to National Office for review with the State Director’s recommended plan of action.

Exhibit C—Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change

Date Posted
You as a tenant (member) are hereby notified that, subject to Farmers Home Administration (FmHA) approval, rents (occupancy charge) and utility allowances will be changed effective [date], (at least 60 days from this posting or other timeframe if required by State law).

[Project Owner Name] has filed with FmHA, United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the [Name of apartment complex] for the following reasons:

1. [Reason 1]
2. [Reason 2]
3. [Reason 3]

[planned rent (occupancy charge) changes as follows:

(Reasons continue...)

[Signatures of FmHA

[Date of Approval of Change]
Dear [Recipient],

You are hereby notified that the [Farmers Home Administration (FmHA)] has reviewed the request for a change in shelter costs for the [project(s)], and considered all justifications provided by project management [and comments provided by tenants]. The FmHA has approved the following rent (occupancy charge) and/or utility allowance changes listed below. The changes for all units will become effective on [insert effective date shown in exhibit C-1 of this subpart or later effective date in accordance with last paragraph of Exhibit C-1 of this subpart]. The change is needed for the following reasons: (Insert Reasons for Approval)

The approved changes are as follows:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Present rent (occupancy charge)</th>
<th>Approved rent (occupancy charge)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note rate</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The approved utility allowance changes are as follows:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Present utility allowance</th>
<th>Proposed utility allowance</th>
<th>Amount changed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Should you have any questions or concerns, you may contact FmHA. The FmHA Servicing Office address is: (Use the following required and/or optional paragraphs where applicable.)

*You must notify the tenants (members) of FmHA's approval of the rent (occupancy charge) and utility allowance changes by posting this letter in the same manner as the "Notice to Tenants [Members] or Proposed Rent (Occupancy Charge) and Utility Allowance Change (Exhibit C-1 of this subpart)." This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant (member). This approval does not authorize you to violate the terms of any lease (occupancy agreement) you currently have with your tenants (members).

**For those tenants (members) receiving rental assistance (RA), their costs for rent (occupancy charge) and utilities will continue to be based on the higher of 30 percent of their adjusted monthly income or 10 percent of gross monthly income if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

**Your application for RA units on behalf of eligible tenants (members) has been received (or is on hand). Since RA units are not available, the approved rate and/or allowance change is subject to your acceptance of the RA units should they become available.

**This rate and utility allowance change is conditioned on the requirement that you carry out energy conservation measures and operating practices as determined necessary by the project energy audit. You will be allowed [insert number of days] days for completion of the work. FmHA assistance may be available to finance any needed improvements.

**You may file an appeal regarding the rate and utility allowance change as approved within 45 days of the date of this notice. See attached Form FmHA 1900-1, "Request for Appeal of Adverse Action," for your appeal rights. A request for a hearing must be sent to the Area Supervisor, National Appeals Staff, [Address], postmarked no later than [number of days from date of this letter].

*Any tenant who does not wish to pay the FmHA approved rate changes may give the owner a 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent. Sincerely,

FmHA Approving Official
*Required
**Optional, as applicable

Exhibit D—Energy Audit

I Objective: It is the objective of the [Farmers Home Administration (FmHA)] that Multiple Family Housing (MFH) financed by the Agency incorporates energy conservation measures and operating practices in keeping with the National Energy Strategy for a more efficient, less vulnerable, and environmentally sustainable energy future. Monitoring of this objective will be accomplished through the following:

II Purpose and Intended Outcome:

* The purpose of this exhibit is to define the FmHA requirements for energy audits. While energy audits will review the functioning of energy conservation measures initially incorporated in the housing, or previously retrofitted, and identify need for any further measures, the main thrust of energy audits will be to evaluate and/or recommend operating practices used in individual dwelling units and the common areas of a project.

Sincerely,

Borrower/Borrower's Representative

Exhibit C-2—Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change

*This approval does not authorize you to pay the FmHA approved rent changes may give the owner a 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.
B. The intended outcome is to reduce tenant member utility expenses; reduce project operating and maintenance expense; reduce usage of subsidy; improve the marketability of units and value of the property, conserve national energy resources within cost effectiveness; and increase the comfort and enjoyment level of tenants or members.

III Borrower Responsibility:
A. Initial audit. An initial energy audit is required for each project during the third year of operation or during completion of construction for "early" detection and correction of any deficiencies in energy conservation measures and/or operating practices.
B. Subsequent audit. A subsequent energy audit is required at least within 5 years of the initial audit and at 5-year intervals thereafter, to identify if energy conservation improvements are needed.

C. Submission of audit. The borrower shall submit a copy of the initial or subsequent audit along with the next submission of Form FmHA 1930-7, "Multiple Family Housing Project Budget." The borrower's plan for implementing the recommended improvements shall be included in the project budget. The submitter energy audit will be retained in the file by the Servicing Office for review during subsequent annual reviews. If any of the improvements are deferred due to cost ineffectiveness, the borrower shall, each year thereafter, include with the annual project budget, an updated cost feasibility analysis from the deferred improvements, along with the borrower's recommendation for implementing the improvements.

D. Cost of audit. An energy audit is beneficial to the operation of an MFH project. The cost of the audit is an operational expense. The cost should be consistent with the size of the project and comparable to the cost of other audits in the area. The cost may be paid from annual revenue or from the reserve account depending on the amount.

IV Performing an Energy Audit
A. An energy audit shall be an in-depth, on-site inspection of the building shell and of the space heating, space cooling, ventilation, and water heating equipment for the building. It shall be conducted by a qualified energy auditor.
B. Persons shall be considered qualified to perform an energy audit if they:
1. Are authorized under a State Plan approved by the Department of Energy (DOE) in accordance with the requirements in 10 CFR part 456.
2. Are authorized under a Federal Standby Plan promulgated by DOE in accordance with the requirements in 10 CFR part 456, or
3. Can otherwise demonstrate that they possess the technical skills and knowledge necessary to perform energy audits.
C. When persons meeting the qualifications in paragraph IV B of this exhibit are not available, the FmHA State Director, with prior National Office approval, may implement an alternative method to accomplish the requirements of this exhibit using Agency staff and resources, provided it is cost and time effective to perform such task.
D. The energy auditor shall inspect the building to determine which energy saving measures and operating practices should be improved. The energy auditor is expected to summarize the results of this inspection and projected cost savings in priority order and include them in a written report.
1. The report shall address the condition or application of the following energy saving measures:
a. Caulking and weatherstripping;
b. Central high efficiency air conditioners;
c. Ceiling, wall, and floor insulation;
d. Crawlspace or foundation wall insulation;
e. Duct or pipe insulation;
f. Water heater insulation;
g. Storm or thermal windows and doors;
h. Heat-reflective window and door material;
i. Crawlspace and/or attic ventilation;
j. Energy management devices;
k. Clock thermostats;
l. Funnece efficiency modifications; and
m. Vent damper for water heaters, furnaces, and boilers.
2. The report may address the following energy saving measures if significant benefits can be shown in the opinion of the energy auditor:
a. Solar domestic hot water systems;
b. Active solar space heating system;
c. Combined active solar space heater and solar domestic hot water systems; and
d. Passive solar space heating and cooling systems.
3. The auditor shall inspect the building and report any improvement of energy conserving operating practices that can lead to immediate energy savings. These practices include, but are not limited to, the following:
a. caulking and weatherstripping;
b. energy efficiency maintenance and adjustments (air filters should be changed frequently);
c. Water flow reduction on showers and faucets;
d. Sealing leaks and check insulation of pipes and ducts;
e. Raising thermostat settings in summer and lowering them in winter;
f. Cleaning baseboard convectors and refrigerator coils;
g. Nighttime temperature setback;
h. Reducing energy use when apartment is unoccupied;
i. Plugging leaks in attics, basements, and fireplaces;
j. Efficient use of shading; and
k. Reduce water heater temperature setting (should not exceed 120 degrees Fahrenheit).
3. A report shall include a list of any recommended energy saving measures and/or operating practices. The following information shall be provided as applicable:
a. Description;
b. Estimated useful life;
c. Estimated annual energy cost savings in the first year;
d. Cost; and
e. Estimate of any incremental annual operation and maintenance costs.
5. The report shall include a summary of the energy auditor's qualifications.
V. Funding: Improvements may be funded from annual project income, project reserve, a subsequent loan, borrower's funds, or any other FmHA authorized funding which will keep the improvement cost effective. Plans for funding the improvements should be included in the borrower's recommendation for implementation.

VI Servicing Official Responsibility:
The Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit.
1. Cost effectiveness. Cost effectiveness shall be determined by comparing the "value-in-use of the facility with and without the proposed energy saving improvement. Exhibit D of FmHA Instruction 1922-B, (available in any FmHA office), describes the "value-in-use" approach that may be used to appraise cost effectiveness.
2. Financial impact. Financial impact shall be determined by comparing the estimated net energy and operation and maintenance costs savings in the first year to the annual cost of amortizing a loan to install the proposed energy saving improvement. A positive financial impact occurs when the first year annual savings equals or exceeds the annual cost of amortizing any loan(s) for the proposed energy saving improvement. Exhibit D-1 of this subpart may be used to organize the calculation of the financial impact.
3. When the identified and/or deferred improvements determined by an energy audit obtained within the immediate past 5-year period are found to be cost effective and have a positive financial impact, the Servicing Official shall recommend or require that any rent or occupancy charge increase approval requested by the borrower be conditioned upon installation of such energy saving improvement(s).
4. The Servicing Official may recommend a rent or occupancy charge increase for energy saving improvements which are not "cost effective" whenever the borrower contributes sufficient funds to reduce the cost of the improvement so that, on the basis of the FmHA investment only, the improvement is cost effective. A positive first year financial impact is not required. Any contribution made by the borrower to reduce the cost of the improvement to the cost effective limits will not be an eligible contribution for computing return on investments. The project reserve may not be utilized for such contribution.
5. When the improvements are not cost effective or do not have a positive financial impact, and the borrower does not elect to reduce the cost of the energy saving measures as described in paragraph VI A 4 of this subpart, the Servicing Official shall recommend deferral of implementation of the improvements. Any deferred improvements must be analyzed during each subsequent year's annual analysis.
6. A copy of the decision regarding the energy audit will be included in the annual reports forwarded to the State Director.

VII State Director Responsibility: The State Director shall review the Servicing Official's recommendations and the decision required within the immediate past 5-year period to deferral of implementation of the proposed improvements and/or practices as a part of the annual report review.

VIII Development: All development will be performed in accordance with the
requirements of subpart E of part 1944 of this chapter and subpart A of part 1924 of this chapter, except that §1924.6(b)(3)(ii) of subpart A of part 1924 of this chapter will not apply to improvements made by the owner-builder method.

**IX. Rent or Occupancy Charge Change: Any rental or occupancy charge change necessitated by the improvements must be processed as set forth in Exhibit C of this subpart.**

**Exhibit D-1—Calculation of Financial Impact (Energy Audit)**

A. First Year Annual Savings $______ (from audit).

B. Annual Cost of Amortized Loan (from calculation in part D below).

C. Difference (A-B) (if zero or greater, energy saving measure has a positive financial impact).

D. Calculation of Annual Cost of Amortized Loan for Energy Saving Measure:

1. Appraisal of Energy Saving Measure (for calculation of appraised value, of FmHA Instruction 1922- B see Exhibit D available in any FmHA office).

2. Amortization Factor (for calculation of Amortization Factor, use Interest rate of Rural Rental Housing and Rural Cooperative Housing from FmHA Instruction 440.1, Exhibit B (available in any FmHA office); the Useful Life or weighted average of Full Life for more than one energy saving measure from the energy audit; and the Amortization Factor from FmHA Instruction 440.1, (available in any FmHA office).

3. Annual Cost (Appraisal x Amortization Factor enter answer in part B above).

**Exhibit E—Rental Assistance Program**

1. General. The objective of the rental assistance (RA) program is to reduce rents paid by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible rural rental housing (RRH) and eligible members occupying rural cooperative housing (RCH) projects financed by the Farmers Home Administration (FmHA). For the purposes of this exhibit, the term “tenant” also means “member.” This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public agency. RA will supplement the benefits available to tenants under the interest credit program outlined in Exhibit H to this subpart.

**II. Definitions.**

A. Eligible tenants. Any very low-income, or low-income household meeting the following requirements:

1. The household’s adjusted annual income must not exceed their adjusted income which is a low-income limit established for the area as indicated in Exhibit C of subpart A of part 1944 of this chapter (available in any FmHA office).

2. The household must be unable to pay the approved rental rate plus utility allowances and occupancy surcharge within a portion of their income not exceeding the highest of:

   a. 30 percent of their adjusted monthly income;
   b. 10 percent of gross monthly income; or
   c. If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household’s shelter cost.

3. The household must meet the occupancy policy established for the project and approved by FmHA according to paragraph VI D 2 of Exhibit B of this subpart.

4. The household must have an unexpired and signed Form FmHA 1944-6, “Tenant Certification,” with the borrower.

B. Eligible project.

1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a: a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing; b. RRH insured loan to an individual or organization who has or will execute a loan resolution or loan agreement agreeing to operate the housing on a limited profit basis as defined in §1944.205 of subpart E to part 1944 of this chapter.

C. RCH insured or direct loan; or

D. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public agency.

2. Borrowers may utilize the Department of Housing and Urban Development (HUD) Section 6 Housing Assistance Payments Program and FmHA RA in the same project. In such cases, Form FmHA 1944-7, “Multiple Family Housing Interest Credit and Rental Assistance Agreement,” for the project will reflect coding for “Plan II RA.”

3. Borrowers will provide RA to only those eligible tenants occupying LH, RCH, or RRH rental housing units financed by FmHA.

C. Operational project. A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants.

D. New projects. Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For new construction RA purposes, if further means before any units occupied.

E. Rental assistance. RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV A 2 c of Exhibit B to this subpart. When the household’s monthly gross tenant contribution is less than the approved utility allowances and occupancy surcharge, when paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this exhibit.

F. RA agreement. The term refers to Form FmHA 1944-27, or its predecessor. Form FmHA 444-27 and Form FmHA 444-27A.

G. RA obligation. The obligation consisting of the number of RA units and associated dollar amounts of rental assistance specified in a particular RA agreement.

H. RA obligation number. The identification number associated with a particular RA obligation.

1. Replacement units. RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

2. Servicing units. RA units which increase the number of RA units resulting in initial or additional RA agreements.

K. Shelter cost. The approved shelter cost consists of basic or note rate rent plus utility allowances and occupancy surcharge, when required. Basic and/or note rate rent must be shown on the project budget for the year and approved according to §1930.122 of (b)(1) of this subpart. Utility allowances, when required, are determined and approved according to Exhibit A-6 of subpart E of part 1944 of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart.

L. Utility allowances. The allowance approved by FmHA according to Exhibit A-6 of subpart E is used to cover the cost of utilities which are payable directly by the households.

III. Utilization of RA. All borrowers with eligible projects as defined in paragraph II B of this exhibit are encouraged to utilize the RA program and receive RA payments on behalf of eligible tenants. Generally, the borrower, or the borrower’s approved management agent, will initiate the processing of a RA application.

IV. Priority of RA applications.

A. State of allocations. The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction.

B. Allocation to projects within a State. The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this exhibit. Priority in allocating RA units will be as follows:

1. Replacement units: The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are...
allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each Servicing Office during the current fiscal year and the first quarter of the following fiscal year.

2. New housing Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:
   a. Applications for RH and RCH loans where the market survey information indicates that a large percentage of the prospective tenants needed RA. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects having highest need located in areas identified as having the greatest need for low-income housing, and selected for funding in accordance with § 1944.231 of Subpart E of Part 1944 of this chapter.
   b. For LH projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. Operational revenue Where the National Office provides an allocation for servicing RA units, the State Director will distribute them to operational RH, RCH, and LH projects based on Form FmHA 1944–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on this exhibit and administrative directives issued by the National Office under the annual RA allocations or other authorizations or guidelines established through the budget process. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

V. Processing of RA applications All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. Operational projects
   1. A borrower with an eligible project in which there are tenants paying in excess of 30 percent of their adjusted income for rent should be encouraged to have on file a Form FmHA 1944–25 with the Servicing Official to avoid delays in processing future servicing requests. Once a Form FmHA 1944–25 is on file at the FmHA Servicing Office, subsequent submittals of the form will not be necessary to support subsequent approvals of RA by FmHA. A separate Form FmHA 1944–25 will be submitted for each project. The borrower should include the following with each request:
      a. Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project. (All Forms FmHA 1944–8 must be current.)
      b. An approved budget for the year on Form FmHA 1930–7, "Multiple Family Housing Project Budget," with Exhibit A–6 of Subpart E of Part 1944 of this chapter attached, when applicable.
   2. Prior to the full disbursement of obligated funds, a borrower or approved management agent may submit a request for replacement RA units. The request should contain all the material requested in paragraph V A 1 of this exhibit and should be submitted no later than 3 months prior to the expected full disbursement of obligated funds to allow time for processing. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944–51. "Multiple Family Housing Obligation-Fund Analysis," is received obligating the replacement units. Form FmHA 1944–51 requesting the additional units must be coded sequentially as required in paragraph V C 5 of this exhibit.
   3. The Servicing Official will review the budget, Exhibit A–6 of Subpart E of Part 1944 of this chapter, Form FmHA 1944–29, and Form FmHA 1944–25 submitted by the borrower to assure that the items are complete and accurate. The Servicing Official will complete Form FmHA 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. Projects to be funded
   1. Applications for funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944–25 to the Servicing Official when submitting a preapplication or application for funding.
   2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.
   3. State Director action on requests for RA. Only the State Director or delegated members of the State Office staff may approve or disapprove RA requests.

1. Approval actions. When the State Director determines that RA can be obligated or transferred, part III of Form FmHA 1944–51 for obligation, or Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the Forms Manual Insert (FMI). Form FmHA 1944–27, "Replacement or modified RA agreements." will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal on the day following the request.

2. Completing RA agreements. When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944–51 or Form FmHA 1944–55 to the Servicing Official. The Servicing Official will complete Form FmHA 1944–27, and attach the appropriate copies of Form FmHA 1944–51 or Form FmHA 1944–55 according to the FMI.
   a. Initial RA agreements. The Servicing Official will complete the original and two copies of Form FmHA 1944–27. When the project does not have a Form FmHA 1944–7 in effect, the Servicing Office will prepare an original and three copies. The Servicing Office and the borrower will then execute the original of Form FmHA 1944–27 and Form FmHA 1944–7. The forms will be distributed according to their FMI.
   b. Replacement or modified RA agreements. When a Form FmHA 1944–27 initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA 1944–27 will be prepared and distributed according to the FMI. For every replacement or modification on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled and distributed by the Servicing Official according to the FMI.

4. Denial of RA Request
   a. If RA funds are available but cannot be provided due to a determination of ineligibility, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter in such cases. When RA funds are not available from the State's allocation or the National Office Reserve the decision will be considered nonappealable, however, the decision is still reviewable, under subpart B of part 1900 of this chapter.
   b. Should RA not be available for lack of appropriation to replace an expiring RA obligation, the State Director will advise the borrower to notify tenants of the increase in rent following the notification requirements of Exhibit C of this subpart. Tenants who cannot afford the increased rent shall be given the opportunity to quit the lease and vacate the project without penalty.

5. RA obligation numbers
   a. Each RA obligation will be assigned a six-digit RA obligation number by the Approving Official as follows:
      (1) First two digits—Fiscal year (FY) in which the funds were obligated (i.e., 85, 86, etc.).
      (2) Second two digits—Numbers in sequential order for each fiscal year starting with 01 (i.e., 93–01, 93–02, 94–01, 94–02).
      (3) Third two digits—Assign a new RA obligation number by the Approving Official as follows:
         (1) First two digits—FY initial obligation was made on the project (i.e., 78, 79, 80, etc.)
         (2) Second two digits—Relate to the pre-Automated Multi-Housing Accounting System conversion loan number to which the RA obligation was processed.
      (3) Third two digits—Indicate the number of modifications plus 1. (Form FmHA 1944–27 with two modifications on September 30, 1984, will be designated "03").
   c. The Finance Office will track RA obligations and undisbursed balances by number.

VI. Terms of the RA Agreement
   a. Effective date. Each Form FmHA 1944–27 will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal of paragraph XVI of this exhibit, the effective date will be retroactive to the first day of the month in which the assistance
was denied, provided the borrower agrees to make an appropriate refund to tenants who would have been entitled to RA during the retroactive period.

B Term.

1 Twenty-year RA agreement. Twenty-year agreements were authorized during the initial year of the RA program through FY 1982. Twenty-year agreements were restricted to new projects or modifications of existing 20-year agreements. The agreement is effective for 20-years from the effective date of Form FmHA 1944-27. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA 1944-27 are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a 5-year period.

2 Five-year RA agreement. Five-year agreements may be used for operational projects, or for new projects when 20-year units are not available. The agreement shall be effective for 5 years from the effective date of the agreement. This 5-year agreement may be modified or terminated in accordance with the terms stated on Form FmHA 1944-27.

The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA 1944-27 are fully disbursed. This can be any time before or after the end of the 5-year period.

3 Modification of RA agreements. Forms FmHA 1944-27 may be modified:

a To add or subtract RA units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avoid prepayment.

b To reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the project after a voluntary conveyance or a liquidation of the project.

c To transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

d Amendment of RA agreements.

a Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in section 9, "Term of the Agreement," may be modified by the use of Form FmHA 1944-27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

b Any existing RA agreement on earlier Form FmHA 1944-27 or Exhibit B-2 (of now obsolete FmHA Instruction 444.5) containing an occupancy standard may be amended by mutual consent of the borrower and FmHA when a new occupancy policy for the project is approved according to paragraph VI D 2 of Exhibit B of this subpart. To amend the form:

(1) Delete section 5 of the original and the borrower's copy and have the deletion dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower.

(2) Type the following statement on the reverse of the original agreement and the borrower's copy and have the statement dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower. "Amended (date) by authority of paragraphs V B 4 of Exhibit B and VI D 2 of Exhibit B of subpart C of part 1930, chapter XVIII, title 7, Code of Federal Regulations."

5 Replacement RA obligations. Replacement RA obligation(s) for either 5-year or 20-year obligations will be for a 5-year period. All requirements in paragraphs VI B 2 and 3 of this exhibit apply. Expiring RA obligations and replacement RA obligations may run concurrently for a period of 30-50 days so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII Recordkeeping Responsibilities

A The Finance Office (FO) will track the use of RA obligation and ensure that RA obligation is disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the Servicing Official with an RA payment and obligation status report for each project. The annual version of this report will require, at a minimum, the repayment of any incorrectly advanced RA funds. The borrower will be responsible to FmHA for any unauthorized use of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to FmHA Instruction 2012-B (available in any FmHA office).

IX Handling Utility Allowances

A Payment of utilities. 1 When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit.

2 When utilities are paid by the household receiving RA and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and one of those limits of the household's adjusted monthly income.

3 In a project where the owner pays all utilities, the tenant rent will be the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit up to the approved rent for the rental unit being occupied.

B Determining the allowance. The utility allowance will be determined and recorded by the use of Exhibit A-6 of Subpart E of Part 1944 of this chapter.

C Changes in allowances. The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C of this subpart.

X Method of Payment of RA to Borrower

A Regular monthly RA payments.

1 Borrower responsibilities.

a Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944-29 and the remaining balance must be submitted to the Servicing Official by check. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued by the FO.

b Each month the borrower must forward to the Servicing Official a Form FmHA 1944-29. Any new Forms FmHA 1944-8 must be submitted to the Servicing Office as required in Exhibit B of this subpart. Both forms must be prepared for each project according to the instruction attached to the respective forms.

2 Servicing Official responsibilities.

a When new Forms FmHA 1944-8 are received, the Servicing Official will immediately date stamp each form with the receipt date, review each Form FmHA 1944-
8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

b When a Form FmHA 1944-29 is received, the Servicing Official will:
(1) Date stamp each form FmHA 1944-29, and review the form and assure that entries are supported by the current form FmHA 1944-8.
(2) Enter the payment data via field office terminals as required in Exhibit A to subpart K of part 1944 of this chapter (available in any FmHA office).

The Servicing Official should verify the accuracy of the borrower's servicing address shown on the PO record. When the address shown is incorrect, corrections must be made on AMAS screen MSA "Record Borrower/Project Data" via a field computer terminal.

When a project account is delinquent, the Servicing Official may agree to release a portion of the monthly RA for project operation accounts authorized in a servicing plan developed in accordance with Exhibit F of subpart B of part 1905 of this chapter (available in any FmHA Office).

An RA payment request must be based on actual occupancy as of the first day of the month.

XI Assigning RA to tenants

A New project: Applications for occupancy should be accepted during the construction phase of the project, after the preconstruction conference has been held, and placed on a waiting list. During initial rent-up period, the following priorities will apply:

1 Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants as defined in paragraph II A of this exhibit who qualify for RA, even if there are applications on other lists that applied earlier.

Applications qualifying for RA will be considered according to the priority established by paragraph XI B of this exhibit, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.

2 If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may request a transfer of unused RA units in accordance with paragraph XV B 5 of this exhibit.

However, applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.

3 If there are still vacant units, those applicants by-passed because they did not qualify for RA could still be considered for occupancy on a first-come, first-served basis.

B Operational RRH and RCH projects: To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944-29 for the project must be updated as of the date the unit is available, assuring that columns 3 through 9 of part II are current and accurate.

1 First priority for assigning RA must always be given to eligible very low-income households in the following order:
   a Eligible very low-income tenants paying the highest percentage of adjusted annual income for approved shelter costs.
   b Eligible low-income applicants from the project waiting list according to the order provided in paragraph VI H of Exhibit B of this subpart. No eligible tenant household in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA to move in.

2 Second priority for assigning RA will be given to eligible households with low-income in the following order:
   a Eligible low-income tenants in the project paying the highest percentage of adjusted annual income for approved shelter cost.
   b Eligible low-income applicants from the project waiting list. Low-income applicants will be selected according to paragraph VI H of Exhibit B of this subpart, provided the borrower has satisfied the requirements of paragraph XI C of this exhibit.

3 Third priority for RA will be given to occupancy ineligible tenants as described in paragraph VI I of Exhibit B of this subpart living in the project.

4 Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for RA, as the RA calculation formula shows a moderate income tenant that was initially eligible for RA as a very low- and/or low-income tenant who still needs RA and there is an RA agreement in effect.

C Limits on low-income RRH and RCH applicants who may receive occupancy and RA

1 When no more very low-income applicants are on the waiting list and RA is available, eligible low-income applicants may obtain occupancy and receive RA provided that:
   a For projects available for initial occupancy prior to November 30, 1983, no more than 25 percent of the vacant units receiving RA may be occupied by low-income tenants other than very low-income tenants.
   b For projects available for initial occupancy on or after November 30, 1983, no more than 5 percent of the vacant units receiving RA may be occupied by low-income tenants other than very low-income tenants.

2 The borrower may rent units and provide RA to other than very low-income applicants/tenants in excess of the percentage in paragraph XI C 1a and b of this exhibit respectively, only when there are no more very low-income applicants or tenants available in the market area. The borrower must have documentation in its file and available to FmHA for its review to show the efforts made, and the facts used to determine that there are currently no more very low-income applicants in the market area.

3 Operational LV projects: Tenants who meet the definitional requirements of domestic farm laborers found at § 1944.153 of subpart D of part 1944 of this chapter shall be assigned RA in the following priority order within the subcategories of priority occupancy established by that subpart:
   1 Very low-income.
   2 Low-income.
   E Assigning RA other than the first of the month:

When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the prorate amount for ½ month would be $60.]

3 When RA is assigned to a tenant other than the first of the month, no adjustment to the tenant contribution on Form FmHA 1944-29 for that month will be made. The borrower will begin to receive reimbursement of RA for the tenant as of the first day of the next month.

4 No adjustment will be made on Form FmHA 1944-29 to request additional RA payment or to refund any excess RA payment or overage for the previous month when RA is reassigned other than the first of the month.

XII RA assigned to wrong household:

When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are addressed in subpart N of part 1951 of this chapter.

Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Servicing Official. If the Servicing Official verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. The tenant will also be notified in writing that:

1 The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2 The RA granted in error will not be recaptured from the tenant.

The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under subpart L of part 1944 of this chapter.

Reassigning RA: The RA unit will be reassigned to the next eligible household, based on Form FmHA 1944-29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the
tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

XII. RA payment calculation: When an RA check must be canceled, the following procedure will be followed:

A. Return of the original RA U.S. Treasury Check: The Servicing Office will prepare Form FmHA 1944-53, "Multiply Family Housing Cancellation of U.S. Treasury Check and/or Obligation" as specified in the FMI and mail it to the MFH unit in the FO.

B. Return of all or a portion of the RA payment or refund of RA previously paid or advanced: A check from the borrower made payable to FmHA will be submitted to the MFH unit in the FO on Form FmHA 1944-53, completed according to the FMI.

XIV. Terminating existing RA agreements obligated in prior and/or current FYs:

A. When a project's obligated funds are fully disbursed under any given RA obligation number, RA will be automatically terminated by the FO and no further RA request will remain in the RA obligation number. The Servicing Official must monitor these balances through field office terminals and AMAS Report No. 513-C. The Servicing Office will modify Form FmHA 1944-27 according to the FMI by indicate that a termination has occurred. The Servicing Official will notify the borrower in writing that the obligation under the RA obligation number has expired and the RA obligation number must be stricken from the agreement.

1. For all RA obligations before FY 1985, RA is considered fully disbursed by the FO when all RA funds obligated before FY 1985 are disbursed.

2. For all RA obligations after FY 1984, RA is considered fully disbursed by the FO when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3. When a Form FmHA 1944-27 consists of several different obligations (Form FmHA 1944-53 or Form FmHA 1944-55), identified by different RA obligation numbers, and the obligations will not be fully disbursed at the same time, only those RA obligation numbers with fully disbursed obligation will be terminated.

B. Prior to full disbursement of obligated funds:

1. Prior FY obligations. Prior FY obligations will not be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2. Current FY obligations. The State Director is authorized to terminate RA obligation prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV. Suspending or transferring existing RA.

A. RA may be suspended or transferred according to the requirements for each situation described in paragraph XV B of this exhibit. The following situations are described in paragraphs XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of the suspended RA.

B. The State Director or Servicing Office will notify the borrower in writing, stating the reason(s) the RA is suspended.

C. The Servicing Office will put a suspend code on the RA obligation number, RA will be automatically suspended and/or transferred as specified in the FMI for each transferee. The RA obligation number has expired and the RA obligation number must be stricken from the agreement.

1. Transfer.

a. Only the State Director may approve an RA transfer.

b. RA may be transferred to any borrower with an RA eligible project according to the priorities established by this exhibit or the National Office.

c. AMAS will determine the per unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944-55.

d. RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the FMI for Form FmHA 1944-55.

2. Suspension.

a. When the State Director approves an RA suspension, the RA will be suspended to the extent that no payments will be credited to the RA account.

b. When a RA was received as a result of the transferor's liquidated RA obligation(s), the RA will be suspended at the effective first day of the month in which the transfer is approved.

c. The RA has not previously been suspended.

d. The RA was received as a result of the transferor's liquidated RA obligation(s).

e. All or any portion of the units in an RA Agreement with an undisbursed balance may be transferred.

f. When the State Director approves an RA transfer, Form FmHA 1944-55 completed according to the FMI, will be used to notify the FO except as noted in paragraph XV B 1 of this exhibit.

g. Form FmHA 1944-27, with Form FmHA 1944-55 attached, will be completed according to the FMI for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved.

h. The transferee's Form FmHA 1944-27 will be modified by attaching a copy of Form FmHA 1944-55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferee's present agreement will be so documented.

B. RA may be suspended and/or transferred in the following situations according to the following directions:

1. RA transfer accompanying a project transfer. When a project is transferred to an eligible borrower, the transferee may assume the transferor's liquidated RA obligation(s). Form FmHA 1944-55 will be forwarded to the FO attached to Form FmHA 1965-10, "Information on Assumption of Multiple Family Housing Loans," as required in § 1965.Ba(c)(1) of Subpart B of part 1965 of this chapter.

2. Suspension and transfer after a voluntary conveyance or foreclosure sale.

When a project with RA is voluntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Action." The RA obligation numbers may be transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944-55.

3. Suspension and transfer after a liquidation or prepayment.

a. When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project in accordance with paragraph XV B 3 b of this exhibit, if applicable, or if not, to another project at the State Director's discretion.

b. The RA may be suspended and/or transferred as an RA eligible project according to the following directions:

(1) The borrower is eligible to receive and administer RA.

(2) The tenant is eligible to occupy the project and to receive RA.

(3) The tenant had taken all the following steps to insure eligibility to receive priority for the unit of RA.

(i) Had been placed on at least one waiting list for a FmHA project with a Letter of Priority Entitlement.

(ii) Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from the one for which the tenant is eligible by more than one bedroom.

(iii) Moved to an eligible unit as soon as one was available.

(4) The RA has not previously been transferred for the tenant's current displacement.

b. Procedures for transferring RA and modifying RA agreements outlined in paragraphs VC and XV A 2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944-25 if the RA was received as a result of the occupancy of a displaced tenant.

4. Suspension and transfer after a involuntary conveyance or foreclosure sale.

When a project with RA is involuntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Action." The RA obligation numbers may be transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944-55.

5. Suspension and transfer after a voluntary or involuntary conveyance or foreclosure sale.

When a project with RA is involuntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Action." The RA obligation numbers may be transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944-55.

6. Suspension and transfer after a voluntary or involuntary conveyance or foreclosure sale.

When a project with RA is involuntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Action." The RA obligation numbers may be transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944-55.
project’s account. Interest credit will be credited to the project’s account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, RA credit will be cancelled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

(2) That portion of the monthly RA not needed to pay the project monthly installment and other charges as specified in paragraph VIII of Exhibit A to subpart K of part 1951 of this chapter (available in any FmHA office) may be processed and returned to the project operating account to maintain project operation.

(3) RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA as described in paragraph XV.B 4.a (2) of this exhibit.

b. After final disposition of the acceleration, expiration of the appeal and redemption period of the defaulting borrower the RA will be:

(1) Transferred with a credit sale. If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower’s case number and project number to the new case number and project number. Form FmHA 1944-55 will be attached to Form FmHA 1965-20 “Multiple Family Housing Advice of Mortgaged Real Estate Sold,” when it is sent to the FmHA, or

(2) Transferred to a different project when the defaulting project is sold outside the program. When the suspended RA is not needed for the project after the credit sale or other disposition of the acquired property, the State Director should transfer the RA to a different project or projects as provided in paragraph XV.A 2 of this exhibit, or

(3) Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower’s account.

c. The borrower will be apprised of the appeal rights available under subpart B of part 1900 of this chapter upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

5. Transfer of unused RA. When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a. The borrower describes the efforts made to market the subsidized units and further demonstrates that:

(1) The market survey indicated there should be a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a 2-year period since initial availability. The borrower must:

(i) Document the efforts made to market the project to RA eligible applicants;

(ii) Demonstrate that the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) Certify that project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(2) Rent increases anticipated for the following 2 years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b. The Servicing Official recommends the RA transfer to another project or projects as provided under the conditions of §1944.235 of this exhibit have been met.

c. If, after the end of the initial year of a RA agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at least one, to another project without the borrower’s request. If the remaining unit(s) remains unused after an additional 12-month period, the State Director may authorize its transfer to another project. This would apply only if the current agreement is on form FmHA 1944-27 and when:

(1) The borrower has made the efforts described in paragraphs XV.B 5.a (1)(i), (ii), and (iii) of this exhibit to market the project to tenants needing RA, or if the borrower’s failure to use RA has resulted in an acceleration of the loan account.

(2) The Servicing Official has reviewed the project occupancy list, waiting list, past usage, and any other data available and verified that there is no apparent RA needs in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA’s intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with subpart B of part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with subpart B of this chapter before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV.A 2 of this exhibit.

6. Transfer due to an uncollectable loan. When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of §1944.235 (b) of subpart E of part 1944 of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior FY must be canceled and will be lost unless the conditions of §1944.235 (b) of subpart E of part 1944 of this chapter exist.

XVI. Rights for appeal if RA is not granted or is cancelled by FmHA.

A. Borrowers who have requested RA in writing and are denied such assistance due to a determination of eligibility by FmHA, or which RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA and will be notified of their appeal rights in accordance with subpart B of part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borrower denial of RA to tenants will be filed according to subpart L of part 1944 of this chapter.

XVII. Forms and exhibits. Exhibit A-6 to subpart B of part 1944 of this chapter and Form FmHA 1944-7 are to be used in determining the amount of RA to be provided.

Exhibit F—Farmers Home Administration Multiple Family Housing Supervisory Visit—Pre-Visit Worksheet

Purpose and Use of This Document

Use this document to help organize information and plan for a supervisory visit, compliance review, and physical inspection. It should be completed far enough in advance so that all relevant concerns and issues surrounding project operations are known and considered prior to the site visit.

Appropriate Servicing Office staff should examine the project casefile, consult with coworkers, and review any outstanding issues raised by FmHA’s most recent annual review of project operational and financial status. Other relevant issues may be obtained from a variety of sources such as ongoing tenant certification or payment processing concerns, Automated Multi-housing Accounting System (AMAS) status, correspondence from tenants or project management, or other issues contained in the running record.

Use your available tracking systems, AMAS, FOCUS, or Multi-housing Tenant File System (MTFS) to gather statistical information relevant to this document and the visit, to help define current project status and to determine if that status falls within acceptable FmHA norms for occupancy or financial operations.

Thoroughly review the management plan and management agreement to assure that the management practices at the project are in accordance with FmHA procedure and with the way project management has agreed to operate.

You should use the random sampling technique contained in Exhibit F—1 of this subpart to establish a sample of tenants for conducting tenant file reviews, interviews and apartment unit reviews, or wage matching. You may use an alternative sampling technique; however, you must fully explain any alternative sampling techniques on this document. Also, you may supplement your random sample with additional tenants that appear to represent unique occupancy or verification situations.

You may contact tenants to advise them of your visit and provide them the opportunity to express their view of project operations. Exhibit F—2 of this subpart may be used for this purpose.

FmHA MFH Supervisory Visit—Pre-Visit Worksheet

Project name: 

Borrower name: 
Federal Register / Vol. 58, No. 145 / Friday, July 30, 1993 / Rules and Regulations

Borrower ID and project number: 

Project location: 

Project management: 

FmHA visit to be completed by: 

General information. 

Visit Date: [ ] Box/Mgt notified of visit; [ ] 

Tax Credit Eligible: (y)(n) Number of Sec. 8 Units: 

Project Type: (RRH)(RCH)(LH) Number of RA Units: 

Latest tenant termination notice attached: (y)(n) Planning Code: ( ) 

Project's latest tenant grievance attached: (y)(n) Subpart Attach: (y)(n)(na)

Current tenant information for supervisory visit: 

[Latest MTFS project worksheet attached. As of: [ ] ] 

Total Units: 

Vacant Units: 

Overburdened Tenants: 

Tenants Receiving RA: 

Unused RA Units: 

Expired Certifications: 

Current tenant information for compliance review. 

[Latest MTFS documentation attached. As of: [ ] ] 

Tenants by race national origin code. 

White, Non-Hispanic: 

Black, Non-Hispanic: 

Asian, Pacific Island: 

American Indian, Alaska Native: 

Hispanic: 

Tenants by Sex. 

Outstanding concerns: (Check if yes, and explain briefly in Comments below) 

- Supervisory Visit 
- Compliance Review 
- Management Plan 
- Management Agreement 
- Affirmative Fair Housing Marketing Plan 
- Lease 
- Occupancy Rules 
- Rent Change 
- Energy Audit and Implementation Plan 

Comments: 

Other operational or financial concerns: 

Additional documentation for the upcoming visit: 

Most recently completed Exhibit A–2 of this subpart attached: (y)(n) 

Most recently approved Form FmHA 1930–7 Multiple Family Housing Project Budget attached: (y)(n) 

Tenants selected for tenant file review: 

Name and unit number: 

Tenants selected for interview and apartment unit review (if other than above): 

Name and unit number: 

Tenants selected for wage match (if other than above): 

Name and unit number: 

Note: At least six tenant households will be sampled or 100 percent of all households for projects having six or fewer units. 

Determine the sample size. 

Determine the sampling "interval." 

Determine the "starting point" of the sample. 

E. (the last digit of the current calendar year) 

Sampling process. 

Using the most current project worksheet, start selecting tenants with the tenant at the "starting point" (E) and select every tenant on the worksheet at the "interval" (D). To assure that you have a full sample (C), you may need to "wrap around" the project worksheet. 

For example: 

A 24-unit project is to be visited. Based on the June 1, 199X, project worksheet, a 25 percent sampling will be used. 

A. Total number of units is 24 

B. Percentage to be reviewed is .25 

C. Sample size is 6 

D. Interval is 4 

E. Starting point is X year digit 

Starting with the second tenant on the project worksheet, every fourth occupied unit will be selected for the sample. 

Multiple Family Housing Project Budget 

Outstanding concerns: (Check if yes, and explain briefly in Comments below)
Exhibit F-2—Suggested Format for a Pre-Visit Tenant Contact Letter

Date

Name

Address

Dear Tenant:

The Farmers Home Administration (FmHA) of the United States Department of Agriculture (USDA) financed the apartment project where you now live. At least once every three years, FmHA makes a site inspection and management review. The purpose of the visit is to help assure that this FmHA financed project is being operated in accordance with Federal laws and regulations.

Our next visit is scheduled for approximately ___________. We would appreciate knowing any questions, comments, or concerns that you would like to share with us regarding your occupancy. We may be able to talk to you directly during the visit, or you may want to contact us before the visit at: 

(Inset Servicing Office Address)

Some of the issues FmHA reviews during the visit are to determine: if fair and equal access is provided to apartments in your project; if outstanding maintenance, repair, or security concerns exist; how income is verified or certified; and if occupancy charges are at FmHA approved levels. Your response to this letter is completely voluntary. We appreciate your assistance.

Sincerely,

Servicing Official

Exhibit G—Farmers Home Administration—Multiple Family Housing Supervisory Visit—Summary of Findings

Project name:

Borrower name:

Borrower ID and project number:

Date of visit:

Persons interviewed:

FmHA visit completed by:

Purpose and use of This Document

This document summarizes the findings obtained during the subject supervisory visit. Information is collected directly by the FmFA reviewer on this form or summarized from information obtained from any of the following sources:

1. Pre-visit worksheet (Exhibit F of this subpart)
2. A concurrent compliance review
3. A concurrent project physical inspection
4. Tenant file reviews
5. Tenant interviews & unit reviews
6. Tenant wage matching findings
7. FmHA docket information
8. Any other relevant document or worksheet

FmHA will review the project file and any other project management documentation prior to the visit to identify areas of concern.

The FmHA reviewer may prepare questions in advance to draw responses from project management or tenants that will enable FmHA to answer the question on the supervisory visit form. The questions should be prepared to allow the respondent to describe how tasks or functions are performed (i.e., who, what, when, where, or why), rather than “do you do this.”

The findings are listed to highlight areas of project management and operation activities as they relate to the project management performance as described in Exhibit B-1 of this subpart.

Concerns resulting from this supervisory visit may be used as a basis for requiring improved borrower/project management performance.

Status/Analysis (Indicate Yes, No, or Not Applicable)

1. Identity of interest (IOI) and relationship of borrower, management agent and suppliers.
   - Borrower and management agent IOI properly disclosed.
   - Borrower & material/services suppliers IOI properly disclosed.
   - Management Agent & material/services suppliers IOI properly disclosed.
   - Are IOI provided management, material and services comparable in cost, quality or scope to “arms-length” transactions?

Comments:

2. Personnel policy and staffing.
   - Personnel policy and staffing per management plan.

Comments:

3. Marketing and Occupancy.
   - Signs and posters compliance.
   - Project sign.
   - Equal Housing LOGO on sign.
   - Handicapped LOGO at handicapped parking space.
   - Sign indicates where to apply for housing.
   - Equal Housing Opportunity posters visible.
   - “...and Justice for All” posters visible.
   - Affirmative marketing.

- Affirmative Fair Housing Marketing Plan (AFHMP) available for review.
- AFHMP signed and dated by authorized FmHA official.
- Advertising documented (Attach copies).
- Race/Ethnic composition of the project reflects market area.

Applications Management/Occupancy Policy

- Applications accepted at project.
- Applications accepted from anyone.
- Proper documentation of applicant contacts.
- Proper written documentation of withdrawal/rejected applicants.
- Applicants on waiting list. Number: ____________
- Applicants with a Letter of Priority. Number: ____________
- Tenant file review indicates proper application maintenance.
- Waiting list meets 1930-C requirements.
- Most recent tenant selection met 1930-C requirements.

Correct priorities for selection followed.
- Marketing and occupancy policy per management plan.
- Occupancy ineligible tenants properly admitted.
- Occupancy ineligible are placed on a unit transfer list.
- Occupancy ineligible have appropriate lease clauses.

Achieving full occupancy.
- Tenant vacancy percentage is within an acceptable range.
- Tenant turnover rate is within an acceptable range.
- Tax credit eligibility is not affecting project viability.
- Marketing incentives are used to attract tenants.

Comments:

4. Determining eligibility and adjusted income.
   - Income included or excluded correctly.
   - Frequency and timing of verification is correct.
   - Manager believes tenant provided data is accurate & complete.

- Form FmHA 1944–29, updated before rental assistance (RA) is assigned.
- All qualified households listed on the updated Form FmHA 1944–29.
- RA assignment policy meets 1930-C, Exhibit E requirements.
- Most recent tenant RA assignment met 1930-C, requirements.
- Tenant file review indicates income/status correctly verified.
- Tenant file review indicates income/information correct on Form FmHA 1944–8, “Tenant Certification.”.
- Tenant file review indicates proper recertification notice.
- Determining eligibility & adjusted income per management plan.
- Site manager's income verified by third party when appropriate.

Comments:

5. Leasing and occupancy policies.
   - Tenants placed in units according to occupancy standards.
   - Tenant lease prepared by project site manager.
   - Tenant file review indicates rent is properly determined.
   - Tenant file review indicates correct lease maintenance.

- Tenant file review indicates FmHA approved lease used.
- Tenant file review indicates FmHA approved occupancy rules.
- Leasing and occupancy policies per management plan.

Comments:

6. Rents, occupancy charges, and occupancy surcharges.
   - Utilities paid by tenants correspond to FmHA approved levels.
   - Tenants do not pay additional utility fees or charges.
   - Actual costs for tenants utilities verified annually.

- Tenant rent payments accepted and tracked on site.
- Rent payments on site are adequately protected.
Follow up needed on energy efficiency.

Tenants receive appropriate evidence of cash payment.

Rent and occupancy charge policy per management plan.

Tenant security deposit processing per management plan.

Application fees per 1930-C.

Comments:

Rent changes.

Rents and utility allowances charged are FmHA approved.

Most recent rent change per 1930-C.

Management plan.

Most recent utility allowance per 1944-E and management plan.

Comments:

Maintenance, Repair, and Replacement.

Routine repair and replacement per management plan.

Routine unit inspection per management plan.

Services (i.e., exterminating) provided per management plan.

Security services provided per management plan.

Followup needed on exterior items inspected.

Followup needed on energy efficiency items inspected.

Followup needed on interior items inspected.

Followup needed on miscellaneous items inspected.

Followup needed on individual units inspected.

Capital improvements needed, planned and reserve account use plan updated.

Comments:

Supplemental Services.

Laundry and vending machines operated per management plan.

Laundry and vending proceeds handled per management plan.

Comments:

Accounting, Recordkeeping, and FmHA Reporting.

Project Records.

Project O&M expenses appear per approved Form FmHA 1930-7.

Project capital expenses appear per approved Form FmHA 1930-7.

Project revenue appears per approved Form FmHA 1930-7.

Project account information reviewed, balances obtained.

Reserve account:

General operating account:

Tax and insurance escrow:

Tenant security deposit account:

Accounts are kept per 1930-C and management agreement.

Funds are protected by a Federal agency or bank collateral.

Bookkeeping location per management plan.

Project financial information maintained per management plan.

Project is operated as part of a "consolidated" project.

If operations are consolidated, arrangement per 1930-C.

Internal control conducted per management plan.

Do multiple accounts by borrower or management entity in one bank exceed collateral limits.

Tenant Records.

Current tenant files retained for 3 years.

Former tenant and rejected applicant files retained 3 years.

Privacy of tenant files adequately protected.

Tenant files maintained per management plan.

Comments:

Energy conservation measures and practices.

Implemented feasible measures identified by energy audit.

Physical inspection recommends further energy conservation.

Physical inspection recommends more tenant education efforts.

Comments:

Tenant participation and relationship with management.

Tenant appeals since last visit.

Tenants are being informed of their appeal rights.

"FmHA Instruction 1944-L" posted for review by tenants.

Standing hearing panel for the project.

Records maintained of settlements and hearings.

Project management is responsive to tenant grievances.

Comments:

Management training programs.

Site manager training per management plan.

Site manager has received FmHA requirements training.

Date of last FmHA requirements training: ________

Site manager "certified" from an FmHA recognized source.

Equal Opportunity training per AFHMP.

Comments:

Termination of leases and eviction.

The latest tenant termination was properly conducted.

The latest eviction was properly conducted.

Is termination and eviction per 1930-C and management plan.

Comments:

Management agreement plan and project operations.

Project uses the management plan as a working document.

The management plan accurately describes project operations.

The management agreement accurately describes project operations.

Indication of an unreported change to insurance coverage.

Indication of an unreported change to fidelity coverage.

Indication of unreported change to management.

Indication of unreported change to borrower entity.

Comments:

Management compensation.

Management fee paid per management agreement.

Comments:

On-site management.

Site manager compensation per management plan and agreement.

Site manager's unit operated per management plan.

Date current site manager hired: ________

Comments:

FmHA MFH Supervisory Visit—Conclusions and Recommendations

Listed below are the major findings of the supervisory visit, compliance review, and physical inspection of the project, and any followup actions required by the Servicing Office.

FmHA MFH Supervisory Visit—Rating

Above Average  Satisfactory

Below Average  Unsatisfactory

Next follow-up needed (Letter, telephone, etc.)

Next scheduled review

FmHA MFH Supervisory Visit—Additional Rural Cooperative Housing Questions

The cooperative treasurer has received relevant training.

The board of directors considers and acts on new member applications.

Applicants are screened at suitability before being placed on the waiting list.

There are signed "What is Cooperative Housing?" forms indicating the member recognizes and accepts the responsibilities associated with cooperative living.

Cooperative members perform maintenance functions.

Maintenance functions are contracted out. Explain:

The borrower cooperative is working with FmHA.

The board of directors holds monthly meetings.

There is an agreement with the adviser.

The adviser to the board attends each meeting.

It appears that the board has control over the cooperative's operations.

The cooperative has active committees.

What are the committees and how many members on each?

Comments:

How often do the committees meet?

A board member attends committee meetings.

Management agreements and contracts are being followed.

Comments:
### Tenant Name Application

- **NTC from MTFS**
- **Tenant Interview and Unit Review**
- **Family Housing Supervisory Visit - FmHA Review Completed**
- **Farmers Home Administration Multiple Borrower ID and Project Number:** **Follow-up Required**
- **Other Documentation:** **Re-Certification**
- **Lease:** **Borrower is**
- **In the case of on-farm LH, the housing**
  - **is serving eligible farm laborers employed**
  - **by this LH borrower.**
- **Borrower is ( ) charging, or ( ) not charging rent in accordance with their**
- **FmHA approved budget.**
- **Properly verifying farm labor employment.**
- **Properly determining "substantial" portion of income from farm labor.**

**Comments:**

<table>
<thead>
<tr>
<th>Tenant 1</th>
<th>Tenant 2</th>
<th>Tenant 3</th>
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### Table of Documentation

- **Apartment number**
- **Tenant name**
- **Application:**
  - **Signed and dated**
  - **EO Statement**
  - **1930-C requirements met**
  - **Credit report/references**
- **Verifications/Documentation:**
  - **Handicap/disability**
  - **Signed asset statement**
  - **Assets documented**
  - **Income**
  - **Medical expenses**
  - **Child care expenses**
  - **FmHA "wage match" used**
- **Correct Value on Certification:**
  - **Assets**
  - **Income**
  - **Medical**
  - **Child care**
  - **Remaining calculations**
- **Occupancy standards met**
- **Lease:**
  - **FmHA approved**
  - **Correct rent/provisions**
- **Re-Certification Notice:**
  - **Used 75-90 day notice**
  - **Used 30 day notice**
- **Other Documentation:**
  - **Annual Inspection**
  - **Move-in Inspection**
  - **Record of contacts**
  - **Unit repairs & maintenance**
  - **3 years of tenant files**
- **Follow-up Required**

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<thead>
<tr>
<th>Tenant 1</th>
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<th>Tenant 3</th>
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### Project Name

- **Comments:**
- **Borrower Name:**
- **Borrower ID and Project Number:**
- **Management Representative Present:**
- **FmHA Review Completed by:**

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<thead>
<tr>
<th>Tenant 1</th>
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<th>Tenant 3</th>
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<tbody>
<tr>
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</tbody>
</table>
Date of occupancy
Rent paid
Utilities paid (average)
Knows verification rules
Knows grievance procedures
Maintenance is acceptable
Repairs are acceptable
Other comments

From FmHA Apartment Review—Maintenance Needed:

Exhibit H—Interest Credits on Insured Rural Rental Housing and Rural Cooperative Housing Loans

I. Purpose: This exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II. Definitions: As used in this exhibit:

A. Interest credit is the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. Interest credit and rental assistance (RA) agreement is an agreement between FmHA and the borrower providing for interest credits and/or RA for RRH or RCH loans. This agreement will be on Form FmHA 1944-7, “Multiple Family Housing Interest Credit and Rental Assistance Agreement.”

C. Project is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

D. Basic rent is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge.

E. Note rate rental is a unit rental charge determined on the basis of operating the project with payments of principal and interest which the borrower is obligated to pay under the terms of the promissory note and meet budgeted project expenses. Note rate rental also means note rate occupancy charge in an RCH housing project.

F. Surcharge is 25 percent of the established rent in a Plan I project which is added to the rest of an ineligible tenant or member.

III. Eligibility: Borrowers may receive interest credit provided the loan was made or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; is repaid over a period of 30 years or more; and meets the other requirements of this exhibit subject to the following limitations:

A. Plan I will be only to broadly-based nonprofit corporations and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit is no longer available. All borrowers already operating on Plan I may continue operating under it according to the applicable requirements of this exhibit and of this subpart.

B. Plan II will be available to broadly-based nonprofit corporations, cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

C. Units must be ready for occupancy (decent, safe, and sanitary) to qualify for interest credit.

IV. Options of Borrowers: An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A. Plan I.

1. Borrowers operating under this plan must agree to limit occupancy of the housing to very low- or low-income nonelderly and very low-, low- and moderate-income elderly, disabled, or handicapped persons.

2. A borrower under Plan I generally must:
   a. Determine that there is firm market and continuing demand for rental housing by persons within the applicable income limits.
   b. Prepare a budget on the basis of a 3 percent loan.
   c. Determine rentals to be charged.
   d. Determine adjusted personal income of each tenant or member and have each tenant or member complete Form FmHA 1944-8, "Tenant Certification." Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

B. Plan II.

1. Borrowers operating under this plan must agree to limit occupancy of the housing to very low- or low-income nonelderly and very low-, low- and moderate-income elderly, disabled, or handicapped persons.

2. A borrower under Plan II generally must:
   a. Prepare one budget form that reflects two rent levels; the first level on the basis of a 1 percent interest rate loan to determine basic rental; the second level on the basis of the loan at the interest rate shown in the promissory note to determine note rate rental.

   Determine both basic rental and note rate rental for the different units based on the two budgets. (See Exhibit H-1 of this subpart.)
   b. Determine adjusted personal income of each tenant or member and have each tenant
or member complete Form FmHA 1944–8. Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

d Determine the required monthly payment on the loan at 1 percent interest plus overage for the month for the total units. The amount of the project payment will be entered on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

V Determining the Amount of Payment:

A For Plan I. The amount of payment will be determined by using the amortization factor for a payment at a 3 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B For Plan II. The amount of payment will be determined by using the amortization factor for a payment at a 1 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overage.

C For the project. The payment amount for all loans on the project will be added together to determine the project payment. The amount due FmHA will also include all overage, surcharges, late fees, audit receivables, and cost item charges.

VI Special Conditions:

A Leases or occupancy agreements. Borrowers participating in the interest credit program must have an FmHA approved lease or occupancy agreement with the assisted household. Leases and occupancy agreements must comply with the requirements of paragraph VII of Exhibit B of this subpart.

B Rental surcharges to ineligible tenants. If a unit is rented in accordance with the provisions of paragraph VI A of this exhibit to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1 Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $100 per month, this ineligible tenant would pay $125 per month. The 25 percent surcharge, or $25 in this example, will be included with the payment on the note and would be included with interest and other charges on the note.

2 Under Plan II, be charged the note rate rental.

C Vacancies.

1 When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the occupancy of those completed units to eligible tenants or members at the rent or occupancy charge they would be paying as if the amortization effective date (AED) and subsidy levels had been established. A prenut-up or preoccupancy conference is required before marketing and rent-up begins. All income generated must be deposited in the fund and used for management and operation of the units except for member's patronage capital contributions.

2 Multi-Family Housing units rendered unusable due to fire, natural cause, or other damage requiring less than 180 days to repair or replace shall be assumed to be rented or occupied at the monthly basic rate rental or occupancy charge rate. If the units are not repaired or replaced within the 180 day period, they shall thereafter be assumed to be unmarketable and the units will be carried at the monthly note rate rental or occupancy charge rate (i.e., full overage for such units will be paid by the borrower until the units are again ready for occupancy). The Form FmHA 1944–7 will be cancelled, effective the first month of the following 180 day period.

2 The State Director may make an exception to the 180-day period if all of the following conditions are met:

a. The repairs have not been started or ceased due to circumstances beyond the borrower's control; and

b. The borrower must be able to show that they have acted in good faith and they face serious financial difficulties in maintaining the project for existing tenants and they are unable to meet the payments on the indebtedness without the subsidy.

4 Any borrower directly or indirectly affected by action under this part will be granted the appropriate appeal rights according to Subpart C of Part 1900 of this chapter.

5 RRH or RCH units vacant for lack of tenant or member application on the waiting list or for repair not associated with paragraph VI C 2 of this exhibit shall be assumed to be charged at the basic rent.

D Interest credit for tenants in projects under the Department of Housing and Urban Development (HUD) Housing Assistance Program or FmHA rental assistance. When any rental units in a RRH project are leased under the new construction Section 8 program, Form HUD 50059, "Certification and Recertification of Tenant Eligibility," or other acceptable HUD Form will be completed. When any rental units in an RRH project are leased under the FmHA RA program, Form FmHA 1944–8 will be completed.

E Special cases. Situations not covered by this exhibit or Exhibit B to this subpart will be handled individually with instructions for handling the transmittal to the Finance Office.

F Understanding eligibility. The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant or member eligibility are in paragraph VI D of Exhibit B of this subpart.

VII Execution of Agreements:

A Interest credit and rental assistance agreement.

1 Multiple advances loans. Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the Servicing Official determines that the project is ready for full operation, the borrower and the Servicing Official should execute Form FmHA 1944–7. A separate Form FmHA 1944–7 will be executed for each loan on the project.

2 Interim financing and servicing. Effective dates for interim financed loans and servicing action will be according to the Form Manual Insert (FMI) for Form FmHA 1944–7.

B Change in interest credit plan. A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Form FmHA 1944–7.

C Borrowers who are not receiving interest credit. If an eligible borrower did not execute a Form FmHA 1944–7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944–7 and this exhibit. When Form FmHA 1944–7 is executed, it will be effective for the first of the month in which the Form FmHA 1944–7 is executed.

D Borrowers who have had interest credit terminated.

1 If an interest credit agreement on Form FmHA 1944–7 has been terminated because the benefits were not needed and circumstances change to where an interest credit is again needed, a new Form FmHA 1944–7 may be executed.

2 If an interest credit agreement on Form FmHA 1944–7 has been terminated because of the borrower’s failure to meet the requirements and the appropriate corrective actions have been accomplished, a new Form FmHA 1944–7 may be executed.

VIII Tenant or Member Certification: Tenant or member certification and recertification for interest credit borrowers will be performed in accordance with paragraph VII of Exhibit B to this subpart.

IX Project Payments: With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative handling the transmittal to the Finance Office will transmit the payments according to Exhibit C to this chapter and Exhibit A of subpart K of part 1951 of this chapter and this exhibit (available in any FmHA office).

A Plan I.

1 The borrower will make monthly payments in an amount necessary to repay the project loans as if the loans carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this exhibit, the surcharge will be collected and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this exhibit.

2 When a payment is made for any month that involves a rental surcharge, Form FmHA 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount shown and it will be charged to the project account regardless of whether the surcharge is actually collected by the borrower.

B Plan II. The borrower will make monthly payments as though the project notes were written at a 1 percent interest rate plus any overage due and payable whether or not collected from the tenant or member.

X Servicing: Handling of Interest credits when servicing a project’s accounts according to subpart B of part 1965 of this chapter will be handled according to the applicable parts of subpart A of part 1955 of this chapter. Any unusual cases that cannot be serviced in accordance with these sections should be submitted to the National Office with the State Director’s recommendations.
Exhibit H-1—Example of Interest Credit Determination for Rural Rental Housing or Rural Cooperative Housing Projects

(Plan II)

$260,000 loan—approved during 1987 fiscal year project contains four 1-
bedroom units (600 sq. ft. each) and four 2-bedrooms units (700 sq. ft. each) total
floor area = 5200 sq. ft.

### Budget for note rate rent**

<table>
<thead>
<tr>
<th>Operating, maintain-</th>
<th>Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$35,489</td>
<td>$35,489 + 12 = $37,959</td>
</tr>
<tr>
<td>2958</td>
<td>$2958* cost/month</td>
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<td>$2958*</td>
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<tr>
<td>$2958*</td>
<td>$2958* cost/month</td>
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</tbody>
</table>

### Budget for basic rent**

<table>
<thead>
<tr>
<th>Loan repayment at 9½% interest: $260M x $95.88 = $24,929</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan repayment at 1% interest: $260M x $25.44 = $6,615</td>
</tr>
<tr>
<td>Total annual cost $35,489</td>
</tr>
<tr>
<td>$35,489 + 12 = $37,959</td>
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<tr>
<td>$35,489 + 12 = $37,959</td>
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<tr>
<td>$2958* cost/month</td>
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<td>$2958* cost/month</td>
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</table>

**One budget form reflecting two rent levels must be prepared; one level for the note rate rent and another level for the basic rent. (The expense accounts on the budget forms shown in this illustration are only for illustration purposes and are not itemized.)

**Annual amount using monthly amortization factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

* Rounded to the nearest dollar.

**In cooperatives, the term “rent” shall mean “occupancy charge.”

### Exhibit I—Rural Rental Housing Loans and the Housing and Urban Development Section 8 Rental Certificate and Rental Voucher Programs (Existing Units)

I. General. This exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of existing Section 515 Rural Rental Housing (RRH) units and the Department of Housing and Urban Development (HUD) tenant-based Section 8 Rental Certificate and Rental Voucher Programs.

II. Applicability. This exhibit is not applicable to units in Section 515/8 projects which use the project-based Section 8 new construction and substantial rehabilitation programs. Otherwise, FmHA RRH borrowers are authorized to utilize the procedure outlined in this exhibit and the HUD Section 8 Rental Certificate Program or the Rental Voucher Program for existing housing as outlined in HUD regulations 24 CFR 882 and 24 CFR part 887 (as amended) respectively. To promote the use of these programs with existing projects, the following action should be taken:

A. Service areas should conform RRH borrowers operating in the area of their jurisdiction of the contents of this exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 30 percent of its income for rent and utilities. Therefore, RRH borrowers should advise tenants who are paying more than 30 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. Those tenants paying 50 percent or more of their adjusted income for housing have preference over those paying less. In the Rental Certificate Program, families generally pay 30 percent of their monthly adjusted income toward rent and the total rent to the owner must be below a maximum amount. Section 8 Rental Certificate and Rental Voucher assistance is administered by local Public Housing Agencies (PHA) authorized by HUD to administer the program in the area. This Section 8 assistance can be used in the unit of the family's choice anywhere in the State where the issuing PHA is located, and in certain areas in adjacent States. Families must apply to the PHA and come to the top of its waiting list through normal PHA selection preferences.

C. The HUD Rental Voucher Program uses a "shopper's incentive." If a unit rents for less than the payment standard established by the local PHA, the eligible family benefits by paying less than 30 percent of its monthly adjusted income toward rent and utilities, subject to a minimum rent calculation by the PHA. If a unit rents for more than the payment standard for the area (not the actual rent), the housing assistance payment is not increased nor is the family told it must find another unit, as in the Rental Certificate Program. Instead, the family pays the entire difference between the rent and the rental voucher payment standard. The family may rent the unit if it is willing to pay more than 30 percent of its income toward rent. There is no maximum rent as in the Rental Certificate Program.

D. In Rural Cooperative Housing (RCH), cooperatives are considered rental housing in the Section 8 program and Rental Voucher programs. Wherever the word tenant appears in this exhibit, it shall also mean member; rent shall also mean occupancy charge; and lease shall also mean occupancy agreement.

III. FmHA Policies Concerning Rental Rates and Payments.

A. Under the Section 8 Rental Certificate and Rental Voucher Programs, the PHA will pay a portion of the tenant's rent including utility allowance as described in paragraphs B, C and D of this exhibit, whichever is appropriate. The contract rent to be established under either HUD program will be as follows:

1. For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the note rate rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments.

2. For borrowers operating without interest credit, the contract rent will be the note rate rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments.

3. For borrowers operating in accordance with interest credit Plan II, the contract rent:

a. For Rental Certificate participants, the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments;

b. For Rental Voucher participants, the rent to owner must be the lesser of the note rate rent for the unit as approved by FmHA or the payment standard approved by the PHA (but not less than basic rent approved by FmHA).

1. When basic rent is less than the PHA approved payment standard, the borrower will collect and remit the difference between the basic rent and payment standard to FmHA as overage to avoid double subsidy on behalf of the tenant.

2. Should the PHA inadvertently pay the owner (borrower) more than the amount specified in the housing assistance contract between the PHA and the owner, the owner shall return the overpayment to the PHA as an excess payment.

The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with paragraph IX of Exhibit H of this subpart.

IV. Responsibilities.

A. Family. A household family must apply to the PHA and be issued a Certificate of Family Participation or a Rental Voucher to obtain the appropriate housing assistance. Households receiving housing assistance under either program will be responsible for fulfilling all of their obligations under the Certificate of Family Participation or Rental Voucher issued to them by the PHA and under the lease with the owner. However, a lease violation is not necessarily a reason for terminating Section 8 assistance.

B. Owner (FmHA borrower). Upon being presented a Certificate of Family Participation or a Rental Voucher by a family, a borrower wishing to participate in the program shall sign a Request for Lease Approval (Form HUD 52517-A) which is then submitted to the PHA. After PHA approval the owner will execute a Housing Assistance Contract (Form HUD 52535-A) with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. FmHA. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:
Payment for vacated units. 1 Rental Certificate Program. If a certificate family vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payment for the month in which the family vacates and then in the amount of 50 percent of the contract rent for each month after the family moves from the unit, not exceeding an additional month or the expiration or other termination of the lease, whichever comes first.

2 Rental Voucher Program. If the voucher family vacates the unit, the owner will promptly notify the PHA. The PHA shall make no additional housing assistance payment to the owner for any month after the month in which the family moves out. However, the owner may retain the housing assistance payment for the month in which the family moves.

D Recertification for families with either a Section 8 Rental Certificate or Rental Voucher.

1. The PHA, not the FmHA borrower, must reexamine the income and family composition of all Rental Certificate and Rental Voucher families at least annually, and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition. Once a HAP contract expires, recertification responsibility reverts to the borrower and FmHA forms and income verification and certification requirements apply.

2. All changes in family composition must be reported to the PHA.

3. 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.

4. Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

E Rental charges.

1. When支付 rents in all units change.

a. Rental Certificate Program. Rents for tenants receiving rental certificate assistance under HUD Form 52535—A (Section 8 Existing Housing Assistance Payments Contract for Subsidized Units) may change after the beginning (day 1) of the HAP contract term for the initial leasing of the unit with Section 8 assistance. The amount of the contract rent adjusts automatically when the subsidized rent is changed. However, the adjustments are subject to rent reasonableness limitations which are determined by the PHA. Adjustments may not result in material differences between the rents charged for assisted and comparable unassisted units as determined by the PHA.

b. Rental Voucher Program. Rents for tenants receiving rental voucher assistance may not change until the end of the initial 12 months of the individual lease, even though all unit rents may have been changed in the meantime. The lease may provide that the owner may increase the tenant's rent any time AFTER the first anniversary of the lease, but the owner must give the tenant the PHA 60 days prior written notice of any increase before it takes place.

2. When tenant household income, size, and composition change. The following items apply to both the Section 8 Rental Certificate and Rental Voucher Program.

a. The PHA must examine the income and family composition of all rental certificate and rental voucher families at least annually and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's income, size, or composition.

b. All changes in family composition must be reported to the PHA.

c. A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, size, or composition.

d. Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

(1) Should household income INCREASE to where HUD assistance becomes zero, the HAP contract between the borrower/owner and the PHA remains in effect for 12 more months. When 12 months of "zero" assistance occurs, the HAP contract automatically terminates. However, if during that year the family's income decreases to the level where subsidy is needed again, the PHA will resume subsidy payments under the HAP contract after notification by the family of the change.

(2) In both the Rental Certificate and Rental Voucher programs, the tenant's lease term runs concurrently with the Housing Assistance Contract until the tenant or owner terminates the lease or the PHA terminates the contract. In a situation where a tenant's income increases to where the tenant does not receive a subsidy for 12 months, the owner may offer the tenant a new lease for execution. If the tenant fails to execute the new lease after a reasonable time, the owner may terminate the tenant's occupancy.

F Changes in household size and composition.

1. An increase in household size that results in the occupied unit not meeting the PHA occupancy standards or housing quality standards (namely, overcrowding) requires the PHA to issue the household a new rental certificate or rental voucher for a larger unit. The PHA must provide assistance to the family in locating another unit. The PHA may not terminate the current contract unless the family has rejected with good cause the offer of a new unit.

2. If the OWNER fails to maintain the dwelling unit at acceptable housing quality standards, the PHA, after unsuccessful efforts to correct the problem, terminate or abate the housing assistance payments, even though the household continues to occupy the unit.

3. A decrease in household size will not necessarily require the household to move. In the Rental Voucher Program, the household may rent a unit with a greater number of bedrooms than indicated on the housing voucher and still receive housing assistance. In the Rental Certificate Program, the family may continue to receive assistance in the unit if the gross rent (contract rent plus utility allowances) is within the fair market rent for
the smaller size unit appropriate for the size and composition of the family.

G Limitation of owner's participation in the two programs. HUD's regulations provide that assistance under Section 8 Certificates will not exceed 10 percent of the total number of units in the project; however, this limitation may be exceeded on a case-by-case basis for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office. There is no comparable limitation in the HUD Rental Voucher program. The HUD limits shall not affect the number of rental assistance units the project receives through FaIA.

H Special problems. Any problems on utilizing either the HUD Section 8 Certificate or the Rental Voucher program for existing RRH projects not covered by this exhibit should be referred to the National Office by the State Director.

Exhibit J—Management of Congregate Housing and Group Homes

1 Purpose: This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

2 Objective: The objective in the management of congregate and group home housing is to provide shelter and preestablished services as separate components, based on a market study identification of need, that are affordable to the housing's tenant base. It is further the objective to permit residents tenants to cover their individual medical and discretionary needs and access needed or preferences not provided or arranged by the house provider within their own financial, familial, and social resources.

3 Definitions:

Congregate housing. Residential housing for persons who are elderly or have handicaps, or disabilities, consisting of private apartments and central dining facilities in which a number of preestablished services are provided to tenants (services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

Group home. Housing that is occupied by individuals who are elderly or have handicaps or disabilities, sharing living space within a rental unit in which a group home resident assistant may be required.

Service agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

Service contract. A written contract between the borrower and the tenant listing the package of services selected by the tenant that will be provided or arranged by the borrower, the fees to be charged, and applicable conditions and agreements pertaining thereto.

Service plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Tenant base. The demographic and economic profile of eligible people in a housing market area who would benefit, whether by choice, from the housing and supportive services provided by a congregate housing or group home facility located in the market area.

IV Rent Subsidy Opportunities: Congregate housing and group homes are subject to the provisions of paragraph IV of Exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

V Management Operations: Borrowers must comply with paragraph V of Exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management outline in either Exhibit B-4 or B-5 of this subpart. Borrowers who have not experienced with congregate/group housing/group homes must obtain assistance from organizations or individuals experienced with congregate services in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B Management plan. In addition to the general requirements for a management plan described at paragraph V-A of Exhibit B of this subpart, the management plan should describe the plan for management of features unique and essential to congregate/group home housing. This portion of an overall management plan may either be incorporated within the framework of the management plan or as an addendum to the plan. The following is described:

1 Tenant mix. For congregate housing, describe the mix of tenants who will have a greater number of services and tenants who will have a lesser number of services that the project is designed to accommodate. For group home housing, describe the group of tenants who is intended to serve such as elderly tenants, developmentally disabled, or mentally impaired persons.

2 Market plan. Describe the strategies, ways and means that marketing and advertising will be focused to attract and retain tenants from the market area (tenant base) that would benefit by the congregate/group home housing project.

3 Service contract. A written contract between the borrower and the tenant listing the package of services selected by the tenant that will be provided or arranged by the borrower, the fees to be charged, and applicable conditions and agreements pertaining thereto.

4 Referral service. Describe the plan for identifying other services available to tenants and for establishing liaison between the project and the other services. Describe the plan to make the information of such services available and known to tenants. Describe what arrangements the project can provide as part of a service package to help tenants use referral services.

5 Tenant consultation. Describe how the project management staff will use tenant consultation to assist tenants with information, modification of service package, referral to medical, clinical, family, or other services, and identifying what, if any, reasonable accommodations or assistance are needed and whether they are feasible and practical to provide.

6 Emergency evacuation plan. Describe the project plan which will be coordinated and train tenants on safe evacuation of an apartment and building. Describe which community/public service will be informed and about and incorporated into the project evacuation plan.

C Service plan. Congregate housing/group home borrowers must submit a service plan as defined in paragraph III of this exhibit. See Exhibit B of this subpart for a discussion of the chapter for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

D Service agreements. Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service, and the length of time the service will be provided.

The service agreement will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

E Service contract. Borrowers must submit a sample of the service contract for Agency review for compliance with Section 8 Certificate requirements.

VI Renting Procedure: In addition to meeting the conditions of paragraph VI of Exhibit B of this subpart, borrowers must meet the following conditions:

A Eligible tenants. Tenants must meet the general provisions of paragraph VI-D of Exhibit B of this subpart and be eligible to occupy congregate group home housing as defined in paragraph III of this exhibit. Borrowers must be careful to follow the conditions described in paragraph VI-D-I of Exhibit B of this subpart when inquiring.
about the applicant's or tenant's request for congregate/group home housing and the service it provides.

B Tenant selection. Borrowers must meet the provisions of paragraph VI H of Exhibit B of this subpart. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1 Congregate housing
   a Tenant mix. It is the primary intent of a congregate housing project to provide or arrange for service packages made up of various component services to serve the needs of tenants needing such services. If it is not feasible to provide service packages to all tenants, the applicant or tenant may serve tenants needing services and tenants not needing services. The number of tenants that can be served with service package(s) will be described in the project management plan. Project management should be consulted when establishing the tenant mix. The plan should establish a percentage of tenants who will use a service package with a greater number of component services as differentiated from tenants whose service package will contain fewer services. As existing tenants age and new tenants move in, the percentage may fluctuate. Farmers Home Association must concur with the proposed plan.
   b Selecting services needed or wanted by tenants in congregate housing
      (1) It is the borrower's responsibility to inform applicants or tenants about the supportive services provided or by the congregate project. Such services or service packages need to be identified on the project's application form as part of an application package.
      (2) It is the applicant's or tenant's responsibility to identify and request the services or service package provided by the project or tenancy or for the applicant's or tenant's needs.
      (3) The borrower may have the applicant/tenant provide only such essential information about the person's desire for provided service(s) to determine whether the project provides the services desired by the applicant/tenant and/or to determine how best serve the applicant/tenant's request for services with reasonable accommodation, referral services, etc. The essential information may include an explanation by the applicant/tenant. In the case of a group home, it may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc. that the tenant/applicant provides to support the application for housing and services.
   c Waiting lists. To sustain the number of tenants requesting services, management may maintain waiting lists for tenants requesting large component service packages, small component service packages, and those wanting a service package at a later time. Management may choose tenants from the lists in such manner to maintain the feasibility in providing services, however, priority in tenant selection should go to an applicant requesting a service package over one requesting a service package at some later date. The other provisions contained in paragraph VI H of Exhibit B of this subpart concerning waiting lists are applicable.
   2 Group home. A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes:
      a Applicants for group home housing must demonstrate their need for such housing.
      b Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or the organization.
      c Tenants should be selected from the local area before considering other areas.
   D Determining per unit rental rates for group living arrangements. A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom, or a portion of a bedroom. Rents are determined as follows:
      1 When all units are of equal size, divide operational costs equally.
      2 When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.
      a The size of traditional units is their square footage.
      b The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.
      3 A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VII Verification and Certification of Tenant Income, and/or Employment and Review of Support Services Provided by Tenants
   a Tenant must provide documentation of employment and income.
   b The tenant must have a representative, if not the tenant, to explain the available support services and determine if the tenant desires any available support services.
   c Tenants who request services in congregate housing are subject to the provisions of paragraph VII of Exhibit B of this subpart. In addition to recertifying income, management should consult with each tenant to explain the available support services and determine if the tenant desires any available support services.
   d The tenant should be addressed:
      a Tenants who request services in congregate housing. If a tenant requests services, the lease must contain the following clauses:
         1 I understand that use of the service package I have selected is not mandatory, and if I later choose to modify or not renew my service contract, such action on my part will not cause default under the terms of this lease agreement. I further understand and agree that I may not use any aspect of dissatisfaction with my service contract as grounds to withhold rents due under the terms of this lease agreement.
         2 The lessor warrants that the following basic services will be available to all tenants for a fee separate and apart from any rent described in the terms of this lease. The basic services are:

If these services cannot later be provided, such failure or inability to provide the services will not constitute a breach of this lease agreement and the lessor will hold the tenant harmless should the tenant elect to terminate this lease on the grounds that provision of these services was cause for the tenant to apply for and accept occupancy in this congregate housing project.

B Services provided to people other than tenants of FMHA financed congregate housing. If the meal facility serves people other than the tenants of the project, the borrower must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:
   1 The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others.
   2 Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement: "This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative."

IX Rent Collection: The provisions of paragraph IX of Exhibit B of this subpart will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and services must be accounted for separately.

X Borrower Project Budgets: Borrowers must separate the revenue and expenses of project operations from the service component. Form FMHA 1930-7, "Multiple Family Housing Project Basic Information," must reflect project operations only. Also, if project employees provide any part of the services, the project operation budget and the services budget must reflect the proration of employee compensation between the respective budgets as further described in Exhibit E of subpart E of part 44 of this chapter.

XI Accounting and Reporting Requirements and Financial Management Analysis: Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of services, nor may service component funds be used to supplement the project operation and maintenance. Detailed financial reports on the service component will not be required unless specifically requested by FMHA, and then only to the extent necessary for FMHA and the borrower to discuss the affordability (and competitiveness) of the service component by the tenant base in keeping
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3. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

§1944.153 [Amended]

4. Section 1944.153 is amended in the definition of “Familial status” by adding the words “Exhibit B of” after the word “or”; in the definition of “Farm owner” by removing the quotation marks around the word “owners” and by revising the words “these two terms are” to read “this term is”; in the definition of “Handicap” by revising the term “Handicap” to read “Individual with handicap,” by adding the words “Exhibit B of” after the word “See,” and by inserting this definition in alphabetical order; and in paragraph (3)(f) of the definition of “Substantial portion of income” by removing the words “and exempted income” and the words “A, B, and C,” by revising the word “are” to read “is,” and by adding the words “under the terms annual income (determining inclusive and exempted income), adjusted annual income, and adjusted monthly income” after the word “defined”.

5. Section 1944.169 is amended by revising the heading of paragraph (i) and by revising paragraph (i) (2) to read as follows:

§1944.169 Technical, legal, and other services.

(i) Surety bonding and fidelity coverage.

(2) If the applicant is an organization, it will provide fidelity coverage for any person entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable personal property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of Exhibit B of part 1930 of this chapter.

6. Section 1944.170 is amended by adding introductory text to read as follows:

§1944.170 Processing preapplications.

When an applicant indicates an intent in filing a preapplication, the District Director should schedule a preapplication conference to review program objectives and to provide copies of appropriate exhibits and forms, including those listed at §1930.141 of subpart C of part 1930 of this chapter; furnish guidance necessary for orderly application processing; and initiate a processing checklist for use in establishing a schedule for completion of docket items.

Exhibit B of Subpart D of Part 1944—[Amended]

7. Exhibit B of subpart D of part 1944 is amended by revising in paragraph 13 the words “Exhibit F of subpart C of part 1930 of this chapter. (FmHA Instruction 1930-C, Exhibit C)” to read “Exhibit C of subpart C of part 1930 of this chapter” and by revising in paragraph 14 the words “Non-Discrimination Agreement” to read “Assurance Agreement.”

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

8. Section 1944.205 is amended by revising in the first sentence of the definition for “Eligible tenants or cooperative members” the words “Elderly, handicapped, or disabled persons” to read “Persons who are elderly, or have handicaps or disabilities”; by revising in the first sentence of the definition for “Initiation operating capital” the word “bond” to read “coverage”; by revising in paragraph (d) of the definition for “Private nonprofit corporation” the word “municipal” to read “public”; by removing the definitions for “Disabled” and “Handicap”; by adding alphabetically the definitions for “Individual with disability”, “Individual with handicap” and “Loans to build or acquire new units”; and by revising the definitions for “Congregate housing” “Consumer cooperative”, “Elderly (Senior Citizen)”, “Elderly family”, “Group home”, “Limited equity”, “Resident assistant”, “Service agreement” and “Service plan” to read as follows:

§1944.205 Definitions.

* * * * *

* Congregate housing. Residential housing, for persons or families who are elderly, have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them with their own financial, familial or social resources.

* Consumer cooperative. A corporation which:

(1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe;

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the members;

(3) Will operate at cost and, for this purpose, any patronage refunds accruing to members as defined in §1944.205 of this subpart will not be considered gains or profits; and

(4) Will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

* * * * *

Elderly (Senior Citizen). A person who is a least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this section, regardless of age.

Elderly family. A household where the tenant, cotenant, member or comember (individual) is a least 62 years old, disabled, or handicapped as defined separately in this section. An elderly family may include a person younger than 62 years of age who is essential to the care and well-being of the person who is elderly, disabled, and/or handicapped. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant, cotenant, member or comember.)

* * * * *

Group home. Housing that is occupied by tenants who are elderly, or
have handicaps, or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

Individual with disability. A person is considered disabled if the person meets the criteria of either of the following:

1. The person has an inability to engage in any substantial gainful activity, but with use of auxiliary aids apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment where the disability:
   (i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and
   (ii) Substantially impedes the ability to live independently, and
   (iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or
   (iv) In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of The Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

2. The person has a developmental disability; a severe, chronic disability which:
   (i) Is attributable to a mental or physical impairment or combination of mental and physical impairment; and
   (ii) Was manifested before age 22; and
   (iii) Is likely to continue indefinitely; and
   (iv) Results in substantial functional limitations in three or more of the following areas of major life activity:
      (A) Self-care;
      (B) Receptive and expressive language;
      (C) Learning;
      (D) Mobility;
      (E) Self-direction;
      (F) Capacity for independent living; and
      (G) Economic self-sufficiency.

3. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

Individual with handicap. (1) A person with a physical or mental impairment that:

   (i) Is expected to be of long-continued and indefinite duration: and
   (ii) Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

(2) The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance.

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
   neurological; musculoskeletal; special senses organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(C) Has one of the impairments defined in paragraphs (2)(i)(A) and (2)(i)(B) of this definition but is treated by another person as having such an impairment.

Limited equity. The amount of funds which have accumulated in the cooperative member's patronage capital account (defined in § 1944.205) and as described in Exhibit H of this subpart.

Loans to build or acquire new units. Any initial or subsequent loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

Resident assistant. A person(s) residing in a tenant's housing unit who is essential to the well-being and care of person(s) who are elderly, or have handicaps or disabilities residing in the unit but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a shore service worker. A resident assistant may function in any type of housing affected by this subpart.

Service agreement. A written agreement between the borrower and service provider detailing the specific service to be provided, the cost of the service and length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a FmHA financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

9. Section 1944.211 (a)(6)(iv) is revised to read as follows:

§ 1944.211 Eligibility requirements.

(a)

(6)

(iv) If the borrower provided the initial 2 percent operating capital from its own funds, the State Director may, in accordance with subpart C of part 1930 of this chapter, authorize the borrower to make a one-time withdrawal from project funds. The borrower must request in writing the withdrawal after
2 years, but before 5 full (12-month) borrower fiscal years of operation.

§ 1944.215 [Amended]

10. Section 1944.215 is amended by adding in paragraph (b)(5) the words “measures and practices” at the end of the first sentence; by revising in paragraph (b)(6) in the first sentence the words “handicapped tenants” to read “tenants with handicaps,” in the second sentence the words “physically handicapped persons” to read “persons with physical handicaps,” and in the third sentence the words “handicapped people” to read “people with handicaps”; by revising in paragraph (b)(7) the words “Amendments Act of 1988” to read “Act”; and by adding in paragraph (c)(5)(ii) the words “Multiple Families” to read “under the word “Interest.”

11. Section 1944.222 is amended by revising the heading of paragraph (k) and by revising paragraph (k)(2) to read as follows:

§ 1944.222 Technical, legal, and other services.

(k) Surety bonding and fidelity coverage.

2. If the applicant is an organization, it will see that fidelity coverage is in place on any personnel entrusted with the receipt, custody and disbursement of any project monies, securities, or readily salable property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of Exhibit B of subpart C of part 1930 of this chapter.

12. Section 1944.224 is amended as follows:

(a) Congregate housing. Congregate housing will create an environment that will assist individuals who request services to maintain their independence longer by making available nutritious meals and other services that can help enhance their independence.

(1) Eligible tenants. Eligible tenants are described in §1944.205 of this subpart.

(2) Prospective tenants must be evaluated to determine if they meet the essential eligibility requirements to reside in a group home. Applicants should be guided by paragraph VI A of Exhibit J of subpart C of part 1930 of this chapter.

(iv) The entrances to all living units must be on a route accessible to handicapped persons.

(2) A legal guardian (an individual) may execute a lease agreement on behalf of a tenant in a group home when that tenant does not possess the legal capacity to enter into a legal contract with the project owner.

(4) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate or group home facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants from the market area to ensure feasibility of the project.

13. Section 1944.235 is amended in paragraph (h) by removing the words “Prevent-up or” in the heading and by revising in the first sentence of the introductory text the words “soon after loan approval” to read “90 to 120 days prior to the construction completion date”, by removing in the last sentence of paragraph (h)(1) the words after the

the introductory text of paragraph (a)(2), the first sentence of paragraph (a)(2)(i), the first sentence of paragraph (a)(2)(ii), paragraph (a)(2)(vii), the first, second, third and fourth sentences of paragraph (a)(3), the second sentence of the introductory text of paragraph (a)(5), the first and second sentences of paragraph (b)(1)(iv), paragraph (b)(2), paragraph (b)(7), and the first two sentences of paragraph (c)(2) to read as follows:

§ 1944.224 Supplemental requirements for congregate housing and group homes.

* * * Congregate housing and group homes are types of Section 515 RH that require a broader commitment from applicants to ensure that needed and desired services will be provided when requested by prospective tenants. * * *

The management of congregate housing requires supervision of support services and more interaction and consultation with tenants. * * *

(a) Congregate housing. Congregate housing is designed to serve the needs of the individuals the housing is designed to serve. * * *

(iii) The design must accommodate the needs of the individuals the housing is designed to serve. * * *

(vi) The entrances to all living units must be on a route accessible to individuals with handicaps. Living units accessible only via exterior steps or interior stairs will not be acceptable. * * *

(4) Management of congregate projects. Applicants must meet the provisions of Exhibit J of subpart C of part 1930 of this chapter in managing congregate housing and are encouraged to review Exhibit J before completing a loan application. In addition to the elements of managing a typical RRH project, congregate housing requires increased management experience and skills. Delivery of services, counseling with tenants, and the decisionmaking process of tenant selection add a unique dimension to prudent management. The success or failure of a project will rely heavily upon management’s specialized management and marketing skills and abilities and delivery of services. * * *

(b) Group homes. Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living but otherwise need the direction and/or assistance of a trained resident assistant. Group homes may be designed for individuals who are elderly, have handicaps, or disabilities as defined in §1944.205 of this subpart.

(1) * * *

(iv) The entrances to all living units must be on a route accessible to handicapped persons.

(2) Prospective tenants must be evaluated to determine if they meet the essential eligibility requirements to reside in a group home. Applicants should be guided by paragraph VI A of Exhibit J of subpart C of part 1930 of this chapter.

(7) A legal guardian (an individual) may execute a lease agreement on behalf of a tenant in a group home when that tenant does not possess the legal capacity to enter into a legal contract with the project owner.

(c) * * *

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate or group home facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants from the market area to ensure feasibility of the project.

* * *

13. Section 1944.235 is amended in paragraph (h) by removing the words “Prevent-up or” in the heading and by revising in the first sentence of the introductory text the words “soon after loan approval” to read “90 to 120 days prior to the construction completion date”; by removing in the last sentence of paragraph (h)(1) the words after the
(c) Participants in FmHA’s housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. Victims of discriminatory housing practices may seek reparations from HUD or by private lawsuit.

(d) All complaints will be handled in accordance with prescribed procedure.

Exhibit A of Subpart E of Part 1944—[Amended]

15. Exhibit A of subpart E of part 1944 is amended by revising in paragraph III C the words “Review of Preapplication Action” to read “Preapplication Review Action”; by revising in the third sentence of paragraph IV B 5 a the word “bond” to read “coverage”; by revising in paragraph IV B II the words “Statement of Budget and Cash Flow” to read “Multiple Family Housing Project Budget” and by adding the words “of this subpart” after the word “A–6”; by removing in paragraph IV 16 b (1) the words “marital or”; and by revising in paragraph IV 16 b the words “Exhibits B–10 and B–10A” to “to read “Exhibit J of.”

Exhibit A–6 of Subpart E of Part 1944—[Amended]

16. Exhibit A–6 of subpart E of part 1944 is amended by adding the words “Effective Date—” under the heading.

Exhibit E of Subpart E of Part 1944—[Amended]

17. Exhibit E to subpart E of part 1944 is amended in paragraph II by removing the last sentence.

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

18. Section 1944.552(a) is revised to read as follows:

§ 1944.552 Definitions.

(a) Applicant. A person who has submitted an application for occupancy in a RRH, RCH, or LH project, and is not a tenant or member. This includes persons who have been denied an application for admission.

(b) Applicant. Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in an RRH or LH project has been rejected, as well as for a person who has been denied an application for admission. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

PART 1951—SERVICING AND COLLECTIONS

21. The authority citation for part 1951 is revised to read as follows:

and Rental Assistance."

Only tenants with current tenant certifications shown on MTFS will be certified for interest credit or rental assistance when processing payments.

(iii) A copy of the monthly MTFS project worksheet report will be filed with Form FmHA 1944-29 to document the approved subsidies.

(iv) At the borrower's request, a copy of the MTFS project worksheet report may be used as Parts I and II in lieu of Form FmHA 1944-29. The District Office will provide a copy of the MTFS project worksheet report to the borrower about the 20th of the month. When using the MTFS project worksheet report as Parts I and II of Form FmHA 1944-29, the borrower will verify the data, sign the MTFS project worksheet report, and return it with the monthly payment to the District Office.

Borrowers using the MTFS project worksheet report as Part II, only, will complete, sign, and attach Part I of Form FmHA 1944-29 to the MTFS project worksheet report, before returning it with the monthly payment. Borrowers with Section 8 units who are reporting overdue payment, and/or excess HUD contract rent to the reserve account are required to complete Part I of either Form FmHA 1944-29 or the MTFS project worksheet report.

(v) The borrower may subtract any RA due the project (supported by current tenant certifications) from the payment due and remit a "net" payment. Calculations supporting the "net" payment must be shown on Part I of Form FmHA 1944-29. The Finance Office will net enough RA to bring the account status current and pay any unpaid overdue, late fees, occupancy surcharges, interest on delinquent principal, etc., based on the payment reception date. If the account is on or ahead of schedule on the payment reception date, enough RA will be netted to pay one full installment and any unpaid coverage, occupancy surcharge, interest on delinquent principal, etc.

(7) Payment input by FmHA will be based on correct amounts regardless of the amount remitted by the borrower.

23. Section 1951.507(e) is revised to read as follows:

§1951.507 Maintaining borrower accounts.

(3) District Office monitoring. District Offices should review each account at least monthly by accessing the Automated Multi-Housing Accounting System (AMAS) through field office terminals. For projects on PASS, the Management System card will be flagged with an orange signal between Position "5" and "RIH." Exhibit A-1 of this subpart (available in any FmHA office) should be used to track payments.

24. Section 1951.510 is amended by adding in the first sentence of the introductory text of paragraph (c)(2) the words "close of business of" after the words "District Office by" and by revising paragraph (c)(1), by redesignating paragraph (c)(3) as (c)(4) and revising the newly redesignated (c)(4), and by adding a paragraph (c)(3) to read as follows:

§1951.510 Payment application.

(c)

(1) A loan payment is due on the first day of a month. A loan payment is considered past due when it is received on the second day or a subsequent day through the close of business of the second day of the month. A loan payment is late when it is received after normal business hours of the second day of the month, without regard to weekends, holidays or payment transmission factors. Thereafter, a late fee will be charged as described in paragraphs (c)(2) and (c)(4) of this section.

(3) A project is considered delinquent on the 30th day of the month when any due amount is unpaid.

(4) When a regular PASS payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid delinquent principal at the note rate from the date the principal was due until all regular payments, recoverable cost charges, late fees, and occupancy surcharges have been paid current in accordance with the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The interest on delinquent principal will be added to the regular payment amount due for the month.

25. Section 1951.512 is amended by adding the phrase "by the AMAS Coordinator" at the end of the last sentence.

26. Section 1951.517 is amended by revising paragraph (a) the words "will be converted on May 1, 1985" to read "was converted", and by revising paragraphs (b)(3)(ii) and (b)(4) to read as follows:

§1951.517 Conversion from DIAS to PASS.

(b) *(c) *

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. However, a new Form FmHA 1944-7 must be prepared to reflect the PASS payment and subsidy amount.

(4) Principal balance to be converted. For transfers and reamortizations, the applicable transfer or reamortization form will convert the account to PASS. The principal balance converted to PASS will be established according to the FMI for Forms FmHA 1965-9, FmHA 1965-10, "Information on Assumption of Multiple Family Housing Loans," or FmHA 1965-16, and the following:

(i) For DIAS to PASS transactions (new terms):

(A) First of the month closings: The unpaid interest, overdue, occupancy surcharge and late fees accrued through the last day of the previous month will be capitalized.

(B) Other than the first of the month closing: Accrued interest, overdue, occupancy surcharge and late fees through the date of closing will be capitalized. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and applied to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(ii) For DIAS to PASS transactions (same terms):

(A) First of the month closings: Accrued interest, overdue, occupancy surcharge and late fees through the last day of the previous month will be collected from the transferee at closing and credited to the transferee's account.

(B) Other than the first of the month closings: Accrued interest, overdue, occupancy surcharge and late fees through the date of closing will be collected from the transferee at closing and credited to the transferee's account. The date of credit is the day before closing. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and credited to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(iii) Reamortizations will always be effective the first day of the month.
Unpaid interest, including any unpaid overage, occupancy surcharge and late fees may be capitalized as follows: DIAS to PASS transactions, through the last day of the previous month; PASS to PASS transactions, through the 30th day of the previous month.

(iv) Audit receivables may not be transferred or reamortized. They will be established as a "Collection Only" account for the transferor and must be collected or charged off.

Exhibit B of Subpart K of Part 1951—[Amended]

27. Exhibit B of subpart K of part 1951 is amended in the last sentence of paragraph XV C by revising the words "VII F 5 b" to read "VII F 6 c."

PART 1965—REAL PROPERTY

28. The authority citation for part 1965 continues to read as follows:


Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.61 [Amended]

29. Section 1965.61 is amended in the introductory text of paragraph (e)(2) by removing the words "laundries, commissary stores" and by revising in paragraph (e)(2)(iv) the words "1 year" to read "3 years."

§ 1965.65 [Amended]

30. Section 1965.65 is amended in paragraph (b)(11) by revising the word "$ 1930.124" to read "$ 1930.122."

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

§ 1965.204 [Amended]

31. Section 1965.204(b) is amended in the first sentence by revising the words "paragraph IV C and V B" to read "paragraph IV B."

§ 1965.214 [Amended]

32. Section 1965.214(f)(2) is amended in the first sentence by revising the word "IV A 2 e" to read "IV A 2 d."

Dated: July 2, 1993.

Bob Nash,
Undersecretary for Small Community and Rural Development.

[FR Doc. 93-17299 Filed 7-29-93; 8:45 am]
BILLING CODE 3410-07-M
Part III

Department of Education

34 CFR Part 303
Early Intervention Program for Infants and Toddlers With Disabilities; Final Rule
DEPARTMENT OF EDUCATION

34 CFR Part 303
RIN 1820-AA97

Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Early Intervention Program for Infants and Toddlers With Disabilities. These final regulations are needed to implement the Individuals with Disabilities Education Act Amendments of 1991. The regulations incorporate statutory changes and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FURTHER INFORMATION CONTACT: Peggy Cvaich or Bobbi Stettner-Eaton, U.S. Department of Education, 400 Maryland Avenue, SW (Switzer Building, rooms 4609 and 4618, respectively), Washington, DC 20202–2732, Telephone: (202) 205–9807 and (202) 205–8828, respectively. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the Individuals with Disabilities Education Act Amendments of 1991, Pub. L. 102–119 (enacted October 7, 1991), as that statute affects the program authorized by Part H of the Individuals with Disabilities Education Act. The 1991 amendments to the Part H program were enacted to promote a seamless system of services for children with disabilities from birth through five years of age and their families.

The amendments to Part H are an important step forward in addressing the National Education Goals. Specifically, the amendments address Goal 1, that all children will start school ready to learn.

On May 1, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for the Part H program in the Federal Register (57 FR 18986). This document included a summary of (1) the major provisions of the 1991 statutory amendments that were incorporated in the NPRM, (2) regulations proposed to implement those statutory provisions, and (3) other regulations proposed to update, clarify, and in other ways improve the rules for the Part H program. See 57 FR 18986–18990.

Major Changes in the Regulations

The major differences between the NPRM and these final regulations are the following:

Section 303.12 Early Intervention Services

The definition of "assistive technology services" in paragraph (d)(1) of this section has been revised to conform the language to the scope of the Part H program. Paragraph (d)(1)(vi) has been revised (1) to delete references to "education or rehabilitation" services and substitute "early intervention" services, and (2) to delete references to the employment of the individuals with disabilities served by the program.

In the definition of "physical therapy," paragraphs (d)(9) (ii) and (iii) have been amended to add references to "treatment" and to services to "compensate for" functional problems in order to encompass physical therapy for children whose conditions can be neither prevented nor alleviated.

Section 303.16 Infants and Toddlers With Disabilities

Note 1 after the text of this section relates to children who need early intervention services because they have "a diagnosed physical or mental condition that has a high probability of resulting in developmental delay." The proposed language of Note 1 has been amended by striking the second paragraph, relating to a combination of factors. Only children who have one or more conditions that, considered separately, have a high probability of resulting in developmental delay fall within the quoted language, as is the case under current regulations.

Note 2 after the text of § 303.16 relates to children who are at risk of having substantial developmental delays if early intervention services are not provided and who may be served at a State's discretion. Proposed Note 2 is amended by referring to biological and "environmental" rather than "other" identifiable factors that place infants and toddlers at risk.

Section 303.148 Transition to Preschool Programs

Paragraph (b)(2) of this section has been revised to provide that the statutorily-required conference among the lead agency, the family, and the local educational agency or unit must be convened at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the Part B preschool program under State law.

Section 303.321 Comprehensive Child Find System

Paragraph (c)(1) of this section, which lists some programs that may locate and identify children in need of early intervention services, has been revised to add a reference to the Supplemental Security Income program under Title XVI of the Social Security Act.

Section 303.342 Procedures for IFSP Development, Review, and Evaluation

Paragraph (e) of this section has been revised to clarify that if parents withdraw consent to a particular early intervention service after first providing consent, that service may not be provided. In addition, a parallel change has been made in § 303.405—Parent right to decline service.

Section 303.344 Content of an IFSP

Paragraph (e)(1)(iii) of this section has been revised to require that the IFSP include, for the non-required services that are listed in that document, either the funding sources to be used in paying for those services or the steps that will be taken to secure them through public or private sources. A conforming change has been made to the language in the note following § 303.13.

Section 303.404 Parent Consent

Note 2 following the text of this section has been revised to clarify that a public agency may initiate procedures to challenge a parent's refusal to consent to the child's initial evaluation and, if successful, permit the evaluation to proceed.

Section 303.510 Adopting Complaint Procedures

This section has been revised to allow the lead agency to provide that all complaints must be filed with it or that complaints may also be filed with another public agency subject to a right of appeal to the lead agency. Conforming changes have been made to the note following this section, to § 303.511, and to § 303.512(a). In addition, the reference to an independent on-site investigation in § 303.512(a)(1) has been expanded to
include the material in proposed § 303.510(c) concerning such an investigation. Finally, § 303.512 has been revised to provide clarifications that parallel those in § 300.661 of regulations adopted on September 29, 1992 (57 FR 44794, 44829), under Part B of the Act.

Section 303.520 Policies Related to Payment of Services

The final regulations do not include the requirement in proposed paragraph (b)(4)(ii) of this section that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The requirement in proposed paragraph (b)(4)(ii), which is taken from current § 303.19, is retained with conforming editorial changes.

Analysis of Comments and Changes

In response to the Secretary’s invitation in the NPRM, 173 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Comments on provisions outside the scope of the proposed regulations will be considered in any future rulemaking for the Part H program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 13272 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department’s specific plans and actions for this program.

List of Subjects in 34 CFR Part 303

Education, Education of individuals with disabilities, Programs-Education, Medical personnel, State educational agencies.

Dated: May 6, 1993.

Richard W. Riley,
Secretary of Education.

(Catalog of FederalDomestic Assistance Number 84.181, Early Intervention Programs for Infants and Toddlers with Disabilities)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 303 to read as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

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303.2 Eligible recipients of an award.
303.3 Activities that may be supported under this part.
303.4 Limitation on eligible children.
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303.16 Infants and toddlers with disabilities.
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303.100 Conditions of assistance.
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303.124 Prohibition against supplanting.
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General Requirements for a State Application

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303.143 Designation regarding financial responsibility.
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303.145 Description of use of funds.
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303.152 Fourth year applications.
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Components of a Statewide System—Application Requirements for Years Four, Five, and Thereafter

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303.167 Individualized family service plans.
303.168 Comprehensive system of personnel development (CSPD).
303.169 Personnel standards.
303.170 Procedural safeguards.
303.171 Supervision and monitoring of programs.
303.172 Lead agency procedures for resolving complaints.
303.173 Policies and procedures related to financial matters.
303.174 Interagency agreements; resolution of individual disputes.
303.175 Policy for contracting or otherwise arranging for services.
303.176 Date collection.

Participation by the Secretary of the Interior

303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

Subpart C—Procedures for Making Grants to States

303.200 Formula for State allocations.
303.201 Distribution of allotments from non-participating States.
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303.203 Payments to the Secretary of the Interior.
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303.300 State eligibility criteria and procedures.
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Authority: 20 U.S.C. 1471–1485, unless otherwise noted.
Subpart A—General
Purpose, Eligibility, and Other General Provisions
§303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
The purpose of this part is to provide financial assistance to States to—
(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families;
(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and
(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.
(Authority: 20 U.S.C. 1471)
§303.2 Eligible recipients of an award.
Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).
(Authority: 20 U.S.C. 1401(a)(6), 1484)
§303.3 Activities that may be supported under this part.
Funds under this part may be used for the following activities:
(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.
(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.
(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with §303.527.
(d) To provide a free appropriate public education, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.
(Authority: 20 U.S.C. 1473, 1479)
§303.4 Limitation on eligible children.
This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.
(Authority: 20 U.S.C. 1419(g))
§303.5 Applicable regulations.
(a) The following regulations apply to
(1) The Education Department General Administrative Regulations (EDGAR), including—
   (i) Part 76 (State Administered Programs), except for §76.103;
   (ii) Part 77 (Definitions that Apply to Department Regulations);
(iii) Part 79 (Intergovernmental
Review of Department of Education
Programs and Activities);
(iv) Part 80 (Uniform Administrative
Requirements for Grants and
Cooperative Agreements to State and
Local Governments);
(v) Part 81 (Grants and Cooperative
Agreements under the General
Education Provisions Act—
Enforcement);
(vi) Part 82 (New Restrictions on
Lobbying);
(vii) Part 85 (Governmentwide
Debarment and Suspension
[Nonprocurement] and
Governmentwide Requirements for
Drug-Free Work Place [Grants]); and
(viii) Part 86 (Drug-Free Schools and
Campuses).

(2) The regulations in this part 303.

(3) The following regulations in 34
CFR part 300 (Assistance to States for
Children with Disabilities Program):
§§ 300.580 through 300.585, and
§§ 300.586.

(b) In applying the regulations cited in
paragraphs (a)(1) and (a)(3) of this
section, any reference to—

(1) State educational agency means
the lead agency under this part;

(2) Special education, related
services, free appropriate public
education, free public education,
or education means “early intervention
services” under this part;

(3) Participating agency, when used in
reference to a local educational agency
or an intermediate educational agency,
means a local service provider under
this part;

(4) Section 300.128 means §§ 303.164
and 303.321; and

(5) Section 300.129 means § 303.460.

(Authority: 20 U.S.C. 1401–1418, 1420, 1433)

Definitions
Note: Sections 303.6–303.24 contain
definitions, including a definition of “natural
environments” in § 303.12(b)(2), that are
used throughout these regulations. Other
terms are defined in the specific subparts in
which they are used. Below is a list of those
terms and the specific sections in which they are
defined:

Appropriate professional requirements in the
State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(ii))
Highest requirements in the State
applicable to a profession or discipline
(§ 303.361(a)(2))
Individualized family service plan and
IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Location (§ 303.344(d)(3))
Method (§ 303.344(d)(2)(ii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of “aggregate amount”
(§ 303.200(b)(1))
Special definition of “infants and toddlers”
(§ 303.200(b)(2))
Special definition of “State” (§ 303.200(b)(3))
State approved or recognized certification,
licensing, registration, or other comparable
requirements (§ 303.361(a)(4))

§ 303.6 Act.

As used in this part, Act means the
Individuals with Disabilities Education
Act.

(Authority: 20 U.S.C. 1400)

§ 303.7 Children.

As used in this part, children means
“infants and toddlers with disabilities”
as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

§ 303.8 Council.

As used in this part, Council means the
State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

§ 303.9 Days.

As used in this part, days means
calendar days.

(Authority: 20 U.S.C. 1471–1485)

§ 303.10 Developmental delay.

As used in this part, developmental
delay has the meaning given to that term
by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

§ 303.11 Early intervention program.

As used in this part, early intervention
program means the total effort in a State
that is directed at meeting the needs of
children eligible under this part and
their families.

(Authority: 20 U.S.C. 1471–1485)

§ 303.12 Early intervention services.

(a) General. As used in this part,
early intervention services means services
that—

(1) Are designed to meet the
developmental needs of each child
eligible under this part and the needs
of the family related to enhancing the
child’s development;

(2) Are selected in collaboration with
the parents;

(3) Are provided—
(i) Under public supervision;
(ii) By qualified personnel, as defined
in § 303.21, including the types of
personnel listed in paragraph (e) of this
section;
(iii) In conformity with an
individualized family service plan; and
(iv) At no cost, unless, subject to
§ 303.520(b)(3), Federal or State law
provides for a system of payments by
families, including a schedule of sliding
fees; and

(iv) Meet the standards of the State,
including the requirements of this part.

(b) Natural environments. (1) To the
maximum extent appropriate to the
needs of the child, early intervention
services must be provided in natural
environments, including the home and
community settings in which children
without disabilities participate.

(2) As used in paragraph (b)(1) of this
section, natural environments means
settings that are natural or normal for
the child’s age peers who have no
disability.

(c) General role of service providers.
To the extent appropriate, service
providers in each area of early
intervention services included in
paragraph (d) of this section are
responsible for—

(1) Coordinating and using other
service providers, and representatives of
appropriate community agencies to
ensure the effective provision of
services in that area;

(2) Training parents and others
regarding the provision of those
services; and

(3) Participating in the
multidisciplinary team’s assessment of a
child and the child’s family, and in the
development of integrated goals and
outcomes for the individualized family
service plan.

(d) Types of services; definitions.
Following are types of services included
under “early intervention services,”
and, if appropriate, definitions of those
services:

(1) Assistive technology device means
any item, piece of equipment, or
product system, whether acquired
commercially off the shelf, modified, or
customized, that is used to increase,
maintain, or improve the functional
capabilities of children with disabilities.

Assistive technology service means a
service that directly assists a child with
a disability in the selection, acquisition,
or use of an assistive technology device.

Assistive technology services include—

(i) The evaluation of the needs of a
child with a disability, including a
functional evaluation of the child in the
child’s customary environment;

(ii) Purchasing, leasing, or otherwise
providing for the acquisition of assistive
technology devices by children with
disabilities;

(iii) Selecting, designing, fitting,
customizing, adapting, applying,
maintaining, repairing, or replacing
assistive technology devices;

(iv) Coordinating and using other
therapies, interventions, or services
with assistive technology devices, such
as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) Audiology includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiologic evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibratory devices, and evaluating the effectiveness of those devices.

(3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) Health services (See § 303.13).

(5) Medical services only for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) Nursing services includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) Nutrition services includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) Occupational therapy includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

(i) Identification, assessment, and program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(ii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(10) Psychological services includes—

(i) Administering psychological and developmental tests and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) Service coordination services means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.22.

(12) Social work services includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(13) Special instruction includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(14) Speech-language pathology includes—

(i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
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... disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purerly medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

Note: The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e) and the note 3 following that section.)

§ 303.14 IFSP.

As used in this part, IFSP means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

§ 303.15 Include; including.

As used in this part, include or including means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1471–1485)

§ 303.16 Infants and toddlers with disabilities.

(a) As used in this part, infants and toddlers with disabilities means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

1: The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

Under this provision, States have the authority to define what would be “at risk of having substantial developmental delays if early intervention services are not provided.” In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

§ 303.17 Multidisciplinary.

As used in this part, multidisciplinary means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322 and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a))

§ 303.18 Parent.

As used in this part, parent means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent.
who has been appointed in accordance with §303.406. The term does not include the State if the child is a ward of the State. 


Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the regulations under Part B of the Act (34 CFR 300.13).

§303.19 Policies.
(a) As used in this part, policies means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.
(b) State policies include—
(1) A State's commitment to develop and implement the statewide system (see §303.150);
(2) A State's eligibility criteria and procedures (see §303.300);
(3) A statement that, consistent with §303.520(b), provides that services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law.
(4) A State's standards for personnel who provide services to children eligible under this part (see §303.361);
(5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and
(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.


§303.20 Public agency.
As used in this part, public agency means each of the following:
(a) The lead agency;
(b) Any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.


§303.21 Qualified.
As used in this part, qualified means that a person has met State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(App: U.S.C. 1472(2))

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (i.e., that the State educational agency establish standards and ensure that the standards are currently met for all programs providing special education and related services).
2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.
3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

§303.22 Service coordination (case management).
(a) General. (1) As used in this part, except in §303.12(d)(11), service coordination means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.
(2) Each child eligible under this part and the child's family must be provided with one service coordinator who is responsible for—
(i) Coordinating all services across agency lines; and
(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.
(3) Service coordination is an active, ongoing process that involves—
(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;
(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;
(iii) Facilitating the timely delivery of available services; and
(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.
(b) Specific service coordination activities. Service coordination activities include—
(1) Coordinating the performance of evaluations and assessments;
(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;
(3) Assisting families in identifying available service providers;
(4) Coordinating and monitoring the delivery of available services;
(5) Informing families of the availability of advocacy services;
(6) Coordinating with medical and health providers; and
(7) Facilitating the development of a transition plan to preschool services, if appropriate.
(c) Employment and assignment of service coordinators. (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.
(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.
(d) Qualifications of service coordinators. Service coordinators must be persons who, consistent with §303.144(g), have demonstrated knowledge and understanding about—
(1) Infants and toddlers who are eligible under this part;
(2) Part H of the Act and the regulations in this part; and
(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(App: U.S.C. 1472(2))

Note: If States have existing service coordination systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

Note: 2: The legislative history of the 1991 amendments to the Act indicates that the use of the term "service coordination" was not intended to affect the authority to seek reimbursement for services provided under Medicaid or any other legislative that makes reference to "case management" services. See H.R. REP. NO. 198, 102d Cong., 1st Sess. 12 (1991); S. REP. NO. 84, 102d Cong., 1st Sess. 20 (1991).

§303.23 State.
Except as provided in §303.200(b)(3), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(App: U.S.C. 1401(a)(3))

§303.24 EDGAR definitions that apply.
The following terms used in this part are defined in 34 CFR 77.1:
Subpart B—State Application for a Grant

General Requirements

§ 303.100 Conditions of assistance. (a) In order to receive funds under this part for any fiscal year, a State must—
(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and
(2) Have on file with the Secretary the statement of assurances required under §§ 303.120 through 303.128.
(b) For years one through five, a State shall submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1475)

§ 303.101 How the Secretary disapproves a State's application or statement of assurances. The Secretary follows the procedures in 34 CFR 300.581 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1475)

Public Participation

§ 303.110 General requirements and timelines for public participation. (a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—
(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;
(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and
(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.
(b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that—
(1) There are circumstances that would warrant such an exception; and
(2) The timelines that will be followed provide an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.111 Notice of public hearings and opportunity to comment. The notice required in § 303.110(a)(3) must—
(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and
(b) Be in sufficient detail to inform the public about—
(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;
(2) The length of the comment period and the date, time, and location of each hearing; and
(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

§ 303.112 Public hearings. Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.113 Reviewing and reporting on public comments received. (a) Review of comments. Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—
(1) Review and consider all public comments; and
(2) Make any modifications it deems necessary in the application or policy.
(b) Reporting on comments to the Secretary. In submitting the State’s application or policy to the Secretary, the lead agency shall include—
(1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;
(2) The State’s responses to those comments; and
(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

Statement of Assurances

§ 303.120 General. (a) A State’s statement of assurances must contain the information required in §§ 303.121 through 303.128.
(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State’s participation under this part.
(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.

(Authority: 20 U.S.C. 1478(b))

§ 303.121 Reports and records. (a) The statement must provide for—
(1) Making reports in such form and containing such information as the Secretary may require; and
(2) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authorized by the Office of Management and Budget under control number 1820–0550)

§ 303.122 Control of funds and property. (a) The statement must provide assurance satisfactory to the Secretary that—
(1) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and
(b) A public agency will administer the funds and property.

(Authorized by the Office of Management and Budget under control number 1820–0550)

§ 303.123 Prohibition against commingling. The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Authorized by the Office of Management and Budget under control number 1820–0550)

Note: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be
consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.  
(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.  
(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for-  
(1) Decreases in the number of children who are eligible to receive early intervention services under this part; and  
(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(b)(3))

§ 303.125 Fiscal control.  
The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(b)(6))

§ 303.126 Payor of last resort.  
The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in §303.527, including the requirements on-  
(a) Nonsubstitution of funds; and  
(b) Non-reduction of other benefits.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(b)(3))

§ 303.127 Assurance regarding expenditure of funds.  
The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in §303.3.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(b)(1))

§ 303.128 Traditionally underserved groups.  
The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—  
(a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and  
(b) That these families have access to culturally competent services within their local geographical areas.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(b)(7))

§ 303.140 General.  
A State's application under this part must contain the information required in §§303.141 through 303.148.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(a))

§ 303.141 Information about the Council.  
Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G of this part.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(a)(3))

§ 303.142 Designation of lead agency.  
Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(a)(1))

§ 303.143 Designation regarding financial responsibility.  
Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1478(a)(2))

§ 303.144 Assurance regarding use of funds.  
Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under subparts D through F of this part.  

(Approved by the Office of Management and Budget under control number 1820-0550)  
(Authority: 20 U.S.C. 1475, 1478(a)(4))

§ 303.145 Description of use of funds.  
(a) General.  
Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.  

(b) Administrative positions.  
Each application must include—  
(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and  
(2) For each position, the percentage of salary paid with those funds.  

(c) Planning, development, and implementation activities.  
Each application must include—  
(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and  
(2) The approximate amount of funds to be spent for each activity.  

(d) Direct services.  
(1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§303.521 and 303.527.  
(2) The description must include information about each type of service to be provided, including—  
(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and  
(ii) The approximate amount of funds under this part to be used for the service.  

(e) Activities by other agencies.  
If other agencies are to receive funds
under this part, the application must include—
(1) The name of each agency expected to receive funds;
(2) The approximate amount of funds each agency will receive; and
(3) A summary of the purposes for which the funds will be used.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1478(a)(4) and (a)(6))

§ 303.466 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1478(a)(6))

§ 303.467 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1478(a)(7))

§ 303.468 Transition to preschool programs.

Each application must include the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under Part B of the Act, including—
(a) A description of how the families will be included in the transitional plans;
(b) A description of how the lead agency under this part will—
(1) Notify the appropriate local educational agency or intermediate educational unit in which the child resides; and
(2) Convene, with the approval of the family, a conference among the lead agency, the family, and the local educational agency or unit at least 90 days before the child’s third birthday or, if earlier, the date on which the child is eligible for the preschool program under Part B of the Act in accordance with State law, to—
(i) Review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and
(ii) Establish a transition plan; and
(c) If the State educational agency, which is responsible for administering preschool programs under Part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1478(a)(8))

Note: The development and implementation of an individualized education program (“IEP”) or an individualized family service plan (“IFSP”) for each child, consistent with the requirements of laws see § 303.344(b) and sections 613(a)(15) and 614(a)(5) of the Act.

The coordination of communication between agencies and the child’s family.

The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

Note: While the transition requirements of the Act and this section pertain to children who are eligible for preschool programs under Part B, States are encouraged to adopt policies and procedures to facilitate a smooth transition of other children who are exiting the Part H program as well.

Specific Application Requirements for Years One Through Five and Thereafter

§ 303.469 Application requirements for first and second years.

A State’s annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.148.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475, 1478(a))

§ 303.450 Third year applications.

(a) General. A State’s third year application under this part must contain the following:

(1) The information required in §§ 303.141 through 303.148.

(2) Either—
   (i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or
   (ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.151.

(3) Other information that the Secretary may require.

(b) Adoption of policy on statewide system. Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—
(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;
(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and
(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State’s fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(b), 1478(a))

§ 303.451 Waiver of the policy adoption requirement for the third year.

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.150(b), if the State, in its third year application, includes a statement requesting a waiver, including—
(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.150(b)(1) and (b)(2); (b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and (c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.150(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State’s fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(b)(2))

Note: An example of when the Secretary may grant a waiver is a situation in which a State’s policy is awaiting action by the State legislature, but the legislative session does not commence until after the State’s application must be submitted.

§ 303.452 Fourth year applications.

A State’s application for the fourth year of participation under this part must contain—
(a) The information required in §§ 303.141 through 303.148;
(b) Information and assurances to demonstrate that—
(1) The requirements in §303.150(b)(1) and (b)(2) are met; and
(2) Subject to §303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;
  (c) Information and assurances required in §§ 303.161 through 303.176; and
  (d) Other information that the Secretary may require.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(b), 1476(a))

§303.153 States with mandates as of September 1, 1986, to serve children with disabilities from birth

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with disabilities from birth through age two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—
  (1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 through 303.128;
  (2) Submit an annual application for years one through four that contains the information in §§ 303.141 through 303.148;
  (3) Meet the public participation requirements in §§ 303.110 through 303.113; and
  (4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with disabilities from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in §303.154.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(d))

§303.154 Applications for year five and each year thereafter.

(a) Fifth year application. A State's application for the fifth year of its participation under this part must contain—
  (1) The information and assurances required in §§ 303.141 through 303.148 and §§ 303.161 through 303.176;
  (2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;
  (3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;
  (4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under §303.302; and
  (5) Other information that the Secretary may require.

(b) Applications for succeeding years. A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(c), 1476(b)(2), and 1476(a))

§303.155 Differential funding.

Notwithstanding any other provision of this part, an eligible entity that is experiencing significant hardships in meeting the eligibility requirements for a grant under this part for the fourth or fifth year of participation may qualify for a grant for fiscal years 1990, 1991, or 1992 under section 675(e) of the Act.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1475(e))

§303.160 Minimum components of a statewide system.

Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations. The minimum components of a statewide system are described in §§ 303.161 through 303.176.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(a), 1476(a)(9))

§303.161 State definition of developmental delay.

Each application must include the State's definition of "developmental delay," as described in §303.300.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(11))

§303.162 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in §303.301.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(7))

§303.163 Timetables for serving eligible children.

Each application must include an assurance that the timetables required in §303.302 have been established and will be met.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(2))

§303.164 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in §303.320.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(6))

§303.165 Comprehensive child find system.

Each application must include—
(a) The policies and procedures required in §303.321(b); and
(b) Information demonstrating that the requirements on coordination in §303.321(c) are met;
(c) The referral procedures required in §303.321(d), and either—
  (1) A description of how the referral sources are informed about the procedures; or
  (2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and
(d) The timelines in §303.321(e).
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(5))

§303.166 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(3); 1477(a)(1), (d)(2), and (d)(5))
§ 303.167 Individualized family service plans.

Each application must include—
(a) An assurance that the IFSP requirements in § 303.341 will be met; and
(b) Information demonstrating that—
(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and
(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(4), 1467(d))

§ 303.168 Comprehensive system of personnel development (CSPD).

Each application must include information to show that the requirements in § 303.360 are met.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(6))

§ 303.169 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(13))

§ 303.170 Procedural safeguards.

Each application must include procedural safeguards that—
(a) Are consistent with §§ 303.400 through 303.406, 303.420 through 303.425 and 303.460; and
(b) Incorporate either—
(1) The due process procedures in 34 CFR 300.516 through 300.512; or
(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 through 303.425.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(12))

§ 303.171 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(9)(A))

§ 303.172 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(9))

§ 303.173 Policies and procedures related to financial matters.

Each application must include—
(a) Funding policies that meet the requirements in §§ 303.520 and 303.521; and
(b) Information about funding sources, as required in § 303.522;
(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and
(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(9)(D) and (b)(9)(E), 1467(b)(11), 1467(d))

§ 303.174 Interagency agreements; resolution of individual disputes.

Each application must include—
(a) A copy of each interagency agreement that has been developed under § 303.523; and
(b) Information to show that the requirements in § 303.524 are met.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.175 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(10))

§ 303.176 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1476(b)(14))

Participation by the Secretary of the Interior

§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(b) (1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.

(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs ("BIA").

(c) (1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section.

(2) The report must include—
(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;
(ii) The amount of each payment; and
(iii) The date of each payment.

(Approved by the Office of Management and Budget under control number 1820-0550)

Subpart C—Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allocates to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—
(1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;
(2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and
(3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secretary reallocates those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1484(d))
§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under §303.200 or $500,000, whichever is greater.

(Authority: 20 U.S.C. 1444(c)(1))

§ 303.203 Payments to the Secretary of the Interior.

The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under §303.204.

(Authority: 20 U.S.C. 1444(b))

§ 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in §303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1444(e))

§ 303.205 Differential funding grants.

Notwithstanding any other provision of this part, section 675(e) of the Act governs—

(a) The amount of any grant for fiscal year 1990, 1991, or 1992 under that subsection; and

(b) The reallocation of funds for those fiscal years.

(Authority: 20 U.S.C. 1475(e))

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

General

§ 303.300 State eligibility criteria and procedures.

Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with §303.16, that will be used by the State in carrying out programs under this part.

(a) The State shall define development delay by—

(1) Describing, for each of the areas listed in §303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child’s development; and

(2) Stating the levels of functioning or other criteria that constitute a development delay in each of those areas.

(b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under §303.16(a)(2).

(c) If the State elects to include in its system children who are at risk under §303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

Note: Under this section and §303.32(c)(2), States are required to ensure that informed clinical opinion is used in determining a child’s eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State’s criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1476(b)(7))

Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

§ 303.302 Timetables for serving eligible children.

Except as provided in §303.4, each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, no later than the beginning of the fifth year of the State’s participation under this part.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1411(g), 1476(b)(2))

Note: Amendments to the Act made by Public Law 102-119 extend the State’s duty to make services available to Indian children on reservations served by BIA schools. The State’s obligation under prior law to make services available to other Indian children is unaffected by those amendments.

Identification and Evaluation

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about—

(a) The State’s early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who have disabilities; and

4. Includes a variety of methods for informing the public about the provisions of this part.
Note 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases; (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations; and (3) the use of a toll-free telephone service.

§ 303.321 Comprehensive child find system.

(a) General. (1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) Procedures. The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) Coordination. (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other State agencies responsible for administering the various educational, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and

(vi) Supplemental Security Income program under Title XVI of the Social Security Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) Referral procedures. (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made no more than two working days after a child has been identified; and

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.

(3) As used in paragraph (d)(1) of this section, primary referral sources includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) Timelines for public agencies to act on referrals. (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency shall—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1472(3)(E)(ii), 1476(b)(5))

Note: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

§ 303.322 Evaluation and assessment.

(a) General. (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) Definitions of evaluation and assessment. As used in this part—

(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

(c) Evaluation and assessment of the child. The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) The results of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(3) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) Family assessment. (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family related to enhancing the development of the child.
Any assessment that is conducted must be voluntary on the part of the family.

If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.

Timelines. (1) Except as provided in paragraph (a)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(a).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345(b)(1) and (b)(2).

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(3); 1477(a)(1), (a)(2), (d)(1), and (d)(2))

Note: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) section 677(a)(1) and (2) (multidisciplinary and family-directed assessments).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family’s resources, priorities, and concerns related to the development of the child (section 677(d)(2)), and (2) the child’s functioning level in each of the five developmental areas (section 677(d)(1)).

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child’s eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(3); 1477(a)(1), (d)(2), and (d)(3))

§ 303.340 Individualized Family Service Plans (IFSPs)

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child’s family. The plan must—

(1) Be developed in accordance with §§ 303.342 and 303.343;

(2) Be based on the evaluation and assessment described in § 303.322; and

(3) Include the matters specified in § 303.344.

(c) Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part.

(1) In settings and at times that are convenient to families; and

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

Meeting the IFSP requirements for years four and five.

(a) Fourth year requirements. No later than the beginning of the fourth year of a State’s participation under this part, the State shall ensure that—

(i) Evaluations and assessments are conducted in accordance with § 303.322;

(ii) An IFSP is developed, in accordance with §§ 303.342(a) and 303.343(a), for each child determined to be eligible under this part and the child’s family; and

(b) Requirements for the fifth year. No later than the beginning of the fifth year of a State’s participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child’s family.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(2) and (b)(4), 1477(a)(2) and (c))

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) Meeting to develop initial IFSP—timelines. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in § 303.321(e).

(b) Periodic review. (1) A review of the IFSP for a child and the child’s family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child’s family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) Accessibility and convenience of meetings. (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.
(a) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

(Approved by the Office of Management and Budget under control number 1820-0550)

Authority: 20 U.S.C. 1477)

Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

§303.345 Participants in IFSP meetings and periodic reviews.

(a) Initial and annual IFSP meetings.

(1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so;

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in §303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person’s involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) Periodic review. Each periodic review must provide for the participation of persons in paragraphs

(a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0550)

Authority: 20 U.S.C. 1477(b))

§303.344 Content of an IFSP.

(a) Information about the child’s status.

1. The IFSP must include a statement of the child’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

2. The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) Family information. With the concurrence of the family, the IFSP must include a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child.

(c) Outcomes. The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine—

1. The degree to which progress toward achieving the outcomes is being made; and

2. Whether modifications or revisions of the outcomes or services are necessary.

(d) Early intervention services.

1. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, and method of delivering the services;

(ii) The natural environments, as described in §303.12(b), in which early intervention services will be provided; and

(iii) The location of the services; and

(iv) The payment arrangements, if any.

2. As used in paragraph (d)(1)(i) of this section—

(i) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(ii) Method means how a service is provided.

3. As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided.

(e) Other services. (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and “well-baby” care), unless a child needs those services and the services are not otherwise available or being provided.

(f) Dates; duration of services. The IFSP must include—

1. The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in §303.342; and

2. The anticipated duration of those services.

(g) Service coordinator. (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed for the time that the child was initially referred for evaluation to be responsible for implementing a child’s and family’s IFSP; or

(ii) Appoint a new service coordinator.

(h) Transition from Part H services. (1) The IFSP must include the steps to be taken to support the transition of the child to—

(i) Preschool services under Part B of the Act, in accordance with §303.148, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child’s transition;
(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in §303.322, and copies of IFSPs that have been developed and implemented in accordance with §303.340 through §303.346.

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(Authority: 20 U.S.C. 1477(d))

Note 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.

Note 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child’s family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child’s development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 3: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with §303.12.

The “other services” in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that these services must be provided, their identification can be helpful to both the child’s family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child’s total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services). Thus, to the extent appropriate, it is important for a State’s procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 4: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents.

§303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child’s family may commence before the completion of the evaluation and assessment in §303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child’s family.

(c) The evaluation and assessment are completed within the time period required in §303.322(e).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(d))

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving outcomes in the child’s IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child’s IFSP.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(d)(8))

§303.350 Personnel standards.

(a) As used in this part—
(1) Appropriate professional requirements in the State means entry level requirements that—
   (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and
   (ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) Profession or discipline means a specific occupational category that—
   (i) Provides early intervention services to children eligible under this part and their families;
   (ii) Has been established or designated by the State; and
   (iii) Has a required scope of responsibility and degree of supervision.

(4) State approved or recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each lead agency system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Approved by the Office of Management and Budget under control number 1820–0550)

(4) Refer to the Federal Register for the full text of the regulations.
§303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under §303.322; and

(2) Initiating the provision of early intervention services (see §303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1440)

Note 1: In addition to the consent requirements in this section, other consent requirements are included in (1) §303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under Part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: Under §300.504(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent’s refusal to consent to the initial evaluation of the parent’s child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the Part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

§303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1440(3))

§303.406 Surrogate parents.

(a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in §303.16) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty of lead agency and other public agencies. The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) Criteria for selecting surrogates.

(1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation.

(1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) Responsibilities. A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child’s IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1440(5))

§303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in §303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of §303.425; or

(b) Developing procedures that—

(1) Meet the requirements in §§303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1440(1))

Note 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child’s family). These procedures require the appointment of a decision-maker who is impartial, as defined in §303.421(b), to resolve a dispute concerning any of the matters in §303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in §§303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant’s or toddler’s development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States
have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in §303.423.

§303.421 Appointment of an impartial person.

(a) Qualifications and duties. An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(i) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(ii) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(b) Definition of impartial.

(1) As used in this section, impartial means the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820-0550)

[Authority: 20 U.S.C. 1480(1)]

§303.422 Parent rights in administrative proceedings.

(a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under §303.420.

(b) Rights. Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the proceedings.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820-0550)

[Authority: 20 U.S.C. 1480(7)]

Confidentiality

§303.460 Confidentiality of information.

(a) Each State shall adopt and develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in §303.5(b).

(Approved by the Office of Management and Budget under control number 1820-0550)

[Authority: 20 U.S.C. 1480(2), 1483]

Note: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (§303.460).

The Part H provisions incorporated by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Approved by the Office of Management and Budget under control number 1820-0550)

[Authority: 20 U.S.C. 1476(b)(9)]

§303.501 Supervision and monitoring of programs.

(a) General. Each lead agency is responsible for—
(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

[b] Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;

(2) Enforcing any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring.

[Approved by the Office of Management and Budget under control number 1820–0550](Authority: 20 U.S.C. 1476(b)(9))

Lead Agency Procedures for Resolving Complaints

§ 303.510 Party to complaint.

Each lead agency shall adopt written procedures for—

(a) Resolving any complaint that any public agency is violating a requirement of Part H of the Act or this part by—

(1) Providing for the filing of a complaint with the lead agency; and

(2) At the lead agency’s discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency’s decision on the complaint; and

(b) Informing parents and other interested individuals about the procedures in §§ 303.510 through 303.512.

[Approved by the Office of Management and Budget under control number 1820–0550](Authority: 20 U.S.C. 1476(b)(9))

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State’s early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. The lead agency must provide for the filing of a complaint with the lead agency and, at the lead agency’s discretion, with a public agency subject to a right of appeal to the lead agency.

§ 303.511 An organization or individual may file a complaint.

An individual or organization may file a written complaint under § 303.510. The complaint must include—

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

[Approved by the Office of Management and Budget under control number 1820–0550](Authority: 20 U.S.C. 1476(b)(9))

§ 303.512 Minimum State complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part H of the Act or of this part; and

(b) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency’s final decision.

[b] An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the lead agency’s final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

[d] The right of the complainant or the public agency to request the Secretary to review the lead agency’s final decision.

[Approved by the Office of Management and Budget under control number 1820–0550](Authority: 20 U.S.C. 1476(b)(9))

Policies and Procedures Related to Financial Matters

§ 303.520 Policies related to payment for services.

(a) General. Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State’s early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) Specific funding policies. A State’s policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child’s family; and

(4) Set out any fees that will be charged for early intervention services and the basis for those fees.

(c) Procedures to ensure the timely provision of services. No later than the beginning of the fifth year of a State’s participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

[Approved by the Office of Management and Budget under control number 1820–0550](Authority: 20 U.S.C. 1476(b)(9))

§ 303.521 Fees.

(a) General. A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) Functions not subject to fees. The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321.

(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Service coordination, as included in §§ 303.22 and 303.34(g).

(4) Administrative and coordinative activities related to—
(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and
(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and
(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);
(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);
(3) The Head Start Act;
(4) Parts B and H of the Act;
(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;
(6) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94–130); and
(7) Other Federal programs.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1476(b)(9)(B))

§ 303.523 Interagency agreements.

(a) General. Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State’s early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) Financial responsibility. Each agreement must define the financial responsibility, in accordance with §303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) Procedures for resolving disputes.

(1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State’s early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(2) The lead agency, in accordance with the lead agency’s procedures that are included in the agreement, so long as the agency acts in a timely manner, and

(i) Permit the agency to resolve its own internal disputes (based on the agency’s procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) Additional components. Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State’s early intervention program.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1476(b)(9)(C) and (b)(9)(F))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1476(b)(9)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1476(b)(10))

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and
individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) Nonsubstitution of funds. Except as provided in paragraphs (b)(1)(i) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) Interim payments—

reimbursement. (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or “well-baby” health care (see § 303.13(c)(1)).

(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1481)

Note: The Congress intended that the enactment of Part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to Title XIX of the Social Security Act. That amendment...
§303.502 Use of funds by the Council.

(a) General. Subject to the approval by the Governor, the Council may use funds under this part—

1) To conduct hearings and forums;
2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;
4) To hire staff; and
5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) Compensation and expenses of Council members. Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(b))

§303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and
2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for these services.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482 (c) and (d))

§303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(f))

§303.650 General.

(a) Each Council shall—

1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;
2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;
3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and
ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and
4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(D))

§303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;
(b) Assignment of financial responsibility to the appropriate agency; and
(c) Promotion of the interagency agreements under §303.523.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(A))

§303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(a)(1)(B))

§303.653 Transitional services.

Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under Part B of the Act, to the extent those services are appropriate.

(Approved by the Office of Management and Budget under control number 1820-0578) (Authority: 20 U.S.C. 1482(e)(1)(C))

§303.654 Annual report to the Secretary.

(a) Each Council shall—

1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and
2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(D))

Existing Councils

§303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(g))

Appendix—Analysis of Comments and Responses

Note: This appendix will not be codified in the Code of Federal Regulations.

The following is an analysis of the comments and of the changes in the regulations since publication of the NPRM on May 1, 1992 (57 FR 18986). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are generally not addressed.
Subpart A—General

Section 303.1 Purpose of the Early Intervention Program for Infants and Toddlers With Disabilities.

Comment: Two commenters requested that the Department substitute the term "early intervention needs" for the term "needs." One commenter suggested that the Department define the term "historically underrepresented." One commenter suggested that the Department clarify that agency—the SEA under Part B or the lead agency under Part H—has responsibility for the delivery of services to children during the year in which they reach age three. Another commenter recommended clarifying that some Part H services may be required to be continued under Part B.

Discussion: The amendment to § 303.1 is taken from section 671(a)(5) of the Individuals with Disabilities Education Act (the Act), as added by Pub. L. 102–119, enacted October 7, 1991 (1991 Amendments). The Secretary believes it is unnecessary under the procedures in 34 CFR 303.3.

Changes: None.

Section 303.3 Activities That May Be Supported Under This Part.

Comment: Some commenters requested that the Department provide States with the flexibility to serve children from their third birthday to the beginning of the next school year in accordance with either Part H or Part B requirements. Some commenters requested that the Department require parental consent prior to the transition of a child to Part B services when the child is below the age of three. One commenter requested that the Department clarify the effect of a parent's refusal to consent to Part B services.

Discussion: The amendment to § 303.3 is taken from section 679(3) of the Act, as added by the 1991 Amendments. This new statutory provision makes Part H funds to be used for an additional purpose—to provide a free appropriate public education (FAPE) in accordance with Part B from a child's third birthday to the beginning of the next school year. The requirements relating to services for children who turn three, including the requirement that these children receive a free appropriate public education in accordance with Part B, are unaffected by this statutory change, and the Secretary is not authorized to revise those requirements by regulation. The effect of the statutory amendment reflected in § 303.3 is to permit Part H as well as Part B funds to be used for three-year-old children where only Part B funds had previously been authorized for this purpose.

The requirements relating to parental consent are unaffected by the change to § 303.3. For the Part B requirements concerning parental consent for a preplacement evaluation and initial placement, see 34 CFR 300.504 (57 FR 44794, 44820; Sept. 29, 1992). Whatever the child's age, parental consent must be obtained before the initial placement of a child in a special education program. If parental consent for the initial placement of a child below the age of three in a special education program is refused, the lead agency remains responsible for the provision of the services until the child's third birthday (or an earlier successful challenge to the parent's refusal to consent under the procedures in 34 CFR 300.504).

Changes: None.

Section 303.4 Limitation on Eligible Children.

Comment: Commenters requested that the Department clarify the relationship between §§ 303.4 and 303.3(d) of the proposed regulations. One commenter requested that the Department clarify which agency—the SEA under Part B or the lead agency under Part H—has responsibility for the delivery of services to children during the year in which they reach age three. Another commenter recommended clarifying that some Part H services may be required to be continued under Part B. Finally, some commenters requested that the Department clarify when the transition from Part H to Part B terminates service planning for the child and the family throughout the early childhood years.

Discussion: Section 303.4 simply incorporates new section 619(g) of the Act. Under the 1991 Amendments, a State may, for the first time, use funds under section 619 of the Act to provide FAPE in accordance with Part B to two-year-old children with disabilities who will reach age three during the school year. See section 619(c)(1)(B)(ii) and (f). Section 619(g) of the Act allocates the children from coverage under Part H.

As a general matter, a State that participates in the Part H program must provide early intervention services to all eligible children (see section 676(e) of the Act), and the source of funds for services to a child determines which program requirements are applicable. If a child receives services with Part H funds, the Part H program requirements in this part apply unless the child has reached age three. (The Part B requirements in 34 CFR part 300 apply to services to all children age three or above.) If a child of any eligible age receives services with funds under the section 619 program for preschool children, the program requirements in part 300 but not part 303 apply. (See 34 CFR 301.4(c) and section 619(g) of the Act, discussed above.) Finally, if a child below age three receives services with Part B funds under section 611, the requirements of both part 300 and part 303 must be met.

If only Part B requirements apply, the State educational agency (SEA) and not the lead agency under Part H is responsible for ensuring that those requirements are met. 34 CFR 300.600(a)(1). The SEA may carry out this responsibility through the use of an interagency agreement with the Part H lead agency or by other means. See 34 CFR 300.152 and 300.600(b). If both Part B and Part H requirements apply, the SEA is responsible for ensuring compliance with the requirements of Part B, while the lead agency is responsible for ensuring compliance with the requirements of Part H. Respecting the effects of a child's movement from Part H to Part B on service planning and the continuation of particular services, the Secretary points out that services to the family may be provided as "related services" under Part B if they are necessary to assist the child in the use of educational benefits. See 34 CFR 300.16. The Secretary encourages the continuation of services agreed to by the family, such as those described in the legislative history of the 1991 Amendments (H.R. REP. No. 198, 102d Cong., 1st Sess. 7–8 (1991)). Commenters are referred to § 303.148, which contains detailed new requirements designed to ensure that the transition from Part H to Part B is a smooth one.

Changes: None.

Section 303.5 Applicable Regulations.

Comment: None.

Discussion: Current regulations contain duplicative and technically inaccurate provisions relating to the applicability of regulations outside this part to the Part H program. Specifically, both §§ 303.5 and 303.460 contain provisions that apply Part B regulations on the confidentiality of information (§§ 300.560–300.576) to the Part H program and change the meanings of certain terms for Part H purposes. In order to eliminate redundant and unnecessary provisions and to consolidate cross-references to applicable regulations in one location, § 303.5(b) has been expanded to include the necessary cross-references to Part B regulations that are found in § 303.460(b) of current regulations. The Secretary believes this change will clarify the requirements relating to the confidentiality of information under the Part H program.

Changes: Paragraph (b) of this section has been revised to add cross-references to, and Part H amendments for, two terms and two section numbers of the Part B regulations that are found in §§ 300.560–300.576. Conforming changes have been made in § 303.460 and the note following the text of that section. In addition, in the note following the text of this section (§ 303.5), the reference to "natural environments" has been placed in its proper location.

Section 303.12 Early Intervention Services.

Paragraph (b)—Natural environments.

Comment: Commenters requested clarification of the flexibility afforded to service providers in determining which environments are "natural" for children with disabilities. Some commenters requested that the Department clarify when a child should be served in a natural environment by providing a detailed list of examples or by other means. Other commenters expressed concern that the needs or wishes of the family not be ignored in determining the location of service delivery. One commenter felt that center-based services might be an appropriate delivery mechanism for some services and might serve the needs of the family for support and collegiality.

Discussion: The Secretary believes that no further guidance is appropriate at this time. Decisions on the early intervention services to be provided to a child and his or her family, including decisions on the location of service delivery, are made in the development of the individualized family service plan (IFSP) described in §§ 303.340–303.346. The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting described in § 303.342, in which the parents of the child are full participants. With respect to the comment on center-based services, the Secretary emphasizes that decisions on the location of service delivery must be made on an
individualized basis in accordance with the needs of the child and the family. See §303.344(d).

Changes: None.

Paragraph (d)—Types of services: definitions.

(1) Assistive technology device.

Comment: Several commenters expressed the concern that the proposed definition of "assistive technology device" is too broad and could require service agencies to fund medically-related equipment, supplies, and services (e.g., wheelchairs, repair and maintenance of wheelchairs, and hearing aids). These commenters suggested limiting the term "assistive technology device" to include only devices that result in an educational benefit to children with disabilities or that serve a child's developmental needs, and exclude all medically-related items. Commenters also expressed concern about the costs of providing assistive technology devices under the proposed definition of the term.

Commenters requested clarification of certain phrases in the definition of "assistive technology device," including "product system" and "functional capabilities." Some commenters suggested substituting "developmental capabilities" for "functional capabilities" to clarify that assistive technology devices are used to meet the developmental needs of the child. This suggested substitution was opposed by other commenters.

Discussion: The definition of "assistive technology device" is taken from section 602(a)(26) of the Act, and there is no authority to change the substance of that definition. However, the Secretary points out that in the context of the Part H program, assistive technology devices are required only if they relate to the developmental needs of the infants and toddlers served by the program. See §303.12(a)(1). Linking the provision of assistive devices to an educational benefit is not appropriate under a program that serves children from birth to age three. Part H does not require that assistive technology devices be provided to meet the medical or quotidian, life-sustaining needs of a child. The Secretary shares the concern of some commenters that the costs of assistive technology may be manageable. The Secretary reiterates that the purpose of assistive technology devices is to meet the unique developmental needs of the child, as determined on an individualized basis through the IFSP development process. The Secretary recognizes that interagency cooperation will be needed to identify all available sources of assistive technology funding, both public and private.

Changes: None.

Assistive technology service.

Comment: Commenters expressed the concern that the proposed definition of "assistive technology service" is overly broad. Commenters expressed the same concerns that were expressed with regard to the proposed definition of "assistive technology device." These commenters stated that assistive technology services should not include medically-related services, but rather should focus on the educational or developmental needs of children with disabilities.

Other commenters had questions about the list of the specific types of assistive technology services. One commenter requested that the Department clarify the financial obligation of the provider in acquiring an assistive technology device in paragraph (d)(1)(ii), and selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing an assistive technology device in paragraph (d)(1)(iii). Another commenter was suggested adding "installing" and "monitoring" to the listed activities in paragraph (d)(1)(iii). One commenter recommended that paragraph (d)(1)(vi) be adapted to the Part H program by referring to individuals providing "early intervention services" rather than "education or rehabilitation services." Finally, several commenters requested that, because the Part H program serves only young children, the Department either clarify or delete the phrase "employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities" in paragraph (d)(1)(vi).

Discussion: The definition of "assistive technology service" is taken from section 602(a)(26) of the Act and may not be substantially altered by regulation. Commenters are referred to the above discussion of the nature, purpose, and cost of assistive technology devices for responses to similar comments and concerns relating to assistive technology services.

The Secretary agrees that paragraph (d)(1)(vi) should be revised to conform the statutory language of the definition, which applies to all of the individuals with Disabilities Education Act, to the scope of the Part H program.

Changes: Paragraph (d)(1)(vi) has been revised (1) to delete references to "education or rehabilitation services" and substitute "early intervention services," and (2) to delete references to the employment of the individuals with disabilities served by the program.

(9) Physical therapy.

Comment: One commenter expressed concern about broadening the scope of "physical therapy" under the Part H program. This commenter expressed the view that intensive hospital-level services should not be transferred to community-based early intervention services.

Other commenters requested certain clarifications of and amendments to the definition of "physical therapy." One commenter requested that the Department distinguish assistive technology from physical therapy. Another commenter requested that the Department add the term "treatment" to services to "prevent or alleviate" movement dysfunction and related functional problems in paragraph (d)(9)(iii) to further explain the types of physical therapy services available to children with disabilities. Also, this commenter requested that the Department add the phrase "compensate for" to paragraphs (d)(9)(ii) and (iii) to express physical therapy for children whose conditions can be neither prevented nor alleviated.

Finally, other commenters suggested that the Department amend the list of physical therapy services. One commenter requested that the list of physical therapy services be amended to include assistance in the use of assistive technology needed for postural support, ambulation, and mobility. Another commenter requested that the Department amend the list of services to include "providing assistive technology and services."

Discussion: The purpose of the proposed revisions of the definition of "physical therapy" is to keep pace with advances in the field and, in particular, to reflect the full scope of the practice of physical therapists in a pediatric setting. The revisions do not address whether a particular service is appropriate for an individual child or where a service should be provided.

A definition of "occupational therapy" appears in §303.12(d)(8), and no revision of that definition has been proposed. The Secretary believes the distinction between "occupational therapy" and "physical therapy" is sufficiently clear. The Secretary agrees with the suggestions to amend the definition of "physical therapy" to add references to "treatment" and services to "compensate for" movement dysfunction and related functional problems. The Secretary believes the broad application of assistive technology devices and services makes the inclusion of assistive technology in the definition of any one type of early intervention service inappropriate.

Changes: Paragraphs (d)(9)(ii) and (iii) have been amended to add the suggested references to "treatment" and services to "compensate for" functional problems.

(15) Transportation and related costs.

Comment: One commenter requested that the Department require that all transportation services provided under Part H meet State safety standards. Some commenters were concerned about the potential for family transportation to children with disabilities and their families, and one commenter asked whether families are required to use the least expensive mode of transportation available. Another commenter asked that the regulations provide that Part H funds may be used for the transportation costs of family members, caregivers, or service providers if needed for the provision of early intervention services.

Discussion: The Secretary does not believe that further guidance on the meaning of "transportation and related costs" is needed. The legislative history of the 1991 Amendments indicates that the addition of the quoted phrase to the statutory list of early intervention services was intended as an endorsement of current regulations on the subject. The regulations would not alter current program requirements.

No change in the proposed regulation is needed to ensure that transportation services meet State safety standards. Compliance with those standards is required by §303.12(a)(4).

Federal regulations for the Part H program do not require the use of any particular mode of transportation. Whether to impose such a requirement, consistent with the requirements of this part, is a matter of State responsibility.
Changes: None.
(16) Vision services.
Comment: One commenter requested that the Department clarify which State agencies are required to reimburse families for vision testing.

Discussion: The allocation of financial responsibility for early intervention services among State agencies is a matter of State responsibility. See §§ 303.143 and 303.523. The Secretary believes that no change to the proposed definition of “vision services” is necessary.

Changes: None.

Paragraph (e) qualified personnel.
Comment: One commenter requested that the Department define the terms “family therapists” and “orientation and mobility specialists” used in this paragraph of the proposed regulations. Another commenter requested that paraprofessionals be added to the list of qualified personnel and that the regulations include minimum standards for all personnel.

Discussion: Since the list of qualified personnel in paragraph (e) is not exhaustive, the Secretary declines to amend it except as provided by the 1991 Amendments. Nor does the Secretary believe it is necessary that Federal regulations define or provide minimum standards for categories of qualified personnel. The qualifications of early intervention service providers are a matter of State responsibility. See §§ 303.12(a)(3)(ii), 303.21, and 303.361, none of which have been proposed to be amended.

Changes: None.
Note following § 303.12.
Comment: Several commenters addressed the statement in the note following the regulatory text that qualified personnel may include paraprofessionals. Some commenters requested that paraprofessionals be noted as qualified to provide early intervention services because they lack adequate training. One commenter suggested that the Department permit paraprofessionals to provide early intervention services only under the supervision of qualified professionals. Another commenter suggested requiring that paraprofessionals be appropriately trained.

One commenter requested that the terms “vision specialists” and “paraprofessionals” used in the note be defined. Another commenter requested that the Department clarify which State agencies are responsible for reimbursing families for vision testing. See, for example, § 303.361 and the note following that section, which have not been proposed to be substantively revised. For this reason, and because the services and personnel referred to in the note are illustrative only, the Secretary believes that the commenters’ suggested revisions are unnecessary. Commenters are referred to § 303.12(a) for the definition of “early intervention services” as that term is used in this part.

Changes: None.

Section 303.16 Infants and Toddlers With Disabilities

Comment: Comments on proposed § 303.16 focused on the notes following the regulatory text. Most commenters objected to the proposed revision concerning the cumulative effect of a combination of risk factors. Commenters requested that the Department clarify the extent to which States are authorized to define which children have conditions that have a high probability of resulting in developmental delay and children who are “at risk.” One commenter suggested that States encourage communities to meet the needs of unborn “at risk” children. Commenters also requested that the Department further define the terms “high probability” and “toxic substances,” as used in proposed Note 1.

Some commenters requested that certain phrases be substituted for phrases in the notes. Commenters requested that the phrase “maternal substance abuse” in the second paragraph of proposed Note 1 be revised to place the emphasis on the exposure of the child rather than the behavior of the mother. Commenters also requested that the Department specify in paragraphs 2 that environmental as well as biological factors may place infants at risk of developmental delay in order to update the note in light of current knowledge.

In addition to the comments on the notes following the regulatory text, the Department received comments requesting a definition of the term “physical development” as used in § 303.16(a)(1)(ii).

Discussion: The regulatory text of this section is unchanged except for the updating of terminology required by the 1991 Amendments. The Secretary believes it is unnecessary to revise the text of § 303.16 to define the term “physical development,” that has been used in its present context since the program regulations were first promulgated.

Note 1 after the text relates to children who “need early intervention services because they have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.” Under § 303.300(b), relating to State eligibility criteria and timelines, States retain substantial discretion in determining the existence of such a condition. For this reason, and because the determinations at issue do not lead themselves to quantitative precision, the Secretary believes it is inappropriate to define any “high probability.” The Secretary intends no special meaning for the phrase “disorders secondary to exposure to toxic substances” that is included in the list of examples of diagnosed conditions in Note 1. Therefore, the term “toxic substances” is not defined. However, the Secretary is persuaded that the proposed clarification regarding a combination of factors should be withdrawn. Only children who have one or more conditions that, considered separately, have a high probability of resulting in developmental delay fall within the category described in § 303.16(a)(2), as is the case under current regulations.

Note 2 after the text of § 303.16 relates to children who are at risk of having substantial developmental delays if early intervention services are not provided and who may be served at a State’s discretion. The Secretary agrees with the suggestion to refer to “environmental” risk factors in this note. The note is further revised to add two examples of this kind of risk factor.

Changes: Proposed Note 1 has been amended by striking the second paragraph, relating to a combination of factors. Proposed Note 2 is amended by referring to biological and “environmental” risk factors. The Secretary agrees with the suggestion to refer to “identifiable factors that place infants and toddlers at risk” and by adding two examples of environmental risk factors: nutritional deprivation and a history of abuse or neglect.

Section 303.22 Service Coordination (Case Management)

Comment: One commenter suggested revising the statement of the service coordinator’s role in paragraph (a)(2)(i) to emphasize that the service coordinator’s responsibility is to assure and not duplicate coordination. The same commenter suggested revising paragraph (a)(2)(ii) to read that the service coordinator is “a point of contact,” rather than “the single point of contact” in assisting parents in need of Part H services. The commenter believed this change was needed to permit parents to access services through means other than the service coordinator. Other commenters suggested revising paragraphs (a)(3)(i) and (b)(5) to ensure that service coordinators assist in making financial arrangements for early intervention services. Regarding the qualifications of service coordinators described in paragraph (d), these commenters requested that the Department require that service coordinators have knowledge of possible funding sources for providing Part H services.

Discussion: The text of § 303.22 (§ 303.6 of current regulations) is proposed to be revised only to reflect a change in terminology required by the 1991 Amendments. The Secretary declines to adopt the suggested revisions of paragraphs (a)(2) (i) and (ii). The service coordinator’s role as the single point of contact helps to ensure that coordination services are not duplicative. Since parents may access services independently of the coordinator under current regulations, no revision is needed to accomplish this purpose. The Secretary also declines to adopt the suggested revisions relating to service coordinators’ knowledge of funding sources and their responsibility to assist in making financial arrangements for early intervention services. The broad language of current regulations makes these revisions
unnecessary. See, in particular, paragraphs (a)(2)(ii) and (d)(3).

Changes: None.

Subpart B—State Application for a Grant
Section 303.124 Prohibition Against Supplanting

Comment: One commenter recommended that the "particular cost" test not be removed from the supplanting prohibition in the Part H regulations until the effects of doing so were studied further.

Discussion: The removal of the prohibitions against using funds under Part B and Part H to displace—State or local funds for any "particular cost" was proposed in an NPRM published on December 30, 1991 (56 FR 67420). The May 1, 1992 NPRM for Part H included § 303.124 as it had been proposed to be revised in the earlier notice. The comment described above was submitted in response to both NPRMs. On August 19, 1992, the Secretary adopted final regulations that removed the "particular cost" test from both the Part B and the Part H supplanting prohibitions. Pursuant to the requirements of comments and changes that accompanied those regulations, the Secretary expressed the view that there was no need to delay the removal of the "particular cost" test from the Part H regulations. See 58 FR 37553.

Changes: None.

Section 303.128 Traditionally Underserved Groups

Comment: Commenters requested that the Department clarify the meaning of "traditionally underserved," "meaningfully involved," "culturally competent services," and "local geographical area" as used in this section. Some commenters suggested that the regulations incorporate minimum standards for the involvement of, and services to, traditionally underserved groups or that illustrations of satisfactory State policies and practices be provided. Other commenters requested that the Department clarify the responsibilities of States to ensure the meaningful involvement of Indian tribes and the provision of culturally competent services to Indian families on reservations.

Discussion: The Secretary declines to provide further guidance at this time on the meaning of "traditionally underserved." The Secretary agrees that it would be helpful to clarify when the conference described in § 303.148(b)(2) must be convened. The clarification adopted in the final regulations is based upon the legislative history of the 1991 Amendments. See S. REP. NO. 84, 102d Cong., 1st Sess. 17 (1991).

The Secretary does not believe it is appropriate to expand the requirements for transition planning beyond the scope of the statute. However, No. 2 gave the Department authority to facilitate a smooth transition of all children who are exiting the Part H program. As regards service delivery models, nothing in these regulations precludes the use of models that are appropriate to Part H under the preschool program authorized by Part B so long as services comply with Part B requirements.

Moreover, regulations under Part B specifically authorize the use of an IFSP for children aged three through five under certain conditions. See 34 CFR 300.343(a).

The Secretary declines to prescribe the appropriate elements of transition planning in greater detail. The Secretary contemplates that the use of evaluation data and the allocation of financial responsibility will be addressed in any State's planning and in the interagency agreement required by paragraph (c) in a State where the SEA is not the lead agency under Part H. Note 1 following this section lists several matters that should be considered in developing policies and procedures to ensure a smooth transition of children from the Part H to the Part B program.

Changes: Paragraph (b)(2) has been revised to provide that the statutorily-required conference among the lead agency, the family, and the local educational agency or unit must be convened at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the Part B preschool program under State law. A conforming change has been made in § 303.344(b)(1). In addition, the citation of authority following § 303.148 has been corrected.

Section 303.180 Payments to the Secretary of the Interior for Indian Tribes and Tribal Organizations

Comment: One commenter requested that, in view of the respective responsibilities of tribes and States, the Department clarify: (1) Whether the Bureau of Indian Affairs (BIA) schools will provide screening, evaluation, and assessment for non-Indian children in rural areas; (2) whether tribal health clinics will be open to the public; (3) whether county health districts will extend outreach into tribal lands and reservations; (4) how States will ensure extension of services to tribal communities; and (5) whether the BIA or the State lead agency will monitor the activities of a tribal school that receives Part H funds. Another commenter asked for clarification of the provision of technical assistance to States and tribes concerning services to Native American children with disabilities on reservations.

Discussion: The Secretary believes it would be inappropriate to provide the requested guidance on the responsibilities of the Secretary of the Interior. Commenters are referred to section 884(b) of the Act for a description of the Secretary of the Interior's responsibility to distribute payments under the Act to tribes and tribal organizations. Many of the clarifications sought by commenters concern matters that are the responsibility of the Department of the Interior, tribes, or States and do not relate specifically to the Part H program. The Secretary declines to address these matters in the Part H regulations.

The State lead agency's supervision and monitoring responsibilities, including the provision of technical assistance to entities used by the State to carry out the Part H program, are stated in § 303.501. These responsibilities apply to tribal schools to the extent that those schools conduct activities that receive Part H assistance from the State or carry out the State's Part H program. The Part H regulations do not make further provision for technical assistance, and section 684(b)(6) of the Act prohibits use of Part H funds by the Secretary of the Interior for that purpose.

Changes: None.

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

Section 303.300 State Eligibility Criteria and Procedures

Comment: One commenter requested that the Department clarify its "informed clinical opinion," which is required by this section to be a part of a State's assessment criteria and procedures, permits a determination that a child is eligible for Part H services without "testing." Another commenter suggested that further
information be provided on the use of informed clinical opinion.

Discussion: The use of informed clinical opinion in determining a child’s eligibility under Part H is substantively unaffected by the proposed regulations. Section 303.321(c)(2), which is unchanged, requires that the evaluation and assessment of each child be based on informed clinical opinion. The note following §303.300, which is also unchanged in substantive terms, provides further guidance on the use of informed clinical opinion. The Secretary believes that no further guidance to States on this matter is necessary.

Changes: None.

Section 303.321 Comprehensive Child Find System

Comment: Two commenters requested that the Department add Supplemental Security Income (SSI) to the list of programs to be coordinated with the Part H child find system by the lead agency. Commenters requested the addition of several other programs as well.

Discussion: The list of programs that may locate and identify children in need of early intervention services in §303.321(c)(1) is not exhaustive. However, the Secretary notes that the discussion in §303.322(c), which was added to the SSI program because it represents a major national effort to locate and identify children who may have disabilities.

Changes: Section 303.321(c)(1) has been revised to add a reference to the Supplemental Security Income program under Title XVI of the Social Security Act.

Section 303.322 Evaluation and Assessment

Comment: Commenters requested that the Department clarify the term “family assessment.” One commenter requested that the term be changed to “description of family resources, priorities, and concerns.” Another commenter recommended that the term be changed to “family-directed assessment.” Finally, one commenter recommended that §303.322 incorporate the new requirement relating to “natural environments.” See §303.12(b).

Discussion: The revisions of §303.322 relating to the term “family assessment” in paragraph (d) are for the purpose of incorporating the new requirement for a family-directed assessment in section 677(a)(2) of the Act. The Secretary believes that the substantive provisions of the amended statute are fully and accurately reflected in the revised regulations and that there is no need to revise the term “family assessment.”

The Secretary declines to adopt the suggestion to incorporate the “natural environments” requirement in this section because it is not the function of the evaluation and assessment to identify where early intervention services should be provided. However, all other aspects of services to a particular child, the setting for service delivery must be determined through the IFSP process described in §§303.340–303.344. The “natural environments” requirement is referenced in §303.344(d)(1)(ii) of the regulations relating to the IFSP process.

Changes: The citation of authority following §303.322 has been corrected.

Section 303.342 Procedures for IFSP Development, Review, and Evaluation

Comment: One commenter requested that the Department clarify whether parents may withdraw consent for a particular service after initially approving the service. Other commenters suggested that the Department implement more effective procedures for ensuring that a family’s and child’s needs are identified and that the family has the opportunity to make choices from among alternatives as to how to meet those needs, and that the periodic review of IFSPs address the “natural environments” requirement in §303.12(b).

Discussion: The Secretary agrees that the regulations should make clear that parents may withdraw the provision of a particular early intervention service by withholding consent that they have previously given for that service. This provision is based upon the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 28 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 21 (1991). The Secretary believes that the requirements for the development, review, and periodic review of an IFSP contained in current regulations and those derived from the 1991 Amendments provide sufficiently detailed guidance and declines to prescribe additional requirements on the subject.

Changes: Section 303.342(e) has been revised to provide that if parents withdraw consent to a particular early intervention service after first providing consent, that service may not be provided. In addition, a parallel change has been made in §303.405—Parent right to decline service.

Section 303.344 Content of an IFSP

Paragraph (d)—Early intervention services.

Comment: Some commenters requested that the Department provide flexibility to States in determining which environments are “natural environments.” Other commenters requested that the Department provide parents with the option of choosing the environments in which their children will receive services. Finally, commenters requested that the Department require that IFSPs include the provision of information to the family on funding sources and the steps that will be taken to secure Part H services through public or private sources.

Discussion: Commenters are referred to the above discussion of the “natural environments” provisions of §303.12(b) for the Secretary’s views on the process by which decisions on the settings for service delivery are made. Respecting the early intervention services that must be included in an IFSP, commenters are advised that §303.344(d)(1)(iv) requires any payment arrangements for services to be included in that document. The Department does not believe it is necessary to include the inclusion of funding sources and the steps to be taken to secure them for services provided or paid for by a public agency. Arrangements for those services will already have been made as a part of the establishment of the early intervention system.

Changes: None.

Paragraph (e)—Other services.

Comment: Several commenters addressed the proposed requirement. In paragraph (e)(iii), that funding sources for medical and other non-required services that are included in the IFSP also be included in that document. Some commenters supported the proposed requirement. Other commenters opposed it, stating that the requirement would cause confusion for families, create burdens for the lead agency and others, or delay the provision of services. One commenter recommended modifying the approach in current regulations, which requires that if an IFSP includes non-required services it must also include the steps to be taken to secure those services through public or private sources. Another commenter recommended that the current and proposed approaches be combined.

Commenters also requested that the Department (1) clarify the responsibilities and obligations of the service coordinator in assessing or ensuring the payment for the non-required services included in the IFSP; (2) add services that address family needs, as well as the child’s needs; (3) clarify that some services may not require funding, but rather may be addressed through “natural supports,” and (4) substitute the phrase “child-specific needs” for “child needs” to avoid an interpretation that the regulation addresses housing and employment.

Discussion: The proposed requirement to include in the IFSP the funding sources of listed non-required services is based upon language in the note following §303.13 of the current regulations. The language of the note, incorporated in proposed §303.344(e)(1)(ii), is quoted with approval in the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 21 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 13–14 (1991). The Secretary believes the proposed language should be adopted. However, the Secretary also believes the approach in current §303.344(e)(1)(ii), which requires that the IFSP include the steps to be taken to secure services, may be appropriate when the funding sources for all listed non-required services are not readily identifiable. Therefore, that paragraph has been revised to combine the two approaches.

The Secretary encourages States to apply the regulations in §303.344(e) consistent with their broad purpose of providing a comprehensive picture of the family’s need for services and assisting the family in obtaining those services. Note 3 following §303.344 discusses the medical and other non-required services addressed in this paragraph.

The note to paragraph (e) remains substantively unchanged, states some of the reasons why the inclusion of non-required services in an IFSP can be helpful to both the child’s family and the service coordinator. These same reasons underlie the requirement to include in the IFSP information about the funding sources for medical services. The note states that the inclusion of non-required services that are included in an IFSP can be helpful to both the child’s family and the service coordinator. The note also makes clear that services to meet the needs of the family related to enhancing the development of the child are a proper subject for the IFSP. The Secretary believes, that the guidance in current Note 3 is
sufficiently detailed and declines to address the subject matter of the note further.

Changes: Section 303.344(0)(1)(ii) has been revised to require that the IFSP include, for the non-required services that are listed in that document, either the funding sources to be used in paying for those services or the steps that will be taken to secure them through public or private sources. A conforming change has been made to the language in the note following § 303.13.

Paragraph (f) — Dates; duration of services.
Comment: Commenters requested that the Department clarify the circumstances under which it may be appropriate to delay the start of certain services identified in the IFSP. These commenters expressed the concern that a complete list of services for a child may not be able to be identified at the time of the development of the IFSP. Also, commenters requested that the regulations provide that services be initiated on a schedule formulated by the family and appropriate for the family's particular circumstances.

Discussion: The purpose of the proposed revision of § 303.344(f) is to ensure that there is no unnecessary delay between the development of the service plan in the IFSP. The revision does not compel the initiation of all services immediately; the needs of the child and the family determine the timelines for the initiation of services. Like other aspects of the IFSP, the schedule of service delivery is developed in the process described in § 303.342, and the parents of the child are full participants in that process. If a need for additional services is identified after the initial development of the IFSP, the document may be modified as described in § 303.342.

Changes: None.

Paragraph (g) — Service coordinator.
Comment: One commenter requested that the Department add a note stating that parents may serve as their own service coordinators, as well as serve as service coordinators for other children after they receive appropriate training. Another commenter requested that the Department clarify who would be responsible for providing Part H services to hospitalized children and how a child would receive Part H services after discharge from the hospital. Finally, one commenter requested that the Department substitute the phrase "child care" for "day care" in the list of examples of natural environments.

Section 303.360 Comprehensive System of Personnel Development
Comment: One commenter requested that the Department add regulatory language emphasizing interdisciplinary training. Another commenter requested that the Department clarify that supervisory and professional. A third commenter requested that the Secretary declines to provide further guidance on the provision of services to hospitalized children, which is governed by the IFSP process discussed above. The Secretary agrees with the commenter's suggested editorial changes in Note 1 following the regulatory text.

Changes: Note 1 following § 303.344 has been revised to refer to "child care centers" rather than "day care centers" in the list of examples of natural environments.

Section 303.404 Parent Consent

Comment: Commenters requested clarification of whether a parent's refusal to consent to either the provision of services or an initial evaluation of his or her child is final, or whether a public agency may overrule a parent's refusal to consent through a due process hearing. Also, one commenter requested that written parental consent be required for initial IFSP development.

Discussion: The Secretary agrees that a clarification of the consequences of a parent's refusal to consent would be useful. A public agency may not override a parent's refusal to consent to the provision of Part H services. See § 303.405. However, the initial evaluation of a child is a requirement under Part B as well as Part H. See § 300.120(a)(1) and Note 2 following that section of the Part B regulations. Therefore, the governing regulations in the case of a parent's refusal to consent to an initial evaluation are those issued under Part B. Under § 300.504(b) of the Part B regulations, a public agency may initiate procedures (described in that section) to challenge the parents' refusal to permit the evaluation to take place. If the agency is successful in its challenge, the evaluation may proceed.

Changes: Note 2 following § 303.404 has been revised to clarify that a public agency may initiate procedures to challenge a parent's refusal to consent to the child's initial evaluation, as discussed above.

Section 303.460 Confidentiality of Information

Comment: One commenter requested that the Department state that the phrase "consistent with Federal and State law" in paragraph (a) of this section means only that the written notice and consent provisions do not supersede existing child abuse and other relevant statutes protecting children or the public health that also provide for the sharing of information among agencies.

Second, commenters requested that the Department add a provision requiring that agencies or programs participating in the State's early intervention system obtain parental consent prior to making a referral to either the Part H program or the Part B program. These commenters stated that parental consent prior to referral is necessary to protect against the unauthorized disclosure of the child's identity to another agency or program.

Third, commenters requested that the Department define the term "agency" to mean the traditional administrative entity responsible for a defined function or activity (e.g., public health or mental health) so that parental consent would be required for the exchange of information within an umbrella agency that encompassed many functions.

Finally, one commenter requested that the Department add a note encouraging the lead agency and other agencies to pursue the
elimination of barriers to efforts by agencies to share information. This commenter expressed concern that confidentiality considerations may be read improperly to prohibit all interagency reporting.

Discussion: The Secretary does not agree with the commenters' construction of the amendment to section 880(2) of the Act that is incorporated in proposed §303.460(a). The Secretary interprets the amendment to permit the exchange of information consistent with the Family Educational Rights and Privacy Act of 1974 (FERPA) as implemented in 34 CFR part 99, as well as other Federal and State law. The exchange of personally identifiable information among the Part H lead agency and local service providers is governed by the FERPA regulations through the provisions of §303.460(b), which applies Part B requirements on confidentiality of information, and §300.571 of the Part B regulations. The FERPA regulations do not require prior written parental consent for the disclosure of information among appropriate State and local educational authorities within the Part H system when disclosure is “in connection with a parent or eligible child's education;” Federal law requires only the notification to the “lead” program, 34 CFR 99.35(a). Thus, for example, parental consent is not required for the disclosure of personally identifiable information as a part of the referral of a child for evaluation within two working days after the child is identified—a Part H requirement under §303.321(d)(2)(ii). However, if such a disclosure is made, the information must be afforded special protection, as specified in 34 CFR 99.35(b). Under §305.34(e)(2)(ii) of the current regulations, parental consent is required for the State lead agency's notification of the appropriate educational agency under §303.148(b)(1) in order to prepare for a child’s exiting the Part H program. In light of the detailed guidance on the confidentiality of information in current Federal regulations, the Secretary declines to adopt the commenters' suggestions.

Changes: None.

Subpart F—State Administration

Section 303.501 Supervision and Monitoring of Programs

Comment: Commenters addressed the requirement in paragraph (a)(2) of this section that the lead agency monitor programs used by the State to carry out Part H, even if those programs are not receiving Part H funding. Commenters requested that the Department provide direction on how the lead agency would monitor an activity in another agency if the activity is not receiving Part H funding.

Discussion: The purpose of the monitoring requirement under this section is to ensure that Part H requirements are met. The scope of the lead agency's monitoring responsibilities is the extent to which the program or activity in question receives Part H assistance. If a State is using other Federal funds to carry out the Part H program, it may monitor those activities.
who were opposed to the concept of sliding fee scales urged the Department not to retain the requirement, relocated from \$ 303.19 of the current regulations to \$ 303.520(b)(4)(i) of the proposed regulations, that a State's policies set out any fees that will be charged for early intervention services and the basis for those fees.

Commenters who addressed the proposed requirement that States that decide not to charge fees for Part H services provide an explanation of the determination not to charge fees were uniformly opposed to it. These commenters expressed the view that the requirement would place undue burdens on States, would not enhance the ability of States to decide the merits of sliding fee scales, and would improperly interfere with the discretion of States to determine whether to charge fees for Part H services.

Commenters suggested that the Department gather more information on sliding fee scales before adopting a policy in favor of such a system. No comments were received on the elements of useful analyses of sliding fee scales that States might undertake.

Discussion: The Secretary has determined not to adopt the requirement in proposed \$303.520(b)(4)(ii) that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The purpose of this proposed requirement was to encourage States to establish sliding fee scales for direct services based on a family's ability to pay, as authorized by section 672(2)(B) of the Act. However, the Secretary is persuaded that the proposed requirement could impose unnecessary burdens on States and presents other problems noted in the comments summarized above. The Secretary has determined to adhere to the policy on sliding fee scales for early intervention services that is contained in current regulations and that the legislative history of the 1991 Amendments expressly endorses. See S. REP. No. 84, 102d Cong. 1st Sess. 20 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 13 (1991). That policy requires that a State provide information about any system of payments it adopts but does not require an explanation for the decision not to adopt a system of payments.

Changes: The requirement in proposed paragraph (b)(4)(i), described above, has been deleted. The requirement in proposed paragraph (b)(4)(i), which is taken from current \$303.19, is retained with conforming editorial changes.

Subpart G—State Interagency Coordinating Council

Section 303.602 Use of Funds by the Council

Comment: One commenter requested that the regulations provide that Council members be reimbursed for only extraordinary—and not normal—child care expenses incurred while attending Council meetings and performing Council duties.

Discussion: The proposed regulations incorporate statutory language from the 1991 Amendments. See section 682(d) of the Act. Under this language, the use of funds for child care expenses of parent representatives is permitted, but not required, if those expenses are "reasonable and necessary." The Secretary declines to provide more specific guidance on this topic.

Changes: None.

Section 303.650 General

Comment: Commenters expressed concern about the revision of the Council's functions that permits it to advise and assist the SEA regarding the provision of appropriate services for children. Commenters pointed out that the SEA is required to establish its own statewide advisory panel under Part B. They expressed concern that the new function of the Part H Council would be duplicative and confusing. One commenter asked that the regulations provide that the SEA has the discretion to arrange to obtain the Council's advice and assistance. Another commenter requested that paragraph (b) of this section emphasize advice and assistance on transition matters.

Discussion: Proposed \$303.650 incorporates the language in section 682(e)(2) of the Act, as added by the 1991 Amendments. The Secretary declines to prescribe the procedure by which advice may be sought or given, or to expand upon the statutory language in other respects. However, the Secretary encourages the use of advisory bodies to facilitate better communication on matters of mutual concern. The Secretary also offers the observations that the Council's advice and assistance on the provision of services under paragraph (b) is permitted but not required, and that the SEA is not bound by any advice it receives.

Changes: None.

Section 303.653 Transitional Services

Comment: One commenter expressed concern that the added requirement that the Council advise and assist the SEA regarding the transition of children with disabilities to Part B services may prove duplicative and confusing. Another commenter requested that the regulations require the Council to advise and assist the State lead agency as well as the SEA on transition matters.

Discussion: The proposed regulations incorporate the statutory requirement in section 682(e)(1)(C), as added by the 1991 Amendments. The Secretary declines to prescribe how the new role of the Part H Council regarding transition issues should be performed or to expand that role by regulation.

Changes: None.

[FR Doc. 93-18110 Filed 7-29-93; 8:45 am]
Part IV

Department of Education

Office of Educational Research and Improvement—Library Programs; Notice Inviting Applications for New Awards for Fiscal Year 1994
DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement—Library Programs

Invitation To Apply for New Awards for Fiscal Year 1994

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1994.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1994 and announces closing dates for the transmittal of applications under six discretionary grant programs for libraries: The Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Improving Access to Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Foreign Language Materials Acquisition Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

The invitation for applications for new awards under the Library Education and Human Resource Development Program (CFDA No. 84.036) is scheduled to be announced in the Federal Register at a later date.

These programs support the National Education Goals by seeking to improve library services, to enhance the skills of library staff, to increase the quality and availability of library holdings, and other activities. The National Education Goals specifically call for:

- Children to start school ready to learn (Goal 1);
- The high school graduation rate to increase to at least 90 percent (Goal 2);
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well (Goal 3);
- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship (Goal 5); and
- Every school to be free of drugs and violence and to offer a disciplined environment conducive to learning (Goal 6).

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

To contact any persons named in this announcement, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Organization of Notice

This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcement for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

<table>
<thead>
<tr>
<th>Title of program and CFDA number</th>
<th>Applications available</th>
<th>Application deadline</th>
<th>Deadline for intergovernmental review</th>
<th>Tentative award date</th>
<th>Estimated available funds</th>
<th>Estimated range of awards</th>
<th>Estimated avg. size of awards</th>
<th>Estimated number of awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A).</td>
<td>8/24/93</td>
<td>10/15/93</td>
<td>NA</td>
<td>02/23/94</td>
<td>$897,000</td>
<td>NA</td>
<td>$5,000</td>
<td>210</td>
</tr>
<tr>
<td>Improving Access to Research Library Resources Program (84.091A).</td>
<td>08/24/93</td>
<td>10/12/93</td>
<td>02/7/94</td>
<td>05/16/94</td>
<td>5,808,000</td>
<td>35,000</td>
<td>165,000</td>
<td>35</td>
</tr>
<tr>
<td>Library Literacy Program (84.167A).</td>
<td>09/17/93</td>
<td>11/19/93</td>
<td>01/19/94</td>
<td>06/29/94</td>
<td>8,098,000</td>
<td>5,000</td>
<td>32,000</td>
<td>250</td>
</tr>
<tr>
<td>College Library Technology and Cooperation Grants Program (84.197A–D).</td>
<td>10/01/93</td>
<td>12/13/93</td>
<td>02/13/94</td>
<td>08/12/94</td>
<td>3,873,000</td>
<td>300,000</td>
<td>A 50,000</td>
<td>35</td>
</tr>
<tr>
<td>Foreign Language Materials Acquisition Program (84.239A).</td>
<td>10/15/93</td>
<td>01/07/94</td>
<td>03/07/94</td>
<td>06/17/94</td>
<td>968,000</td>
<td>10,000</td>
<td>B 180,000</td>
<td>250</td>
</tr>
<tr>
<td>Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (84.163B).</td>
<td>02/03/94</td>
<td>04/04/94</td>
<td>NA</td>
<td>08/12/94</td>
<td>$897,000</td>
<td>17,000</td>
<td>*A 97,000</td>
<td>15</td>
</tr>
</tbody>
</table>

1. The Department is not bound by any estimates in this notice. The estimated available funds reflect fiscal year 1993 appropriation amounts; however, the Administration’s budget request for fiscal year 1994 does not include funds for these programs, other than set asides for Indian Tribes and Hawaiian Natives. Applications are being invited to allow sufficient time for evaluation and completion of the grant process before the end of fiscal year 1994 should the Congress appropriate funds for these programs.

2. 10/12/93 for eligibility information for institutions needing to establish eligibility (Part I only); 12/09/93 for all project descriptions (Part II).

3. Indian Tribes

4. Hawaiian Natives

6. This deadline also applies to comments from State Library Administrative agencies.

8. By law, (A) up to 30 percent of the funds available may be used to make grants in amounts between $35,000–$125,000, (B) of the remaining funds, no grant may exceed $35,000.
Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

Purpose of Program:

Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Eligible Applicants:

(a) Indian tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(b) Alaska Native villages or regional or village corporations as defined in or established under the Alaska Native Claims Settlement Act; however, two or more Alaska Native villages, regional corporations, or village corporations may not receive basic grant allocations to serve the same population; and

(c) Organizations primarily serving Hawaiian natives and recognized by the Governor of Hawaii.

Applicable Regulations:

(a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 771; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Supplementary Information

The application procedure contains two parts: Part I covers the Status as a Major Research Library and Part II covers the Description of the Project. These parts must be submitted separately as follows: Those applicants who need to establish status as a major research library must submit Part I (Program Regulations, § 778.21) by 10/12/93; applicants who established status in fiscal year 1990 or later need not submit Part I. Applicants must submit Part II (Program Regulations, § 778.22) by 12/9/93. Applicants submitting Part I may not be notified of status as a major research library prior to the Part II deadline. Therefore, these applicants should prepare and submit both Parts I and II by the deadlines listed.

For Applications or Information Contact

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315.


CFDA No. 84.197A–D—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part A)

Purpose of Program

To assist college and university libraries in acquiring technological equipment, participating in networks, and conducting research and demonstration projects that utilize technology to enhance library and information services. The four types of discretionary grants and their purposes are:

(a) Networking Grants—for the planning, development, acquisition, maintenance, or upgrading of technological equipment necessary to organize, access, or utilize material in electronic formats and to participate in networks for the accessing and sharing of library and information resources;

(b) Combination Grants—for establishing and strengthening joint-use library facilities, resources, or equipment for the accessing and sharing of library and information resources;

(c) Services to Institutions Grants—for establishing, developing, or expanding programs or projects that improve the services provided by public and nonprofit organizations to institutions of higher education; and

(d) Research and Demonstration Grants—for improving information services to meet special national or regional needs by utilizing technology to enhance library and information services, such as through the National Research and Education Network.
Eligible Applicants

The following are eligible to receive awards under this program:

(a) For Networking Grants—
institutions of higher education.
(b) For Combination Grants—
combinations of institutions of higher education.
(c) For Services to Institutions
Grants—public or nonprofit private
organizations (other than institutions of
higher education) that provide library
and information services to institutions of
higher education on a formal cooperative basis.
(d) For Research and Demonstration
Grants—'institutions of higher education.

Absolute Priority

The Secretary gives priority to
institutions of higher education seeking
assistance for projects that assist
developing institutions of higher
education in linking one or more
institutions of higher education to
resource-sharing networks. In
accordance with 34 CFR 75.105(c)(3),
the Secretary reserves up to 40 percent
of all program funds solely for
applications that meet this priority in a
particularly effective way.

Applicable Regulations

(a) The College Library Technology
and Cooperation Grants Program
Regulations in 34 CFR part 768; and
(b) The Education Department
General Administrative Regulations
(EDGAR) in 34 CFR parts 75, 77, 79, 80,
81, 82, and 85.

For Applications or Information Contact

Neal Kaske, Program Officer,
Discretionary Library Programs
Division, Library Programs, U.S.
Department of Education, 555 New
Jersey Avenue, NW., room 404,
Washington, DC 20208-5571.
Telephone (202) 219–1315.


CDFA No. 84.239A—Foreign Language
Materials Acquisition Program (Library
Services and Construction Act, Title V)

Purpose of Program

This program makes grants to State
and local public libraries for the
acquisition of foreign language
materials. By law, up to 30 percent
of the funds available may be used to
make grants in amounts between $35,000 and
$125,000; and, of the remaining funds,
no grant may exceed $35,000. The law
also provides that no recipient may
receive more than one grant under this
program in the same fiscal year.

Eligible Applicants

State and local public libraries.

Applicable Regulations

(a) The Foreign Language Materials
Acquisition Program Regulations in 34
CFR part 768; and
(b) The Education Department
General Administrative Regulations
(EDGAR) in 34 CFR parts 75, 77, 79, 80,
81, 82, and 85.

For Applications or Information Contact

Nancy Cavanaugh, Program Officer,
Discretionary Library Programs
Division, Library Programs, U.S.
Department of Education, 555 New
Jersey Avenue, NW., room 404,
Washington, DC 20208–5571.
Telephone (202) 219–1315.


CFDA No. 84.163B—Library Services to
Indian Tribes and Hawaiian Natives
Program—Special Projects Grants
(Library Services and Construction Act,
Title IV)

Purpose of Program

This program makes competitive
awards to eligible Indian tribes to
establish or improve public library
services. All available funds for library
services to Hawaiian natives are
awarded through the Library Services to
Indian Tribes and Hawaiian Natives
Program—Basic Grants (CFDA No.
84.163A).

Eligible Applicants

Indian Tribes and Alaska Native villages or regional or village
corporations that have met eligibility
requirements for the Library Services to
Indian Tribes Program—Basic Grants
(CFDA No. 84.163A) and received such
Basic Grants in the same fiscal year as
the year of application.

Priorities

The Secretary is particularly
interested in applications that meet one
or more of the following invitational
priorities. However, under 34 CFR
75.105(c)(1) an application that meets
an invitational priority does not receive
competitive or absolute preference over
other applications.

Invitational Priority 1: To assess and
plan for tribal library needs.

Invitational Priority 2: To train or
retrain Indians as library personnel.

Invitational Priority 3: To purchase
library materials.

Invitational Priority 4: To conduct
special library programs for Indians
such as summer reading programs for
children, outreach programs for elders,
literacy tutoring, and training in
computer use.

Applicable Regulations

(a) The Special Projects Grants to
Indian Tribes and Hawaiian Natives
Program Regulations in 34 CFR part 772;
and
(b) The Education Department
General Administrative Regulations
(EDGAR) in 34 CFR parts 75, 77, 80, 81,
and 85.

For Applications or Information Contact

Beth Fine, Program Officer,
Discretionary Library Programs
Division, Library Programs, U.S.
Department of Education, 555 New
Jersey Avenue, NW., room 404,
Washington, DC 20208–5571.
Telephone (202) 219–1315.

Program Authority: 20 U.S.C. 351, 361(d),
364.
Dated: July 26, 1993.
Dick W. Hays,
Acting Assistant Secretary for Educational
Research and Improvement.
[FR Doc. 93–18170 Filed 7–29–93; 8:45 am]
BILLING CODE 4000–01–P
Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Single Family and Manufactured Home FHA Insurance—Miscellaneous Amendments; Final Rule
This rule implements various provisions in the Housing and Community Development Act of 1992 (Pub. L. 102–550 approved October 28, 1992) relating to (1) FHA single family and manufactured home loan limits, (2) veterans exemption from certain minimum equity requirements, (3) Secretarial discretion in setting mortgage insurance premiums and (4) the correction of defects in certain types of homes with FHA-insured financing. In addition, the rule makes final two interim and one proposed rule published earlier in the Federal Register. One of these, a proposed rule relating to limitations on FHA insurance for secondary homes was published on October 30, 1991. A second, revising HUD’s mortgage insurance premium formulas for 15-year mortgages, was published on October 14, 1992. The third, an interim rule relating to minimum mortgagor equity, was published on May 30, 1991 at 56 FR 24628.

Single Family Mortgage Amounts

Section 503(a) of the Housing and Community Development Act of 1992 (the 1992 Act) amended section 203(b)(2) of the National Housing Act (NHA) (12 U.S.C. 170a(b)(2)) by eliminating its then-current dollar limits on maximum mortgage amount. Section 503 also made an amendment to the loan-to-value limits set forth in the NHA.

The effect of the amendment is to eliminate the earlier dollar cap of $124,875 ($124,850 for condominiums) and to provide, as a general matter, that a mortgage may be insured by FHA if it does not exceed the lesser of 95 percent of the median area house price or 75 percent of the dollar amount limitation for the Federal Home Loan Mortgage Corporation (FHLMC) as in effect on September 30, 1992. A provision ensuring that no area experiences a reduction, by virtue of the statutory change, in its maximum mortgage amount applicable as of May 12, 1992 is also included. The amendment also increases the downpayment on the amount of any FHA insured loan in excess of $125,000—from 5 to 10 percent for the amount above $125,000.

The FHLMC maximum mortgage amounts in effect on September 30, 1992 were $202,300 for a one unit dwelling, $258,800 for a two unit dwelling, $312,800 for a three unit dwelling and $388,800 for four unit dwelling. The FHA maximum mortgage limits can in certain areas increase to $151,725 for a one unit dwelling and $194,100, $234,600 and $291,600 for two, three and four unit dwellings, respectively.

FHA’s latest annual update listing the areas with high cost mortgage limits was published in the Federal Register on March 15, 1993 (58 FR 13950). This publication did not reduce any high cost limits in any areas below the limits in effect on May 12, 1992.

In this final rule, 24 CFR 203.18 (a) and (g), 203.18b, and 203.27 are revised to reflect these amendments.

In addition, a new paragraph (h) in 24 CFR 203.18 explains the change in the method for announcing updated area maximum mortgage amounts. HUD will continue its practice of issuing periodic comprehensive Federal Register notices listing the current maximum mortgage amount for each area. HUD will discontinue using Federal Register notices to announce interim changes in maximum mortgage amounts that occur between comprehensive notices.

Instead, HUD will use administrative issuances such as mortgagee letters to inform affected mortgagees that the maximum mortgage amounts have been updated in one or more areas. This will permit more timely implementation of interim changes affecting smaller portions of the country.

Manufactured Home Loan Limits

Section 503(c) of the 1992 Act amends section 205(a) of the National Housing Act to increase the maximum loan amount on certain single family loans by 20 percent. The maximum loan amount would be increased from $40,500 to $48,500 if the loan is for the purpose of financing the purchase of manufactured home; from $54,000 to $64,800 if made for purchasing a manufactured home and a suitably developed lot; and from $13,500 to $16,200 if made to a manufactured home owner for purchasing a suitably developed lot.

The rule revises 24 CFR 205.10 (b), (c) and (d) to effect these changes in maximum dollar amounts. In addition, the rule revises 24 CFR 205.10(e) to implement a provision of the 1993 HUD Appropriations Act which caps high-cost area limits for manufactured home loan limits at 185 percent of the maximum dollar amounts in §§ 205.10(c) and 205.10(d), respectively.

Veterans Exemption

Section 505 of the 1992 Act amends provisions in section 205(b) of the NHA relating to the establishment of a generally applicable maximum loan-to-value ratio on FHA single family mortgages. The amendment restores an exemption for veterans from this otherwise applicable minimum equity requirement. In revising the NHA in 1990, the Congress inadvertently...
deleted this veterans' exemption. This final rule revises 24 CFR 203.18(g) and 234.27(f) to reflect this restoration of the veterans' exemption.

Secretarial Discretion in Establishing Single Family Mortgage Insurance Premiums

Section 507 of the 1992 Act amends section 203(c)(2) of the NHA to make clear that the Secretary of HUD retains authority to charge lower single family up-front and annual mortgage insurance premiums than those specified in the statute. The section authorizes the Secretary to charge a premium “not exceeding” rather than “equal to” a specified percentage amount.

This final rule revises 24 CFR 203.284 (promulgated as an interim rule on May 30, 1991 (56 FR 24622) and as a final rule on April 29, 1992 (57 FR 15208) to make this change. In the future, adjustments to up-front or annual MIP, within the maximums set forth in the regulation, will be made through administrative instructions rather than a change in the regulations.

Correction of Defects

Section 518(a) of the NHA gives discretion to the Secretary, under specified circumstances, to make expenditures to cure structural defects in newly constructed FHA insured homes that qualified for high-ratio mortgages because of approval by FHA or the Department of Veterans Affairs before the beginning of construction. Section 515 of the 1992 Act amends this provision to make eligible for such assistance (1) newly constructed FHA insured homes that qualify for a high-ratio mortgage because they were covered by a consumer protection or warranty plan acceptable to the Secretary; and (2) newly constructed condominium units (including common areas) that qualified for high-ratio mortgages for any reason. The Department will be issuing administrative instructions describing the processing procedure to be used with respect to these newly covered properties.

This final rule amends 24 CFR part 200 to implement section 515.

Promulgation as Final Certain Proposed and Interim Rules

Secondary Homes—Proposed Rule

On October 30, 1991, the Department published a proposed rule (56 FR 55855) entitled Single Family FHA Mortgage Insurance—Secondary Homes. The rule proposed to implement section 326 of the Cranston-Gonzalez National Affordable Housing Act. That section prohibits HUD from insuring a mortgage for a secondary residence unless HUD determines that it is necessary to do so to avoid undue hardship to the mortgagor, or unless the mortgage is a type exempt from the investor prohibitions set forth in section 203 of the National Housing Act. In no event may HUD insure a vacation home, as that term is defined by the Secretary.

The proposed rule would permit a mortgagor to obtain a mortgage for a secondary residence only if affordable housing which meets the needs of the mortgagor is not available for lease in the area or within reasonable commuting distance from the mortgagor's place of employment. For example, if the mortgagor has a large family and must obtain a secondary residence because of seasonal employment or employment relocation, and no rental housing is available to accommodate the family, the mortgagor may submit a request to HUD for an “undue hardship” exception. It would not be HUD's policy to grant exceptions to the restriction on secondary residences when affordable rental housing is available.

Where the purchase of a secondary home is involved, the Department will require that the direct endorsement lender obtain a certification from the real estate agent that rental housing, affordable to the purchaser, is not available within a 50 mile radius of the purchasing family's place of employment. For purposes of this certification, housing having a rent at or below 30 percent of area median income will be considered rental housing affordable to the purchaser.

Under the proposed rule, a written request for a hardship exception was to be submitted by the lender to the local HUD office. The request would state the basis for the exception and would include a written explanation from the applicant stating that rental housing that meets the needs of the mortgagor is not available. Documentation from local real estate professionals supporting the unavailability of rental housing must also be submitted with the applicant's request.

Further, under the proposed rule, a secondary residence was to be considered a vacation home if the dwelling was used primarily for recreational purposes. (The need for a secondary residence must be related to the need for seasonal employment, relocation for employment reasons, or other circumstances not related to recreational use of the property.)

Finally, under the proposed rule, a section in the current regulations, 24 CFR 203.43b, relating to eligibility of mortgages covering housing intended for seasonal occupancy, was proposed to be removed. The statutory basis for this regulation, section 203(m) of the National Housing Act, was repealed at section 406(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242 approved Feb. 5, 1988).

One public comment was received concerning the above-described proposed rule. The National Association of Realtors in its written comments expressed the following concerns:

1. * * * the proposed rule will weaken or eliminate affordable housing opportunities for low- and moderate-income renters because it unfairly compels prospective creditworthy mortgagors seeking single family housing opportunities to lease rental housing. We believe the requirement will create competition for modestly priced rental units and encourage landlords to escalate rents that will hasten the decline of low-cost apartments to the detriment of low- and moderate-income families who have no other housing options. The Association anticipates the upgrade of lower cost apartment units and condominium conversions to meet these higher income renters which will exacerbate the dwindling supply of low-cost housing for low- and moderate-income families.

HUD Response: The Department believes that the above-quoted argument overstates the effect this rule will have in the marketplace. Historically, HUD has insured very few second homes, and second homes represent only a small fraction of HUD's single family insurance business. Additionally, as the National Association of Realtors spells out later in its comments, the prime purchasers of second homes will be individuals reaching their peak earning years with substantial Income to spend. This client group does not include the low- and moderate-income mortgagors that HUD is mandated to serve. These purchasers have the capacity to obtain financing by means other than HUD mortgage insurance, and may be expected to be purchasing second homes as a convenience—not as a necessity.

2. The National Association or Realtors is concerned with the provision requiring documentation from local real estate professionals whose experience and expertise involves single family residential sales and not rental properties and their market conditions. Additionally, the proposed rule's statement concerning documentation is vague; it does not specify what documentation is needed. HUD should be specific about what documentation will be required and whether penalties will be imposed because of inaccurate information.

HUD Response: It is HUD's opinion that real estate professionals are aware
of rental market conditions because of their impact on the demand for homeownership. Information regarding market conditions could come from local newspapers, the local Chamber of Commerce, various econometric studies, and from other entities that collect, analyze, and disseminate information on local real estate markets. As to inaccurate information, HUD would only pursue sanctions against individuals who provided information knowing it to be false.

3. The National Association of Realtors is concerned with the process involved in obtaining a hardship exception for mortgage insurance on secondary residences. The Association anticipates lengthy delays in the application process because of the information collection requirements necessary to obtain a hardship exception. We believe worthy buyers' interest in purchasing a second home will be greatly discouraged, exacerbating their hardship circumstances.

**HUD Response.** The Department believes the process for obtaining a hardship exception will not add appreciably to the processing time for loan approval.

The Realtors conclude their comments with a general statement strongly opposing the existing statutory restriction on secondary homes and expressing their intention to seek a change in the existing law.

Accordingly, in this final rule, the Department is adopting as final the provisions contained in the October 30, 1991 proposed rule. Revisions to appropriate sections in 24 CFR parts 203, 220, 221 and 234 are republished as a part of this rule.

**Fifteen year MIP—Interim Rule.** On October 14, 1992 the Department published an interim rule (57 FR 46980) providing for a reduced premium structure for 15-year FHA mortgages that are liabilities of the Mutual Mortgage Insurance Fund. The purpose of the rule was to provide for a more equitable premium structure for these lower risk mortgages. The Department received two written comments from the public on this rule. Both were limited to expressing support for the rule. This rule adopts as final the October 14, 1992 interim rule. Appropriate sections of 24 CFR parts 203 and 204 are republished as a part of this rule. In conjunction with promulgation of the October 14, 1992 interim rule, the Department issued Mortgagee Letter 92-43. The premium levels announced in that Mortgagee letter remain in effect.

**Minimum Mortgagor Equity—Interim Rule.** Section 2101 of the Omnibus Budget Reconciliation Act of 1990 amended section 203(b)(2) of the National Housing Act to prohibit FHA-insured single family mortgages from involving a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) that exceeds 98.75% of the appraised value of the property (97.75% where the appraised value exceeds $50,000), plus the amount of the mortgage insurance premium paid at the time of insurance. The section defines "appraised value" as the amount set forth in the written statement required under section 226 of the National Housing Act, or a similar amount determined by HUD, if section 226 does not apply. (Section 226 requires the seller of a single family home approved for mortgage insurance to deliver to the buyer, prior to sale, a written statement setting forth the FHA appraised value of the property. A statement of FHA replacement cost may be substituted where applicable.) The amount does not include any closing costs. This rule revises 24 CFR 203.18 and 234.27 to reflect this new requirement.

The effect of section 2101 is to establish a maximum loan-to-value ratio that is generally applicable to FHA single family housing. The maximum 98.75% (and 97.75% loan-to-value ratio must be applied to mortgages insured under the following sections of the National Housing Act: 203(b) (Basic Program), 203(i) (Outlying Areas), 203(n) (Cooperative Units), 222 (Service members), 223(e) (Miscellaneous Housing Insurance), 234(c) (Condominiums), 238(c) (Military Impact Areas), 240 (Foe Simple Purchase), 244 (Coincurrence), 245 (GPM/GEM), 251 (Adjustable Rate) and 809 (Armed Services Housing—Civilian Employees). This rule revises 24 CFR 203.18 and 234.27 to reflect this new loan to value requirement. There are, however, additional specific maximum loan-to-value ratios in the law which also must be met. These old loan-to-value ratios are set forth in 24 CFR 203.18 and 234.27.

**Interim Rule.** On May 30, 1991, the Department published an interim rule implementing section 2101 at 56 FR 24628. The rule became effective on July 1, 1991. In the rule, the Department announced that it was ending its practice of permitting mortgages to include 100% of allowable closing costs as part of the appraised value, when applying the old loan-to-value ratios that would continue to apply in addition to the new requirements in section 2101. The interim rule permitted HUD to adjust the percentage of closing costs to be financed as HUD gained further experience regarding the overall effect of the statutory reforms. Until HUD has such experience, the preamble stated, HUD would apply a maximum of 57% for closing costs includable in appraised value for the old loan-to-value calculation set forth at 24 CFR 203.18(e) through (f) and at 234.27(a) through (d). (With respect to the overall loan to value ratio set forth in Section 2101, 0% would be included for calculations to be carried out under the rule.)

**Public Comments on Interim Rule.**

A total of 481 public comments were received in connection with the interim rule. Almost all of the comments (474) voiced strong opposition to the basic legislation. Letters were addressed to members of Congress, with copies to HUD, as well as to the Department directly.

In addition to these letters directed at the basic legislation, the Department also received seven letters from State or national trade associations, one from a mortgage company and one from an individual which addressed issues raised by provisions in the interim rule. The overriding question raised in these comments was the desirability of HUD administratively limiting the financing of closing costs.

**57 Percent limitation on financing closing costs.** Five State or national organizations commented on the 57 percent limitation. One, Mortgage Bankers Association of America, National Council of State Housing Agencies, National Association of Realtors and California Association of Realtors, strongly opposed the limitation, as did the single individual correspondent. Detailed and comprehensive arguments were raised against the 57 percent limitation.

These arguments also were addressed to the Congress, which subsequently included a provision in the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriation Act for FY 1993 (Pub. L. 102-389, approved October 6, 1992) which provides that the Secretary may not (by regulation or otherwise) limit the percentage or amount of any approved charges and fees that may be included in the principal obligation of a mortgage.

In light of this Congressional mandate, the Department does not find it necessary either to set forth the various arguments raised against its 57 percent limitation, or HUD's responses to them. In compliance with the mandate, the interim rule is being revised in this final rule to allow...
borrowers to include up to 100 percent of their reasonable and customary closing costs in the specific loan to value calculations used to determine the maximum mortgage amount. (It should be noted however, that HUD still retains authority to approve the acceptability of any charge, including appraisal, inspection, and other fees.)

Before publishing this final rule, the Department issued administrative instructions—Mortgagee Letter 92–39, issued October 16, 1992 recognizing the legislative repeal of the 57 percent limitation and authorizing borrowers, as of that date, to include up to 100 percent of reasonable and customary closing costs in the calculation used to determine the maximum mortgage amount.

Under both Mortgagee Letter 92–39 and this final rule, to calculate the maximum mortgage amount, add 100 percent of borrower-paid closing costs to the lesser of the sales price or appraised value, then multiply the result by the appropriate loan-to-value ratio. The closing cost total to be added will be the amount remaining of total borrower closing costs after subtracting any closing costs paid by the seller. Seller concessions remain limited to six percent of the contract sales price (as described in HUD Handbook 4155.1 Rev-4), and seller-paid prepaid items, personal property items, etc., result in dollar-for-dollar reductions to the sales price. Note that the 97.75 percent (or 98.75 percent if $50,000 or less) limits set forth in this final rule and applied to the appraised value, excluding closing costs, remain in effect and may further reduce the maximum mortgage amount. The mortgage credit analysis worksheet (HUD–92900WS) has been revised to reflect these changes.

Illustrative examples of how maximum mortgage amounts should be calculated can be found in Mortgagee Letter 92–39, October 16, 1992. The method of calculation set out in the Mortgagee Letter will continue in effect under this final rule.

In addition to written comments relating to the 57 percent limitation, one National association also objected strongly to HUD’s continued policy of deducting any seller-paid contributions to closing costs, stating:

Supplementary information provided with the rule makes it clear that HUD will continue its policy of deducting any seller-paid contributions to closing costs from the lesser of sales price or appraised value when computing the mortgage amount based on the 97/95 percent rule. We strongly object to the continuation of this policy and urge HUD to examine an alternative.

The concerns we have about this policy can be summarized as follows: (a) In states with high closing costs, the statutory Loan-to-Value limit, when combined with the 57 percent limitation on closing costs, requires FHA borrowers to come up with significantly more cash than was discussed during the debate on how to improve the financial viability of FHA’s Mutual Mortgage Insurance Fund; and (b) Trying to help a borrower meet this significantly higher cash requirement by paying all or part of a buyer’s closing costs is effectively precluded if the sales price is reduced by an amount equal to the seller contribution to closing costs when determining the maximum mortgage amount.

NAHB believes that HUD should alter its policy and permit some portion of a buyer’s closing costs to be paid by a seller without a consequent deduction when applying the 97/95 rule.

HUD Response: The removal of the 57 percent limit on financed closing costs, and the Department’s practice of allowing only buyer-paid closing costs to be financed in the mortgage, should alleviate the concerns expressed by the NAHB. HUD expects to make no further changes in its policies concerning the seller payment of buyer closing costs, and the six percent limit on sales concessions will remain in effect to prevent sellers from inflating the sales prices of properties in order to offer concessions to homebuyers.

Technical Provisions in Interim Rule

There are a number of cross-references, either to or within the new § 203.18(g) set forth in the rule, which operate either to apply or not to apply the new mortgage equity requirements to various mortgage insurance programs. In order to include National Housing Act programs § 203(n) (insurance of units in cooperatives), section 222 (serviceperson’s mortgage insurance), section 240 (loans for fee title purchase), and section 809 (armed services housing-civilian employees), amendments are made in 24 CFR parts 203, 222, 240 and 226, cross-referencing the new § 203.18(g). Within § 203.18(g) itself, reference is made to §§ 203.18(e) (disaster housing) and to 203.50(f) (rehabilitation loans), expressly to exclude those programs from coverage. In addition, the rule corrects some existing errors in certain sections relating to calculation of maximum mortgage amounts.

Under current regulations in §§ 204.1 (coinsurance) and 203.45(g) (graduated payment mortgages), § 203.18(f) is excluded from incorporation by reference. This made sense when the subject matter in § 203.18(f) related to seasonal homes. The old seasonal home language was removed in 1988, however, and new language on definitions was substituted. The new definition language should apply to coinsurance and GPM’s. Therefore, §§ 204.1 and 203.45(g) have been revised to incorporate § 203.18(f) by reference.

Finally, §§ 203.15 and 234.14 (certification of appraisal amount) are revised to extend their coverage by removing references to 1- and 2-family dwellings. The effect of this revision is to apply the requirement that a certification of FHA appraisal amount be delivered to the purchaser before the sale in connection with all FHA single family properties—3- and 4- as well as 1- and 2-family. The expansion makes the coverage of § 203.15 consistent with the coverage of the new mortgage minimum equity requirement established by this rule.

Technical Provisions in This Final Rule

Finally, this final rule contains several strictly technical amendments designed to (1) update certain provisions relating to fair housing and equal opportunity to reflect current statutes and Executive Orders and (2) correct an omission in the listing of acceptable closing costs for condominiums in § 234.48(e).

Section 200.300 is revised to add, to the list of authorities under which HUD’s nondiscrimination and fair housing regulations are issued, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, and Executive Order 11246.

Section 200.300 is revised to add, to the definition of a “discriminatory practice”, discrimination because of sex, handicap or familial status.

Section 200.415 is revised to add the requirement that applicants for HUD assistance must agree not to discriminate based upon handicap or age.

Section 234.48(e) is revised to conform that section to § 203.27 and make clear that, for condominium-unit mortgages, the mortgages may collect prepaid interest at closing to cover the period until amortization of the loan begins. (Although this charge has been allowed by HUD, the charge has not been mentioned specifically in this section on allowable fees and charges.)

Procedural Matters

This rule does not constitute a “major rule” as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not, as defined in that order,
have an annual effect on the economy of $100 million or more. 
In accordance with 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. The rule implements specific congressional mandates revising various aspects of FHA single family mortgage insurance programs. The effects of the rule are the result of legislation, and to the extent there may be an impact on small entities, the Department has no authority to alter that impact.

This rule was listed in sequence number 1453 under Office of Housing in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to revising certain specific program requirements in connection with FHA mortgage insurance. The revisions are mandated by statute and do not alter the established roles of HUD, the states and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule makes specific revisions, mandated by the Congress, in FHA mortgage insurance programs. The rule reflects efforts by the Congress and the Department to ensure the financial soundness of the Mutual Mortgage Insurance Fund while, to the maximum extent feasible, continuing FHA program affordability for first-time homebuyers.

Portions of this final rule are being promulgated without prior public comment. Public comment has been determined, in these instances, to be unnecessary because the changes are solely conforming or technical in nature, or because they carry out direct and unambiguous statutory directions. The Department believes it is in the public interest to implement these changes in this final rule.


List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing. Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development. Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Mortgage insurance.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 220

Home improvement, 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 226

Government employees, Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 240

Mortgage insurance.

Accordingly, 24 CFR parts 200, 201, 203, 204, 220, 221, 222, 226, 234 and 240 are amended to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:


Section 200.300 is revised to read as follows:

§ 200.300 Non-discrimination and fair housing policy.

The regulations in this subpart are prescribed pursuant to the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1, the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 109 and 110; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; and the affirmative fair housing market requirements in 24 CFR part 200, subpart M and part 108.

3. The introductory paragraph of § 200.310 is revised to read as follows:

§ 200.310 Definition of "discriminatory practice".

As used in this subpart, the term discriminatory practice shall mean any discrimination because of race, color, religion, sex, handicap, familial status, or national origin in lending practices or in the sale, rental, or other disposition of residential property or related facilities and group practice facilities, or in the use or occupancy thereof, if:

* * * * *

4. Section 200.415 is revised to read as follows:

§ 200.415 Agreement of applicant.

An applicant, prior to the Commissioner's issuance of any commitment or other loan approval, shall agree (in a form prescribed by the Commissioner) that there shall be no discrimination against anyone who is
employed in carrying out work receiving assistance pursuant to this chapter, or against an applicant for such employment, because of race, color, religion, sex, handicap, age, or national origin.

5. Section 200.507 is revised to read as follows:

§200.507 Eligibility requirements.
To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:
(a) The property is (1) a 1- to 4-family dwelling; or (2) a condominium unit (including common areas) covered by an individual mortgage.
(b) The dwelling was approved for mortgage insurance, or for guaranty, insurance or a direct loan under chapter 37 of title 38 U.S.C. (38 U.S.C. 1801-1827) by the Secretary of Veterans Affairs before the beginning of construction, or was less than one year old at the time of insurance of the mortgage and was covered by a consumer protection or warranty plan meeting the requirements of §§203.200-203.209 of this chapter.
(c) The mortgagor has made reasonable efforts to obtain a correction of a structural defect in his or her property by the builder, seller, or other persons, and that defect has not been corrected.

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

6. The authority citation for 24 CFR part 201 is revised to read as follows:

7. In §201.10, paragraph (b)(1) is amended by substituting $48,600 for $40,500; paragraph (b)(2) is amended by substituting $48,600 for $40,500; paragraph (c) is amended by substituting $16,200 for $13,500; paragraph (d)(1) is amended by substituting $48,600 for $40,500; paragraph (d)(2) is amended by substituting $48,600 for $40,500; and paragraph (e) is revised to read as follows:

§201.10 Loan amounts.

(e) Manufactured home loan limits in high-cost areas. (1) The maximum loan amounts otherwise applicable under paragraphs (b), (c), and (d) of this section may be increased by an amount not to exceed 40 percent where the manufactured home and/or lot is purchased and located in Alaska, Guam or Hawaii.

(2) The maximum loan amounts otherwise applicable under paragraphs (c) and (d) of this section may be increased for any geographical area except Alaska, Guam or Hawaii to the extent deemed necessary by the Secretary; however, any increased loan amount may not exceed the lesser of (i) 185 percent of the dollar amounts specified in paragraphs (c) and (d) of this section; or (ii) the dollar amounts specified in paragraphs (c) and (d) of this section, as increased by the same percentage by which 95 percent of the median 1-family house price in the area (as determined by the Secretary for purposes of §203.18) exceeds $67,500.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

8. The authority citation for 24 CFR part 203 continues to read as follows:

9. Section 203.15 is revised to read as follows:

§203.15 Certification of appraisal amount.
An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner, whereby the person agrees that before any sale of the dwelling, the person will deliver to the purchaser of the property a written statement, in a form satisfactory to the Commissioner, setting forth the amount of the appraised value of the property as determined by the Commissioner.

10. In §203.18, paragraphs (a), (e), (f)(2), (f)(4) and (g) are revised, and new paragraphs (f)(5), (f)(6), and (h) are added, to read as follows:

§203.18 Maximum mortgage amounts.

(a) Mortgagors of principal or secondary residences. A mortgage executed by a mortgagor who is to occupy the property as a principal residence or as a secondary residence (as these terms are defined in paragraph (f) of this section) may not exceed the lesser of the amounts specified in paragraphs (a)(1) and (2), (a)(1) and (3), or (a)(1) and (4) of this section (whichever applies), as follows:
1. If the case of a 1-family residence, 95 percent of the median 1-family house price in the area, as determined by the Secretary; in the case of a 2-family residence, 107 percent of the median price; in the case of a 3-family residence, 130 percent of the median price, or in the case of a 4-family residence, 150 percent of the median price; or
2. 75 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as in effect on September 30, 1992) for a residence of the applicable size; except that the applicable dollar amount limitation in effect for any area under this paragraph (a)(1) may not be less than the dollar amount limitation in effect under paragraph (a) of this section for the area on May 12, 1992.

(2) Loan-to-value limitation—principal residences—no approval before construction. If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and the dwelling was not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling:
(i) Was completed more than one year before the date of the mortgage insurance application; or
(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or
(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary that meets the requirements of §§203.200-203.209.

(3) Loan-to-value limitation—principal residences—approval before construction. If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and the dwelling is approved for mortgage insurance before the beginning of construction, or the dwelling meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:
(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.
(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90 percent of the value in excess of $125,000.

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(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90 percent of the value in excess of $125,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner, minus $200, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90 percent of the value in excess of $125,000.

(4) Loan-to-value limitation—secondary residences. If the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (f)(2) of this section), the loan-to-value ratio may not exceed 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(e) Disaster victims. A mortgage covering a single family dwelling, in an amount not in excess of the maximum dollar limitation specified in paragraph (a)(1) of this section (unless a higher maximum mortgage amount is authorized under § 203.29), and not in excess of the less of 100 percent of the appraised value of the property or the cost of acquisition as of the date the mortgage is accepted for insurance, shall be eligible for insurance if:

(1) The mortgage is executed by a mortgagor who is to occupy the dwelling as a principal residence (as defined in paragraph (f)(1) of this section);

(2) The mortgagor establishes that the home which he or she previously occupied as owner or tenant was destroyed or damaged to such an extent that reconstruction or replacement is required as a result of a flood, fire, hurricane, earthquake, storm, riot or civil disorder or other catastrophe which the President has determined to be a major disaster; and

(3) The application for insurance is filed within one year from the date of such presidential determination, or within such additional period of time as the period of federal assistance with respect to such disaster may be extended.

(1) * * *

(2) Secondary residence means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

(4) Appraised value means the sum of:

(i) The lesser of sales price (with any adjustments required as a result of a flood, fire, hurricane, earthquake, storm, riot or civil disorder or other catastrophe) or the amount set forth in the written statement required under § 203.15; and

(ii) Borrower-paid closing costs allowed under § 203.27(a)(1)-(3), except that neither sales price nor closing costs shall apply for purposes of paragraph (g) of this section.

(5) Undue hardship means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from the mortgagor's home to his or her work place.

(g) Maximum principal obligation. Except for mortgages meeting the requirements of § 203.18(b), § 203.18(c) or § 203.50(f), and notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 97.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

(b) Announcement of maximum mortgage amounts. The Secretary will announce maximum mortgage amounts based on paragraph (a)(1) of this section. From time to time, the Secretary will update the maximum mortgage amounts for all areas by publishing a notice in the Federal Register. Before publication in the Federal Register, the Secretary may make updated mortgage amounts effective in one or more areas by providing notice to affected mortgagees by means of a mortgagee letter or other administrative issuance.

11. Paragraphs (a) and (b) of § 203.18b are revised to read as follows:

§ 203.18b Increased mortgage amount.

(a) If any party believes that a mortgage limit established by the Secretary under § 203.18(a)(1) does not accurately reflect the median house prices in an area, the party may submit documentation in support of an alternative mortgage limit. For purposes of this section, an area (1) must be at least the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (2) may be an area for which the mortgage limits established under § 203.18b(1) apply.

(b) The documentation referred to in paragraph (a) of this section consists of sufficient housing sales price data for the entire geographic area for which the request is made to justify an alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing 1-family homes and condominiums, over a period of time.

The listing should contain a brief address for each property, its county location, its sales price, the month and year of its sale, and whether it is new or existing. In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in this paragraph may also include separate median sales prices for both the new and existing homes.

(2) Requests for an increased mortgage limit based upon documentation of median house prices for the area should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

* * *

12. Paragraphs (a) and (g) of § 203.43c are revised to read as follows:

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

(a) The provisions of §§ 203.16a, 203.17, 203.18a, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

* * *

(g) The mortgage shall not exceed the balance remaining after subtracting, from the amount determined under §§ 203.18(a), 203.18(g) and 203.18a of this part, an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative

* * *

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development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

13. Paragraph (g) of § 203.44 is revised to read as follows:

§ 203.44 Eligibility of open-end advances.

(g) The amount of any such advance (computed in even dollar amounts), when added to the unpaid balance of the original principal obligation of the mortgage, shall not exceed the original principal obligation of the mortgage: Provided, That if the mortgagor certifies that the proceeds of the open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amount prescribed by the limitations of §§ 203.18, 203.18a, or § 203.43.

14. Paragraph (c) of § 203.45 is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed by §§ 203.18, 203.18a, and 203.29; or,

(2) An amount which, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed 97 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance. However, if the mortgagor is a veteran, the mortgage amount, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed the applicable limits prescribed for veterans in § 203.18(a).

15. Paragraph (a) of § 203.47 is revised to read as follows:

§ 203.47 Eligibility of growing equity mortgages.

(a) The mortgage amount shall not exceed the limits prescribed by § 203.18, 203.18a, or 203.29.

16. Paragraph (f)(1) of § 203.50 is revised to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

(f) * * * * * (1)(i) The limits prescribed in §§ 203.19(a) (1) and (2) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.16(f)(1)); (ii) the limits prescribed in §§ 203.18(a) (1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.16(f)(2)); (iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in §§ 203.18(a) (1) and (3), as the Secretary may prescribe (in the case of an eligible (a)(1) non-occupant mortgage as defined in § 203.18(f)(3)); (iv) the limits prescribed in § 203.18(e) as the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation; or

17. In § 203.259a, paragraphs (b) and (c) are revised to read as follows:

§ 203.259a Scope.

(b) Except as provided in § 203.284(h) or § 203.285(d), the Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages executed on or after July 1, 1991 that are obligations of the Mutual Mortgage Insurance Fund. The periodic MIP provision of §§ 203.18 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section, nor shall they apply to mortgages to which the provision of § 203.284 or § 203.285 apply.

18. The first sentence in paragraph (c) of § 203.270 is revised to read as follows:

§ 203.270 Open-end insurance charges.

(c) Payment of charge for mortgages with one-time or up-front MIP. In the case of a mortgage with a one-time or up-front MIP pursuant to § 203.280, § 203.284, or § 203.285 of this part, the insurance charges shall be in an amount equal to ¼ percent per annum of the outstanding principal obligation of the open-end advance.

19. In § 203.284, an introductory paragraph is added and paragraphs (a) and (b) are revised to read as follows:

§ 203.284 Calculation of up-front MIP after July 1, 1991.

Except for insured mortgages with a term of 15 or fewer years executed on or after December 26, 1992, (see § 203.285 of this part), up-front and annual MIP will be calculated in accordance with this section.

(a) Permanent provisions. Any mortgage executed on or after October 1, 1994 that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) Up-Front. The Commissioner shall establish and collect a single premium payment in an amount not exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage before its maturity date, or upon termination of insurance by voluntary agreement, the Commissioner shall refund all the unearned premium charges, as determined by the Commissioner, paid on the mortgage under this paragraph (a)(1).

(2) Annual. In addition to the premium under paragraph (e)(1) of this section, the Commissioner shall establish and collect annual premium payments in an amount not exceeding .50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (e)(1) of this section) for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than or equal to 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the lesser of the mortgage term or the first 30 years of the mortgage term; except that, for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than 95 percent of the appraised value, the annual premium collected during the period determined under this clause shall be in an amount not exceeding 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section).
be subject to the following requirements:

1. 1991 and 1992. For mortgages executed during fiscal years 1991 and 1992, but after July 1, 1991, the Commissioner shall establish and collect the following premiums:
   (i) Up-Front. A single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.
   (ii) Annual. In addition to the premium under paragraph (b)(1)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(1)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(1)(i) of this section) that is:
      (A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first five years of the mortgage term;
      (B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first eight years of the mortgage term; and
      (C) Greater than 95 percent of such value, for the first 10 years of the mortgage term.

2. 1993 and 1994. For mortgages executed during fiscal years 1993 and 1994, the Commissioner shall establish and collect the following premiums:
   (i) Up-Front. A single premium payment in an amount not exceeding 3.00 percent of the amount of the original insured principal obligation of the mortgage.
   (ii) Annual. In addition to the premium under paragraph (b)(2)(i) of this section, annual premium payments in an amount not exceeding 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(2)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(2)(i) of this section) that is:
      (A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first seven years of the mortgage term;
      (B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and
      (C) Greater than 95 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term.
   20. A new § 203.285 is added, to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

(a) Up Front. Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992 that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to a single up-front premium payment, established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. Upon termination of insurance by voluntary agreement, or upon payment in full of the principal obligation of the mortgage before the maturity date, the Commissioner shall refund all of the unearned premium charged on the mortgage pursuant to this paragraph (a).

(b) Annual. In addition to the premium under paragraph (a) of this section, the Commissioner shall establish and collect annual premium payments in amounts not exceeding the following percentages of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)) of this section for the following periods:

1. For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), no annual premium will be charged.

2. For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than or equal to 90 percent of such value, but less than or equal to 95 percent of such value, an annual premium not exceeding 0.25 percent shall be collected for the first four years of the mortgage term.

3. For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than 95 percent of such value, an annual premium not exceeding 0.50 percent shall be collected for the first eight years of the mortgage term.

(c) Applicability of certain provisions.

The provisions of §§ 203.261, 203.266, 203.267, 203.268, 203.280 and 203.282 are applicable to mortgages subject to premiums under this section. The provisions of paragraphs (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

(d) Exception for streamline refinance. This section shall not apply to any mortgage insured pursuant to § 203.43(c) if the mortgage to be refinanced was executed before July 1, 1991 and the new mortgage is executed on or after December 26, 1992.

PART 204—COIN SURANCE

21. The authority citation for 24 CFR part 204 continues to read as follows:

Authority: 12 U.S.C. 1715z-9, 1715(b); 42 U.S.C. 5525(d).

22. Section 204.1 is revised to read as follows:

§ 204.1 Cross-reference.

All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages under section 203(b) of the National Housing Act apply to mortgages covering 1- to 4-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act except the following provisions:

See 203.18(c), (d), and (e) Maximum mortgage amounts.

203.43 Eligibility of miscellaneous-type mortgages.

203.43a Eligibility of mortgages covering housing in certain neighborhoods.

203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.

203.43h Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

203.43j Eligibility of mortgages on Allegheny Reservation of Seneca Nation of Indians.

203.44 Eligibility of open-end advances.

203.50 Eligibility of rehabilitation loans.

23. Section 204.260 is revised to read as follows:

§ 204.260 Mortgage insurance premiums for coinsured mortgages.

The provisions of §§ 203.260 through 203.268, or the provisions of §§ 203.284 or 203.285 (as appropriate), concerning mortgage insurance premiums with respect to mortgages insured under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under this part.

24. Section 204.276 is revised to read as follows:
PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

25. The authority citation for part 220 continues to read as follows:


26. Section 220.30 is amended by revising paragraph (d)(2), and adding and reserving paragraph (c)(4), and adding paragraphs (c)(5) and (c)(6), to read as follows:

§ 220.30 Maximum mortgage amount—loan to value limitation.

(d) Definitions. As used in this section:

(2) Secondary residence means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

(4) [Reserved]

(5) Undue hardship means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from place of residence to place of employment.

(6) Vacation home means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

27. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715l; sec. 7(d), 42 U.S.C. 5335(d).

28. Section 221.20 is amended by revising paragraph (c)(2), adding and reserving paragraph (c)(4), and adding paragraphs (c)(5) and (c)(6), to read as follows:

§ 221.20 Maximum mortgage amount—loan to value limitation.

(c) Definitions. As used in this section:

(2) Secondary residence means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

(4) [Reserved]

(5) Undue hardship means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from place of residence to place of employment.

(6) Vacation home means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

29. The authority citation for 24 CFR part 222 continues to read as follows:


30. Section 222.3 is revised to read as follows:

§ 222.3 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 221.10 or § 221.11 of this chapter.

PART 223—ARMED SERVICES HOUSING-CIVILIAN EMPLOYEES [SEC. 809]

32. The authority citation for 24 CFR part 223 continues to read as follows:

Authority: 12 U.S.C. 1748(b), 1748(f).

33. Section 223.4 is revised to read as follows:

§ 223.4 Maximum mortgage amount—loan to value limitation.

(c) Notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 97.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value of less than $50,000). The mortgagor shall be credited with the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 224—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

35. The authority citation for part 224 continues to read as follows:


36. Section 224.14 is revised to read as follows:

§ 224.14 Certification of appraisal amount.

An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner, in which the person executing the agreement declares that before any sale of the dwelling, he or she will deliver to the purchaser of the property a written statement, in a form satisfactory to the Commissioner, setting forth the amount of the appraised value of the property as determined by the Commissioner.

37. Section 224.27 is revised to read as follows:
§ 234.27 Maximum mortgage amounts.

(a) Mortgagors of principal or secondary residences. A mortgage executed by a mortgagor who is to occupy the property as a principal residence or as a secondary residence (as these terms are defined in paragraph (d) of this section) may not exceed the lesser of the amounts specified in paragraphs (a) (1) and (2), (a) (1) and (3), (a) (1) and (4) of this section (whichever applies), as follows:

1. If the mortgagor has no assets (as defined in § 234.27(a)(2)), the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.
2. If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.
3. If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000 but not in excess of $125,000, and 90 percent of such value in excess of $125,000.
4. If the mortgagor qualifies as a veteran (under § 203.18(b) of this chapter), the loan-to-value limitation is the lesser of:
   (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000; or
   (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner, minus $200, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000.

(b) Loan-to-value limitation—principal residences—no approval before construction. If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (d) of this section), the dwelling was not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling:

(i) Was completed more than one year before the date of the mortgage insurance application; or
(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or
(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary that meets the requirements of §§ 203.200–203.209 of this chapter.

(c) Loan-to-value limitation—principal residences—approval before construction. If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (d) of this section) and the dwelling was approved for mortgage insurance before the beginning of construction, or the dwelling meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.
(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000 but not in excess of $125,000, and 90 percent of such value in excess of $125,000.
(iii) If the mortgagor qualifies as a veteran (under § 203.18(b) of this chapter), the loan-to-value limitation is the lesser of:
   (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000; or
   (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner, minus $200, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000.

(d) Loan-to-value limitation—secondary residences. If the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (d) of this section), the loan-to-value ratio may not exceed 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(e) Increased mortgage amount. If any party believes that a mortgage limit established by the Secretary under this section does not accurately reflect the median house prices in an area, the party may submit documentation in support of an alternative mortgage limit. Such documentation shall be submitted in accordance with the provisions of § 203.18b of this chapter.

(f) Mortgagors of dwellings that are not principal or secondary residences. A mortgage may be executed by an eligible non-occupant mortgagor (as defined in paragraph (d) of this section) for up to an amount authorized for the appropriate loan type under paragraph (a) of this section, except where a lesser amount is expressly provided for in this part.

(g) Definitions. As used in this section:

1. Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year.
2. Secondary residence means a dwelling: (i) Where the mortgagor maintains (or will maintain) a part-time place of abode, and typically spends (or will spend) less than a majority of the calendar year; (ii) Which is not a vacation home; and (iii) Which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at any one time.
3. Eligible non-occupant mortgagor means a mortgagor (or co-mortgagor, as appropriate) who is not to occupy the dwelling as a principal residence or a secondary residence and who is—
   (i) A public entity, as provided in section 214 or 247 of the National Housing Act; or any other State or local government or an agency thereof;
   (ii) A private nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and intends to sell or lease the mortgaged property to low- or moderate-income persons, as determined by the Secretary;
   (iii) A serviceperson who is unable to meet such requirement because of his or her duty assignment, as provided in section 216, or in subsection (b)(4) or (f) of section 222;
4. A mortgagor that, pursuant to § 234.52, is refinancing an existing mortgage insured under the National Housing Act for not more than the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than the amount due under the existing mortgage for the month in which the refinancing mortgage is executed.
5. Appraised value means the sum of:
   (i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 234.14; and
   (ii) Borrower paid closing costs allowed under § 234.47(a)(1)–(2), except that neither sales price nor closing costs shall apply for purposes of paragraph (e) of this section.
6. Undue hardship means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from home to work place.
7. Vacation home means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.
8. Maximum principal obligation. Except for mortgages meeting the requirements of § 234.27(a)(3)(ii), and...
notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

(f) Announcement of maximum mortgage amounts. The Secretary will announce maximum mortgage amounts based on paragraph (a) of this section. From time to time, the Secretary will update the maximum mortgage amounts for all areas by publishing a notice in the Federal Register. Before publication in the Federal Register, the Secretary may make updated mortgage amounts effective in one or more areas by providing notice to all affected mortgagees by mortgagee letter or other administrative issuance.

38. Paragraph (a) of § 234.48 is revised to read as follows:

§ 234.48 Charges, fees or discounts.
(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20, or 1 percent of the original principal amount of the mortgage, whichever is the greater;
(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:
   (i) Recording fees and recording taxes or other charges incident to the recordation;
   (ii) Credit report;
   (iii) Survey, if required by mortgagee or mortgagor;
   (iv) Title examination; title insurance, if any;
   (v) Such other reasonable and customary charges as may be authorized by the Commissioner.
(3) Reasonable and customary charges in the nature of discounts.
(4) Interest from the date of closing or the date on which the mortgagee disburses the mortgage proceeds to the account of the mortgagor or the mortgagor's creditor, whichever is later, to the beginning of amortization.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

39. The authority citation for 24 CFR part 240 continues to read as follows:

Authority: 12 U.S.C. 1715(b), 1715 2–5; and 42 U.S.C. 3535(d).

40. Paragraph (b) of § 240.5 is revised to read as follows:

§ 240.5 Maximum loan amounts.

(b) An amount which, when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in § 203.18(a)(1), (b), (c), and (g), and 203.18a, of this chapter, as applicable.

Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–18038 Filed 7–29–93; 8:45 am]

BILLING CODE 4210–27–M
Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for FY 1994–1995 for a Rehabilitation Engineering Research Center
SUMMARY: The Secretary proposes a funding priority for a new Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: All comments concerning this proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains a proposed priority under the RERC program for research on housing and home automation for individuals with disabilities.

Authority for the RERC program of NIDRR is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority proposed in this notice is consistent with the long-range planning process. The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department.

Not: This notice of a proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following the notice of a final priority.

Description of the Rehabilitation Engineering Research Center Program

RERCs develop and disseminate innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers; study new or emerging technologies, products, or environments; demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services; and conduct other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities. RERCs facilitate service delivery systems change through the development of consumer-responsive models for the delivery of rehabilitation technology services.

The statute requires that each applicant for a grant, including an RERC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages the RERC to involve individuals with disabilities and minorities as recipients in research training, as well as in clinical training.

Each RERC provides training in the applications of new technology to service providers and to individuals with disabilities and their families. Any Center funded under these priorities must coordinate activities and share information with other NIDRR-funded Centers and will be required to work closely with the RERC on Technology Evaluation and Transfer that will be established by NIDRR in fiscal year 1993 in response to a priority announced in the Federal Register on December 4, 1992 (57 FR 57482).

General

The Secretary proposes that the following requirements apply to the RERC pursuant to this absolute priority:

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must conduct coordinated programs of research and development that will contribute to the desired outcomes specified in the priority. Applicants have considerable latitude in proposing specific research approaches. However, the selection criteria in the regulations (34 CFR 353.31) require applicants to justify their choice of projects in terms of relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must develop all training materials in formats that will be accessible to individuals with various types of disabilities and communication modes, and widely disseminate findings and products to individuals with disabilities and their families and representatives, service providers, manufacturers and distributors, and other appropriate target populations.

The RERC must involve individuals with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.
Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Proposed Priority—Housing and Home Automation for Individuals With Disabilities

Background

The general purpose of the proposed Center is to reduce the dependence of persons with disabilities who are limited in their activities of daily living and increase the likelihood that they will be able to live, and, if appropriate, learn, and work in their own homes. Contemporary technology is already making it possible for persons to communicate interactively with information sources, business establishments and work centers, learning environments, health support centers, security services, and entertainment centers from their own homes. Other forms of technology are making the activities of daily living, including personal care, food preparation and waste disposal, more and more accessible to persons with disabilities while improvements in security systems, furniture, plumbing and electrical fixtures, and home hardware design are also increasing accessibility. Much of this new technology is designed for the general population, with ancillary benefits accruing to persons with disabilities, while other applications, designed to improve accessibility to persons with disabilities, are found useful by all people. The application of new technology in these ways and for these purposes may be termed "Universal Design" because it enhances the lives of all people and can be used both by individuals with disabilities and the able-bodied persons with whom they may share a home. In this sense, Universal Design is the central focus of this priority.

There are an estimated 43 million persons with disabilities in the United States. Of these, 8.5 million persons experience difficulty in performing basic life activities such as walking, self-care (including feeding, bathing, dressing, and toileting), and community and home management activities, due to physical or mental health problems (LaPlant, "National Medical Expenditure Survey," National Center for Health Statistics, 1987). In 1990, more than 13.1 million Americans, or about 5.3 percent of the population, used assistive technology devices to accommodate physical impairments. In 1990, 7.1 million persons, or nearly 3 percent of all Americans, lived in homes that were specially adapted to accommodate impairments (Adams and Benson, "National Health Interview Survey," National Center for Health Statistics, 1991). An appropriate home environment for the lifetime of a person with disabilities is, in many cases, a major undertaking, involving accommodating to various combinations of physical, sensory and mental impairments.

There have been several efforts to develop accessible housing models. For example, a Universal Home Series was developed as a joint venture between Excel Homes, Inc. and the Center for Accessible Housing at North Carolina State University, a Rehabilitation Research and Training Center (RRTC) supported by NIDRR. These homes incorporate Universal Design principles, resulting in a living space that can be readily adapted for long-term comfort, safety, and ease of use (Mace, "Quarterly Report," Center for Accessible Housing, North Carolina State University, Raleigh, NC, October, 1992). The Electronics Industry Association has established a home automation standard known as the Consumer Electronic Bus (CEBus) Standard, which promises to facilitate communication between persons with disabilities and their home environments.

An RERC on housing and home automation would have two purposes. Its primary purpose would be to develop a variety of housing options and innovative approaches to designing, financing, and managing models of affordable adaptive housing. This will require a convergence of knowledge from the fields of architecture, engineering, construction, computer sciences, rehabilitation, independent living, ecology, telecommunications, energy conservation, and cost engineering in order to develop appropriate home environments in which persons with disabilities can live independently or with families and other household members.

The second purpose of the Center would be to improve the utilization of available research-based information on accessibility and independent living, including data on human performance and models of accessible building designs based on field and laboratory research tested in regular use by persons with disabilities.

A Center to be funded in response to this priority is expected to maintain liaison with the Architectural and Transportation Barriers Compliance Board, the Department of Housing and Urban Development, and NIDRR-supported research projects and Centers in such areas as technology transfer, independent living, aging, families and community integration.

Proposed Priority

An RERC on housing and home automation shall—

• Evaluate the adequacy of existing universal design for persons with disabilities for home management appliances and systems, such as those for food preparation, laundry, home maintenance, waste disposal, cleaning, communications, entertainment, security, and information, and, based on that evaluation, identify needs for modifications and additional designs;

• Develop integrated architectural and electronic designs for persons with disabilities that provide maximum accessibility and affordability;

• Develop and disseminate validated universal designs for persons with disabilities for home environments, including the home management appliances and systems to be used in those environments;

• Evaluate the potential for home accessibility and automation to prevent accidents and promote security for persons with disabilities;

• Evaluate the potential for advances in computer, communication, and robotics technologies to lead to new products and services that address the needs for home accessibility and automation among persons with disabilities;

• Identify or develop and evaluate low-cost, access-oriented designs that enable parents with disabilities to provide home-based child care;

• Analyze the effects of relevant laws and business and financial policies and practices on the development of suitable living environments for individuals with disabilities and develop strategies to address problems in these areas;

• Develop, acquire, maintain, and disseminate a database on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing and home automation, and serve as a national information resource;

• Design training materials to increase awareness of the housing needs of persons with disabilities, concepts of accessibility and home automation, and techniques to increase the availability of accessible housing environments;

• Conduct training for a range of involved populations, including persons
with disabilities and their families, architects, builders, engineers, service providers, educators, designers, manufacturers, housing managers, city planners, and other appropriate audiences; and

- Disseminate research results, if appropriate, and be prepared to disseminate technical documentation and user instructions to manufacturers, providers, distributors, information centers and to the persons with disabilities and their families for whom the devices and systems are intended, ensuring that materials are provided in a variety of accessible formats and media.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3424, Switzer Building, 330 C Street SW., Washington, DC., between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR Parts 350 and 353.


(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: June 18, 1993.

Richard W. Riley,
Secretary of Education.
Part VII

Office of Management and Budget

OFFICE OF MANAGEMENT AND BUDGET

Financial Management Systems

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Final revision of OMB Circular No. A-127.

SUMMARY: This notice revises OMB Circular No. A-127 which prescribes requirements for executive branch agency financial management systems.

DATES: This Circular is effective July 23, 1993.


SUPPLEMENTARY INFORMATION:

Background

Circular No. A-127 was originally issued on December 19, 1984, to provide policies and procedures for developing, operating, evaluating, and reporting on financial management systems. This Circular requires establishment of a single, integrated financial management system at each executive branch agency to provide complete, reliable, consistent, and timely financial information supporting Federal government operations. OMB’s objectives in this revision are to eliminate unnecessary overlap between Circular No. A-127 and Circulars A-123, “Internal Control Systems”/IA-130, “Management of Federal Information Resources”, clarify terminology and definitions, update the Circular for statutory and policy changes, clarify certain agency responsibilities and eliminate outdated guidance.

(1) Eliminate unnecessary overlap with Circular No. A-123 involving policies for management control and Federal Managers’ Financial Integrity Act (FMFIA) reporting and Circular No. A-130 involving policies for information systems. The revised Circular focuses specifically on requirements for financial management systems. Policies and guidance pertaining to reviews of financial management systems for FMFIA will be covered under a subsequent revision to Circular No. A-123. In the interim, reference is made to the statutory requirement of the FMFIA that a separate report on the conformance of the agency’s accounting systems be included in the annual FMFIA report. Circular No. A-130 focuses on information systems and information technology management policy for the management of information resources. The revised Circular No. A-127 clarifies that financial management systems are a subset of information systems and, therefore, subject to the policies established in Circular No. A-130. Some policy statements in the revised Circular No. A-127 duplicate existing policy in Circular No. A-130 in order to provide added emphasis to certain financial management system requirements. OMB also plans to provide periodic supplemental guidance for areas with more dynamic requirements, such as financial management plan preparation and FMFIA report guidance.

(2) Clarify terminology and definitions which caused confusion on the interpretation of data on financial management systems. These changes are consistent with definitions and terminology used in Circular No. A-11 involving preparation and submission of budget estimates and in OMB guidance for developing CFO Financial Management 5-Year Plans and for preparing FMFIA reports. This revision specifically clarifies what constitutes a single, integrated financial management system. This definition has not been clear in past publications.

(3) Update the Circular for statutory and policy changes. Since the Circular was first issued in 1984, there have been numerous statutory and policy changes substantially affecting financial management systems. The Circular provides for the impact of these changes by establishing sections on financial management system requirements and financial management system improvements.

The financial management system requirements section establishes specific financial management system requirements and identifies authoritative sources for standards covering information, reporting, functional, and accounting standards. Specifically, the Circular recognizes the core financial system requirements published by the Joint Financial Management Improvement Program (JFMIP) and the U.S. Government Standard General Ledger (SGL) published by the Department of the Treasury as financial management system requirements. It also requires financial management systems to be able to provide the data required to prepare financial statements in accordance with the accounting standards recommded by the Federal Accounting Standards Advisory Board (FASAB) and reporting policies and requirements prescribed by OMB and the Department of the Treasury.

The financial management system improvements section was added to highlight requirements for the implementation of financial management systems. This section covers general financial management system development and operating requirements and includes guidance on cross-serviceing, use of “off-the-shelf” software, and developing custom financial system software. This section also places a strong emphasis on the need for system designs to support improvement in agency work processes.

(4) Clarify agency responsibilities for financial management systems. The revised Circular makes reference to the Chief Financial Officers Act where responsibilities for financial management systems were clearly defined. The revised Circular also refers to responsibilities outlined in other OMB circulars.


Analysis of Comments

Comments were received from OMB, the Small Agency Council representing smaller executive agencies of the Federal Government, and two private firms.

Comments Accepted: Comments were received which indicated guidance on implementing the SGL in instances where the existing accounts do not meet agency-unique needs was inadequate in the Circular. To clarify, a statement was included to recognize that the agencies may supplement their application of the SGL to meet agency specific information requirements in accordance with guidance provided in the U.S. Government Standard General Ledger supplement to the Treasury Financial Manual. Other clarifications were made to section 7 revisions to the references on required documentation which may have been incorrectly interpreted as requiring agencies, even in cases of vendor supplied software, to have in-house the capability to perform detailed software maintenance.

Several comments were received from the Federal sector expressing concerns over timely incorporation of new Federal financial system requirements
in vendor packages on the GSA Financial Management System Software (FMSS) Multiple Award Schedule. This revision includes requirements that such software packages meet the Core Financial System Requirements and other applicable accounting principles, standards, and related requirements specified by OMB for government-wide use. Such requirements will be incorporated into the recertification process for inclusion on the FMSS multiple award schedule and the benchmark testing process for software certification.

OMB also requested that the Circular outline the various responsibilities of OMB and other agencies for the FMSS multiple award schedule technical review process. OMB will issue and maintain such guidance separately after appropriate discussions with the parties involved.

The Small Agency Council commented that more guidance is needed for agencies not included in the Chief Financial Officers Act. Specific needs were not identified, but OMB is committed to providing additional guidance needed for the smaller agencies and will issue supplemental guidance as necessary.

Comments Not Accepted: Two agencies commented that “grace periods” should be allowed for meeting the requirements of the Circular. OMB does not feel this is necessary as this Circular is not modifying basic financial management policy. Many comments received stated that certain requirements of the Circular should be implemented as systems become obsolete and need replacement. OMB believes that agencies should begin to plan for implementation of the requirements of this revision now. The Federal government currently operates systems that are 10, 20, or in some cases close to 30 years old. Therefore, awaiting replacement of obsolete systems could delay desperately needed financial system improvements.

Two agencies commented that the Circular should include requirements of the FMFIA process and Information Resources Management (IRM) responsibilities as they relate to financial management systems. One of the objectives of this revision is to eliminate or at least reduce redundant or overlapping guidance. Therefore, such requirements and responsibilities are properly reflected in Circulars A-123 and A-130.

One private firm commented on the description of an integrated financial management system, stating that “it does not clearly state that agencies are required to implement a single, integrated data base, where technically feasible, to achieve systems integration.” OMB feels that implementing a single, integrated financial management system does not necessarily require the implementation of a single, integrated data base. Therefore, the requirements included in this Circular are believed appropriate, given the complexity and diversity of the Federal Government operations.

Several agencies commented on the absence of references to requirements of the Comptroller General in the Circular. The Director of OMB and the Comptroller General work cooperatively to develop principles, standards, and related requirements, which are incorporated in the Core Financial System Requirements and other documents referenced in this revision.

One Federal agency commented that some of the practices outlined under Section 8, Financial Management System Improvements, may be unnecessarily restrictive and duplicate practices under existing system development life cycle (SDLC) methodologies required of all systems. OMB feels these practices are significant and should be included in this revision to emphasize their importance.

One private firm commented that duplicative entry of transactions should never be permitted. OMB recognizes that there may be a few isolated situations, such as where extremely low transaction volumes are involved, where it may not be cost-effective to design and operate systems with complex electronic interfaces to avoid duplicative transaction entry. The Circular, therefore, requires that unnecessary duplicative entry be avoided where the benefit does not justify the cost.

One agency commented that “the common data element standard requirement for storage could be extremely costly for some bureau” and suggested wording to allow bureaus with existing systems to maintain the database and applications environment which best supports its mission, as long as it meets the common data element reporting requirements. OMB’s position is that common agencywide data elements should be maintained and that they should be incorporated in the agency’s financial management systems to be used for collection, storage and retrieval of financial management to eliminate inconsistency in agency financial information. Comments were also received as to the need for governmentwide standard data elements on which departmental elements would be based. OMB recognizes that governmentwide data elements should be established and plans to pursue such efforts in the future.

Some comments expressed concern that requirements for using “off-the-shelf” software packages could prevent agencies from obtaining systems developed and in use in the Federal government from other Federal agencies. OMB provides guidance in Section 8f. of this revision for transfer of agency financial management software.

Philip Lader,
Deputy Director for Management, Office of Management and Budget.
Circular No. A-127—Revised Transmittal Memorandum No. 1
To the Heads of Executive Departments and Establishments.
Circular No. A-127 prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems. This Transmittal Memorandum contains updated guidance which eliminates unnecessary overlap between Circular No. A-127 and Circular A-123, “Internal Control Systems”; eliminates unnecessary overlap between Circular No. A-127 and with Circular A-130, “Management of Federal Information Resources”; clarifies terminology and definitions; updates the Circular for statutory and policy changes; clarifies certain agency responsibilities; and eliminates outdated guidance.


Leon E. Panetta,
Director.

1. Purpose. OMB Circular No. A-127 (hereafter referred to as Circular A-127) prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems.


3. Authorities. This Circular is issued pursuant to the Chief Financial Officers Act (CFOs Act) of 1990, Pub. L. 101-576 and the Federal Managers’ Financial

4. Applicability and Scope.

a. The policies in this Circular apply to the financial management systems of all agencies as defined in section 5 of this Circular. Agencies not included in the CFOs Act are exempted from certain requirements as noted in section 9 of this Circular.

b. The policies contained in OMB Circular No. A–130, "Management of Federal Information Resources" (hereafter referred to as Circular A–130) govern agency management of information systems. The policies contained in Circular A–130 apply to all agency information resources, including financial management systems as defined in this Circular.

c. The policies and procedures contained in OMB Circular No. A–123, "Internal Control Systems," (hereafter referred to as Circular A–123) govern executive departments and agencies in establishing, maintaining, evaluating, improving, and reporting on internal controls in their program and administrative activities. Policies and references pertaining to internal controls contained in this Circular serve to amplify policies contained in Circular A–123 or highlight requirements unique to financial management systems.

5. Definitions. For the purposes of this Circular, the following definitions apply:

The term "agency" means any executive department, military department, independent agency, government corporation, government controlled corporation, or other establishment in the executive branch of the government.

The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual. Information systems include non-financial, financial, and mixed systems as defined in this Circular.

The term "financial system" means an information system, comprised of one or more applications, that is used for any financial events, provide financial information significant to the financial management of the agency, and/or required for the preparation of financial statements.

A financial system encompasses automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions. A financial system may include multiple applications that are integrated through a common database or are electronically interfaced, as necessary, to meet defined data and processing requirements.

The term "non-financial system" means an information system that supports non-financial functions of the Federal government or components thereof and any financial data included in the system are insignificant to agency financial management and/or not required for the preparation of financial statements.

The term "mixed system" means an information system that supports both financial and non-financial functions of the Federal government or components thereof.

The term "financial management systems" means the financial systems and the financial portions of mixed systems necessary to support financial management.

The term "single, integrated financial management system" means a unified set of financial systems and the financial portions of mixed systems encompassing the software, hardware, personnel, processes (manual and automated), procedures, controls and data necessary to carry out financial management functions, manage financial operations of the agency and report on the agency's financial status to central agencies, Congress and the public. Unified means that the systems are planned for and managed together, operated in an integrated fashion, and linked together electronically in an efficient and effective manner to provide agency-wide financial system support necessary to carry out the agency's mission and support the agency's financial management needs.

The term "application (financial or mixed system)" means a group of interrelated components of financial or mixed systems which supports one or more functions and has the following characteristics:

A common data base.
Common data element definitions.
Standardized processing for similar types of transactions.
Common version control over software.

The term "financial event" means any occurrence having financial consequences to the Federal government related to the receipt of appropriations or other financial resources; acquisition of goods or services; payments or collections; recognition of guarantees, benefits to be provided, or other potential liabilities; or other reportable financial activities.

The term "work process" means a series of activities operating together to achieve an end or desired result (mission, goal or objective). A work process is a workflow or series of steps necessary for the initiation, tracking and delivery of services or outputs. The process reflects how resources are managed to deliver the services or outputs and may cut across existing or future organizational boundaries.

6. Policy. Financial management in the Federal government requires accountability of financial and program managers for financial results of actions taken, control over the Federal government's financial resources and protection of Federal assets. To enable these requirements to be met, financial management systems must be in place to process and record financial events effectively and efficiently, and to provide complete, timely, reliable and consistent information for decision makers and the public.

The Federal government's financial management system policy is to establish government-wide financial systems and compatible agency systems, with standardized information and electronic data exchange between central management agencies and individual operating agencies, to meet the requirements of good financial management. These systems shall provide complete, reliable, consistent, timely and useful financial management information on Federal government operations to enable central management agencies, individual operating agencies, divisions, bureaus and other subunits to carry out their fiduciary responsibilities; deter fraud, waste, and abuse of Federal government resources; and facilitate efficient and effective delivery of programs through relating financial consequences to program performance.

In support of this objective, each agency shall establish and maintain a single, integrated financial management system that complies with:

- Applicable accounting principles, standards, and related requirements as defined by OMB and the Department of the Treasury;
- Internal control standards as defined in Circular A–123 and/or successor documents;
---Information resource management policy as defined in Circular A-130 and/or successor documents; and

---Operating policies and related requirements prescribed by OMB, the Department of the Treasury and the agency.

An agency's single, integrated financial management system shall comply with the characteristics outlined in section 7 of this Circular.

7. Financial Management System Requirements. Agency financial management systems shall comply with the following requirements:

a. Agency-wide Financial Information Classification Structure. The design of the financial management systems shall reflect an agency-wide financial information classification structure that is consistent with the U.S. Government Standard General Ledger, provides for tracking of program expenditures, and covers financial and financially related information. This structure will minimize data redundancies, ensure that consistent information is collected for similar transactions throughout the agency, and encourage consistent formats for entering data directly into the financial management systems and, therefore, that consistent information is readily available and provided to internal managers at all levels within the organization. Financial management systems' designs shall support agency budget, accounting and financial management reporting processes by providing consistent information for budget formulation, budget execution, programmatic and financial management, performance measurement, and financial statement preparation.

b. Integrated Financial Management Systems. Financial management systems shall be designed to provide for effective and efficient interrelationships between software, hardware, personnel, procedures, controls, and data contained within the systems. In doing so, they shall have the following characteristics:

---Common Data Elements. Standard data classifications (definitions and formats) shall be established and used for recording financial events. Common data elements shall be used to meet reporting requirements and, to the extent possible, used throughout the agency for collection, storage and retrieval of financial information. Government-wide information standards (e.g., the U.S. Government Standard General Ledger) and other external reporting requirements shall be incorporated into the agency's standard data classification requirements.

---Common Transaction Processing. Common processes shall be used for processing similar kinds of transactions throughout the system to enable these transactions to be reported in a consistent manner.

---Consistent Internal Controls. Internal controls over data entry, transaction processing and reporting shall be applied consistently throughout the system to ensure the validity of information and protection of Federal government resources.

---Efficient Transaction Entry. Financial system designs shall eliminate unnecessary duplication of transaction entry. Wherever appropriate, data needed by the systems to support financial functions shall be entered only once and other parts of the system shall be updated through electronic means consistent with the timing requirements of normal business/transaction cycles.

c. Application of the U.S. Government Standard General Ledger at the Transaction Level. Financial events shall be recorded by agencies throughout the financial management system applying the requirements of the U.S. Government Standard General Ledger (SGL) at the transaction level. Application of the SGL at the transaction level means that the financial management systems will process transactions following the definitions and defined uses of the general ledger accounts as described in the SGL. Compliance with this standard requires:

---Data in Financial Reports Consistent with the SGL. Reports produced by the systems that provide financial information, whether used internally or externally, shall provide financial data that can be traced directly to the SGL accounts.

---Transactions Recorded Consistent with SGL Rules. The criteria (e.g., timing, processing rules/conditions) for recording financial events in all financial management systems shall be consistent with accounting transaction definitions and processing rules defined in the SGL.

---Supporting Transaction Detail for SGL Accounts Readily Available. Transaction detail supporting SGL accounts shall be available in the financial management systems and directly traceable to specific SGL account codes.

Agencies may supplement their application of the SGL to meet agency specific information requirements in accordance with guidance provided in the U.S. Government Standard General Ledger supplement to the Treasury Financial Manual.

d. Federal Accounting Standards. Agency financial management systems shall maintain accounting data to permit reporting in accordance with accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and issued by the Director of OMB, and reporting requirements issued by the Director of OMB and/or the Secretary of the Treasury. Where no accounting standards have been recommended by FASAB and issued by the Director of OMB, the systems shall maintain data in accordance with the applicable accounting standards used by the agency for preparation of its financial statements. Agency financial management systems shall be designed flexibly to adapt to changes in accounting standards.

e. Financial Reporting. The agency financial management system shall meet the following agency reporting requirements:

---Agency Financial Management Reporting. The agency financial management system shall be able to provide financial information in a timely and useful fashion to (1) support management's fiduciary role; (2) support the legal, regulatory and other special management requirements of the agency; (3) support budget formulation and execution functions; (4) support fiscal management of program delivery and program decision making, (5) comply with internal and external reporting requirements, including, as necessary, the requirements for financial statements prepared in accordance with the form and content prescribed by OMB and reporting requirements prescribed by Treasury; and (6) monitor the financial management system to ensure the integrity of financial data.

---Performance Measures. Agency financial management systems shall be able to capture and produce financial information required to measure program performance, financial performance, and financial management performance as needed to support budgeting, program management and financial statement presentation. As new performance measures are established, agencies shall incorporate the necessary information and reporting requirements, as appropriate and feasible, into their financial management systems.

f. Budget Reporting. Agency financial management systems shall enable the
agency to prepare, execute and report on
the agency's budget in accordance with
the requirements of OMB Circular No.
A-11 (Preparation and Submission of
Budget Estimates), OMB Circular No. A-
34 (Instructions on Budget Execution)
and other circulars and bulletins issued
by the Office of Management and
Budget.

g. Functional Requirements. Agency
financial management systems shall
conform to existing applicable
functional requirements for the design,
development, operation, and
maintenance of financial management
systems. Functional requirements are
defined in a series of publications
titled Federal Financial Management
Systems Requirements issued by the
Joint Financial Management
Improvement Program (JFMIP).
Additional functional requirements may
be established through OMB circulars
and bulletins and the Treasury
Financial Manual. Agencies are
expected to implement expeditiously
new functional requirements as they are
established and/or made effective.

h. Computer Security Act
Requirements. Agencies shall plan for
and incorporate security controls in
accordance with the Computer Security
Act of 1987 and Circular A-130 for
those financial management systems
that contain “sensitive information” as
defined by the Computer Security Act.

i. Documentation. Agency financial
management systems and processing
instructions shall be clearly
documented in hard copy or
electronically in accordance with (a) the
requirements contained in the Federal
Financial Management Systems
Requirements documents published by
JFMIP or (b) other applicable
requirements. All documentation
(software, system, operations, user
manuals, operating procedures, etc.)
shall be kept up-to-date and be readily
available for examination. System user
documentation shall be in sufficient
detail to permit a person,
knowledgeable of the agency’s programs
and of systems generally, to obtain a
comprehensive understanding of the
entire operation of each system.

Technical systems documentation such
as requirements documents, systems
specifications and operating
instructions shall be adequate to enable
technical personnel to operate the
system in an effective and efficient
manner.

j. Internal Controls. The financial
management systems shall include a
system of internal controls that ensure
resource use is consistent with laws,
regulations, and policies; resources are
safeguarded against waste, loss, and
misuse; and reliable data are obtained,
maintained, and disclosed in reports.
Appropriate internal controls shall be
applied to all system inputs, processing,
and outputs. Such system related
controls form a portion of the
management control structure required
by Circular A-123.

k. Training and User Support.
Adequate training and appropriate user
support shall be provided to the users
of the financial management systems,
based on the user, training need and
roles of individual users, to enable the
users of the systems at all levels to
understand, operate and maintain the
system.

l. Maintenance. On-going
maintenance of the financial
management systems shall be performed
to enable the systems to continue to
operate in an effective and efficient
manner. The agency shall periodically
evaluate how effectively and efficiently
the financial management systems
support the agency’s changing business
practices and make appropriate
modifications.

m. Financial Management System
Improvements. In improving financial
management systems, agencies shall
follow the information technology
management policies presented in
Circular A-130. In addition, agencies
shall comply with the following policies
in designing, developing, implementing,
operating and maintaining financial
management systems:

a. Improvement in Agency Work
Processes. Designs for financial systems
and mixed systems shall be based on the
financial and programmatic information
and processing needs of the agency. As
part of any financial management
system design effort, agencies are to
analyze new requirements, new
technology supporting financial
management systems, and modifications
to work processes can together enhance
agency operations and improve program
and financial management. The
reassessment of information and
processing needs shall be an integral
part of the determination of system’s
requirements. Process redesign shall be
considered an essential step towards
meeting user needs in program
management, financial management,
and budgeting. Concurrent with
developing and implementing
integrated financial management
systems, agencies shall consider
program operations, roles and
responsibilities, and policies/practices
to identify related changes necessary to
facilitate financial management systems
operational efficiency and effectiveness.

b. Cost Effective and Efficient
Development and Operation of
Financial Management Systems.
Financial management system
development and implementation
efforts shall seek cost effective and
efficient solutions as required by
Circular A-130. A custom software
development approach for financial
management systems shall be used as a
last resort and only after consideration
of all appropriate software options,
including the following:

- Use of the agency’s existing system
  with enhancements/upgrades,
- Use of another system within the
department/agency,
- Use of an existing system at another
department/agency,
- Use of a commercial “off-the-shelf”
  software package,
- Use of a system under development at
  another department, or
- Use of a private vendor’s service.

The cost effectiveness of developing
custom software shall be clear and
documented in a benefit/cost analysis
that includes the justification of the
unique nature of the system’s functions
that preclude the use of alternative
approaches. This analysis shall be made
available to OMB for review upon
request.

c. Cross or Private Servicing. Cross
servicing of financial system support,
where one agency or a division within
an agency provides financial
management software and processing
support to another agency or division
within an agency, or private servicing
through commercial vendors shall be
used whenever feasible and cost
effective, as a solution to meet Federal
government financial management
system needs. Agencies providing cross-
servicing support shall ensure that
systems are maintained appropriately;
fees for service are reasonable; adequate
conversion support is provided;
procedures, training and documentation
are available and periodic service
reviews are conducted. Small agencies
are particularly encouraged to use cross-
servicing to meet fundamental core
financial and payroll/personnel
processing and reporting requirements.

d. Use of “Off-the-Shelf” Software.
GSA shall maintain the Financial
Management System Software (FMSS)
Multiple Award Schedule for vendors
providing acceptable software which
meets the core financial system
requirements as defined in the Core
Financial System Requirements
document published by JFMIP and other
applicable accounting principles,
standards, and related requirements as
defined by OMB for governmentwide
use. Such software packages will be
“benchmarked,” as appropriate, by an
transportability of the system to other approaches for meeting similar financial resources and developing common joint development efforts, are encouraged to undertake

Agencies with similar financial requirements document may also be made available under the GSA FMSS Multiple Award Schedule as agreed to by the Offfice of Federal Financial Resources Management (OFFM). Agencies obtaining such a waiver must ensure the system, whether resulting from a custom software development approach or from software existing within or external to the agency, is “benchmarked” by an independent team approved by OFFM or its designee.

Financial management system software meeting requirements beyond the scope of the Core Financial System Requirements document may also be made available under the GSA FMSS Multiple Award Schedule as agreed to by the OFFM or its designee.

e. Joint Development of Software. Agencies with similar financial management functions, after considering “off-the-shelf” software solutions, are encouraged to undertake joint development efforts by pooling resources and developing common approaches for meeting similar financial functions. The designs for jointly developed software shall contain the flexibility and other features needed for transportability of the system to other agencies and/or cross-servicing.

1. Transfer of Agency Financial Management Software. In cases where an agency determines it is more efficient and effective to use or adopt the software of another agency to meet its financial management system requirements, the agency shall ensure the following:

(1) The software meets the financial management system requirements in section 7 of this Circular.
(2) A formal written agreement on the transfer of software is prepared and approved by all parties. The agreement shall cover the full scope of support services to be provided including system modifications, maintenance and related costs;
(3) Any necessary support requirements not covered in the agreement shall be provided by the agency and such support, including implementation support and training, shall be assessed and determined to be adequate.

An ongoing relationship for determining future enhancements shall be established between the parties involved.

Any compensation arrangements for the transfer of the software shall conform to Circular A-130 policies.

9. Assignment of Responsibilities. a. Agency Responsibilities. Agencies shall perform the financial management system responsibilities prescribed by legislation referenced in Section 3 “Authorities” of this Circular. In addition, each agency shall take the following actions:


Agencies are required to maintain an inventory of existing and proposed financial management systems. Annually CFOs Act agencies will provide OMB with financial management system information in compliance with the financial system planning guidance issued by OMB for the Agency CFO 5-Year Financial Management Plan. Financial management systems shall be included in the agency information systems inventory following the information system inventory policies established in OMB Circular A-130.

(2) Develop and Maintain Agency-wide Financial Management System Plans.

Agencies are required to prepare annual financial management systems plans. These plans shall be developed in accordance with OMB guidance issued annually. Financial management system planning guidance for CFOs Act agencies shall be included in the guidance for developing CFO Financial Management 5-Year Plans.

The financial management systems strategies and tactical initiatives included in the CFO Financial Management 5-Year Plan shall be incorporated into the agency’s five year information systems plan prepared in compliance with Circular A-130.

Agencies not covered by the CFOs Act shall prepare plans following the CFO Financial Management 5-Year Plan guidance but are not required to submit the plans to OMB. Financial management system plans shall be an integral part of the agency’s overall planning process and updated for significant events that result in material changes to the plan as they occur.


Each agency shall ensure appropriate reviews are conducted of its financial management systems. The results of these reviews shall be considered when developing financial management systems plans. OMB encourages agencies to coordinate and, where appropriate, combine required reviews.

Reviews must comply with policies for (1) reviews of internal controls undertaken and reported on in accordance with the guidance issued by OMB for compliance with the requirements of the Federal Managers’ Financial Integrity Act (FMFIA) and Circular A-123, (2) reviews of conformance of financial management systems with the principles, standards and related requirements in Section 7 of this Circular undertaken in accordance with the guidance issued by OMB for compliance with requirements of the FMFIA, and (3) reviews of systems and security as required under provisions of Circular A-130.


Agencies shall issue, update, and maintain agency-wide financial management system directives to reflect policies defined in this Circular.

b. GSA Responsibilities. GSA is responsible for maintaining the FMSS Multiple Award Schedule for Federal financial management software and related services in accordance with guidance provided by OMB.

10. Information Contact. All questions or inquiries should be addressed to the Office of Federal Financial Management, Federal Financial Systems Branch, telephone number 202/395-6903.

11. Review Date. This Circular shall be reviewed three years from the date of issuance to ascertain its effectiveness.

12. Effective Date. This Circular is effective July 23, 1993.
Part VIII

Department of the Interior

Bureau of Indian Affairs

Integration of Employment; Notice
DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Integration of Employment, Training and Related Services Provided by Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Program announcement.

SUMMARY: Public Law 102-477 authorizes the integration of employment, training and related services provided by Indian tribes. A Memorandum of Understanding among the Department of the Interior, Department of Health and Human Services and the Department of Labor is being developed which provides for the implementation of the Act. Tribes will be afforded the opportunity to demonstrate how Indian tribes can integrate these services in order to improve the effectiveness of those services, reduce joblessness and serve tribally-determined goals. This program announcement invites tribes, by tribal resolution, to apply for participation in the demonstration project beginning October 1, 1993. Tribes submitting resolutions will receive guidance in preparing tribal proposals.

DATES: Tribal resolutions for participation may be submitted at any time. However, for participation beginning October 1, 1993, tribal resolutions should be submitted within 30 days from the date of this notice being published in the Federal Register.

ADDRESSES: Tribal resolution, must be submitted to: Division of Job Placement and Training, Office of Economic Development, Bureau of Indian Affairs, 1849 C. Street NW., Washington, DC 20240 Mail Stop 2528/B-MIB.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, Chief, Division of Job Placement and Training (202) 208-2570.


Ron Eden, Assistant Secretary-Indian Affairs.

[FR Doc. 93-18225 Filed 7-29-93; 8:45 am]
### Proposed Rules

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### LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 27, 1993